

where actual or potential enemy destination is suspected, any unnavicerted cargo for these destinations will be liable to be seized as prize. Same will apply to any outward cargo not covered by certificate of origin.

7. In the same way inward bound ships sailing without ships' navicerts will be presumed to be doing so only because they were unable to obtain navicerts for the whole of their cargo, and therefore to be deliberately carrying contraband. Such ships will be similarly liable to seizure. Outward bound ships not provided with a ship's navicert will also be assumed to be carrying goods of enemy origin or interest and will be liable to seizure.

8. Accordingly H. M.'s Government have decided to announce that all ships sailing to or from any of the above destinations which leave their last port of call after to-morrow without obtaining a ship's navicert will, if intercepted by our patrols, be liable to be seized in prize. During initial period allowances will be made for cases where a shipowner has already loaded unnavicerted or uncertificated cargo.

These new regulations are in force as from the 31st July 1940.

Dokumente zu den britisch-französischen Maßnahmen zur Beschlagnahme deutscher Ausfuhrwaren

1. Britische Order in Council vom 27. November 1939¹⁾

ORDER IN COUNCIL FRAMING REPRISALS FOR RESTRICTING FURTHER THE COMMERCE OF GERMANY.

At the Court at Buckingham Palace the 27th day of November, 1939.

PRESENT,

The King's Most Excellent Majesty in Council.

Whereas His Majesty has been compelled to take up arms against Germany in defence of the fundamental right of nations to a free and peaceful existence:

And whereas German forces have in numerous cases sunk merchant vessels, British, Allied and neutral, in violation of the rules contained in the Submarine Protocol, 1936, to which Germany is a party:

And whereas merchant vessels, British, Allied and neutral, have been sunk by mines laid by German forces indiscriminately and without notification, in contravention of the obligations of humanity and the provisions of the Hague Convention No. VIII of 1907 to which Germany is a party:

And whereas the sinking of these vessels has been effected without regard to their nationality or destination or to the nature, ownership or destination of their cargoes:

And whereas these acts have already resulted in grave loss of non-combatant life, British, Allied and neutral:

And whereas it is manifest that the German Government have deliberately embarked on a policy of endeavouring to destroy all seaborne trade between the Allied and other countries by a ruthless use of the forces at their disposal, contrary to the laws and customs of war, the rights of neutrals and the obligations of humanity:

And whereas this action on the part of the German Government gives to His Majesty an unquestionable right of retaliation:

¹⁾ S. R. & O. 1939 No. 1709.

And whereas the Allies of His Majesty are associated with Him in the steps now to be announced for restricting further the commerce of Germany:

Now, therefore, His Majesty is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows: —

1. Every merchant vessel which sailed from any enemy port, including any port in territory under enemy occupation or control, after the 4th day of December, 1939, may be required to discharge in a British or Allied port any goods on board laden in such enemy port.

2. Every merchant vessel which sailed from a port other than an enemy port after the 4th day of December, 1939, having on board goods which are of enemy origin or are enemy property may be required to discharge such goods in a British or Allied port.

3. Goods discharged in a British port under either of the preceding Articles shall be placed in the custody of the Marshal of the Prize Court, and, unless the Court orders them to be requisitioned for the use of His Majesty, shall be detained or sold under the direction of the Court. The proceeds of goods so sold shall be paid into Court.

On the conclusion of peace such proceeds and any goods detained but not sold shall be dealt with in such manner as the Court may in the circumstances deem just; provided that nothing herein shall prevent the payment out of Court of any such proceeds or the release of any goods at any time (a) if it be shown to the satisfaction of the Court that the goods had become neutral property before the date of this Order, or (b) with the consent of the proper officer of the Crown.

4. The law and practice in Prize shall, so far as applicable, be followed in all cases arising under this Order.

5. Nothing in this Order shall affect the liability of any vessel or goods to seizure or condemnation independently of this Order.

6. For the purposes of this Order the words »goods which are of enemy origin« shall include goods having their origin in any territory under enemy occupation or control, and the words »goods which . . . are enemy property« shall include goods belonging to any person in any such territory.

7. Proceedings under this Order may be taken in any Prize Court having jurisdiction to which the Prize Court Rules, 1939*), apply.

8. For the purposes of this Order the words »British port« mean any port within the jurisdiction of any Prize Court to which the Prize Court Rules, 1939, apply.

Rupert B. Howorth.

*) S. R. & O. 1939 No. 1466.

2. Französisches Dekret vom 27. November 1939 nebst Begründung¹⁾

Embargo sur les exportations allemandes.

RAPPORT

AU PRÉSIDENT DE LA RÉPUBLIQUE FRANÇAISE

Paris, le 27 novembre 1939.

Monsieur le Président,

La France a dû prendre les armes contre l'Allemagne pour défendre le droit essentiel des nations à une existence libre et pacifique.

¹⁾ Journ. Off. v. 28. Nov. 1939 S. 13463f.

En dépit des assurances qu'il avait données, le gouvernement du Reich n'a pas hésité à recourir à des actes de violence que condamnent le droit international et les principes d'humanité.

C'est ainsi que, dans de nombreuses occasions, les forces allemandes ont torpillé des navires de commerce français, alliés et neutres, en violation des dispositions du protocole de 1936, relatif à la guerre sous-marine, protocole auquel pourtant l'Allemagne est partie.

Par ailleurs, de nombreux navires de commerce français, alliés et neutres ont été coulés par des mines posées, sans notification, par les forces allemandes, en contravention avec les dispositions de la convention VIII de la Haye de 1907 à laquelle l'Allemagne était également partie.

La destruction de ces navires a été effectuée, sans égard à leur nationalité ou à leur destination, et sans souci de la nature, de la propriété ou de la destination de leurs cargaisons.

Ces actes, contraires au droit des gens, qui ont déjà coûté la vie à un nombre important de non combattants de nationalité tant neutre qu'alliée, ne peuvent laisser aucun doute sur la détermination du gouvernement allemand de supprimer tout commerce maritime entre les alliés et les autres pays par l'usage, à la fois illégal et inhumain, des forces dont il dispose.

De semblables pratiques donnent au Gouvernement de la République le droit incontestable de recourir à des mesures de représailles, et d'empêcher toute exportation maritime de marchandises allemandes.

Dans l'application de ces mesures, rendues inévitables par le caractère inhumain que l'Allemagne a donné à la guerre maritime, il sera d'ailleurs tenu compte de tous les intérêts légitimes des neutres, que le Gouvernement français a le souci de sauvegarder en toutes circonstances.

Les alliés de la France s'associant pleinement à la ligne de conduite ainsi définie, nous avons l'honneur de soumettre à votre haute approbation le projet de décret ci-après.

