

NOTE TO GREAT BRITAIN OF DECEMBER 26,¹ PROTESTING AGAINST SEIZURES AND DETENTIONS REGARDED AS UNWARRANTED

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The Secretary of State to the Ambassador in Great Britain (Page)²

[Telegram]

DEPARTMENT OF STATE,
*Washington, December 26, 1914, 4 p. m.*¹

836. The present condition of American foreign trade resulting from the frequent seizures and detentions of American cargoes destined to neutral European ports has become so serious as to require a candid statement of the views of this Government in order that the British Government may be fully informed as to the attitude of the United States toward the policy which has been pursued by the British authorities during the present war.

You will, therefore, communicate the following to His Majesty's Principal Secretary of State for Foreign Affairs, but in doing so you will assure him that it is done in the most friendly spirit and in the belief that frankness will better serve the continuance of cordial relations between the two countries than silence, which may be misconstrued into acquiescence in a course of conduct which this Government can not but consider to be an infringement upon the rights of American citizens.

The Government of the United States has viewed with growing concern the large number of vessels laden with American goods destined to neutral ports in Europe, which have been seized on the high seas, taken into British ports and detained sometimes for weeks by the British authorities. During the early days of the war this Government assumed that the policy adopted by the British Government was due to the unexpected outbreak of hostilities and the necessity of immediate action to prevent contraband from reaching the enemy. For this reason it was not disposed to judge this policy harshly or protest it vigorously, although it was manifestly very injurious to American trade with the neutral countries of Europe. This Government, relying confidently upon the high regard which Great Britain has so often exhibited in the past for the rights of other nations, confidently awaited amendment of a course of action which denied to neutral commerce the freedom to which it was entitled by the law of nations.

This expectation seemed to be rendered the more assured by the statement of the Foreign Office early in November that the British Government were satisfied with guarantees offered by the Norwegian, Swedish, and Danish Governments as to non-exportation of contraband goods when consigned to named persons in the territories of those Governments, and that orders had been given to the British fleet and customs authorities to restrict interference with neutral vessels carrying such cargoes so consigned to verification of ship's papers and cargoes.

¹ Presented December 28.

² A paraphrase of this instruction was sent on December 30 to the British, French, and Russian Ambassadors, for which the exact text was substituted on the 31st.

It is, therefore, a matter of deep regret that, though nearly five months have passed since the war began, the British Government have not materially changed their policy and do not treat less rigorously ships and cargoes passing between neutral ports in the peaceful pursuit of lawful commerce, which belligerents should protect rather than interrupt. The greater freedom from detention and seizure which was confidently expected to result from consigning shipments to definite consignees, rather than "to order," is still awaited.

It is needless to point out to His Majesty's Government, usually the champion of the freedom of the seas and the rights of trade, that peace, not war, is the normal relation between nations and that the commerce between countries which are not belligerents should not be interfered with by those at war unless such interference is manifestly an imperative necessity to protect their national safety, and then only to the extent that it is a necessity. It is with no lack of appreciation of the momentous nature of the present struggle in which Great Britain is engaged and with no selfish desire to gain undue commercial advantage that this Government is reluctantly forced to the conclusion that the present policy of His Majesty's Government toward neutral ships and cargoes exceeds the manifest necessity of a belligerent and constitutes restrictions upon the rights of American citizens on the high seas which are not justified by the rules of international law or required under the principle of self-preservation.

The Government of the United States does not intend at this time to discuss the propriety of including certain articles in the lists of absolute and conditional contraband, which have been proclaimed by His Majesty. Open to objection as some of these seem to this Government, the chief ground of present complaint is the treatment of cargoes of both classes of articles when bound to neutral ports.

Articles listed as absolute contraband, shipped from the United States and consigned to neutral countries, have been seized and detained on the ground that the countries to which they were destined have not prohibited the exportation of such articles. Unwarranted as such detentions are, in the opinion of this Government, American exporters are further perplexed by the apparent indecision of the British authorities in applying their own rules to neutral cargoes. For example, a shipment of copper from this country to a specified consignee in Sweden was detained because, as was stated by Great Britain, Sweden had placed no embargo on copper. On the other hand, Italy not only prohibited the export of copper, but, as this Government is informed, put in force a decree that shipments to Italian consignees or "to order," which arrive in ports of Italy, can not be exported or transhipped. The only exception Italy makes is of copper which passes through that country in transit to another country. In spite of these decrees, however, the British Foreign Office has thus far declined to affirm that copper shipments consigned to Italy will not be molested on the high seas. Seizures are so numerous and delays so prolonged that exporters are afraid to send their copper to Italy, steamship lines decline to accept it, and insurers refuse to issue policies upon it. In a word, a legitimate trade is being greatly impaired through uncertainty as to the treatment which it may expect at the hands of the British authorities.

