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AMERICAN CONSULATE GENERAL, LONDON.

FREEDOM OF THE SEAS, The

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No. 7144. AMERICAN CONSULATE GENERAL  
U.S. NAVAL WAR COLLEGE.  
London, England.

CONFIDENTIAL

November 26, 1918.

Subject: The Freedom of the Seas.

The Honorable  
The Secretary of State,  
Washington.

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NAVY DEPARTMENT  
File No. C-3-992  
Op. No. 56

Sir:

I have the honor to submit, for the information of the Department, the following observations in regard to what is commonly called the "Freedom of the Seas" based upon four years' personal and constant contact with the various British departments charged with actual responsibility under the blockade regulations, and American claimants whose interests have been at stake:

For present purposes I avoid all consideration of the doctrine that free ships make free goods, the theory on the continuous voyage, and the like, and I confine myself exclusively to facts of navigation and commercial intercourse. The result of my observations is that the shipper and owner of goods during the war now ended has been far less concerned respecting nice distinctions of international law than with the practical questions of administration. He could accommodate himself to the requirements of the blockade and to the theory of the continuous voyage, but he was constantly harassed by uncertainty as regards administrative method, and if this method had been less rigid, if it had been recognized not merely in theory but in practice that the neutral shipper not only had certain rights, but was entitled to a degree of consideration, we should have heard much less than we did about infractions of international law.

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I do not complain about the absence of it; indeed I rather imagine that any country with an inflamed state of public opinion to reckon with would find it difficult to maintain a certain sense of proportion in the lower official circles unless those circles were given definite metes and bounds by which their action must be governed. In any case, it is a fact that whatever may have been the views of the higher officials in this country during our years of neutrality, the people who actually seized goods and who disposed of them, always proceeded with the idea firmly fixed in their minds that one of the objects of the war was to build up a prize fund to be distributed afterwards among the men and officers of the Navy. It was difficult to find any one of lower rank than a Cabinet officer who could realize that the true purpose of the seizing of goods was exclusively to prevent aid and comfort reaching the enemy; they were always obsessed with the notion that there was a high patriotic purpose involved in building up a prize fund. Obviously under these circumstances it was very difficult for them to release goods which once came into their possession.

The first great complaint of American shippers was that while American goods were subjected to scrutiny, delay and confiscation if shipped to the neutral countries of Europe, the British shipper was encouraged to establish relations with these countries, and, in fact, carried on an enormously greater trade with them than ever before in British history. Thus for example the exports from Great Britain of cotton yarn grew as follows:

		1914	1915	1916
To Sweden	lbs.	1,812,500	2,035,900	1,968,500
Norway		2,541,400	4,065,800	5,391,600
Denmark		1,427,100	3,633,700	5,834,200
Holland		43,147,300	59,746,000	64,232,000

Exports

Exports of cotton waste and piece goods increased as strikingly. Exports of woolen tissues were forwarded as follows:

		1914	1915	1916
To Sweden	Yards	198,700	247,200	1,181,100
Norway		223,500	309,400	2,150,900
Denmark		734,300	1,359,600	6,258,800
Holland		3,102,300	2,139,100	6,280,100

How carefully British foreign trade was guarded is also shown in the subjoined figures as stated in the House of Commons on October 31, 1918:

A. Wool, Woolen Yarn and Woolen Manufactures.

Country		Aggregate Imports from all sources, less all Exports, 1913, i.e. amount retained for home consumption.		Aggregate gross imports from Great Britain, 1917.
Norway	Tons	4,103	Tons	2,665
Sweden		11,481		2,187
Denmark		5,383		3,657
Holland		9,442		7,609
Switzerland		10,112 <sup>#</sup>		11,693

B. Cotton, Cotton Yarn and Cotton Manufactures.

Norway		10,005		10,452
Sweden		27,532		10,248
Denmark		13,293		9,253
Holland		48,435		29,461
Switzerland		45,309 <sup>#</sup>		34,203

<sup>#</sup>Gross imports. In the case of Switzerland gross imports in 1913 afford the proper criterion, as Switzerland is manufacturing for the Allies.

While this successful British business was being carried on, British Department officials found it extremely difficult to answer legitimate inquiries on behalf of American traders with much more than monosyllabic replies. Even the diplomatic correspondence of the Department of State, while couched in the courteous language so characteristic of the Foreign Office,

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was singularly lacking, when particular cases were being examined, in explanations which tended to make matters entirely clear, or in offering solutions which, in the nature of things, could be acceptable. In general, the official attitude until we came into the war was: "Come into our Prize Court, make such claims there as you may be disposed to make, and await the sentence which will be passed upon you."

During the early days of the war ships were captured right and left, and investigations followed. Ships were not detained because of any specific complaint or knowledge with regard to a particular ship, but systematically and upon the general ground that an eastbound ship was necessarily an object of suspicion. To avoid delays to vessels it was then proposed that ships leaving the United States should be inspected by British agents while being loaded with a view to giving them knowledge of material facts. The owners of the goods paid heavy fees to have these surveys made yet after they had been made the delays continued in the same way merely in order that the conclusions of the British surveyor at the port of departure might be verified at Kirkwall or somewhere else.

