

THE SINKING OF NEUTRAL SHIPS

Written for "The Listener" by PAUL KAVANAGH, Editor of the "New Zealand Law Journal"

IT is almost a daily experience to find in the war news accounts of the enemy's sinking of neutral shipping, either by gunfire from submarines or by the explosion of floating mines.

International law recognises the rights of belligerents to prevent contraband of war reaching their enemies, but it lays down rules within which all parties, neutrals as well as belligerents, must conduct themselves. In wartime, the only goods carried in neutral ships that may be seized by a belligerent are those which come within the list of contraband declared by that belligerent, and notified to all neutral States. The word "contraband" itself implies this notice, as it derives from two Latin words meaning "in defiance of an order"; and it is used only in relation to neutral ships, and neutral shippers. Contraband goods are those that are conveyed by sea, either directly or for transshipment through a neutral country, to the enemy, and that, from their nature, may be of use to him in his military or naval operations, and have been declared by the opposing side to be within the list of contraband. It is not necessary that such goods should be directed to an enemy port: it is sufficient if they are destined to reach the enemy country eventually.

The seizure of contraband does not depend on the law of might. The law of nations has always been clear in this regard: it is a legitimate practice for a neutral to try to get his goods to his buyer; but it is equally lawful for the buyer's enemy to prevent the delivery of those goods. The "manner" of such seizure is regulated by the law of nations.

Ownership Settled by Prize Court

If we are to understand the war news, it must always be borne in mind that no neutral property, even that seized by a belligerent, can become the property of the captor until the ownership in such goods has been transferred to him by the declaration of a properly-constituted Prize Court. From this it follows that a neutral ship or cargo must be examined for suspected contraband. This may take place at sea or in a port of the captor, but suspected or actual contraband does not change its ownership until the Prize Court so declares.

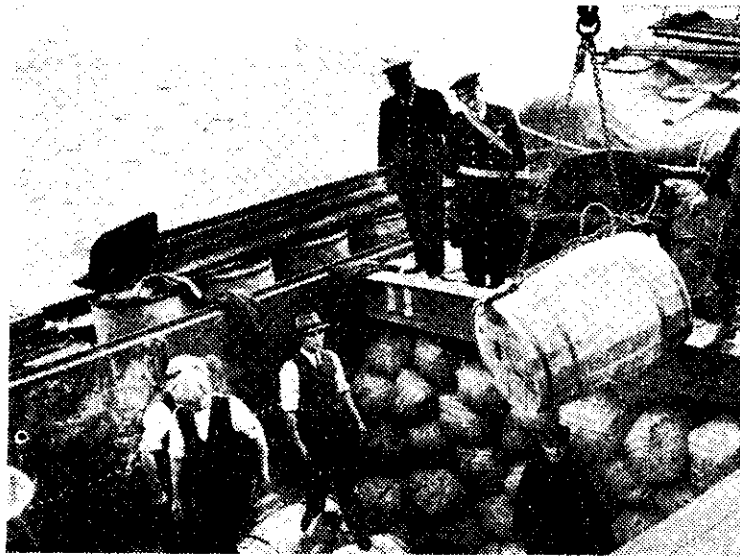
It is, therefore, illegal to sink a ship carrying contraband, even after examination; and it is against all rules of international law to sink at sight a neutral vessel merely because, without examination, she may be suspected of carrying contraband goods, because, until there has been a careful investigation and condemnation by a Prize Court, those goods are not the property of the captor.

Visit And Search

The right of visit and search may be exercised anywhere on the seas outside neutral territorial waters by all the ships of war and military aircraft of a belligerent, from the outbreak of war until peace is actually declared.

A warship which wishes to visit a neutral vessel to search for contraband must hail her or fire two

blank cartridges from the so-called affirming gun, and, if necessary, by firing a shot across her bows. If she does not stop, the warship is justified in using force to compel her to do so. The warship also stops, keeping a distance that is reasonable according to wind and weather. One or more naval officers from the warship are sent aboard. They examine the vessel's papers, and, if everything is found in order, the vessel goes on her way. If, however, there is proof or reasonable suspicion that she is carrying contraband, or that her papers are not in order, she may be searched in the presence of her master, without the use of any force.



CONTRABAND CARGO being removed from a neutral merchantman. Hitler's personal consignment of coffee came from this very hold.

If suspicion becomes certainty, the vessel is ordered into a port for the purpose of being searched as thoroughly as possible.

During the last war, and so far during the present war, no neutral ship has been sunk by the Allies, and there has been no loss of life among the neutral seamen during the course of British search or seizure of contraband. On the other hand, the enemy has sunk indiscriminately neutral merchant ships even in neutral territorial waters, without visit or search, or any attempt to bring them into a German port for examination and condemnation of ships or cargoes.

Submarines As Commerce Raiders

The British view the submarine as a weapon entirely unsuited to commerce-raiding, since it can only with difficulty and under exceptional circumstances be so employed to conform with the rules of international law respecting the seizure and condemnation of contraband. The few cases in which German submarine commanders have treated the crews of sunken ships with humanity throw into relief those cases in which neutral seamen have been killed or abandoned in the open sea far from land. These acts are contrary to the submarine protocol to the London Navy Treaty, by which Germany by the signature of Herr von Ribbentrop voluntarily bound herself in 1936. The Treaty provided that, in relation to any merchant ships, submarines must conform to the rules of

international law to which surface vessels are subject, and that a merchant vessel may not be sunk or rendered incapable of navigation unless the passengers, crew, and ship's papers are placed in a position of safety. A ship's boats are not regarded as places of safety unless the existing sea and weather conditions, the proximity to land, or the presence of another vessel in a position to take passengers on board, makes safety assured.

Freedom of the Seas

As has been said elsewhere in these notes, international law regards the high seas as free and common to all mankind for navigation and innocent use, and as forming an international highway which no nation can claim as its own.

The Hague Convention of 1907, to which Germany was a party (and which, as late as September 17 last, she declared her intention to observe), prohibited the laying by belligerents of unanchored automatic contact mines, unless they are so constructed as to become harmless within one hour at most after those who lay them lose control of them. Britain wanted a total prohibition of their use, and the German delegate, Baron Marshal von Bieberstein, supported her. In his speech, he said:

"A belligerent who lays mines assumes a very heavy responsibility towards neutrals and peaceful shipping. But military acts are not governed solely by principles of international law. There are other factors—conscience, good sense, and the sentiment of duty imposed by the

principles of humanity will be the surest guarantee against abuses. The officers of the German Navy will always fulfil in the strictest fashion the duties which emanate from the unwritten law of humanity and civilisation. As to these sentiments, I cannot admit that there is any Government or country which is superior in these sentiments to the Government which I have the honour to represent."

Notwithstanding these lofty sentiments, a German vessel was sunk while laying floating mines in the North Sea on the first day of the war of 1914; and hundreds of neutral seamen lost their lives through the blowing up of their ships during the succeeding four years of war.

If anchored automatic contact mines are employed, international law requires that every possible precaution is to be taken for the security of peaceful neutral navigation. Belligerents must provide, as far as possible, for these mines becoming harmless after a limited time; and the danger-zones or the mine-fields must be notified to all neutral Governments. During the four years of the last war in which the Allies and Associated Powers used mine-fields of anchored mines, no neutral vessel suffered any harm from them.