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William C. Eliot

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DOCTRINE OF CONTINUOUS VOYAGES

With the exception of a few isolated instances, the Doctrine of Continuous Voyages has been built up by England and the United States. Each has extended it to meet the necessities of the moment—England in the desire to retain the advantage given by her large navy, and the United States in its attempt to make tight its blockade of the ports of the Confederacy.

At the commencement of hostilities between nations, the commerce of each becomes liable to capture and confiscation by the other. In order that they might still continue it without such interruptions, the belligerents turned their commerce over to neutrals, who claimed exemption as such. England met this by holding that vessels so engaged acquired the character of enemy shipping and so became liable to capture and condemnation. To avoid this ruling, the practice was begun of stopping at some neutral port. It was then claimed by the neutral vessels that the ship was never proceeding from one hostile port to another, but always between a hostile and a neutral port. The English met this by holding that the voyage was in effect continuous, notwithstanding such stop, and was, therefore, unchanged as to its legal status, but remained a voyage from one hostile port to another. Later the scheme was adopted of unloading the cargo at the neutral port, paying duties, and immediately reloading it into the same vessel. For some time this was successful, but in the case of *The William*¹ in 1806, it was held that as the goods were shipped from one hostile port with the intent that they should reach another hostile port, the unloading, payment of duties, and reloading, was mere ceremony and without legal significance. The voyage was said to be continuous and the ship and cargo liable to capture and confiscation.

Matters stood thus for a period of almost fifty years, when in 1855, during the Crimean War, the Hanoverian ship, *Frau Howina*, bound for a neutral port with a cargo of saltpetre, was captured by a French cruiser. Upon finding that the cargo was ultimately intended for Russia, it was condemned by the French prize court. This decision is important in that it is the first time that the doctrine was extended to include contraband goods.

The next extension of the doctrine was made by the United States during the War of the Rebellion. The North having

¹5 C. Robinson, 385.

declared a blockade of the Southern ports, attempts were made to ship cargoes intended for the Confederacy to nearby neutral ports, such as Nassau and Matamoros, where they would await the most convenient opportunity for running the blockade. This was done sometimes by transshipment to the fast blockade runners, sometimes by the same vessels that brought them. A number of these vessels were captured before reaching the neutral port. The cases of *The Bermuda*² and *The Peterhoff*³ and *The Springbok*⁴ are the most widely known. In each case the ship was captured while proceeding from one neutral port to another. On examination of the cargos they were found to have an ultimate destination of breaking the blockade and reaching Confederate hands. Parts of the cargo were contraband, consisting of arms and munitions, marked for the Confederacy. In the first case, both vessel and cargo were condemned for attempt to break the blockade. In the second case the cargo was seized as contraband and the vessel for complicity, some papers having been destroyed at the moment of capture. In the case of the *Springbok*, the cargo was condemned for the same reason, but the ship was released, as the owners and master were innocent as to the nature of the cargo. The law in all three cases is the same, i. e., a cargo owned by a neutral and shipped from one neutral port to another, where it appears that it was ultimately intended for transshipment to the enemy, may be condemned. Vessels carrying such goods were held subject to capture that the goods might be brought in, and for any irregularity of conduct were subject to the payment of costs as a condition of release, while upon evidence of any complicity in the purpose of the owners of the cargo, they were subject to condemnation.

While the Doctrine of Continuous Voyages was said by the United States to apply in the case of transshipment of the cargo at a neutral port, at the same time if the goods became absorbed in the common stock of the country and later were bought and shipped to an enemy port by others, the voyage was said to have been broken and the doctrine did not apply. Hence it followed that even though goods might eventually reach one of the belligerents, or might release other goods for shipment to the enemy, if their shipment to the neutral port was in good faith they could

² 3 Wall U. S. 514.

³ 5 Wall U. S. 28.

⁴ 5 Wall U. S. 1.

not be condemned. To quote from the opinion of Chief Justice Chase in the Bermuda case:

“Neutrals in their own country may sell to belligerents whatever belligerents choose to buy * * * and so, again, the neutrals may convey in neutral ships, from one neutral port to another, any goods, whether contraband of war or not, if intended for actual delivery at the port of destination, and to become part of the common stock of the country or of the port.”

These rulings have been severely criticized by the European jurists, some of whom went so far as to state that they were without support outside of the United States, and would soon fall into disrepute, even there. They were, however, ratified in substance by the ruling of the Italian prize court in the case of the Dutch ship *Doelwyk*, captured by an Italian cruiser during the war with Abyssinia in 1896,⁵ and again by the Seventeenth Article of the Japanese Regulations of March, 1904, as to maritime capture.

