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GREAT BRITAIN, CONTRABAND AND FUTURE MARITIME CONFLICT (1885–1916)[1]

For Great Britain, the second half of the nineteenth century was a time of relative peace. It experienced each international conflict, except for the Boer War of 1899–1902, as a neutral. This shaped its expectations of a future war at sea. As a neutral, Great Britain was primarily interested in keeping its trade uninterrupted during a conflict, while belligerents imposed trade restrictions on neutrals and thus constrained international trade. The diverging interests of belligerents and neutrals often clashed in conflicts prior to the First World War. An analysis of Great Britain's experience of this pre-war tension between neutral and belligerent rights in international law offers an insight into perceptions of a future war at sea.

Developments in international maritime law were of importance to Great Britain because of its dominant role in international trade and its dependence on the import of foodstuffs and raw materials. Despite its free-trade policy, the protection of trade was Great Britain's primary strategic focus and this shaped its ideas of future maritime conflict. Changes to the practice of law directly affected Great Britain because of its status as the major sea power and one of the world's leading economic powers. As a result, Great Britain was an active participant in shaping international maritime law.

This article examines British perceptions of future war at sea through the lens of developments in international law. Although historical scholarship often treats international law as a technicality, the international lawyers and war-planners of the time recognised the growing importance of law in international politics. This article focuses on the question of contraband of war to illustrate the perceptions of future maritime conflict. It considers how influential international law was for decision-making processes in Great Britain before the outbreak of the First World War. Finally, a brief look at the period after the outbreak of the war evaluates the illusions and realities of war at sea, and puts war expectations in context.

Contraband of War

In the period prior to the First World War the question of contraband was one of the most controversial issues in international law. Contraband is a legal term which describes goods forbidden to be traded in wartime. In Great Britain, the »Manual of Naval Prize Law«, published in 1888, distinguished between absolute and conditional contraband. Absolute contraband embraced goods which were for direct and »exclusive« military use, such as arms, ammunition, or uniforms. Conditional contraband was defined as goods which were predominantly used for civilian purposes but which could also be used by belligerent forces, such as coal, foodstuffs, timber, or cotton. In the case of conditional contraband, the »final« destination, rather than the

1 I would like to thank John Hattendorf, Meighen McCrae, Tom Rackham, and Hew Strachan for their comments and suggestions on a draft version of this article. I am also grateful for the comments of the two editors Heather Jones and Arndt Weinrich.

type of good, determined its nature[2]. Contraband could be captured by a belligerent as part of the right of search and capture, which allowed a belligerent to stop and search every ship on the high seas, in territorial or enemy waters[3].

In maritime conflicts contraband trade was often the subject of dispute between belligerents and neutrals, not least because belligerents decided on the lists of goods to be treated as absolute and conditional contraband. The belligerents usually published their contraband lists at the outbreak of a conflict. Neutrals, on the other hand, wanted to trade without interruption during wartime. While Great Britain as a neutral did not prohibit contraband trade, the laws of neutrality did not permit it to be encouraged either[4]. In other words, contraband trade could be undertaken at the citizen's own risk and British domestic law did not prosecute perpetrators[5].

A source of recurrent dispute was conditional contraband since the nature of the good was determined by its »final« destination. In this context the doctrine of continuous voyage was closely related. The doctrine was developed during the Seven Years' War and received a broader interpretation during the American Civil War by the ruling of the US Supreme Court. In essence, the doctrine of continuous voyage dealt with the »ultimate« destination of a good. The British ship »Springbok« was seized by an American cruiser while she was on her way to Nassau, a neutral port in the Bahamas. The US Supreme Court decided that while the »Springbok« sailed for a neutral port, it had carried goods on board whose »ultimate« destination was a blockaded port of the Confederates. Therefore, the goods should be treated as contraband as they were not destined to a neutral port but later transshipped and consigned to a blockaded port. It was argued that the neutral port was not the final destination, and thus the goods were on a »continuous voyage«. With the development of infrastructure on land, the doctrine would become more important as goods were transported further inland. Under modern circumstances, it would become increasingly difficult for a belligerent to gather evidence to prove the »ultimate« destination of a good, and thus more disputes would result[6].