We feel that we are abundantly justified in asking for information as to the manner in which the British Government propose to carry out the policy which they have adopted, in order that we may determine the steps necessary to protect our citizens, engaged in foreign trade, in their rights and from the serious losses to which they are liable through ignorance of the hazards to which their cargoes are exposed.

In the case of conditional contraband the policy of Great Britain appears to this Government to be equally unjustified by the established rules of international conduct. As evidence of this, attention is directed to the fact that a number of the American cargoes which have been seized consist of foodstuffs and other articles of common use in all countries which are admittedly relative contraband. In spite of the presumption of innocent use because destined to neutral territory, the British authorities made these seizures and detentions without, so far as we are informed, being in possession of facts which warranted a reasonable belief that the shipments had in reality a belligerent destination, as that term is used in international law. Mere suspicion is not evidence and doubts should be resolved in favor of neutral commerce, not against it. The effect upon trade in these articles between neutral nations resulting from interrupted voyages and detained cargoes is not entirely cured by reimbursement of the owners for the damages which they have suffered, after investigation has failed to establish an enemy destination. The injury is to American commerce with neutral countries as a whole through the hazard of the enterprise and the repeated diversion of goods from established markets.

It also appears that cargoes of this character have been seized by the British authorities because of a belief that, though not originally so intended by the shippers, they will ultimately reach the territory of the enemies of Great Britain. Yet this belief is frequently reduced to a mere fear in view of the embargoes which have been decreed by the neutral countries to which they are destined on the articles composing the cargoes.

That a consignment "to order" of articles listed as conditional contraband and shipped to a neutral port raises a legal presumption of enemy destination appears to be directly contrary to the doctrine previously held by Great Britain and thus stated by Lord Salisbury during the South African War:

Foodstuffs, though having a hostile destination, can be considered as contraband of war only if they are for the enemy forces; it is not sufficient that they are capable of being so used, it must be shown that this was in fact their destination at the time of their seizure.

With this statement as to conditional contraband the views of this Government are in entire accord, and upon this historic doctrine, consistently maintained by Great Britain when a belligerent as well as a neutral, American shippers were entitled to rely.

The Government of the United States readily admits the full right of a belligerent to visit and search on the high seas the vessels of American citizens or other neutral vessels carrying American goods and to detain them *when there is sufficient evidence to justify a belief*

that contraband articles are in their cargoes; but His Majesty's Government, judging by their own experience in the past, must realize that this Government can not without protest permit American ships or American cargoes to be taken into British ports and there detained for the purpose of searching generally for evidence of contraband, or upon presumptions created by special municipal enactments which are clearly at variance with international law and practice.

This Government believes and earnestly hopes His Majesty's Government will come to the same belief, that a course of conduct more in conformity with the rules of international usage, which Great Britain has strongly sanctioned for many years, will in the end better serve the interests of belligerents as well as those of neutrals.

Not only is the situation a critical one to the commercial interests of the United States, but many of the great industries of this country are suffering because their products are denied long-established markets in European countries, which, though neutral, are contiguous to the nations at war. Producers and exporters, steamship and insurance companies are pressing, and not without reason, for relief from the menace to transatlantic trade which is gradually but surely destroying their business and threatening them with financial disaster.

The Government of the United States, still relying upon the deep sense of justice of the British nation, which has been so often manifested in the intercourse between the two countries during so many years of uninterrupted friendship, expresses confidently the hope that His Majesty's Government will realize the obstacles and difficulties which their present policy has placed in the way of commerce between the United States and the neutral countries of Europe, and will instruct their officials to refrain from all unnecessary interference with the freedom of trade between nations which are sufferers, though not participants, in the present conflict; and will in their treatment of neutral ships and cargoes conform more closely to those rules governing the maritime relations between belligerents and neutrals, which have received the sanction of the civilized world, and which Great Britain has, in other wars, so strongly and successfully advocated.

In conclusion, it should be impressed upon His Majesty's Government that the present condition of American trade with the neutral European countries is such that, if it does not improve, it may arouse a feeling contrary to that which has so long existed between the American and British peoples. Already it is becoming more and more the subject of public criticism and complaint. There is an increasing belief, doubtless not entirely unjustified, that the present British policy toward American trade is responsible for the depression in certain industries which depend upon European markets. The attention of the British Government is called to this possible result of their present policy to show how widespread the effect is upon the industrial life of the United States and to emphasize the importance of removing the cause of complaint.

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