Nous vous prions d'agréer, monsieur le Président, les assurances de notre profond respect.

*Le président du conseil, ministre de la défense nationale
et de la guerre et des affaires étrangères,*

ÉDOUARD DALADIER.

Le ministre du blocus,
GEORGES PERNOT.

Le ministre des finances,
PAUL REYNAUD.

Le ministre de la marine,
C. CAMPINCHI.

Le Président de la République française,

Sur le rapport du président du conseil, ministre de la défense nationale et de la guerre et des affaires étrangères, du ministre du blocus, du ministre des finances et du ministre de la marine,

Décète :

Art. 1^{er}. — Les autorités compétentes pourront exiger le déchargement dans un port relevant de la France ou dans un port allié des marchandises chargées dans un port situé en territoire ennemi, à condition que le navire ait quitté le port ennemi de chargement postérieurement au 4 décembre 1939.

Elles pourront procéder de même en ce qui concerne les marchandises d'origine, de provenance ou de propriété ennemie chargées dans un port autre qu'un port ennemi sur un navire ayant quitté ce port postérieurement au 4 décembre 1939.

Art. 2. — La procédure applicable en matière de prises maritimes sera suivie pour déterminer si des marchandises déchargées en application de l'article 1^{er} ci-dessus ont été à bon droit arrêtées.

A cet effet, le comité interministériel établi par l'arrêté du 3 septembre 1939 sera dénommé dorénavant «Comité de contrôle de la contrebande et des exportations ennemies».

Art. 3. — Les marchandises arrêtées seront remises au service des prises et administrées par lui. Elles pourront être réquisitionnées ou vendues sur décision du comité de contrôle de la contrebande et des exportations ennemies.

Le produit de ces réquisitions et ventes sera versé à un compte spécial ouvert à la caisse des dépôts et consignations.

Art. 4. — A la conclusion de la paix, le conseil des prises déterminera, en équité et compte tenu de toutes les circonstances, du sort à réserver aux marchandises arrêtées ou, le cas échéant, au produit de leur réquisition ou vente.

La présente disposition ne fera pas obstacle à ce qu'à tout moment, et indépendamment de la procédure normale prévue à l'article 2, le ministre du blocus décide, après avis du comité de contrôle de la contrebande et des exportations ennemies, la relaxe d'une marchandise arrêtée ou le paiement de sa contre-valeur. Il pourra notamment en être ainsi s'il est établi que la marchandise est devenue propriété neutre avant la date d'insertion du présent décret au *Journal officiel*. L'exécution de la décision appartiendra au ministre de la marine.

Art. 5. — Le présent décret ne met pas obstacle à la saisie et la capture de navires et de marchandises en vertu des principes généraux du droit des gens et des dispositions des règlements et instructions en vigueur.

Art. 6. — Pour l'application du présent décret, les territoires occupés par l'ennemi ou placés sous son contrôle seront assimilés au territoire ennemi. Toute marchandise appartenant à une personne se trouvant sur lesdits territoires sera considérée comme étant de propriété ennemie.

Art. 7. — Le président du conseil, ministre de la défense nationale et de la guerre et des affaires étrangères, le ministre du blocus, le ministre des finances et le ministre de la marine sont chargés, chacun en ce qui le concerne, de l'exécution du présent décret, qui sera publié au *Journal officiel*.

Fait à Paris, le 27 novembre 1939.

ALBERT LEBRUN.

Par le Président de la République:

*Le président du conseil, ministre de la
défense nationale et de la guerre et des
des affaires étrangères,*

ÉDOUARD DALADIER.

Le ministre du blocus,
GEORGES PERNOT.

Le ministre des finances,
PAUL REYNAUD.

Le ministre de la marine,
C. CAMPINCHI.

3. Verlautbarung der Deutschen Regierung vom 29. II. 1939¹⁾

Die Ausdehnung des Wirtschaftskrieges auf die Ausfuhrwaren deutscher Herkunft auf neutralen Schiffen mit neutraler Bestimmung bedeutet einen neuen Bruch des Völkerrechts durch England. Sie steht in klarem Widerspruch zu anerkannten Grundsätzen des Völkerrechts, insbesondere zu der Pariser Seerechts-Deklaration von 1856. Dieser neue Völkerrechtsbruch trifft ebenso die Neutralen wie Deutschland.

Die Deutsche Regierung nimmt von der durch England geschaffenen neuen Lage Kenntnis und behält sich alle Maßnahmen vor.

4. Verbalnote der Sowjetregierung an die britische Botschaft in Moskau vom 10. Dezember 1939 (Übersetzung)²⁾

Moskau, 10. Dezember 1939.

Das Volkskommissariat für auswärtige Angelegenheiten der UdSSR beehrt sich im Auftrage der Regierung der UdSSR die Botschaft Großbritanniens zu ersuchen, folgendes zur Kenntnis der britischen Regierung zu bringen: Durch die Note, die der Botschaft am 25. Oktober d. J. überreicht worden ist, hat die Sowjetregierung erklärt, daß sie nicht einverstanden ist mit den Maßnahmen, die — von der britischen Regierung unter dem Vorwand der Bekämpfung der Kriegskonterbande durchgeführt — die Grundsätze des Völkerrechts verletzen, die Interessen der neutralen Länder schwer beeinträchtigen und den internationalen Handel zerstören.

Die Sowjetregierung sieht sich gezwungen festzustellen, daß seitens Großbritanniens gegenwärtig neue Maßnahmen des Wirtschaftskrieges getroffen worden sind, die ihrem Wesen nach gegen den Seehandel der neutralen Staaten gerichtet sind.

Durch die Verordnung vom 28. November d. J. maßt sich die britische Regierung das Recht an, jede beliebigen Seetransporte von Waren aus deutschen Häfen zu unterbinden. Außerdem fordert die britische Regierung, daß Waren deutschen Ursprungs desgleichen nicht aus den Häfen neutraler Staaten ausgeführt werden sollen. Ferner besteht die britische Regierung darauf, daß Schiffe, die die obengenannten Waren befördern, zur Löschung ihrer Ladung in britische oder französische Häfen einlaufen, wo diese Frachten der Beschlagnahme unterliegen, ja, sogar dem Zwangsverkauf.

Schließlich verpflichtet die britische Regierung die Schiffe, die mit einer beliebigen Fracht aus den Häfen von Staaten auslaufen, zu denen Deutschland einen Zugang besitzt, sich zur Kontrolle in dafür eigens bezeichnete britische oder französische Häfen zu begeben.