The question of contraband was not settled in the nineteenth century. The Declaration of Paris of 1856 mentioned contraband, but did not define it further. Thus, belligerents remained free to declare goods as contraband[7]. The experience of the Sino-French War of 1884–1885 and the Russo-Japanese War of 1904–1905 shaped Great Britain's position towards the question of contraband. In both conflicts Great Britain stayed neutral. During the Sino-French War of 1884–1885 France declared rice as contraband. Neutral Great Britain vehemently protested

2 Thomas E. Holland, A Manual of Naval Prize Law. Founded upon the Manual prepared in 1866 by Godfrey Lushington, London 1888, p. 18–21.
3 William E. Hall, A Treatise on International Law, Oxford [5]1904, p. 719–735.
4 For example: A Proclamation of Neutrality by the Queen Victoria, in: The London Gazette, No. 23635, 19 July 1870, p. 3431–3433.
5 Memorandum by Lord Tenterden on the Export of Arms during War (Confidential), 18 July 1870 (No. 51), National Archives [NA] FO 881/5163.
6 Memorandum by Edward Hertslet respecting Contraband of War (Confidential), 28 March 1887, NA FO 881/5429; Memorandum on Contraband Trade and Continuous Voyage by Alexander Pearce Higgins, 1914, NA FO 881/10593X; Stuart L. Bernath, Squall Across the Atlantic. American Civil War Prize Cases and Diplomacy, Berkeley 1970, p. 85–98; Charles N. Gregory, The Doctrine of Continuous Voyage, in: Harvard Law Review 24 (1911), p. 167–181; Stephen C. Neff, Justice in Blue and Gray. A Legal History of the Civil War, Cambridge, MA 2010, p. 187–202.
7 Memorandum by Edward Hertslet on the Definition of the Term »Contraband of War« (Confidential), 3 May 1877; NA FO 881/3880; Memorandum by Hertslet respecting Contraband of War (as in n. 6).

against the decision on the grounds that foodstuffs could not be declared contraband[8]. The Foreign Secretary, Earl Granville, described the decision as contrary to the »law of nations« and demanded that French prize courts decide on individual cases to substantiate the evidence that the goods were indeed destined for the belligerent forces and thus constituted contraband[9].

The British government was concerned about France's declaration of a foodstuff as contraband because of the far-reaching consequences for a future maritime conflict in which Great Britain was a belligerent. A memorandum by the Lord Chancellor, Lord Selborne, highlighted this:

> »It is of most vital importance to all nations who, like ourselves, depend for the food of our population on imports from abroad, to maintain the right of neutrals to trade with us (or with any other country) in time of war, in provisions and other commodities, which are neither in their own proper nature contraband of war, nor intended for naval or military use, without being liable to capture[10].«

Great Britain's dependence on the import of foodstuffs meant that the protection of trade was a strategic necessity, as the strategist John C.R. Colomb declared as early as 1867 in a pamphlet[11]. For Lord Selborne, the existing practice of contraband was no safeguard for British trade. Although no British ship was seized during the Sino-French War of 1884–1885, Great Britain remained concerned about its position in a future maritime conflict in which foodstuffs would be declared contraband.

The Boer War of 1899–1902 required Great Britain to consider the question of contraband from the perspective of a belligerent. When the British government put foodstuffs on the list of conditional contraband, the Law Officers immediately criticised the decision, and warned of the negative implications in a future maritime conflict. Consequently, the plan was dropped[12]. The Law Officers advised the British government in all matters concerning international law, and their decision carefully weighed the legal consequences of proposing a change of existing practice. This illustrates that the long-term impact of the practice of law had been considered by the British government[13]. The conflict also underlined the importance of the doctrine of continuous voyage, since the Boers had to be resupplied via neutral ports. As a result, the capture of conditional contraband was a delicate issue[14].

At the outbreak of the Russo-Japanese War of 1904–1905, Russia declared coal and cotton as absolute contraband. Great Britain objected to the measure and argued that these goods could not be declared absolute contraband because of their »innocent character«[15]. In several incidents British merchant ships were sunk by Russian warships as the Russians suspected that the

