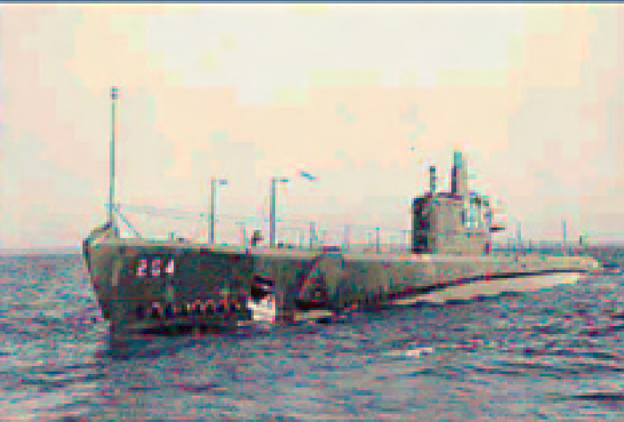
Naval Blockades in Peace and War

An Economic History Since 1750



Lance E. Davis • Stanley L. Engerman

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Naval Blockades in Peace and War

This book examines a number of major blockades, including the Continental System in the Napoleonic Wars, the War of 1812, the American Civil War, and World Wars I and II, in addition to the increased use of peacetime blockades and sanctions with the hope of avoiding war. The impact of new technology and organizational changes on the nature of blockades and their effectiveness as military measures are discussed. Legal, economic, and political questions are explored to understand the various constraints on belligerent behavior. The analyses draw on the extensive amount of quantitative material available from military publications.

Lance E. Davis is Mary Stillman Harkness Professor of Social Science, Emeritus, at the California Institute of Technology. He is author or editor of many books, including *Institutional Change and American Economic Growth* (1971, with Douglass North), *Mammon and the Pursuit of Empire: The Political Economy of British Imperialism* (1986, with Robert Huttenback; revised and abridged edition, 1988), *International Capital Markets and American Economic Growth, 1820–1914* (1994, with Robert Cull), and *Evolving Financial Markets and International Capital Flows: Britain, the Americas, and Australia, 1865–1914* (2001, with Robert E. Gallman), all published by Cambridge University Press.

Stanley L. Engerman is John H. Munro Professor of Economics and Professor of History at the University of Rochester. Among his co-authored and co-edited volumes are *Time on the Cross: The Economics of American Negro Slavery* (1974, with Robert W. Fogel), *The Cambridge Economic History of the United States* (1996, 2000, with Robert E. Gallman), *A Historical Guide to World Slavery* (1998, with Seymour Drescher), and *Finance, Intermediaries, and Economic Development* (Essays in Honor of Lance E. Davis; 2003, with Philip T. Hoffman, Jean-Laurent Rosenthal, and Kenneth L. Sokoloff).

Naval Blockades in Peace and War

AN ECONOMIC HISTORY SINCE 1750

LANCE E. DAVIS
California Institute of Technology

STANLEY L. ENGERMAN
University of Rochester

cambridge university press
Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo

Cambridge University Press
The Edinburgh Building, Cambridge cb2 2ru, UK

Published in the United States of America by Cambridge University Press, New York

www.cambridge.org
Information on this title: www.cambridge.org/9780521857499

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First published in print format 2006

isbn-13 978-0-511-24537-4 eBook (EBL)
isbn-10 0-511-24537-8 eBook (EBL)

isbn-13 978-0-521-85749-9 hardback
isbn-10 0-521-85749-X hardback

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To our children

Maili Davis Kessler
David, Mark, and Jeffrey Engerman

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Preface

Our interest in the subject of blockades came about when we were both asked to discuss the work of David Surdam on the American Civil War blockade imposed by the Northern states on the Confederacy. Surdam's analysis of this case was thorough and his general conclusions were quite interesting. What we became curious about was whether other of the notable blockades of the past two centuries had similar outcomes, and if not, why not. As we began to examine other blockades, we found that there was a considerable body of international law that had some influence on the outcomes but whose changes over time reflected changing political, economic, and military factors. The blockades of interest were not just those for military purposes in wartime but also Pacific blockades, or sanctions, presumably imposed in the attempt to prevent warfare.