Die neue Methode des Wirtschaftskrieges, die durch die Verordnung vom 28. November d. J. eingeführt wurde, kennt keinen Präzedenzfall in der Geschichte der internationalen Beziehungen und stellt eine weitere Verletzung der Normen des Völkerrechts dar, denen zufolge niemand den neutralen Ländern verbieten kann, für ihre Bedürfnisse vom Territorium kriegsführender Staaten die einen oder anderen Waren einzuführen, unabhängig von ihrer Herkunft.

Dieselbe Verletzung des Völkerrechts stellt das Verbot der Transporte von Waren deutschen Ursprungs von einem neutralen Hafen in einen anderen dar.

¹⁾ DNB Nr. 1677 vom 29. II. 1939.

²⁾ DNB Nr. 1727 vom 11. 12. 1939.

Schließlich hält die Sowjetregierung die Forderung der Verordnung vom 28. November für völlig willkürlich, wonach — unabhängig vom Ursprung der transportierten Frachten — Schiffe, die aus Häfen derjenigen neutralen Staaten, zu denen Deutschland Zugang besitzt, auslaufen, zur Kontrolle sich in britische oder französische Häfen zu begeben haben.

Infolge der oben genannten Gründe hält die Sowjetregierung es für erforderlich, gegen die Maßnahmen Protest zu erheben, die auf Grund der Verordnung vom 28. November 1939 getroffen wurden und die eine Verletzung der Rechte und Interessen der neutralen Länder darstellen.

Die Sowjetregierung behält sich das Recht vor, für die entstehenden Verluste Ersatz zu fordern, wenn ein staatliches Schiff der Sowjetunion zwangsweise in einen britischen oder französischen Hafen eingebracht wird, oder wenn in Anwendung der Verordnung vom 28. November d. J. dem auswärtigen Handel der UdSSR irgendein beliebiger anderweitiger Schaden zugefügt wird.

5. Note der amerikanischen Botschaft in London an das britische Auswärtige Amt vom 8. Dezember 1939¹⁾

My Government has noted with regret that by its Order-in-Council of November 28, the British Government has undertaken to intercept all ships and all goods emanating from German ports, and ports in territory under German occupation, after December 4, 1939, and all ships from whatever port sailing after December 4 having on board goods of German origin or German ownership, and to require that such goods be discharged in a British or allied port and placed in the custody of the marshal of the prize court. This order if applied literally would subject American vessels to diversion to British ports if they are found to be carrying goods of German origin or German ownership, regardless of the place of lading of such goods or the place of destination and regardless of the ownership of the goods at the time that the vessel is intercepted, the words 'enemy origin', according to the order, covering any goods having an origin in any territory under enemy control, and the words 'enemy property' including goods belonging to any person in any such territory.

Interference with neutral vessels on the high seas by belligerent powers must be justified upon some recognized belligerent right. It is conceded that a belligerent government has a right to visit and search neutral vessels on the high seas for the purpose of determining whether the vessel is carrying contraband of war to an opposing belligerent, is otherwise engaged in some form of unneutral service, or has broken or is attempting to break an effective blockade of an enemy port and, if justified by the evidence, to take the vessel into port.

American vessels are at the present time prohibited by our domestic law from engaging in any kind of commerce on the west coast of Europe between Bergen, Norway, on the north, and the northern part of Spain on the south. This prohibition applies to neutral as well as to belligerent ports within that area. Consequently, justification for interfering with American vessels or their cargoes on grounds of breach of blockade can hardly arise. Likewise the question of contraband does not arise with respect to goods en route from Germany to the United States.

Whatever may be said for or against measures directed by one belligerent against another, they may not rightfully be carried to the point of en-

¹⁾ The Department of State Bulletin. Vol. I (1939), p. 651 f.

larging the rights of a belligerent over neutral vessels and their cargoes, or of otherwise penalising neutral states or their nationals in connection with their legitimate activities.

Quite apart from the principles of international law thus involved, the maintenance of the integrity of which cannot be too strongly emphasized at this time when a tendency toward disrespect for law in international relations is threatening the security of peace-loving nations, there are practical reasons which move my Government to take notice of the Order-in-Council here in question. In many instances orders for goods of German origin have been placed by American nationals for which they have made payment in whole or in part or have otherwise obligated themselves. In other instances the goods purchased or which might be purchased cannot readily, if at all, be duplicated in other markets. These nationals have relied upon such purchase or the right to purchase for the carrying on of their legitimate trade, industry and professions. In these circumstances, the British Government will readily appreciate why my Government cannot view with equanimity the measures contemplated by the Order-in-Council which if applied cannot fail to add to the many inconveniences and damages to which innocent trade and commerce are already being subjected.

My Government is therefore under the necessity of requesting that measures adopted by the British Government shall not cause interference with the legitimate trade of its nationals and of reserving meanwhile all its rights and the rights of its nationals whenever, and to the extent that they may be infringed.

6. Verlautbarung des amerikanischen Staatsdepartements

vom 4. Januar 1940¹⁾

The following is a list of questions which were submitted by the American Embassy at London to the British Ministry of Economic Warfare concerning the matter of interference by British authorities with shipments of commodities purchased in Germany. The following answers to each of these specific questions are in the form stated by the Ministry of Economic Warfare in an official communication to the American Embassy dated December 25, 1939:

Q. First. What measures are in effect or in contemplation in the direction of assurances, before shipment from German and neutral ports, of noninterference with such consignments?

A. Applications for exemption from the provisions of the order in council in certain circumstances will be entertained and if granted an assurance will be given that the consignment concerned will not be interfered with.

Q. Second. Under what circumstances and on the basis of what evidence will such assurances be given?

A. Such exemptions will only be given in very exceptional circumstances. It is not possible to define the facts on which an exception may be made because, as you will appreciate, this will depend on the particular circumstances of each case. When, however, any application for exemption is made the fullest possible information should be supplied, including in particular all details of the shipment desired, together with the names and addresses of consignor and consignee, the origin of the goods, the contract under which they were purchased, dates on which payment therefor is due, and the dates on which any payments therefor have been made.

¹⁾ The Department of State Bulletin. Vol. II (1940), p. 5.

Q. Third. To whom should such evidence be presented, and, generally speaking, what periods of time are likely to follow presentation of such evidence before decisions will be rendered respecting individual shipments?

A. All such applications should be addressed to the Ministry of Economic Warfare with any further documentary evidence that is available. It is not necessary to state how long a period of time is likely to elapse before decisions will be made in regard to individual shipments, but every effort will be made in this Department to minimize delay.

Q. Fourth. What is the nature of and what value will be given to such advance assurances?

A. The nature of any assurance given, in cases where an exemption is granted, will be a communication to that effect made to the applicant. In such cases the necessary instructions will be given to all the naval and customs authorities concerned.