During the first two years of the war neutral shippers endeavored over and over again to ascertain, in advance, whether contemplated transactions would meet with British opposition, and were unable to obtain any satisfaction. The cynical suggestion was constantly made that they could ship their goods and could rely upon the fairness of British methods. Usually the ships were detained and the goods were either seized or long delayed, or, in many instances were allowed to reach the intended destination on the signing of an agreement that they would not be disposed of except with the consent of the Foreign Office. In practice it was within the legal power of the British Minister in Copenhagen, Stockholm or elsewhere to give the

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final word, even after the discharge of American goods in warehouse in those countries, as to whether or not they might be delivered to the intending purchaser.

While matters were thus proceeding there was building up in the United States an enormous body of opinion adverse to British methods arising from innumerable transactions of the above general types.

It was not until January, 1916, after I had had repeated conversations with the various personages concerned, that the Foreign Office agreed to put into effect what was called a system of granting "Letters of Assurance". Under this system the intending shippers consulted the British authorities in the United States, acquainting them with the commercial details, and if these details were satisfactory they received a "Letter of Assurance" which gave them reasonable security that the transaction could be completed without Prize Court difficulties. Unfortunately, even then the British Government refused to issue "Letters of Assurance" that were absolutely final, and always reserved the right to review their own decisions thus casting a considerable degree of doubt over the whole system. However, without the slightest question, it eased up the situation and had it been put into effect at the outbreak of the war, would have prevented the development of those tense relations between the two countries which we all felt up to the moment when America entered the war.

Furthermore, there was great complaint that while the British Government set up the Netherlands Oversea Trust in Holland, and effected similar arrangements in other neutral countries, requiring that all goods sent to those countries should be consigned to the Trust or its equivalent, it assumed no reciprocal responsibility to hold goods harmless that were consigned in accordance with its prescriptions. It was fair

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to assume that if the American shipper consigned his goods precisely as indicated to him he should be guaranteed against delay and confiscation, but nevertheless, time after time, goods which had been consigned in accordance with the British rule were detained, were brought from Holland to England to be placed in the Prize Court, and even if eventually released and allowed to be delivered to the purchaser after a long and exasperating delay and a multiplication of costs, all of these costs had to be borne by the owners of the goods rather than by the Government which created them.

In cases where the British Government was clearly wrong in detaining goods, and recognized that the goods were innocent, it invariably declined to support the charges incident to its own operations. It declined to assume any responsibility for delays visited upon ships, declined compensation for demurrage, and, on the other hand, vessels or goods which were delayed and brought into British ports were required to pay local charges, pilotage, demurrage, and the like, precisely as though they had sought the British port in the usual course of business. When the Admiralty Marshal released goods against which no ultimate legal complaint was lodged, a tax of £1 was collected for rendering this service. These may seem small matters, but their cumulative effect upon commercial opinion in neutral countries was very great indeed.

I am quite convinced that administrative rules might have been devised, and as respects the "Letters of Assurance" were devised eventually, which had they been effective from the very beginning of the war would have protected every substantial interest of the British Government, and which, at the same time, within certain limitations, would have enabled shippers to carry on business without anxiety or loss; and it was largely the failure of those in authority to realize this that created the  
feelings

feelings of dissatisfaction which compelled the exchange of diplomatic Notes in which the Department set forth so ably the American point of view.

In conclusion I venture to suggest that any future rules of the sea in time of war should set out in considerable detail administrative directions fair alike to all concerned, and I offer the following proposals for purposes of discussion:

1. Nations enforcing a blockade policy must openly state the terms on which their own merchants are allowed to do business with neutral nations adjacent to the blockaded Power, and must extend to non-combatant nations the privilege of trading on conditions equally favorable.

2. Modern conditions make it entirely impossible to search vessels at sea, or to depend upon the evidence contained in the ship's documents as proof of the destination and ownership of the goods. It is necessary for the ascertainment of material facts that ships should be searched in port, and there is no reason why this search should not be carried out at the port of departure rather than at a port of detention. Vessels whose owners do not desire to take advantage of an opportunity to be searched in the port of departure would naturally have to accept the consequences of this attitude.

3. The importance of Prize Courts in any future war should be greatly reduced by legal recognition of "Letters of Assurance" which should be granted by a belligerent Power on the voluntary submission to its representatives of information respecting ownership and destination of goods about to be shipped. "Letters of Assurance" once granted should be final and conclusive. Refusals to grant "Letters of Assurance" should be subject to review by some competent international tribunal operated under equitable rules.



4. When detentions are recognized as unjustified or as the result of error, the nations responsible should immediately pay compensation for demurrage and the like, and assume responsibility for their own acts in such manner as to admit of settlements without such interminable delays as now seem to be inseparable from claims against governments.

The essence of my proposals is that decisions respecting the rights of ships and goods in time of war shall, in general, be determined before and not after the voyage is begun or the delivery undertaken; that the losses of legitimate traders shall be limited, in general, to deprivation of a contemplated profit rather than condemnation of the property involved; that when decisions are made by the administrative power of a belligerent nation applicable to proposed voyages or commercial transactions which are regarded by the Power whose nationals are affected as in violation of neutral rights, there shall exist an international Court of some kind to pass immediately upon an appeal in order that the course of legitimate commerce may be impeded and delayed as little as possible.

I have the honor to be, Sir,

Your obedient servant,

ROBERT L. SKINNER

American Consul General.

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