

It has been said by one critic that it is for the Prize Courts to decide according to the circumstances whether an article is contraband, that no list can be made which should always be applicable, and that articles may be included in such a list which in some wars ought not to be contraband, and articles excluded which in some wars ought to be contraband.

This may be true to some extent, but to leave the question still at large would fail to provide any security for traders as to what they might or might not carry during war, and this, subject to the preservation of belligerent rights, was perhaps the principal purpose for which agreement was sought by the Powers both at The Hague and in London. Looking at the list, it seems difficult to say that anything therein, with the possible exception of No. 7 (animals), would not necessarily be absolute contraband in almost every conceivable war, and even if there were cases in which it was otherwise, the belligerent would then have no object in bringing in the carrying ship, since it is not in his interest to annoy neutrals for no advantage to himself. It is true that the list may not include everything that could be absolute contraband in any possible war, but this contingency is met by Article 23, and in the case of conditional contraband by Article 25.

The actual lists were agreed upon with much difficulty, but the opinion prevailed that few greater reforms could be effected in this direction than to substitute certainty for uncertainty. The advantages to what I may call for this purpose "the honest trader" are apparent, and the agreement on definite lists of contraband would also benefit the belligerent in that it would afford clear guidance to his officers and minimise the risk of complications with neutral Powers, which might be of much danger at a time of stress and pressure.

The right of the belligerent to make additions to the lists of contraband by notification to other Powers has been questioned, as enabling him to do this arbitrarily and thus at his own will to treat contraband goods which do not fulfil the requisite conditions to give them that character.

This is met by the language of the Declaration, which, in giving the right, provides that the articles added to the list of absolute contraband must be limited to such as are exclusively used for war and those added to the list of conditional contraband susceptible of use in war.

If articles declared to be contraband were not within this description the carrier would not be liable to condemnation and the owner of the goods would be compensated, and (short of going to war) this is, under existing circumstances, the only remedy against arbitrary or unjustifiable seizure. Seizures of that character would, as it appears to me, be equally likely, if not more likely, to occur if it were—as it is—left to the Prize Court to say whether in particular circumstances an article is or is not contraband.

It has been said that additions to lists ought only to have been allowed by agreement, and not at the will of the belligerent.

This would be impracticable because of the time it would occupy to invite and obtain such agreement. Even if the war were not over, the object of the proposed addition would probably have ceased to exist before the assents of all neutral Powers could possibly be obtained.

The agreement on a free list (Article 28), coupled with the provision in Article 27 (which is really a necessary inference from the provisions of the previous articles dealing with contraband) that articles not susceptible of use in war may not be declared contraband, is of much advantage to neutral traders. In respect of the carriage of such articles he is always safe, and security is the soul of straightforward and legitimate trade.

So far the criticisms of the chapters on contraband do not seem very formidable, and I think impartial consideration would result in the conclusion that neutral traders benefit—and that no just right of belligerents is weakened.

Whether articles, being such as are capable of being contraband, are in fact contraband depends on their destination, and the rules by which destination may be established or presumed raise points of considerable difficulty on which different views have been held by different Powers, and on which, when the Conference met, there could not be said to be anything approaching general agreement.

Without agreement on this point no provision as to the nature of contraband would have removed uncertainty as to the rules to be applied as to carriage of contraband, with regard to which the divergences of theory and of practice that exist produce so great a sense of insecurity and involve neutral traders from time to time in serious losses. The importance of some agreement on this point was emphasised