The above is released merely for the information of the public. The United States has protested the legality of the British order in council of November 28, 1939, by a note dated December 8, 1939, delivered by the American Embassy in London to the British Foreign Office and made public on December 8, 1939.

7. Mitteilung des amerikanischen Botschafters in London an den britischen Staatssekretär für auswärtige Angelegenheiten vom 2. April 1915¹⁾

.....
The Order in Council of the 15th March*) would constitute, were its provisions to be actually carried into effect as they stand, a practical assertion of unlimited belligerent rights over neutral commerce within the whole European area and an almost unqualified denial of the sovereign rights of the nations now at peace.

.....
Moreover, the rules of the Declaration of Paris of 1856, among them that free ships make free goods, will hardly at this day be disputed by the signatories of that solemn agreement.

His Majesty's Government, like the Government of the United States, have often and explicitly held that these rights represent the best usage of warfare in the dealings of belligerents with neutrals at sea From that time (1871) to the Declaration of London of 1909, adopted with modifications by the Order in Council of the 23rd October last, these rights have not been seriously questioned by the British Government. No less claim on the part of Great Britain of any justification for interfering with these clear rights of the United States and its citizens as neutrals could be admitted. To admit it would be to assume an attitude of unneutrality towards the present enemies of Great Britain which would be obviously inconsistent with the solemn obligations of this Government in the present circumstances.

.....
But the novel and quite unprecedented features of that blockade, if we are to assume it to be properly so defined, is that it embraces many neutral ports and coasts, bars access to them, and subjects all neutral ships seeking to approach them to the same suspicion that would attach to them were they

¹⁾ Further Correspondence between His Majesty's Government and the United States Government respecting the Rights of Belligerents. [In continuation of »Miscellaneous, No. 6 (1915): Cd 7816], Miscellaneous No. 14 (1916): Cd 8233.

bound for the ports of the enemies of Great Britain, and to unusual risks and penalties.

It is manifest that such limitations, risks, and liabilities placed upon the ships of a neutral Power on the high seas, beyond the right of visit and search and the right to prevent the shipment of contraband already referred to, are a distinct invasion of the sovereign rights of the nations whose ships, trade, or commerce is interfered with.

The Government of the United States is, of course, not oblivious to the great changes which have occurred in the conditions and means of naval warfare since the rules hitherto governing legal blockade were formulated. It might be ready to admit that the form of »close« blockade with its cordon of ships in the immediate offing of the blockaded ports is no longer practicable in the face of an enemy possessing the means and opportunity to make an effective defence by the use of submarines, mines, and aircraft; but it can hardly be maintained that, whatever form of effective blockade may be made use of, it is impossible to conform at least to the spirit and principles of the essence of the rules of war. If the necessities of the case should seem to render it imperative that the cordon of blockading vessels be extended across the approaches to any neighbouring neutral port or country, it would seem clear that it would still be easily practicable to comply with the well-recognised and reasonable prohibition of international law against the blockading of neutral ports by according free admission and exit to all lawful traffic with neutral ports through the blockading cordon. This traffic would, of course, include all outward-bound traffic from the neutral country and all inward-bound traffic to the neutral country except contraband in transit to the enemy. Such procedure need not conflict in any respect with the rights of the belligerent maintaining the blockade, since the right would remain with the blockading vessels to visit and search all ships either on entering or leaving the neutral territory which they were in fact, but not of right, investing.

The Government of the United States notes that in the Order in Council His Majesty's Government give as their reason for entering upon a course of action which they are aware is without precedent in modern warfare, the necessity they conceive themselves to have been placed under to retaliate upon their enemies for measures of a similar nature which the latter have announced it their intention to adopt, and which they have to some extent adopted; but the Government of the United States, recalling the principles upon which His Majesty's Government have hitherto been scrupulous to act, interprets this as merely a reason for certain extraordinary activities on the part of His Majesty's naval forces and not as an excuse for or prelude to any unlawful action. If the course pursued by the present enemies of Great Britain should prove to be in fact tainted by illegality and disregard of the principles of war sanctioned by enlightened nations, it cannot be supposed, and this Government does not for a moment suppose, that His Majesty's Government would wish the same taint to attach to their own actions, or would cite such illegal acts as in any sense or degree a justification for similar practices on their part in so far as if they can affect neutral rights.

....

This Government . . . infers that the commanders of His Majesty's ships of war engaged in maintaining the so-called blockade will be instructed to avoid an enforcement of the proposed measures of non-intercourse, in such a way as to impose restrictions upon neutral trade more burdensome than those

which have been regarded as inevitable when the ports of a belligerent are actually blockaded by the ships of its enemy.

... It is . . . expected that His Majesty's Government, having considered these possibilities, will take steps necessary to avoid them, and in the event that they unhappily occur, will be prepared to make full reparation for every act which, under the rules of international law, constitutes a violation of neutral rights.

As stated in its communication of the 22nd October, 1914, "this Government will insist that the rights and duties of the United States and its citizens in the present war be defined by the existing rules of international law, and the treaties of the United States, irrespective of the provisions of the Declaration of London, and that this Government reserves to itself the right to enter a protest or demand in each case in which those rights and duties so defined are violated, or their free exercise interfered with by the authorities of the British Government".

*) The Order in Council actually bears date of March 11, 1915.

8. Erklärung des Sprechers des japanischen Auswärtigen Amtes vom 25. November 1939¹⁾

Since the outbreak of the present European War the British Government, exceeding the rights of the belligerent, have been interfering with the legitimate trade of neutral Powers with regard to contrabands of war and other matters. Protests have frequently been lodged by the Governments of Scandinavian countries, Belgium, Holland as well as of Japan. Now on the 21st of this month Prime Minister Chamberlain declared the intention of the British Government of inaugurating the so-called "de facto" blockade such as was adopted in the last Great War, namely, of preventing the export of German goods by neutral vessels, as a retaliatory measure against Germany on the assumption that the recent successive sinking of neutral vessels by mines in British waters is due to German action.

Even if granted that the aforesaid sinking of neutral vessels in the British waters were due to German action, the proposed measure of the British Government not only exceeds the limits of reprisal recognized under international law but violates also the undertaking of the British Government made to the Japanese Government not to interfere in any way with the exportation of German goods. The British measure inflicts really greater losses upon neutral Powers than upon Germany.

Just to what extent the British Government intends to prevent the exportation of German products is not yet clear in the absence of an Ordinance in connection with the matter. However, it is possible that the proposed measure of the British Government may cut off the importation to Japan of important articles from Germany, in which the Japanese Government can never acquiesce. Accordingly, instructions have been sent to Ambassador Shigemitsu in London yesterday, November 24, to present a vigorous protest to the British Government.