8 M. Waddington to Earl Granville, 20 February 1885 (No. 1), NA FO 881/8167; Memorandum by the Lord Chancellor (Lord Selborne), 1 May 1885 (No. 92), NA FO 834/15.
9 Earl Granville to M. Waddington, 27 February 1885 (No. 5), NA FO 881/8167; The Law Officers of the Crown to Earl Granville, 24 February 1885 (No. 4), NA FO 881/8167.
10 Lord Chancellor (Lord Selborne) to Earl Granville, 30 March 1885 (No. 80), NA FO 834/15.
11 John C.R. Colomb, The Protection of our Commerce, and Distribution of our Naval Forces Considered, London 1867.
12 Law Officers Report, 26 October 1899 (No. 4), NA FO 834/19.
13 John Ll. J. Edwards, The Law Officers of the Crown. A Study of the Offices of Attorney-General and Solicitor-General of England, with an Account of the Office of he Director of Public Prosecutions of England, London 1964; Clive Parry, Foreign Policy and International Law, in: Francis H. Hinsley (ed.), British Foreign Policy under Sir Edward Grey, Cambridge 1977, p. 89–110.
14 John W. Coogan, The End of Neutrality. The United States, Britain, and Maritime Rights, 1899–1915, Ithaca, NY 1981.
15 Law Officers Report, 22 Sept 1904 (No. 43), NA FO 834/21.

British ships carried contraband, such as coal or cotton[16]. The destruction of neutral ships was a development which alarmed the British government and was condemned as unlawful. This practice also destroyed evidence which could have been used in a prize court[17]. British merchants, whose businesses were hampered due to the uncertainty caused by the extensive contraband list, argued that the situation »paralysed« their trade to the Far East and criticised the Russian contraband list as being »of the most sweeping nature«[18]. In response to these developments, the British government discussed plans to propose a neutral zone, in which belligerents would be denied the exercise of the right of search and capture of contraband. Yet, the plans were abandoned for the reason that such a proposal could have serious implications for Great Britain in a future maritime conflict in which it would be a belligerent[19]. The British government considered prohibiting the coaling of Russian warships as a retaliatory measure. The lengths to which the British government was prepared to go demonstrate the tension between neutrals and belligerents over the question of contraband. After weeks of negotiations between Great Britain and Russia, the latter removed coal and cotton from its list of absolute contraband[20].

These events illustrate that the British government treated questions concerning international law not in isolation but with regard to a future war at sea. In other words, developments in international law, particularly precedents, were considered in light of not only the law but also their potential strategic impact. As a result, international law shaped ideas about a future maritime conflict. Despite Great Britain's successful negotiations with Russia over the question of contraband, the Russo-Japanese War of 1904–1905 showed the limitations of the existing practice of international law in relation to the conditions of modern naval warfare. With the growing tension between neutrals and belligerents over the question of contraband, the new century demanded new solutions.

The Hague Conference of 1907 attempted to resolve this question, and Great Britain was determined to shape its agenda and outcome. In preparation for the conference, an Inter-Departmental Committee formulated the British position towards international law. The committee was chaired by Sir John Walton, the Attorney-General, and the board consisted of Lord Desart (the Director of Public Prosecutions), Charles L. Ottley (the Director of Naval Intelligence), George S. Clarke (the Secretary to the Committee of Imperial Defence), Cecil J. B. Hurst (the Assistant Legal Advisor to the Foreign Office), Eyre Crowe (the Senior Clerk to the Foreign Office) and other high-ranking members of the War Office, the Colonial Office and the Board of Trade. The number of high profile members indicates that international law was an issue not only for legal advisors to the government but also for war-planners. When the final report was published on 17 March 1907, it provided a systematic analysis of the legal developments in recent conflicts, and illustrated how British officials anticipated a future maritime conflict[21].

16 List compiled by T.V.S. Angier of British Steamers Seized, Sunk, Boarded, and Papers Overhauled, or Stopped and Delayed by Russian Cruisers since February 1904, September 1904 (No. 721), NA FO 881/8433; Sakuyé Takahashi, International Law Applied to the Russo-Japanese War. With the Decisions of the Japanese Prize Courts, New York, NY 1908.

17 The Marquess of Lansdowne to Sir Charles Hardinge, 10 August 1904 (No. 377), NA FO 881/8433.

18 China Association (Joseph Welch) to Foreign Office, 11 August 1904 (No. 396), NA FO 881/8433.

19 Memorandum by F. A. Campbell (FO) on the Need of a Neutral Zone, 6 September 1904 (No. 687), NA FO 881/8433; Memorandum by the Admiralty on the Need of a Neutral Zone, September 1904 (No. 700), NA FO 881/8433.