The study of blockades posed many interesting economic issues and there were available considerable amounts of quantitative data to permit much statistical analysis. This aspect of the study fits well with our professional background. There were two possible problems that we do not believe seriously weaken the analyses in the book. First, we had no formal training as military historians, nor did we seek to utilize naval archives to obtain primary material. Nevertheless, there have been ample amounts of material collected in secondary sources, and there is an extremely rich body of important work by military historians for us to utilize for quantitative and qualitative information. Second, we have rather limited abilities in languages other than English but could, with the help of colleagues, learn from foreign-language publications. Given the time that has passed since the blockades on which we focused, much of the key foreign language material has been translated into English, in full or in part, so that we have been able to benefit from many of the works first published in other languages. Although there may

be some difficulties due to these two problems, we do feel that they had little impact on our analysis and conclusions.

We have benefited from the comments received at presentations at the 2000 meeting of the Economic History Association, the 2001 meeting of the American Economic Association, at Eli F. Heckscher: A Celebratory Symposium held at the Stockholm School of Economics in May 2003, and at a public lecture at Colby College.

We also have benefited from comments by François Crouzet, three readers for Cambridge University Press, David Surdam, Richard Patard, Gregory A. Caldeira, John Nye, Mary McKinnon, and Hugh Rockoff. A shortened version of Chapter 8 was published in the *Journal of Economic Perspectives*, Spring 2003, which contains the relevant acknowledgments for that essay.

Secretarial and other logistical support were supplied by the Division of Humanities and Social Sciences, California Institute of Technology (particularly by Heather Guyett), and by the Department of Economics, University of Rochester. Excellent research assistance was provided by Ozgur Yilmaz and Maria E. Canon at the University of Rochester. The final typescript was prepared by Ken Maher. We also wish to thank, for extensive help and guidance, Frank Smith at Cambridge University Press, Richard Shrout and associates for indexing, and Kenneth Karpinski at Techbooks for guidance through the production process.

1

Introduction

"Thou Shalt Not Pass"

1. ECONOMIC WARFARE

During a war there are a number of alternative military and naval strategies that a belligerent power can pursue in that country's efforts to defeat its enemies. Obviously, one such strategy is conquest by force of arms in direct combat. Such a strategy involves the siege or the invasion of an enemy's territory, and it is aimed at the destruction, capture, or surrender of the enemy's armed forces and, perhaps, the permanent occupation of its territory. Economic warfare, by weakening the enemy's ability to pursue military action, can substitute for or complement a strategy of direct combat. Such an economic strategy is designed to sever the trading links between the enemy and his allies or with neutral powers, and, in so doing, to reduce the level of military and civilian goods that are available to support his military ventures. Historically, the blockade, usually sea-based but occasionally land-based, has been the most common form of economic warfare; however, in the more recent past, other forms of economic warfare have been utilized. They include the imposition of higher tariffs, nontariff exclusions, restrictions on capital movements, and policies aimed at encouraging the production of substitutes by the targeting and neutral nations – all tactics designed to reduce enemy exports as well as their imports. In addition, the scope of direct economic warfare has been expanded to include the aerial bombardment of economic objectives, sanctions designed to restrict trade to neutral countries, sabotage of economic targets, preemptive purchases of strategic material, and, more generally, psychological warfare. Although naval blockades remained their major concern, this widening of scope was mirrored in the British government's decision to change the name of the department charged with implementing that county's economic warfare

efforts from the Ministry of Blockade during World War I to the Ministry of Economic Warfare during World War II.[1]

For centuries, land and sea blockades have been initiated unilaterally by belligerent powers for military or commercial motives. Some early naval blockades were mainly extensions of land blockades, part of the siege of a fortress or city located on the sea. It was, however, only in early modern Europe that the rules and laws of blockade, like the laws of war, were formalized and enshrined in a series of international agreements. Although such agreements date back to at least 1689, from the point of view of the past century, the most important were the treaty that emerged from the Congress of Paris of 1856 and the never ratified end product of the Conference of London of 1909. Both spelled out a set of rules that were, formally or informally, accepted by most developed nations. Nevertheless, as with most rules of law, their acceptability and applicability varied with the intensity of the conflict and with changes in the technology and organization of warfare.