In case the vital interests of Japan should be affected by the proposed British measure, Japan would be compelled to take appropriate counter measures.

¹⁾ Japan Advertiser vom 26. Nov. 1939.

9. Note der italienischen Regierung an die britische Regierung vom 3. März 1940¹⁾

Il Governo fascista si riferisce alla comunicazione del Governo britannico secondo la quale ogni nave con carico di carbone di provenienza germanica che lasci il porto di caricamento dopo il primo marzo corrente è soggetta a misure di controllo. Di fronte a tale misura, che lede gravemente gli interessi italiani, il Governo fascista rinnova nei termini più fermi la protesta e le riserve da esso già formulate per i principi ai quali si informano le disposizioni del Governo britannico relative alla guerra economica e per i modi nei quali esse vengono applicate nei riguardi degli Stati non belligeranti. I provvedimenti adottati dal Governo britannico in questo campo appaiono e sono contrari alla lettera e allo spirito della legge internazionale, che stabilisce entro limiti ben definiti i diritti dei belligeranti per salvaguardare gli interessi dei terzi Stati e la libertà del loro legittimo commercio. Avuto riguardo alle norme internazionali in vigore, è manifestamente abusiva la pratica invalsa di sottoporre a un controllo spesso vessatorio tutto il traffico marittimo dei paesi non belligeranti esigendo da essi una documentazione onerosa ed eccessiva non compatibile con la normale segretezza delle contrattazioni commerciali, elevando a norma il dirottamento con una sosta, spesso prolungata di giorni e settimane, delle navi nei porti di controllo, causando danni gravissimi all'armamento, alla regolarità dei servizi e allo svolgimento dei traffici e col risultato di ostacolare, limitare e spesso paralizzare i rifornimenti dei paesi non belligeranti, con immediate e dirette ripercussioni sulle industrie e sull'occupazione operaia.

Le disposizioni in atto sulle merci dichiarate di contrabbando eliminano praticamente la distinzione fra contrabbando assoluto e quello condizionale, in aperto contrasto con la legge internazionale; che su tale distinzione ha basato la possibilità di assicurare i normali scambi per le esigenze della vita civile. Il prelievo dei sacchi postali in alto mare e i modi nei quali viene praticato il controllo sulla corrispondenza in essi contenuta, anche se da italiani a italiani, costituiscono una flagrante violazione del segreto postale che la XI Convenzione dell'Aja del 1907 ha inteso esplicitamente di garantire. Soprattutto incompatibile con i principi fondamentali del diritto internazionale e in particolare con la dichiarazione di Parigi del 16 aprile 1856, è il provvedimento del 28 novembre scorso, che colpisce le esportazioni di merci germaniche a destinazione di paesi neutri. Quali che siano i motivi, per i quali si ritiene di adottare tali misure, essi non potrebbero in alcun caso legittimare la menomazione dei diritti delle Potenze non belligeranti. Il provvedimento predetto presenta d'alto canto una gravità eccezionale dal punto di vista delle sue ripercussioni economiche, in quanto la sua applicazione turba profondamente il meccanismo degli scambi internazionali, sopprime delle fonti di rifornimento e riduce le possibilità di produzione degli Stati non belligeranti.

In particolare il Governo fascista tiene a porre nella migliore evidenza la illegittimità e la gravità della decisione presa dal Governo britannico di sottoporre a misure di controllo le importazioni in Italia, via mare, del carbone di provenienza germanica, tanto più che il Governo britannico conosce come il carbone in questione risponde a una necessità inderogabile per la vita e il lavoro del popolo italiano. In tali condizioni la misura adottata dal Governo britannico è tale da turbare e compromettere le relazioni economiche e politiche fra

¹⁾ Relazioni internazionali, Anno VI No. 10, p. 291.

L'Italia e la Gran Bretagna quali furono stabilite dagli accordi del 16 aprile 1938. Il Governo fascista, mentre rinnova la sua formale protesta, intende precisare fin da questo momento i dati e gli elementi di fatto della situazione, per le responsabilità inerenti a un ulteriore sviluppo della medesima.

10. Antwortnote der britischen Regierung an die italienische Regierung vom 20. März 1940¹⁾

1. His Majesty's Government in the United Kingdom have received and have examined carefully the note which the Italian Government communicated to them on Mar. 3 last dealing in general with the exercise of their belligerent rights at sea and drawing attention in particular to the question of the control of German seaborne coal to Italy. An understanding on the last-named question has now happily been reached between the two Governments, and in consequence the present reply is mainly directed to the other questions raised in the Italian Government's communication.

2. By way of preface His Majesty's Government would wish to stress the following point. The Italian Government express the view that His Majesty's Government in the present exercise of their belligerent rights are disregarding both the letter and the spirit of international law. His Majesty's Government would point out that in considering the application of the principles of international law in the present circumstances, account must be taken of the fact that they are fighting against an enemy who has on repeated occasions flagrantly disregarded those principles and even the common precepts of humanity. The Italian Government will appreciate that if, on the one hand, the enemy are to be free to pursue with impunity practices in total disregard of the restraints imposed by international law and moral principles, and yet at the same time His Majesty's Government are expected at all times scrupulously to observe them, His Majesty's Government are placed at a marked disadvantage in their conduct of the war. This disadvantage is one to which His Majesty's Government are prepared to submit so far as humanitarian considerations are concerned. They have no intention of imitating the barbarous methods of their opponents, from which Italian ships and nationals have suffered in common with those of other neutral Powers irrespective of the nature, origin or destination of the cargoes concerned, and they have therefore at all times sought to ensure that their action conforms to the accepted principles under which they exercise their belligerent rights. But they are unable to accept the disabilities that would result for them were they to refrain from full exercise of these rights, and in particular of the undoubted right of retaliation to which the action of the enemy gives rise.

3. His Majesty's Government had believed that the Italian Government were in full possession of their point of view upon the various questions raised by the Italian Government; nevertheless they are glad to have this opportunity of restating briefly their attitude.

4. To take first of all the Order-in-Council of Nov. 27 last, regarding the application of measures of control to goods which are of German origin or German property, His Majesty's Government recall that it was clearly explained at the time when this Order was issued that the measures in question were taken as a result of the savage and inhuman extension by the German Government of mine and submarine warfare against merchant shipping.

¹⁾ Lloyd's List and Shipping Gazette, March 23, 1940, p. 6.

In the face of the declared German intention of preventing by any means, legal or illegal, commerce of all kinds with the United Kingdom, His Majesty's Government have had recourse to their undoubted right of reprisal for the breaches of international law by their adversaries, and chose for this purpose the measure most calculated in their opinion to offset the illegalities committed by the German Government. In its effect on neutrals, however, this measure is entirely different from the unprincipled procedure adopted by Germany, since it does not involve the destruction of innocent vessels with their cargoes and passengers.