20 Law Officers Report, 22 September 1904 (No. 43), NA FO 834/21.

21 Report of the Inter-Departmental Committee Appointed to Consider the Subjects which may Arise for Discussion at the Second Peace Conference (Confidential), 21 March 1907, NA FO 881/9041X.

The report focused on the question of contraband because it had caused so many disputes between neutrals and belligerents in the past. Yet, the diverging interests of neutrals and belligerents made a compromise unlikely. Therefore, the committee proposed a radical change to Great Britain's existing practice and suggested the abolition of contraband altogether. Given that British practice up to that date had distinguished between absolute and conditional contraband, this was surprising[22].

The committee gave several reasons for the volte-face. It highlighted that British trade was hampered in wartime due to the freedom of belligerents to declare any good as contraband. The report concluded that it should be in Great Britain's interest to »free neutral commerce to the utmost extent possible from interference by belligerent Powers«[23]. The rules proposed to free neutral trade and allow goods to be transported to any port, even to a belligerent one, with the exception of the blockaded port of a belligerent.

Clarke summarised the rationale behind the decision. He explained the benefits to Great Britain as a belligerent or as a neutral in a future maritime conflict:

> »It may be urged that the abolition of contraband would confer special or exclusive benefits on a belligerent island Power. This view, however, practically ignores the conditions under which such island Powers as Great Britain and Japan exist. If the maritime communications of such island Powers are severed by blockade, they will be at the mercy of an enemy, whatever may be the definition of contraband. On the other hand, if the blockade cannot be established, the island Powers will be able to obtain any articles falling within the scope of a restricted definition of contraband, since such articles must, in any case, form a very small proportion of the total imports. In the case of belligerent island Powers, therefore, no special advantage arises if –
>
> a. Contraband is abolished; or
>
> b. Contraband is restricted to material of war. On the other hand, a neutral island Power is placed at a disadvantage as regards the supply of contraband, as compared with a continental Power in existing condition. In this respect Great Britain would gain by the adoption of either a. or b.[24].«

Clarke reckoned that the right of search and capture of neutral ships would only be of limited benefit to Great Britain as a belligerent. Capturing contraband goods on neutral ships would be of minimal advantage, and would upset neutrals. The same applied in cases in which conditional contraband was captured. The difficulty of proving cargo's »final« destination made capture a delicate issue for a belligerent. Clarke highlighted the vulnerability of sea powers with regard to contraband if Great Britain were neutral. He argued that land powers were much less affected by the issue than sea powers as the former could import contraband goods overland, rather than by sea. The abolition of contraband would therefore balance the advantages and disadvantages of sea powers and land powers in a future maritime conflict.

In short, the committee proposed to limit the right of search and capture to enemy trade. This meant strengthening blockade as the only means to intercept neutral trade. Blockade was one of the most powerful means of a belligerent to control trade. Only major sea powers cap-

22 Ibid., p. 1–16.
23 Ibid., p. 13.
24 Memorandum by George S. Clarke on the Law of Contraband (Appendix 10), n.d., in: Report of the Inter-Departmental Committee Appointed to Consider the Subjects which may Arise for Discussion at the Second Peace Conference (Confidential), 21 March 1907, NA FO 881/9041X, p. 78–79.

able of installing and upholding an effective blockade would be able to control enemy and neutral trade. Great Britain would be put in a much stronger position compared with minor sea powers, which lacked the capability to form an effective blockade.

These conclusions were drawn from the reports of the Committee of Imperial Defence. Founded in 1902, this was the chief body for the coordination of war-planning and acted as an advisory board to the cabinet[25]. During the Russo-Japanese War of 1904–1905, the committee had already considered the question of the »value« to Great Britain as a belligerent of the right to search and capture neutral ships. It concluded that if Great Britain was a neutral, the right of search and capture would be disadvantageous, and that, if Great Britain was a belligerent, the right would be of limited benefit as powerful neutrals could be inconvenienced too much:

> »The sea pressure that can be brought to bear on a Continental Power appears, therefore, to be far less effective now than formerly. If this is admitted, the advantage a belligerent State possesses from the right to capture contraband on the high seas, on the plea of ›continuous voyage‹, must seem to be illusionary[26].«

The proposal to abolish contraband was bold, and yet it was also met with scepticism by the cabinet. The Foreign Secretary, Sir Edward Grey, instructed the head of the British delegation not to take the initiative in the matter of contraband because such »a novel proposal of a far-reaching character coming from ourselves, may arouse more suspicion in the minds of one of our European neighbours than if it was proposed by some other Power who could not be regarded as a rival«[27].

