Is the British Embargo Lawful?

IT is the purpose of the British note of July 24th to bring the British embargo upon neutral commerce with the German Empire within the concept of blockade as that is recognized and defined by international law. The British position is sufficiently indicated in the following sentence: "It seems, accordingly, that if it be recognized that a blockade is in certain cases the appropriate method of intercepting the trade of an enemy country, and if the blockade can only become effective by extending it to enemy commerce passing through neutral ports, such an extension is defensible and in accordance with principles which have met with general acceptance." Other passages of the note make it clear that the "principles" thus referred to comprise more especially the doctrine of continuous voyage as it was applied by the United States Supreme Court in the well known case of the Springbok.

This contention and the support in authority invoked for it are calculated to provoke discussion, not merely of the proper limitations of blockade, but of the nature and sources of international law itself. Sir Edward Grey admits that the weight of learned opinion was in 1873 strongly adverse to the correctness of the decision in the Springbok case, and a further measure of candor would have extended the admission to more recent opinion. Yet because the British government ultimately waived protest against the decision, Sir Edward seems to think that its legality must to-day be conceded by the United States. It cannot be admitted that international law is thus made. No doubt, for the purpose of a particular dispute, the parties to it can waive their rights under international law, but the fabric of the law itself is not therefore altered. And by the same sign it cannot be admitted that the United States is to-day bound as a neutral by its previous conduct as a belligerent, nor yet by the acquiescence of the British government in that conduct, unless it was in fact conduct conforming to law. Rights are not thus forfeited in municipal law, and there is no apparent reason why they should be in international law; and the idea that one who had committed a tort at private law should be exposed on that account to like trespasses by others would meet with ridicule.

But does the doctrine of the Springbok case lend any real support to the British Orders-in-Council establishing an embargo upon commerce passing to and from Germany through neutral ports? The answer must be an unqualified negative: self-confessedly an effort to press the belligerent interest to the utmost limit, this adjudication yet affords no basis for the outstanding features of the British embargo. In the Springbok case goods consigned ostensibly to British West Indian ports were seized before they reached their immediate destination, and confiscated on the ground that their ultimate destination was certain blockaded ports of the South. In other words, the goods in question suffered the penalty ordinarily imposed under the British-American view of blockade upon goods and vessels shown to be intending the infraction of a regularly established blockade: that, and nothing more. But the British Orders-in-Council purport to authorize the interception of cargoes destined to pass through the unblockaded ports of neutrals, over a land frontier also unblockaded, into the interior of the enemy country. The goods are intercepted not because their passage constitutes an infraction of an existing blockade—an act penalized by international law—but because it renders less efficacious a blockade elsewhere established of enemy ports, an entirely innocent act under international law. But Sir Edward Grey writes: "By means of a blockade a belligerent is entitled to cut off, by effective means, the sea-borne commerce of his enemy." Yes, if the "effective means" are proper incidents of a proper blockade; otherwise, no. And Sir Edward himself acknowledges that there can be no blockade of neutral ports.

Unfortunately for Sir Edward, the admission, though clearly unavoidable, plants the bare bodkin in the heart of his whole contention. Let us suppose Rotterdam, for instance, to be a German port. Let us further suppose England to be desirous of leaving Rotterdam unblockaded. Could she none the less assume to intercept goods passing to and from Rotterdam on the plea that it was necessary to do so in order to make more stringent her blockade of other German ports? Obviously not, if the Declaration of Paris means anything. By what legerdemain, then, is a stoppage of goods made valid in the case of neutral ports, neither under blockade nor legally subject to it, which would be invalid if the same ports were unblockaded and hostile?

