

As was stated in the note of April 4 last, the prize court should have to decide the questions whether the destruction of the ship and cargo was legal; whether and under what conditions the property sunk was liable to confiscation, and to whom and in what amount indemnity is to be paid provided application therefore is received. Since the decision of the prize court must first be awaited before any further position is taken by the German Government, the simplest way for the American interested parties to settle their claims would be to enter them in the competent records in accordance with the provisions of the German code of prize proceedings.

The undersigned begs to suggest that the Ambassador bring the above to the knowledge of his Government, and avails himself [etc.]

V. JAGOW

GERARD

The Note of June 9, 1915, to Germany on the "Lusitania" and Other Cases—The Note of June 24, 1915, on the "Frye"

File No. 763.72/1830

The Secretary of State ad interim to the Ambassador in Germany (Gerard)

[Telegram]

WASHINGTON, June 9, 1915.

1803. You are instructed to deliver textually the following note to the Minister of Foreign Affairs:

In compliance with your excellency's request I did not fail to transmit to my Government immediately upon their receipt your note of May 28 in reply to my note of May 15 [13], and your supplementary note of June 1, setting forth the conclusions so far as reached by the Imperial German Government concerning the attacks on the American steamers *Cushing* and *Gulflight*.¹ I am now instructed by my Government to communicate the following in reply:

The Government of the United States notes with gratification the full recognition by the Imperial German Government, in discussing the cases of the *Cushing* and the *Gulflight*, of the principle of the freedom of all parts of the open sea to neutral ships and the frank willingness of the Imperial German Government to acknowledge and meet its liability where the fact of attack upon neutral ships "which have not been guilty of any hostile act" by German aircraft or vessels of war is satisfactorily established; and the Government of the United States will in due course lay before the Imperial German Government, as it requests, full information concerning the attack on the steamer *Cushing*.

With regard to the sinking of the steamer *Falaba*, by which an American citizen lost his life, the Government of the United States is surprised to find the Imperial German Government contending that an effort on the part of a merchantman to escape capture and secure assistance alters the obligation of the officer seeking to make the capture in respect of the safety of the lives of those on board the merchantman, although the vessel had ceased her attempt to escape when torpedoed. These are not new circumstances. They have been in the minds of statesmen and of international jurists throughout the development of naval warfare, and the Government of the United States does not understand that they have ever been held to alter the principles of humanity upon which it has insisted. Nothing but actual forcible resistance or continued efforts to escape by flight when ordered to stop for the purpose of visit on the part of the merchantman has ever been held to forfeit the lives of her passengers or crew. The Government of the United States, however, does not understand that the Imperial German Government is seeking in this case to relieve itself of liability, but only intends to set forth the circumstances which led the commander of the submarine to allow himself to be hurried into the course which he took.

¹Ante, pp. 419, 393, and 431.

Your excellency's note, in discussing the loss of American lives resulting from the sinking of the steamship *Lusitania*, adverts at some length to certain information which the Imperial German Government has received with regard to the character and outfit of that vessel, and your excellency expresses the fear that this information may not have been brought to the attention of the Government of the United States. It is stated in the note that the *Lusitania* was undoubtedly equipped with masked guns, supplied with trained gunners and special ammunition, transporting troops from Canada, carrying a cargo not permitted under the laws of the United States to a vessel also carrying passengers, and serving, in virtual effect, as an auxiliary to the naval forces of Great Britain. Fortunately, these are matters concerning which the Government of the United States is in a position to give the Imperial German Government official information. Of the facts alleged in your excellency's note, if true, the Government of the United States would have been bound to take official cognizance in performing its recognized duty as a neutral power and in enforcing its national laws. It was its duty to see to it that the *Lusitania* was not armed for offensive action, that she was not serving as a transport, that she did not carry a cargo prohibited by the statutes of the United States, and that, if in fact she was a naval vessel of Great Britain, she should not receive clearance as a merchantman; and it performed that duty and enforced its statutes with scrupulous vigilance through its regularly constituted officials. It is able, therefore, to assure the Imperial German Government that it has been misinformed. If the Imperial German Government should deem itself to be in possession of convincing evidence that the officials of the Government of the United States did not perform these duties with thoroughness, the Government of the United States sincerely hopes that it will submit that evidence for consideration.

Whatever may be the contentions of the Imperial German Government regarding the carriage of contraband of war on board the *Lusitania* or regarding the explosion of that material by the torpedo, it need only be said that in the view of this Government these contentions are irrelevant to the question of the legality of the methods used by the German naval authorities in sinking the vessel.