5. As regards the contention of the Italian Government that the action which His Majesty's Government are taking involves a violation of the Declaration of Paris, His Majesty's Government, while reserving their attitude as to the extent to which Article 2 of the Declaration can be regarded in existing circumstances as covering German exports carried in neutral ships, would observe that the German action, in retaliation for which the measures in question are being taken, in itself involves a clear violation of both Articles 2 and 3 of the Declaration. German submarines and mines, employed as they are being employed in the present war, respect British goods on neutral ships no more than they respect neutral goods on British ships.

6. As regards the general objection raised by the Italian Government to the measures of contraband control adopted by His Majesty's Government in regard to the seaborne trade of nonbelligerent States, His Majesty's Government would observe that their action in this matter rests on the broad ground that they are entitled, in the exercise of their lawful belligerent rights, to enquire into the destination of cargo passing through their contraband control, with a view to distinguishing between goods which are of such a nature and have such a destination as would make it necessary to place them in prize and other goods.

7. As regards the various specific points raised by the Italian Government under this head, the system of which complaint is made (on the grounds among other things that it involves excessive documentation) has been introduced almost wholly with a view to ensuring the swift and easy passage of neutral vessels through the control. It must be recognised that the diversion of neutral vessels is necessary for the exercise of control under modern conditions, and it is particularly in this connection that the greatest efforts have been made by His Majesty's Government to meet the desires of the Italian and other neutral Governments. So far as the Western Mediterranean is concerned, arrangements have been made, after full discussion with the Italian Government and the shipping interests concerned, which render the diversion of neutral ships unnecessary save in exceptional circumstances; while, as regards the Eastern Mediterranean, a number of special facilities have been introduced, such as the establishment of an additional contraband control base at Aden. As a result of these and other arrangements, the delays to shipping of which complaint is made have, as the Italian authorities themselves recognise, been very greatly reduced. For example, in the case of the Italia Line, an amicable arrangement with the company has made it possible to reduce the stay of the company's vessels at Gibraltar to a matter of a few hours.

8. As regards the question of goods declared contraband, His Majesty's Government would observe that international law recognises the right of every belligerent to determine what it will treat as contraband, within the ambit of the generally accepted definition of contraband as that which is of use for

the prosecution of the war. History and experience have shown that, as new methods of warfare have been developed and as new scientific discoveries have been made, there has been a constant and natural tendency for the conception of contraband to alter and to expand. This consideration seems to be recognised by the Italian Government; for Articles 159 and 160 of the Italian War Law of 1938 (which appear to make no distinction between absolute and conditional contraband) contain a restricted list of contraband defined to articles of purely military use, but provide that any other articles, except medical and ships' stores, may be added to the list by Royal Decree. Furthermore, on the general question of the contraband list issued by His Majesty's Government, the Italian Government will be aware that this list is closely modelled upon that adopted by the United States Government in 1917.

9. The measures which his Majesty's Government have found it necessary to take in order to prevent the use of mailbags for the conveyance of contraband have already formed the subject of correspondence with the Italian Government, in which his Majesty's Government have explained the justification for their action and have had occasion to point out that the practice of his Majesty's Government in this matter is by no means inconsistent with the views of the Italian Government as represented by Article 209 of the Italian War Law of 1938. There is no seizure ("prelievo") of mails, but only an examination of these for purposes of control.

10. His Majesty's Government hope that the foregoing comments will enable the Italian Government to form a just appreciation of their position generally. They note that the Italian Government in the penultimate paragraph of their communication state that the measures taken by his Majesty's Government are calculated "to disturb and compromise the economic and political relations between Italy and Great Britain as set up by the Agreements of Apr. 16, 1938." His Majesty's Government, for their part, continue to attach great importance to those agreements, which in their view constitute an element of stability in the political structure of the Mediterranean area, and they would be sorry to feel that their validity had been in any way compromised by measures which his Majesty's Government are bound to take in the exercise of their belligerent rights. Since the outbreak of the war his Majesty's Government have striven, in consultation with the appropriate Italian authorities, to remove causes of complaint as they arose. The present reply will have been drafted largely in vain if it does not convince the Italian Government of the continued resolve of his Majesty's Government to have the greatest measure of regard for Italian and other neutral interests that is compatible with the maintenance of those measures of legitimate control which they deem necessary for the prosecution of the war.

II. Memorandum der argentinischen Regierung an die Botschaften Deutschlands, Frankreichs und Grossbritanniens in Buenos Aires¹⁾

Por comunicaciones de sus Embajadas en Londres y en París, la Cancillería Argentina está enterada de las medidas que acaban de adoptar los gobiernos de Gran Bretaña y Francia, para el secuestro de las exportaciones alemanas. Son, por otra parte, conocidas las condiciones especiales en que recrudece actualmente la guerra de minas, con perjuicios generales para el comercio neutral.

¹⁾ Informaciones Argentinas 1939, Nr. 37, S. 60.

En estas circunstancias, el Gobierno argentino cree oportuno formular una vez más sus reservas con respecto a los procedimientos que los países beligerantes ponen en práctica, sin contemplar las limitaciones que ellos mismos han aceptado en los acuerdos y convenciones internacionales, celebrados para amparo del comercio neutral.

Los derechos de los beligerantes en la consecución de sus fines militares no son, en efecto, ilimitados, ni pueden desconocer los derechos soberanos de las naciones en paz. Para ese fin, la Declaración de París, de 1856, ha establecido que "el pabellón neutral cubre la mercancía enemiga, excepción hecha del contrabando de guerra", habiendo por otra parte la VIII Conferencia de La Haya, de 1907, reglamentado la colocación de minas automáticas, para limitar sus efectos al objetivo lícito de la guerra.

Las formas adoptadas por la guerra marítima actual, envuelven una amenaza general de destrucción o de secuestro, sin la discriminación elemental que impone el respeto del neutral. Como signatario de la Declaración de París, aceptada también por los países beligerantes, el Gobierno argentino debe expresar las reservas con que recibe la información de referencia y su propósito de ventilarlas en la oportunidad en que los intereses argentinos lo reclamen.

12. Note des niederländischen Gesandten in London an den brit. Staatssekretär für auswärtige Angelegenheiten vom 22. November 1939¹⁾ 2)

le 22 novembre 1939

Monsieur le Secrétaire d'Etat,

D'ordre de mon Gouvernement j'ai l'honneur de porter ce qui suit à la connaissance de Votre Excellence.