In simple terms, a naval blockade can be viewed as an attempt by one belligerent, through the "interception by sea of the approaches to the coasts or ports of an enemy," to cut "off all his overseas communications."[2] The general aim is to reduce the enemy's ability to effectively carry out military operations. Blockades designed to starve or weaken the enemy's civilian and military population by reducing imports of food supplies have received the most attention; however, blockades also have been aimed at the importation of munitions, other war supplies, and critical raw materials – petroleum and minerals, in particular. In addition to reducing imports, blockades frequently have also been directed at a country's exports. In this latter case, the goal is usually to reduce the enemy's ability to obtain the wherewithal to pay for imported resources. In a somewhat parallel fashion, the blockading power

1 W. N. Medlicott, *The Economic Blockade*, 2 vols. (London: His Majesty's Stationary Office, 1952) vol. 1, xi, 1–3.

2 C. John Colombos, *The International Law of the Sea*, 4th rev. ed. (London: Longmans, 1959), 649–687. Von Heinegg, writing on "Naval Blockade" in 2000, uses the "widely accepted definition" of a blockade as "a belligerent operation to prevent vessels and/or aircraft of all nations, enemy as well as neutral, from entering or exiting specified ports, airfields, or coastal areas belonging to, occupied by, or under the control of enemy nations," citing the U.S. Department of the Navy, *The Commander's Handbook on the Law of Naval Operations*. (Note the addition of aircraft to the customary list of vessels in the definition of a blockade.) Von Heinegg claims that most blockades are for military purposes, not for economic ends. See Wolff Heintschel von Heinegg, "Naval Blockade," in *International Law Across the Spectrum of Conflict: Essays in Honor of Professor L. C. Green on the Occasion of his Eightieth Birthday*, ed. Michael N. Schmitt (Newport: Naval War College, 2000), 203–230. For this distinction, see also Julian S. Corbett, *Some Principles of Maritime Strategy* (London: Longmans, Green, 1911) and Charles H. Stockton, *Outlines of International Law* (New York: Charles Scribner's Sons, 1914), both of whom distinguish blockades to restrict military vessels from blockades to stop the flows of trade.

may attempt to use political pressure or military threat against neutrals to limit the enemy's ability to acquire loans and capital from neutral nations. It is this diversity of ends and of means that makes evaluation of the success of any blockade difficult.

Strictly speaking, a legal blockade entails the right to stop all merchant vessels seeking to enter a previously designated area. The legal right to seize contraband, by contrast, applies only to a limited and specific list of war materials; but these materials can be seized anywhere in the world.

A country's decision to deploy a blockade designed to limit enemy exports and imports has a counterpart in the use of embargoes to limit that country's own exports to foes and neutrals. The aim of such embargoes often appears to be less economic than political – by creating a shortage of specific goods, the nation or coalition adopting the embargo hopes to influence a third country's behavior toward the other belligerent. Although there have been some notable, if not particularly effective, embargoes – Jefferson's early-nineteenth-century embargo of all American exports and the South's embargo of cotton exports during the Civil War, to cite two examples – the relative importance of blockades and embargoes in history can be effectively proxied by the coverage given to the two strategies in the standard works on international law. In those publications, embargoes received less than 10 percent of the coverage given to blockades.

Although most blockades are deployed by belligerent powers in wartime, there have been some that involved neither war nor belligerent powers. For example, blockades have been used to deter war by weakening a potential enemy before an official declaration of war. The legal status of such Pacific blockades is rather uncertain; but, in recent years, under the newly coined rubric of "economic sanctions," they have been deployed by both individual countries and by international organizations (the United Nations [UN] and the North Atlantic Treaty Organization [NATO], for example). Nor are all blockades deployed for political or for purely economic reasons. For example, during the years following its political decision to halt the transatlantic slave trade, Britain mounted a blockade of the African coast. The British government drew on existing antipiracy laws to justify its decision, and their naval squadron actually engaged in military skirmishes with vessels from France and other powers. Earlier, during the long series of eighteenth-century wars between Britain and France, the British maintained a mainly military blockade of French ports on the Atlantic. That blockade was designed to keep the French fleet bottled up in port and to prevent it from supporting an invasion of the British Isles, although it did have an impact on French trade with the West Indies.