But the sinking of passenger ships involves principles of humanity which throw into the background any special circumstances of detail that may be thought to affect the cases, principles which lift it, as the Imperial German Government will no doubt be quick to recognize and acknowledge, out of the class of ordinary subjects of diplomatic discussion or of international controversy. Whatever be the other facts regarding the *Lusitania*, the principal fact is that a great steamer, primarily and chiefly a conveyance for passengers, and carrying more than a thousand souls who had no part or lot in the conduct of the war, was torpedoed and sunk without so much as a challenge or a warning, and that men, women, and children were sent to their death in circumstances unparalleled in modern warfare. The fact that more than one hundred American citizens were among those who perished made it the duty of the Government of the United States to speak of these things and once more, with solemn emphasis, to call the attention of the Imperial German Government to the grave responsibility which the Government of the United States conceives that it has incurred in this tragic occurrence, and to the indisputable principle upon which that responsibility rests. The Government of the United States is contending for something much greater than mere rights of property or privileges of commerce. It is contending for nothing less high and sacred than the rights of humanity, which every Government honors itself in respecting and which no Government is justified in resigning on behalf of those under its care and authority. Only her actual resistance to capture or refusal to stop when ordered to do so for the purpose of visit could have afforded the commander of the submarine any justification for so much as putting the lives of those on board the ship in jeopardy. This principle the Government of the United States understands the explicit instructions issued on August 3, 1914, by the Imperial German Admiralty to its commanders at sea to have recognized and embodied, as do the naval codes of all other nations, and upon it every traveler and seaman had a right to depend. It is upon this principle of humanity as well as upon the law founded upon this principle that the United States must stand.

The Government of the United States is happy to observe that your excellency's note closes with the intimation that the Imperial German Government is willing, now as before, to accept the good offices of the United States in an

attempt to come to an understanding with the Government of Great Britain by which the character and conditions of the war upon the sea may be changed. The Government of the United States would consider it a privilege thus to serve its friends and the world. It stands ready at any time to convey to either Government any intimation or suggestion the other may be willing to have it convey and cordially invites the Imperial German Government to make use of its services in this way at its convenience. The whole world is concerned in anything that may bring about even a partial accommodation of interests or in any way mitigate the terrors of the present distressing conflict.

In the meantime, whatever arrangement may happily be made between the parties to the war, and whatever may in the opinion of the Imperial German Government have been the provocation or the circumstantial justification for the past acts of its commanders at sea, the Government of the United States confidently looks to see the justice and humanity of the Government of Germany vindicated in all cases where Americans have been wronged or their rights as neutrals invaded.

The Government of the United States therefore very earnestly and very solemnly renews the representations of its note transmitted to the Imperial German Government on the 15th of May, and relies in these representations upon the principles of humanity, the universally recognized understandings of international law, and the ancient friendship of the German nation.

The Government of the United States can not admit that the proclamation of a war zone from which neutral ships have been warned to keep away may be made to operate as in any degree an abbreviation of the rights either of American shipmasters or of American citizens bound on lawful errands as passengers on merchant ships of belligerent nationality. It does not understand the Imperial German Government to question those rights. It understands it, also, to accept as established beyond question the principle that the lives of non-combatants can not lawfully or rightfully be put in jeopardy by the capture or destruction of an unresisting merchantman, and to recognize the obligation to take sufficient precaution to ascertain whether a suspected merchantman is in fact of belligerent nationality or is in fact carrying contraband of war under a neutral flag. The Government of the United States therefore deems it reasonable to expect that the Imperial German Government will adopt the measures necessary to put these principles into practice in respect of the safeguarding of American lives and American ships, and asks for assurances that this will be done.

LANSING

File No. 763.72112/1241

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

[Telegram]

LONDON, June 10, 1915, 5 p. m.

[Received 6.55 p. m.]

2258. I have again taken up *in extenso* with Lord Crewe, temporarily in charge of the Foreign Office, our troubles about stopped cotton cargoes. After making urgent requests for early answers in a number of specific cases which are of an imperative nature, I expressed the hope on my own account that the British answer to our note on the blockade would not be longer delayed. He confessed confidentially that it was ready and he implied that it was held till our correspondence with Germany should be out of the way. I suggested that if the contents of the reply were satisfactory to us this was a peculiarly good time to send it, especially if the British Government should see its way to settle these cotton controversies promptly by acceding to our requests. I reminded him that it is a very good time now to clean up our whole docket.

He expressed agreement with me. Such an attitude of the First Secretary is one thing. Action by the Admiralty and by committees