But what of Sir Edward's invocation of the doctrine of continuous voyage? It is irrelevant, for clearly in order that a doctrine be relevant it is first requisite that that to which it applies exist. In the case of the doctrine of continuous voyage, this is a voyage on the high seas apparently broken into two parts, but actually comprising one continuous voyage. The purpose of the doctrine in connection

with blockade is to justify a seizure during the first part of the voyage which would be legal if made during the second part. But a belligerent seizure of neutral goods while in transit through neutral territory is unallowable. Nor can such act of transit through the territory of a neutral state be considered a voyage in any sense of the term. In a word, blockade has to do with the coasts, ports, and waters of the enemy, and those only; and the continuous voyage which it may interrupt is a voyage directed in fact to such coast, ports and waters when they are effectively blockaded.

It is equally clear that a belligerent cannot, save in the single instance mentioned below, seize goods of alleged hostile origin when passing from neutral ports to a neutral. It could not ordinarily do so at all under the British-American rule as to the ownership of such goods, even if the Declaration of Paris were to be superseded once more by the ancient British rule of "spare your friends and harm your enemies." It can do so under no rule as to their ownership, under that Declaration, except in the single case of their being encountered on the high seas under the enemy's flag.

One question remains, that of the regularity of the British embargo upon trade with Germany through the Baltic. If the Baltic be regarded as an international highway, such an embargo is clearly unallowable. On the other hand, if the embargo be treated simply as an expeditious way of blockading the German Baltic ports it is still unallowable, since it does not exclude Scandinavian traders from these ports; and by international law a blockade must operate impartially upon the commerce of all states, including even that of the blockading state.

It is interesting to recall that the British government had at first no idea of defending its embargo policy as conformable with international law. The defense officially made of it was that voiced by Mr. Balfour among others, who, urging the reciprocal nature of international law, contended that her enemy's illegal courses had released Great Britain in a measure from the necessity of heeding the law of nations. From the standpoint of neutral rights this is no defense at all. As President Wilson phrased it in the recent note to Germany: "A belligerent act of retaliation is *per se* an act beyond the law, and the defense of an act as retaliatory is an admission that it is illegal."

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The Bayonne Strike

THE Standard Oil Company of New Jersey maintains a settled policy of refusing to deal with any "professional labor man or other outsider." At its great Bayonne refinery, where five thousand men are employed in one of the most profitable enterprises in the country, it maintains "almost navy yard discipline." There is no machinery for collective bargaining or the easy adjustment of grievance. The quoted phrases are those of Mr. Gifford, its general manager. He justifies this undemocratic régime on the ground that the workmen are unable to speak English, and of a class requiring firm treatment, and that large quantities of highly inflammable and explosive liquids are stored at the plant. Until the recent strike the company paid its common laborers at the rate of $1.75 for nine hours' work. Five hundred of the labor force work in shifts of ten hours during the day and fourteen hours during the night, the men changing shifts once a week and receiving twenty-four hours' rest each seven days.

Adjoining the Standard Oil Company's plant is that of the International Nickel Company, whose product is converted copper and nickel. It employs thirteen hundred men. Until recently it paid its common laborers at the rate of $1.80 for nine hours' work. About July 1st its employees asked for an increase in wages. To aid them in negotiating with the company they employed Paul C. Supinsky, a Polish lawyer, with offices in Bayonne and Jersey City. Superintendent Stanley met Mr. Supinsky, and after some discussion agreed to an increase of ten per cent. There was no strike. Employees at the Standard plant learned that common laborers at the adjoining plant were receiving 22 cents an hour. Both companies were operating their plants at capacity and exporting heavily to Europe. There seemed no good reason why the Standard Oil Company should pay 19 4/9 cents an hour for the same sort of work that brought International Nickel Company employees 22 cents.

The dissatisfaction first found expression among the still cleaners, a body of one hundred men whose function is to enter the stills soon after they have been emptied and scrape from the interior walls the tarry substance left from the distilling process. The still cleaners were paid on a piece rate basis, and earned from $2.30 to $2.70 a day. They work in the stills at temperatures ranging from 200 to 300 degrees. To protect their bodies from the intense heat they wear several layers of thick clothing and swathe their faces with cloths. During a