The major legal and political problems engendered by blockades arise not only from the impact of the intervention on enemies but also from their effect on neutral "third" countries. Neutrals often represent potential alternative sources of supply; and, given that goods from anywhere can be routed through those neutrals, a blockade that does not restrict neutral trade with the enemy may well prove ineffective. Neutrals are, however, not belligerents; and as nonbelligerents they often believe that their commercial activities should not be constrained. Attempts to limit their exports and imports can bring them into direct conflict with the blockading power, and attempts to resolve those disputes have generated an extensive body of international law. Moreover, the issues involving neutral rights go beyond those raised by a naval blockade – such blockades are relevant only to controversies arising from contacts at sea. For a blockade to be effective, it must be extended to cover neutrals contiguous to or connected by land with the enemy; and, therefore, international laws must be extended to cover the myriad of political policies designed to deal with neutral overland trade.

The expected benefit of a successful blockade seems clear – a loss of enough of the enemy's military power to shift the probability of victory in a favorable direction. But these benefits are not pure profits; there also are costs involved in any decision to deploy a blockade. These costs include the direct expenditures on vessels and manpower that are needed to mount the blockade, the opportunity costs of diverting resources from alternative employment, the potential costs (in men and vessels) from damage or destruction by enemy action, and the possible costs that might result should the blockade induce a neutral to enter the war on the side of the enemy. Any military planner who sets out to design an "optimum naval blockade" must take into account geography (the length of the relevant shoreline), the available technology (ships, aircraft, equipment), and the level of military organization, economic power, and the probable response of neutral countries.

The planner, however, must always assess the likely enemy responses. Those responses can have a major impact on the blockade's costs and effectiveness. Such reactions will depend, in part, on the enemy's technology (again, ships, aircraft, and equipment), its economic power, and the level of its military organization. The planner will, in addition, also be forced to estimate the enemy's willingness to use what has proved to be the most effective weapon against a "distant" blockade – the convoy. A convoy is simply a group of merchant ships sailing together escorted by a number of armed vessels whose officers are charged with neutralizing any attacks by

the blockading fleet.[3] Convoys, of course, are not free and they cannot be used unless the country has sufficient naval power to implement this policy. Their use imposes costs. By bunching the merchant vessels in the same small area of the ocean, the convoy presents an attractive target for the blockading force; and the time needed to gather together the convoy's vessels and the need to limit the convoy's pace to the top speed of the slowest ship are costly in terms of both time and resources. These have been used by naval officers to argue against the introduction of convoys, although in most cases it seems that the benefits exceeded the cost.

Nor does this list of direct costs represent a complete description of the economic burdens imposed by the blockade or by other similar strategies. The additional costs that must be borne by the belligerent powers or neutral powers include losses related to the decline of imports from, and exports to, the enemy, plus whatever indirect costs that arise through the reduction of trade between neutrals and the enemy (unless of course those reductions are offset by trade diversion), as well as the additional costs imposed by the use of the more roundabout routes that are necessary to circumvent the blockade. Because of the loss of access to goods and resources, a blockade imposes economic and military costs on the blockaded power. It is, however, not only the belligerent powers who are forced to bear a portion of the costs of economic warfare. The evidence indicates that, because of reduced levels of, and more expensive, trade, neutral powers also are required to pay a part of the cost of the economic war – third parties are not exempt. The magnitude of the costs that are actually imposed on each of the parties will, of course, depend on the relevant elasticities of supply and demand, as well as on the effectiveness of blockade-runners and the productivity of any other innovations designed to weaken the blockade's impact. To the extent that alternative sources of supply – sources not affected by the blockade – are available at relatively low prices, costs to the blockaded belligerent powers and the benefits accruing to the blockading power are both reduced. Similarly, the buildup of a large stockpile of goods before the imposition of the blockade, although certainly not free, will, in the short run, reduce the costs imposed on the blockaded country and lengthen the time before the blockade will have a major impact on their war effort. Such lengthening will, in turn, increase the costs of imposing the blockade.

3 For some definitions and discussion of the convoy, see Samuel Eliot Morison, *The Battle of the Atlantic, September 1939–May 1943* (Boston: Little, Brown, 1947), 17–26. See also Colombos, *International Law*, 694–700. There will be discussions of convoys in specific wars later.

