

by the action of the belligerents in the Russo-Japanese war, when traders of neutral States were penalised by decisions not in accordance with the rules recognised by their own Courts, but as to which the belligerents' Prize Courts afforded no adequate redress.

This it was, perhaps, more than any one other consideration, that induced the Government to seek by international agreement some uniform rule enforceable in the last resort by an International Court, with a view of securing ultimate justice and redress on some fixed principle to those who might, as they conceived, be denied them in the national Courts of a belligerent.

It is said that justice will not be secured in such a Court, that it is to degrade national Courts and to destroy the independence of nations that the decisions of the former should be subject to review in a foreign Tribunal; and that the latter should be bound to give effect to the judgments of such a tribunal. The assumption that justice will not be done by a number of distinguished jurists administering an agreed code of laws in public before the eyes of the civilised world seems a startling one, and the question whether it is advisable to allow appeal from the national Courts or not should scarcely be thus disposed of, but deserves consideration by each State on general grounds, and particularly with regard to its own interests when belligerent and the interests of its traders when neutral. If it be of advantage, it must follow that there is the obligation of duty and of honour to give effect to the decisions of the International Court.

Now, how do things work out at present when Great Britain is neutral? Our traders are dealt with by the national Courts of the belligerents acting not infrequently on principles which we do not admit, and sometimes, as we have thought, doing substantial injustice to our traders. In that respect we do not sustain our view of the law, but suffer from these decisions without any remedy but war.

The injury may be great, but the remedy of war disproportionate, looking to the infinite suffering, the commercial confusion, and the enormous cost occasioned by such a remedy. Is it not wise to seek some other means of adjusting differences of this character, and to endeavour to find common principles to be enforced by some Tribunal acceptable to all?

It is obvious that no arrangement of that character can be reached without compromise, and it was thought convenient to make these general observations before dealing with a question on which there has unquestionably been compromise, and enquiring how, and in what degree, the rules so reached affect the position of Great Britain as a combatant, or its traders when a neutral.

With regard to destination, different considerations apply under the Declaration as to absolute and as to conditional contraband. In effect, with regard to the former the ultimate destination of the contraband cargo is the test, that is, although the destination of the carrying vessel may be a neutral port, the belligerent may yet seize and get the contraband condemned—and in certain conditions the vessel—if he can show that the contraband was, after being landed at the neutral port, to be conveyed, either by transshipment or overland, to the enemy or to enemy territory. With regard to the latter (conditional contraband) it is otherwise. In that case the destination of the cargo is held for this purpose to be the destination of the carrier, and it cannot therefore legitimately be seized or it or the vessel brought in for adjudication if she is bound only for a neutral port.

This was a compromise between divergent, and in the first instance apparently irreconcilable, views.

While the view that the destination of the cargo, and not that of the carrier, was the proper test was maintained by some Powers, it was rejected by others, and there seemed to be no possible basis for agreement.

The proposition was then made that the destination of the cargo should be the test in the case of absolute, and the destination of the ship in the case of conditional, contraband. The British delegates were instructed to examine this proposition carefully, and, after full consideration by the Government of the position and of the effect of the proposal, they were instructed to accept it.

In view of the not unreasonable anxiety that has been aroused by what is thought to be an important concession in principle on the part of Great Britain, it is of importance to examine closely into its practical effect.

It should first be said that Great Britain refused to entertain the suggestion that as regards absolute contraband the destination of the cargo should be held necessarily to be that of the carrier if the latter was bound for a neutral port.

That it should be possible for a neutral to carry on a trade in arms and munitions