War Expectations

The Inter-Departmental Committee imagined a future war at sea would focus on economic warfare. The contraband question revealed the main issues concerning economic warfare. First, neutrals were at the mercy of belligerents since the latter decided on the goods on contraband lists, which allowed them to make extensive use of the right to stop and search ships. Second, the capture of conditional contraband was a delicate matter for a belligerent since the »final« destination decided the nature of the cargo. The abolition of contraband would have freed neutral trade from capture as part of the right of search and capture, yet, it would have put blockade at the centre of naval warfare with regard to the interception of neutral trade.

Great Britain had more to gain than to lose from this proposal, both strategically and economically. Strategically, the proposal favoured major sea powers by emphasising effective control of the sea, with blockade as the only means to intercept neutral trade. Economically, the abolition of contraband would be beneficial for the British economy, as the right of search and capture would be limited, and would protect British trade no matter whether Great Britain was a neutral or a belligerent in a future maritime conflict. In short, Great Britain attempted to shape the codification of the laws of naval warfare in order to protect its interests both as a neutral and as a belligerent. This demonstrates that international lawyers and war-planners were

25 Nicholas d'Ombrain, War Machinery and High Policy. Defence Administration in Peacetime Britain 1902–1914, Oxford 1973; Franklyn A. Johnson, Defence by Committee. The British Committee of Imperial Defence, 1885–1959, London 1960.

26 Memorandum by George S. Clarke on the Value of Great Britain of the Right of Capture of Neutral Vessels (Secret), 12 Deceember 1904, NA CAB 38/6/120.

27 Sir Edward Grey to Sir Edward Fry (Private and Confidential), 12 June 1907 (No. 207), in: George P. Gooch, Harold W. V. Temperley (ed.), British Documents of the Origins of the War 1898–1914, vol. VIII, p. 250–251.

indecisive regarding Great Britain's position in a future maritime conflict, because they wanted to ensure the law would be favourable in either case.

Codification of the Laws of Naval Warfare

At the Hague Conference, the British proposal dominated the debate on the question of contraband. Despite Grey's caution, the British representative Lord Reay presented the proposal to abolish contraband and outlined the arguments formulated in the committee report. The advances in technology had changed the conditions of warfare, and therefore the objective of the existing law of contraband no longer applied. Recent conflicts showed that because of the mechanisation of warfare almost all goods could be declared to be conditional contraband:

> »The enormous extension of transportation by land, thanks to the railroads, the progress of the sciences which by multiplying the instruments of land and naval warfare have increased in the same measure the number of articles that are indispensable for the operations of a fleet or an army, the great increase in the size of modern merchant ships, are so many reasons why the old regulations do not in any degree accomplish the object intended, which is to prevent neutrals from carrying on trade in contraband[28].«

The British proposal was rejected on the grounds that no state wanted to curtail belligerent rights by limiting the right of search and capture. As a result, the talks continued with the drawing up of lists of absolute and conditional contraband, a task which ended in deadlock[29]. The defeat of the British proposal illustrates how existing legal practices constrained political ambitions, as well as limiting the codification of revisions to international law.

The leading sea powers met at the London Naval Conference of 1909 to settle the open questions with regard to the laws of naval warfare. The Declaration of London dealt with two major issues: those of contraband and of blockade[30]. After Great Britain unsuccessfully proposed to abolish contraband at the Hague, they supported the creation of three lists – one for absolute contraband, one for conditional, and one for »free« goods, which meant goods that could not be declared contraband. Foodstuffs were declared conditional contraband while raw cotton was to be on the »free« list. Alterations to the lists could only be made by notification. To avoid further conflicts with regard to the doctrine of continuous voyage, Articles 30 to 44 of the Declaration defined destinations which made goods liable to capture as contraband. Article 35 explicitly rejected the doctrine of continuous voyage for conditional contraband, although Article 36 qualified that in cases when an enemy had »no seaboard«, in which case Article 35 would not apply[31].