2. INTERNATIONAL LAW BEFORE WORLD WAR I

The examination of the nature of changes in the international law regarding blockades and embargos could be discounted as an exercise in futility if it were expected that these laws will be binding on belligerents and neutrals. Even though these laws provide some constraint, however limited, on feasible behavior in wartime, in times of wartime emergencies belligerents will not be limited in their behavior by previously accepted peacetime agreements. The study of legal aspects of blockades has, however, provided useful insights into what people believed, and how they responded to actual and anticipated economic, military, and technological developments.[4]

Blockades – interdictions the primary purpose of which "is to prevent the enemy from receiving goods which may be used in warfare and which are designated as contraband" and to limit the ability of a neutral to trade with the enemy by making it legal to capture and condemn all neutral vessels sailing for enemy ports – thus not only directly involving the belligerent powers but, obviously, also neutral third countries. Such blockades have long raised major issues of international legal concern.[5] Beginning at least as far back as the late sixteenth century, in a long series of proclamations and international treaties, the concept of a "legal" blockade has been defined and its rules formally specified.

(a) To the Eighteenth Century

The modern discussion of blockades customarily begins with the 1584 Dutch operation against Spanish-held ports in Flanders. The leading nation in defining conditions of naval transportation during periods of wartime were the Dutch, who had treaties that stated that the fate of the cargo was determined by the flag of the vessel, so that neutral goods on enemy ships were considered to be good prize, whereas they claimed that free ships make free goods. A Dutch Proclamation of 1630 laid out some basic principles, in allowing the confiscation of neutral ships that had broken the blockade, that were later regarded as the core of blockade laws. Provisions of immunity of

4 The literature on international law and naval blockades has been expanding at a rapid rate. Many of the most important works are contained in the ongoing series on International Law Studies, now published by the Naval War College.

5 For an early, but still useful, discussion, see Maurice Parmelee, "Blockade," in *Encyclopedia of the Social Sciences*, ed., Edwin R. A. Seligman (New York: Macmillan, 1930), vol. 2: 594–596. See also his *Blockade and Sea Power: The Blockade, 1914–1919, and its Significance for a World State* (New York: Thomas Y. Crowell, 1924). Among the land blockades of interest, much attention has been given to Mohammad's successful blockade of Mecca in the seventh century. See, for example, Uri Rubin, "Muhammad's Curse of Mudar and the Blockade of Mecca," *Journal of the Economic and Social History of the Orient* 31 (1988), 249–264.

goods in neutral vessels were included in several other international treaties, such as the Treaty of Pyrenees (1659), a treaty between France and Spain that restricted the definition of contraband to "arms and munitions of war," whereas various treaties made by the Dutch with other European powers were to provide for "free ships, free goods." The Anglo-Dutch Treaty of Whitehall (1689), however, effectively did mean that neutral ships were not recognized. England, generally, maintained the view that confiscation of enemy goods in neutral vessels was acceptable. A French ordinance of 1681, continuing earlier ordinances, was modified in 1744 and, again, in 1788, to permit the immunity of goods in neutral vessels. Between 1674 and 1679, a series of treaties among Holland, France, Sweden, and England, recognized blockades as long as they could be regarded as effective, based on real investment in the blockade.[6]

In defining the terms of which goods could be confiscated, a provision was made by the British, called the Rule of the War of 1756 – a rule that was to prevent the French from using the Dutch trade to its colonies in order to circumvent the British blockade. This provision was to be carried forward into future years, with the argument that "a neutral is not entitled to carry on a trade which is closed to him in time of peace."[7]

In 1780, during what would be the more than century-long war between England and France, Russia enunciated several principles, "which were directed primarily against the maritime pretensions of England." These included: free navigation for neutral vessels; the principle of "free ships, free goods" for neutral vessels, except for contraband; the only goods to be considered contraband were munitions of war; and the definition of an effective blockade.

In the years after 1780, Russia, Denmark, Prussia, Portugal, Sweden, Holland, Austria, the United Provinces, and the Two Sicilies joined to form the League of Armed Neutrality – an organization based on advocating these principles. Two decades later, a second League was organized by Russia, Denmark, Sweden, and Prussia. The basis of the institution's structure was, again, the original four principles, but this time a fifth, the neutral right of convoy, was added.[8]

6 On this legal background, see Colombos, *International Law*, 503–505, 556–557, 610–615, 649–651, and George B. Davis, *The Elements of International Law* (New York: Harper and Brothers, 1900), 376–383.