At the commencement of the present war, the English doctrine as stated in the Declaration of London, was substantially the same, but as time went on it became apparent that neutrals had found an effective method of avoiding it. Goods were shipped to Sweden and Denmark, where they became a part of the common stock of the country. It soon became evident from the great increase in imports, that most of these goods were being bought in the open market by German agents, who then shipped them across the Baltic into Germany. The fact that they became a part of the common stock of the country prevented their seizure before their arrival in Sweden, and once they had completed that much of their transit, they passed beyond any possibility of capture, as the English fleet was unable to enter the Baltic to establish a blockade of the German ports. The effect of this was to make the blockade, under the old established rules of international law, impossible. To obviate this difficulty, the English amended the Declaration of London by the Order in Council dated the 29th of October, 1914, the only paragraph of which directly affects the Doctrine of Continuous Voyages, being No. 2:

“When it is shown to the satisfaction of one of his Majesty’s principle secretaries that the enemy government is drawing supplies for its armed forces from or through a neutral country, he may direct that in respect of ships bound for a port in that country Article 35 of the said Declaration shall not apply. Such direction shall be noti-

⁵ 2 Westlake, *International Law*, 28.

fied in the London Gazette and shall operate until the same is withdrawn. So long as such direction is in force, a vessel which is carrying conditional contraband to a port in that country shall not be immune from capture."

It will be noticed that this is in direct opposition to the Bermuda decision. The effect of this was that the English took the tables of imports for the neutral countries adjacent to Germany or any of her Allies, and when the figures for the imports of any contraband or conditional contraband goods through that country began to exceed those of normal times, she declared the ports closed to cargos of a like or similar nature. As it is further recognized that when in modern times a nation makes war, it is organized as a unit for that purpose, the distinction as to whether the goods are for civilian or military consumption becomes of no importance. The leading case on this new extension is the *Kim*.⁶ The *Kim* was a Norwegian ship voyaging between the United States and Copenhagen, Denmark. November 14th it was captured by an English cruiser. Part of her cargo was rubber, which was consigned by the claimant, an American citizen, to a Swede at Landsrona, Sweden. At a hearing in the prize court, evidence was offered by the Crown to the effect that the final destination of the rubber was Germany. The President held that as the Doctrine of Continuous Voyage and Transportation, both as regards carriage by land and sea, was part of the international law at the commencement of the war in August, 1914, all goods which were for the use of the German Government, although nominally going to a neutral port as their port of destination, must be condemned as lawful prize. The thirty-nine packages of rubber were condemned.

The case of the *Balto*, a Norwegian ship which left New York for Gottenburg on the 14th of October, 1915, goes even further. Included in her cargo were 74 bales of sole leather consigned from Boston to Mr. Ernst Aqvist, the managing director of a Swedish firm which carried on a business of the manufacture of boots and shoes at Orebro, Sweden. There was some documentary evidence that the latter might eventually become shoes for the German or Austrian armies, as Germany was buying shoes in Sweden, but none that the particular shipment would be so used. The claimants said that as the goods were intended for manufacture in a neutral

⁶ 113 (N. S.) L. T. R. 1064. In this case the consignor was a neutral citizen as was the consignee, and the cargo was proceeding from one neutral port to another. The defense proved a market for rubber in Sweden. It seems to have been condemned merely upon suspicion.

country, they did not come under Article 30 of the Declaration of London. In effect the voyage was broken and the goods became a part of the common stock of the country. The President of the Prize Court held (a) that contraband material imported into a neutral country to be manufactured into goods destined for the enemy, does not become part of the common stock of the country so as to defeat the Doctrine of Continuous Voyages; and (b) that accordingly an order should be made directing the claimants to make discovery of the books and documents relating to their sales of boots, as well as of leather, from August, 1913, to the date of sale."

The substance of the British position seems to be that, without declaring it, they established a new form of blockade and stretched the Doctrine of Continuous Voyages so as to cover it. Being unable to establish a formal blockade of the ports of the hostile nations, she blockaded all those countries through which contraband goods might be shipped to enemies, allowing only what was necessary for the uses of the neutral countries to pass, and justified this action by the Doctrine of Continuous Voyages.

The tendency of the law today is to avoid frictions and attack problems from the practical standpoint of doing equity to the parties. Viewed in this manner, the new extension of the doctrine by the English is logical. As long as the blockade is recognized as a legitimate form of hostile action, it would be an absurdity to cripple its effectiveness by hedging it about with rules, other than those made to safeguard the principles of humanity. It seems that England might be justified in this as much, and as logically, as the other nations have been in making their enforced extensions of the doctrine.

WILLIAM C. ELIOT.