Blockade was now limited to a *rayon d'action*, which meant that ships destined for a blockaded port could only be pursued and captured within a certain radius. The former practice of Great Britain, Japan and the United States had been that a ship destined for a blockaded port

28 James Brown Scott (ed.), The Proceedings of the Hague Peace Conferences. Translation of the Original Texts. vol. III: Meetings of the Second, Third and Fourth Commissions, New York 1921, (Carnegie Endowment for International Peace. Division of International Law), p. 845.

29 Ibid., p. 844–849, 1136–1147, 1091–1092.

30 Declaration concerning the Laws of Naval War. London, 26 February 1909, in: Dietrich Schindler, Jiří Toman (ed.), The Laws of Armed Conflicts. A Collection of Conventions, Resolutions and other Documents, Dordrecht 2004, p. 1111–1122.

31 Rapport général présenté à la Conférence Navale au nom du Comité de Rédaction, in: Proceedings of the International Naval Conference, held in London, December 1908–February 1909, Parliamentary Papers, Miscellaneous no. 5 (1909), Cd. 4555, p. 352–362.

was liable to capture at any point of its voyage[32]. The focus on the interception of enemy trade raised the question as to what constituted enemy property. On this crucial point no consent could be achieved. Great Britain, Japan and the United States pursued the practice of domicile, while the continental powers regarded nationality as the decisive qualification[33].

The London Conference was a success from the British point of view. The regulations of blockade were favourable for major sea powers and the limitation of the right of search and capture was only a minor concession. The lists of contraband were a compromise which Great Britain had to accept, but in return the doctrine of continuous voyage was limited to absolute contraband only. The Declaration of London conformed with the strategic considerations of the Admiralty regarding a future maritime conflict, and thus the Declaration became an integral part of British war-planning prior to the First World War[34]. Nevertheless, public opinion was against the Declaration and the House of Lords blocked the ratification of the Naval Prize Bill in 1911, which effectively resulted in the non-ratification of the Declaration. Opponents feared that the Declaration would limit belligerent rights which they did not regard as favourable for Great Britain in a future maritime conflict[35].

The First World War

The outbreak of the First World War put international law to the test. Although no state had ratified the Declaration of London, Great Britain and the other belligerents agreed to adhere to it in principle[36]. Soon, the British government decided to make alterations to the Declaration to enable the interception of trade, in particular of foodstuffs, metals, and cotton, which was heading to neutral ports but presumed to be destined for Germany. Grey suggested extending the doctrine of continuous voyage to conditional contraband. Although the Admiralty and the Law Officers were opposed to these plans, the cabinet approved the Order in Council on 20 August 1914[37].

Within a few weeks the British captured more than fifty neutral ships, which had been destined for neutral ports, and held them in British ports. For the Law Officers this was an intolerable situation and contrary to existing British practice, which did not allow the holding of ships in ports without substantial evidence of their wrongdoing. Regardless, the British government further expanded the list of contraband in September 1914 and the Royal Navy seized more ships destined for neutral ports. This was a severe violation of international law. The expansion of belligerent rights was directed not only at the enemy but also against neutrals. Yet, the neutral United States protested only belatedly, a delay which Coogan interpreted as silent approval of the British quasi-blockade. A new Order in Council on 29 October 1914 announced significant changes to the contraband lists, which were contrary to the Declaration of London[38]. Metals were moved from the free list to the list of absolute contraband. The doctrine of continuous voyage was further extended and pressure was put on neutrals to prohibit the export of contraband goods to Germany. In November 1914, the British government established a Con-

32 Ibid., p. 345–352.
33 Charles H. Stockton, The International Naval Conference of London, 1908–1909, in: The American Journal of International Law 3 (1909), p. 613–614.
34 Christopher Martin, The Declaration of London: a Matter of Operational Capability, in: Historical Research 82 (2009), p. 731–755.
35 Coogan, End of Neutrality (as in n. 13), p. 125–147.
36 James W. Garner, International Law and the World War, vol. 1, London 1920, p. 28–30.
37 Order in Council of 20 August 1914, in: The London Gazette, No. 28877, 22 August 1914, p. 6673–6674.
38 A Proclamation Revising the List of Contraband of War by the King George V., in: The London Gazette, No. 28957, 30 October 1914, p. 8755–8756.

traband Committee to administer contraband issues. The North Sea was declared a war zone through which merchant ships travelled at their own risk. In the following months the contraband lists were further expanded. Wheat, corn and flour were treated as absolute contraband. In February 1916 the Ministry of Blockade was formed, and it increased pressure on neutrals to produce records of their peacetime consumption of goods so that these could provide a basis for rationing imports in wartime. The ministry introduced a black list, which consisted of names of ships known to be trading with the enemy, a measure directed against British citizens. In April 1916 the British government formally abandoned the distinction between conditional and absolute contraband[39].