7 Colombos, *International Law*, 613–614. This rule was extended by the United States in the Civil War as the theory of continuous voyage to preclude shipments of goods from neutral ports to a belligerent, thus circumventing a blockade.

8 Parmelee, *Blockade*, 19–20. Most of the subsequent citations to Parmelee are to his quotations from laws, documents, and conference reports, not to his interpretations of specific events. See also Colombos, *International Law*, 568–569, and Chapter 3.

These principles, however, were not universally recognized. In the case of Britain, even before 1815, prize courts had recognized a similar but different set of rules – rules that were less focused on the rights of neutrals: (1) "a blockade to be binding must be effective"; (2) "only a belligerent can establish a blockade"; (3) "to be valid a blockade must be duly declared and notified; the declaration must state the exact geographical limits of the blockaded area and the days of grace allowed to neutral vessels to enable them to come out of the blockaded port"; and (4) "the blockade must be limited to the ports and coasts of the enemy."[9] Thus, there was room for differences concerning the legal basis of a blockade and sufficient ambiguities to leave substantial room for both judicial and military conflict. Such ambiguities led, as described in Chapter 3, to disagreements over neutral rights that arose between the United States and Great Britain; and that disagreement, as well as other issues relating to the control of the American West and the expansion into Canada, ultimately led to the War of 1812.

(b) The Nineteenth Century

The Crimean War (1853–1856) again raised issues of the legality of blockades, and the first international declaration of the fundamental principles of international law on the subject was the product of the resulting 1856 Congress of Paris. That declaration provided a basic set of legal rules that were to govern the operation of naval blockades. It included four major provisions, in part a trade-off of desired goals, particularly on the part of France and Britain, that were, in large measure, to define the interests of both belligerents and neutrals:

1) "Privateering is and remains abolished."
2) "The neutral flag covers enemy's goods, with the exception of contraband of war. ('Free ships' make 'free goods'.)"
3) "Neutral flags, with the exception of contraband of war, are not liable to capture under an enemy's flag."
4) "Blockades, in order to be binding, must be effective; that is to say, maintained by a force sufficient really to prevent access to the coast of an enemy."

Initially, the declaration was signed by seven nations (England, France, Austria, Russia, Sardinia, Turkey, and Prussia). Over the course of the rest of the century, it was signed by most other nations; and, at the turn of the

9 Medlicott, *Economic Blockade*, vol. 1, 4.

century, international lawyers argued that it "has been generally recognized as binding by the civilized world."[10]

As early as 1859, the legal position of neutrals was again clouded, when the American Secretary of State argued against any commercial blockade during time of war. He wished to restrict military actions to those aimed at men, not trade.[11] However, his position was to be undercut by his own government during both the U.S. Civil War and, again, after the entry of the United States into World War I. During the Civil War, despite the Treaty of Paris, the Northern government enunciated, and the blockading fleet implemented, a rule that was known as the principle of the "continuous voyage."[12] The Northern courts held that no longer did "neutral ships mean neutral goods," and, with the court's decision in hand, the government "took the position that a voyage from the European or other original ports of departure to the ultimate destination in the blockaded Confederate port formed one continuous voyage, and that the United States had the right to seize contraband articles obviously intended for an ultimate Confederate destination even though consigned to an intervening neutral port."[13] The blockading fleet enforced that decision for the remainder of the war. Not surprisingly, many European authorities severely, but ineffectively, criticized this decision as a violation of international law.[14]

10 Parmelee, *Blockade*, 20–21. See also Colombos, *International Law*, 417–418.

11 Over most of the years from 1860 to 1920, the United States was an aggressive advocate of a neutral's right to trade freely with all belligerents. The government's position, however, was quickly reversed (in an equally aggressive manner) each time the country found itself in the role of a belligerent.