Le Gouvernement néerlandais a pris connaissance de la décision prise en principe par le Gouvernement britannique de saisir, en pleine mer, sur les navires marchands neutres les marchandises d'origine allemande ou appartenant à des sujets allemands.

Cette décision appelle de la part du Gouvernement de la Reine des observations que lui inspire la probabilité, sinon la certitude, que des intérêts néerlandais seront injustement lésés par la mise à exécution des mesures annoncées.

La décision dont il s'agit est prise, d'après ce que le Premier Ministre britannique a communiqué le 21 novembre à la Chambre des Communes, à titre de représailles contre l'Allemagne, ce dernier pays ayant semé, d'après le Gouvernement britannique, des mines automatiques de contact le long des côtes de la Grande-Bretagne d'une manière contraire au droit international.

Le Gouvernement néerlandais ne s'arrêtera pas à répondre à la question de savoir si, oui ou non, la preuve de l'accusation portée contre l'Allemagne a été dûment établie. Il se borne à remarquer qu'il n'est pas en possession d'éléments adéquats à ce sujet. Ayant perdu tout récemment une unité précieuse de leur flotte marchande à la suite d'une explosion sous-marine au large de Harwich qui a causé la mort de plusieurs dizaines d'êtres humains, dont des femmes et des enfants, les Pays-Bas ont un intérêt tout spécial à connaître la

¹⁾ Overzicht van de voornamste in verband met den oorlogtoestand door het Ministerie van Buitenlandsche Zaken behandelde en voor openbaarmaking geschikte aangelegenheden November 1939—April 1940. — April 1940. s'Gravenhage 1940. S. 33.

²⁾ Eine entsprechende Note ließ die niederländische Regierung am 28. November 1940 in Paris überreichen (a. a. O. S. 33).

cause de ce sinistre. Si le Gouvernement britannique était à même de la lui faire connaître avec certitude, le Gouvernement de la Reine lui en saurait un gré particulier, afin de pouvoir obtenir par des voies légales, s'il y avait faute d'un côté quelconque, réparation du dommage et indemnité pour les souffrances infligées à un grand nombre d'innocents.

Il n'appartient pas plus au Gouvernement de la Reine d'examiner la question de savoir si le Gouvernement britannique est fondé à édicter contre l'Allemagne des mesures de représailles, ou si ces mesures sont à considérer comme licites d'après leur nature et comme tenant compte du caractère plus ou moins grave de la transgression allemande alléguée par le Gouvernement britannique. Toutefois, le Gouvernement de la Reine se demande pourquoi le Gouvernement britannique n'a pas cru devoir recourir, conformément aux règles de la morale et aux principes supérieurs du droit, à une mise en demeure publique de l'Allemagne dénonçant les faits dont le Gouvernement britannique a cru devoir se plaindre, afin d'ouvrir la possibilité — dans le cas où ces faits seraient prouvés — d'une cessation des pratiques incriminées. Sous ce rapport, le Gouvernement des Pays-Bas se plaît à évoquer la démarche diplomatique faite le 25 août 1915 par le Pape Benoît XV, suggérant aux belligérants de s'interdire désormais toute mesure de représailles sans communication préalable des motifs. Pareille communication, recommandée par le bon sens et très judicieuse même vis-à-vis d'un adversaire, donnerait en outre à des tiers l'occasion de soulever des objections dans le cas où leurs intérêts seraient, comme dans l'occurrence, injustement lésés.

Quoi qu'il en soit, le Gouvernement des Pays-Bas doit s'élever avec énergie contre le fait qu'en édictant des représailles contre l'Allemagne, le Gouvernement britannique a eu recours à des mesures préjudiciables non seulement à l'Allemagne, mais aussi aux Pays-Bas, dont les territoires d'outre-mer reçoivent régulièrement des marchandises allemandes, et dans une mesure toute particulière à la navigation sous pavillon néerlandais, navigation à laquelle le droit des gens reconnu par le Gouvernement de la Grande Bretagne comme par les autres nations civilisées, et notamment la Déclaration de Paris de 1856 acceptée par la Grande Bretagne, permet de transporter librement des marchandises destinées à des pays tiers alors même que ces marchandises seraient d'origine allemande. Le fait que les représailles britanniques frappent non seulement ceux qui, selon le Gouvernement britannique, sont les coupables, mais également des innocents, leur donnent un caractère odieux, pour leur part, les Pays-Bas réprouvent d'autant plus que ces mesures sont prises par une Puissance avec laquelle les Pays-Bas entretiennent des liens d'excellente amitié.

Le Gouvernement de la Reine comprend d'autant moins pourquoi ce sont des intérêts néerlandais qui, avec ceux des autres neutres, doivent être frappés, soit-il involontairement, par les mesures britanniques, que le choix de représailles est très étendu, si bien que le Gouvernement britannique, ayant résolu pour des raisons qui lui sont propres, de procéder à des représailles contre le Gouvernement allemand, aurait pu faire choix de mesures n'entraînant pas des dommages pour les Pays-Bas déjà durement frappés dans leur moyens d'existence par la guerre, et en particulier par d'autres mesures, prises antérieurement par la Grande Bretagne.

Le Gouvernement néerlandais prie le Gouvernement de la Grande Bretagne d'examiner de nouveau, à la lumière des observations précédentes, sa décision publiquement annoncée. Il veut croire que ces observations sont à

tel point justes et pertinentes qu'une nouvelle considération de la matière s'impose, et il a trop de confiance dans la loyauté du Gouvernement de la Grande Bretagne pour ne pas être persuadé qu'une décision sera prise qui sauvegarde les intérêts légitimes néerlandais.

Veillez agréer, Monsieur le Secrétaire d'Etat, l'assurance renouvelée de ma plus haute considération.

(get.) E. MICHIELS VAN VERDUYNEN

13. Note des britischen Staatssekretärs für auswärtige Angelegenheiten an den niederländischen Gesandten in London vom 28. November 1939¹⁾

November 28, 1939

Sir,

I have the honour to communicate herewith two copies of an Order-in-Council published on the 28th November, setting out the measures which His Majesty's Government in the United Kingdom feel constrained to take in retaliation for the settled course of illegalities upon which the German Government, in disregard of international law and the dictates of humanity, have seen fit to embark.

2. His Majesty's Government regret that the execution of the Order-in-Council will render necessary an extension of the measures of control which the exercise of their belligerent rights already obliges them to take in regard to neutral shipping. Every effort will, however, be made to minimise inconvenience to neutral shipowners and merchants, and steps are being taken to bring to their notice the precautions which they can take to avoid delay to their vessels and goods.