The British war efforts had eroded the foundation upon which the Declaration of London had been built, and the British government formally withdrew from the Declaration in July 1916. The experience of the first two years of war demonstrated a disregard for the Declaration, and for the contemporary practice of international law. Great Britain expanded the lists of contraband until a distinction no longer made sense. Foodstuffs and cotton were treated as absolute contraband, although Great Britain had formally objected to this in conflicts prior to 1914. Great Britain's measures violated the neutral rights for which it had fought so persistently since 1865, and instead emphasised belligerent rights[40].

The Law Officers heavily criticised the decisions of the British government and declared many of the new regulations to be contrary to existing practices in international law. They warned that Great Britain's behaviour set new precedents, with unforeseeable consequences for the future[41]. In the opinion of many international lawyers, the war destroyed trust in international law. Yet, despite violations of international law, international lawyers spoke out for a renewal of international law and for a reflection of its role in politics. Elihu Root, the President of the American International Law Society, addressed the future of international law at its annual meeting in 1915. Some months later, the French jurist, Louis Renault, set up the Comité pour la défense du droit international, in response to the violations against the law of nations[42].

Conclusion

The question of contraband highlights the interdependence of international law and British maritime strategy in the period prior to the First World War. Both law and strategy were concerned with long-term perspectives. Thus, the legal advisors to the British government weighed

39 Archibald C. Bell, A History of the Blockade of Germany and of the Countries associated with her in the Great War, Austria-Hungary, Bulgaria, and Turkey, 1914–1918, London 1961; Coogan, End of Neutrality (as in n. 13), p. 148–236; Garner, International Law and the World War, vol. 1 (as in n. 35), p. 30–35; James W. Garner, International Law and the World War, vol. 2, London 1920, p. 285–316; Nicholas A. Lambert, Planning Armageddon. British Economic Warfare and the First World War, Cambridge, MA 2012; Eric W. Osborne, Britain's Economic Blockade of Germany 1914–1919, London 2004 (Cass Series: Naval Policy and History), p. 58–152.

40 Legal Assessment by Alexander Pearce Higgins (legal advisor to the Procurator-General), 8 March 1916, ADM 116/1234, in: Nicholas Tracy (ed.), Sea Power and the Control of Trade. Belligerent Rights from the Russian War to the Beira Patrol, 1854–1970, Aldershot 2005 (Navy Records Society), p. 184–188; Garner, International Law and the World War, vol. 2 (as in n. 38), p. 285–291.

41 Coogan, End of Neutrality (as in n. 13), p. 156–168.

42 Hugh H. L. Bellot, The Publications of le Comité pour la défense du droit international, in: Journal of Comparative Legislation and International Law 18 (1918), p. 136–140; Elihu Root, The Outlook for International Law, in: The American Journal of International Law 10 (1916), p. 1–11; George Grafton Wilson, The Defense of International Law, in: The American Journal of International Law 12 (1918), p. 378–380.

the impact of changes to the practice of international law on future maritime conflict. As a result, international law was of growing importance to war-planners and war-planning, and this shaped the ideas of future maritime conflict.

The lack of an agreed definition of contraband caused growing tensions between neutrals and belligerents. The extensive contraband lists of belligerents put Great Britain's economic and strategic interests at risk. Therefore, expectations of a future maritime conflict focused on economic warfare. The codification of the laws of naval warfare at the beginning of the twentieth century demonstrates that Great Britain put its weight behind blockade. Great Britain was less convinced that the capture of contraband would have a decisive impact and consequently accepted curtailments to the right of search and capture. The British government went so far as to suggest the abolition of contraband in order to balance its interests as a neutral with those of a belligerent. This demonstrates the uncertainty in Great Britain as to its position in a future war at sea. Despite the codification of international law subsequently proving illusionary, international lawyers and war-planners of the pre-war period painted a realistic picture of a future war at sea, even though they could not foresee the scale of the First World War.