12 The doctrine was originated by Lord Stowell during the wars arising out of the French Revolution. Parmelee, *Blockade*, 24. H. A. Smith notes an earlier discussion of the issue of continuous voyage "during the Anglo-Dutch wars of the seventeenth century, when the geographical situation made it possible for cargoes consigned to the Spanish Netherlands to be sent on to Holland over inland waterways of the Low Countries." The issue was discussed again in 1756. H. A. Smith, *The Law and Custom of the Sea*, 2nd ed. (London: Stevens and Sons, 1950), 122.

13 Stephen R. Wise, *Lifeline of the Confederacy: Blockade Running During the Civil War* (Columbia: University of South Carolina Press, 1989), 66–73; Parmelee, *Blockade*, 63–67.

14 For example, see the remarks of the members of the Maritime Prize Commission of the Institute of International Law: "The unanimous opinion of the Maritime Commission was as follows: 'That the theory of continuous voyage as we find it enunciated and applied in the judgment of the Supreme Court of America, which condemned as good prize of war the entire cargo of the British bark *Springbok* (1867), a neutral vessel on its way to a neutral port, is subversive of an established rule of the law of maritime warfare, according to which neutral property on board a vessel under a neutral flag, whilst on its way to another neutral port, is not liable to capture or confiscation by a belligerent as a lawful prize of war; that such trade when carried on between neutral ports has, according to the law of nations, ever been held to be absolutely free, and that the novel theory, as above propounded, whereby it is presumed that the cargo after having been unladen in a neutral port, will have an ulterior destination to some enemy port, would aggravate the hindrances to which the trade of neutral is already exposed, and would, to use the word of Bluntschli, '*annihilate*' such trade, by subjecting their property to confiscation, not upon *proof* of an actual voyage of the vessel and cargo to an enemy port, but upon *suspicion* that cargo, after having been unladen at the neutral port to which the vessel is

"In 1885, in the course of her war with China, France declared that rice would be treated as absolute contraband when destined for ports situated north of Canton." The British government protested, arguing that "food-stuffs could not in general be treated as contraband"; the French "replied that its action was justified by 'the importance of rice in the feeding of the Chinese population.'[15] Again, during the Russo-Japanese War (1904–1905), even before the widespread innovation of submarines, the belligerent powers introduced certain innovations "which disregarded neutral rights and frequently endangered the lives of neutrals and non-combatants." The warring powers defined strategic areas "on the high seas from which neutral shipping was excluded under the threat of sinking." "Neutral prizes were frequently sunk," instead of being escorted to port. "Mines were sown indiscriminately in the strategic areas, thus endangering merchant vessels, their cargoes, and the human beings on board, not only during the hostilities but for a long time thereafter"; and the definition of contraband was extended well beyond munitions. The Russians, for example, declared raw cotton to be legal contraband.[16] Moreover, by 1914, and almost certainly earlier, it had become clear that the existing rules – "definitions, which presupposed naval action close to an enemy's coasts, had little relevance to a war in which modern artillery, mines, and submarines made such action impossible, and in which the enemy was so placed geographically that he could use adjacent neutral ports as a channel for supplies."[17]

(c) The Twentieth Century to World War I

As a result of the problems raised both by the unilateral amendments to the Declaration of Paris and the changes in military technology, a new convention was signed at the second Hague peace conference in 1907 (the

bound, may be transshipped into some other vessel and carried to some effectively blockaded enemy port.

"That the theory above propounded tends to contravene the efforts of European powers to establish a uniform doctrine respecting the immunity from capture of all property under neutral flag, contraband of war alone excepted.

"That the theory in question must be regarded as a serious inroad upon the rights of neutral nations, inasmuch as the fact of the destination of a neutral vessel to a neutral port would no longer suffice of itself to prevent the capture of goods noncontraband on board.

"That, furthermore, the result would be that as regards blockades, every neutral port to which a neutral vessel might be carrying a neutral cargo would become *constructively* a blockaded port if there were the slightest ground for *suspecting* that the cargo, after being unladen in such neutral port was *intended* to be forwarded in some other vessels to some port actually blockaded." Quoted in Parmelee, *Blockade*, 65–66.

15 D. T. Jack, *Studies in Economic Warfare* (New York: Chemical Publishing House, 1941), 71. See Albert E. Hogan, *Pacific Blockades* (Oxford: Clarendon Press, 1908), 122–126.

16 Parmelee, *Blockade*, 22.

17 Medlicott, *Economic Blockade*, vol. 1, 4.

first was in 1899 and primarily discussed land war). The twenty-six articles of the "Hague Convention XIII of 1907," although dealing with a variety of issues, such as the treatment of interned troops and wounded persons, focused on the rights and duties of neutral powers; and it concludes with the provision that "Should any member of the League resort to war in disregard of its Covenants . . . it shall *ipso facto* be deemed to have committed an act of war against all members of the League."[18]

Many of the changes were readily accepted by the representatives of the signatory countries; however, the Convention also called for the establishment of an international prize court to which cases could be appealed from the national courts. The court was to act in the following manner (Article 7): "If a question of law to be decided is covered by a treaty in force between the belligerent captor and a power which is itself or whose subject or citizen is a party to the proceedings, the court is governed by provisions of the said treaty. In the absence of such provisions, the court shall apply the rules of international law. If no generally recognized rule exists, the court shall give judgment in accordance with the general principles of justice and equity."[19]

The new rules were, however, not without the problems. The court was instructed to apply the rule of international law relating to prizes, but that law had never been codified nor clearly stated by any international authority; and there were major differences between the past rulings of individual national courts.

The British representatives concluded that they would be unable to secure their government's approval of the international court unless the powers of the court were strictly defined.[20] As a result, the British government invited the major naval powers to a conference to establish the rules of law that were to govern the international court's decisions before the court began to operate. The discussion would include issues such as:

a) The nature of contraband "including the circumstances under which particular articles can be considered as contraband; the penalties for their carriage; the immunity of a ship from search when under convoy; and the rules with regard to compensation where vessels have been seized, but have been found in fact only to be carrying innocent cargo."
b) The nature of a legal blockade, "including the question as to the locality where seizure can be effected, and the notice that is necessary before a ship can be seized."

18 For a summary of the Convention, see Jack, *Studies*, 53–58.
19 Parmalee, *Blockade*, 27.
20 Louis Guichard, *The Naval Blockade, 1914–1918* (New York: D. Appleton, 1930), 9.

c) "The doctrine of continuous voyage in respect both of contraband and of blockade."
d) "The legality of the destruction of neutral vessels prior to their condemnation by a prize court."
e) "The rules as to neutral ships or persons rendering 'unneutral services' ('assistance hostile')."
f) "The legality of the conversion of a merchant vessel into a warship on the high seas."
g) "The rules as to the transfer of merchant vessels from a belligerent to a neutral flag during or in contemplation of hostilities."
h) "The questions whether the nationality or the domicile of the owner should be adopted as the dominant factor in deciding whether property is enemy property."[21]

Ten governments were invited and sent delegates to the conference that met in London from December 1908 to February 1909.[22] The outcome was the adoption of a "Declaration Concerning the Laws of Naval Warfare," commonly known as the 1909 Declaration of London.[23] The Declaration was long (consisting of seventy-one articles) and covered most of the questions raised over the course of the past century and a half. In addition to questions involving the rules of governing the international prize court and the repeal of the doctrine of continuous voyage, the Declaration attempted to spell out and define the nature of "contraband," a definition that had become increasingly fuzzy as the nature of war had changed. At the Hague Convention, the powers had been unable to agree on the British proposal to suppress contraband entirely on the grounds that "the attempt to deprive an enemy of war supplies had not succeeded to an extent which was sufficient to justify the inconvenience which was created to neutral traders."[24] Two years later, by recognizing a threefold distinction – absolute contraband, conditional contraband, and free goods – the delegates moved in the opposite direction. Given that the nature of war was changing, and with it the nature of what might be considered absolute and conditional contraband, to say nothing of the nature of free goods, the definitions were never internationally operationalized – even had the Declaration been signed by all the major powers "it was admitted that as a war proceeded a belligerent would

21 Parmalee, *Blockade*, 28.
22 The ten were: Great Britain, United States, Germany, France, Russia, Italy, Japan, Austria-Hungary, Spain, and Holland.
23 Parmelee, *Blockade*, 26–29. See also Stockton, *Outlines*, 57–59, who was an American delegate to the conference and had helped draft the U.S. proposal.
24 Jack, *Studies*, 76–79; Guichard, *Naval Blockade*, 10.

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