I have the honour to be,
with the highest consideration,

Sir,
Your obedient Servant,

HALIFAX

14. Verbalnote

des französischen Ministeriums der auswärtigen Angelegenheiten an den niederländischen Gesandten in Paris vom 10. Dezember 1939²⁾

Le Ministère des Affaires Etrangères a examiné avec la plus grande attention les observations contenues dans la note que lui a fait tenir récemment la Légation des Pays-Bas concernant la décision prise le 27 novembre par les Gouvernements alliés relativement aux exportations allemandes.

Le Gouvernement français désire souligner que les mesures dont il s'agit ont été imposées par la nécessité de répondre aux actes de violence commis par l'Allemagne, en violation du droit des gens, à l'encontre tant des Puissances neutres que des Puissances belligérantes.

Les infractions aux lois de la guerre maritime dont le Reich s'est ainsi rendu coupable sont assez éclatantes pour que la preuve n'en reste pas à faire.

Elles sont d'autant plus répréhensibles qu'elles ont été commises, non seulement en violation de la convention navale de 1936 et de la Convention 8

¹⁾ a. a. O. S. 34.

²⁾ a. a. O. S. 35.

de La Haye de 1907, mais aussi en violation de l'Ordonnance allemande sur la guerre maritime, en date du 28 août 1939.

En prenant les décisions édictées le 27 novembre, les Gouvernements alliés n'ont fait qu'user du droit de représailles qui leur est reconnu par la loi internationale.

S'ils n'en avaient pas fait usage, ils eussent sacrifié des droits et des intérêts beaucoup plus graves que ceux qui peuvent se trouver lésés par l'application de ces décisions.

S'il en résulte, pour la navigation neutre, une certaine gêne, on doit souligner, d'une part, que les dispositions prises uniquement dirigées contre le commerce allemand, ne peuvent atteindre qu'indirectement les intérêts des pays neutres et, d'autre part, que l'Allemagne est, en définitive, seule responsable des inconvénients signalés, puisque seuls ses actes de violence injustifiables ont rendu les représailles nécessaires.

Soucieux de sauvegarder en toutes circonstances les principes d'humanité, les Alliés n'ont jamais mis en danger la vie de ressortissants de pays neutres. Ils se sont bornés à édicter de simples mesures de contrôle et, dans l'application de ces mesures, ils veilleront à protéger le plus efficacement possible tous les intérêts légitimes.

Il est rappelé enfin qu'en 1915 des dispositions analogues avaient été édictées déjà en présence de manquements de même ordre de la part de l'Allemagne.

Le Gouvernement de la République est persuadé que les indications qui précèdent seront de nature à apaiser les inquiétudes du Gouvernement néerlandais. Il n'en saisit pas moins l'occasion de confirmer sa ferme résolution d'apporter tous les ménagements possibles dans l'application pratique du décret du 27 novembre.

Paris, le 10 décembre 1939

15. Note des niederländischen Gesandten in London an den britischen Staatssekretär für auswärtige Angelegenheiten vom 12. Dezember 1939¹⁾

Londres, le 12 décembre 1939

Monsieur le Secrétaire d'Etat,

Conformément aux ordres reçus du Gouvernement de la Reine, j'ai l'honneur de porter ce qui suit à la connaissance de Votre Excellence.

Dès que le Gouvernement britannique avait annoncé sa décision de procéder à partir d'une date à fixer, à la saisie en pleine mer sur les navires marchands neutres des marchandises d'origine allemande ou appartenant à des sujets allemands, le Gouvernement de la Reine s'est adressé au Gouvernement britannique afin d'exposer à ce sujet son point de vue et surtout les graves objections auxquelles cette décision lui donnait lieu.

Par ma note en date du 22 novembre dernier, j'ai eu l'honneur de faire connaître à Votre Excellence que le Gouvernement de la Reine, sans se prononcer sur la question de savoir si le Gouvernement britannique était fondé à édicter contre l'Allemagne des représailles, ou si ces mesures étaient à considérer comme licites d'après leur nature et comme tenant compte du caractère plus ou moins grave de la transgression allemande alléguée par le Gouvernement britannique, s'est élevé contre le choix des représailles fait par le Cabinet de St. James.

¹⁾ a. a. O. S. 36.

Mon Gouvernement a exposé que ces représailles étaient non seulement préjudiciables à l'Allemagne avec qui la Grande Bretagne est en guerre, mais également aux Pays-Bas neutres, dont les territoires d'outre-mer reçoivent régulièrement des marchandises allemandes et dans une mesure toute particulière à la navigation sous pavillon néerlandais. Le Gouvernement néerlandais a rappelé que certains principes de la Déclaration de Paris de 1856, acceptée par la Grande Bretagne et destinée précisément à sauvegarder le commerce neutre en temps de guerre, furent, de par ces mesures, gravement violés.

A son grand regret le Gouvernement de la Reine a dû constater que l'examen des représentations néerlandaises et de celles faites par plusieurs autres Gouvernements n'a pas amené le Gouvernement britannique à modifier son point de vue. En effet, l'Ordre en Conseil du 27 novembre dernier paraît être dans ses grandes lignes conforme aux idées que le Gouvernement britannique avait déjà annoncées antérieurement.

Dans ces circonstances le Gouvernement de la Reine, tout en maintenant intégralement les observations consignées dans la note du 22 novembre dernier, tient à faire observer encore une fois que, dans ses répercussions sur le commerce légitime des neutres, le nouvel Ordre en Conseil est contraire au droit des gens tel qu'il a été énoncé dans la Déclaration de Paris et reconnu par la communauté du droit des gens. Il est un principe incontesté du droit international que le pavillon neutre couvre la marchandise ennemie à l'exception de la contrebande; la décision du Gouvernement britannique tendant à ce qu'un navire marchand neutre portant des marchandises allemandes peut être requis de décharger les marchandises alors même qu'il ne s'agirait pas de contrebande, est absolument contraire à cette règle. Il en est de même de cette autre disposition de l'Ordre en Conseil qui prescrit la saisie des marchandises neutres pour le seul motif qu'elles sont, totalement ou en partie, d'origine ennemie. Il s'ensuivrait que les propriétaires d'entreprises néerlandaises ne pourraient plus choisir librement, pour la fabrication de leurs produits, les matériaux qu'ils préfèrent utiliser; en se servant de matériaux de provenance d'un pays ennemi de la Grande Bretagne, ils risqueraient la saisie de leurs produits en haute mer par les autorités britanniques. Et ce qui choque particulièrement l'amour-propre néerlandais dans cet exercice du droit du plus fort, c'est la conséquence qu'aurait les représailles du Gouvernement britannique d'enrayer le trafic normal sous pavillon néerlandais entre le Royaume en Europe et les territoires néerlandais d'outre-mer. Une ingérence aussi profonde dans les relations internes d'un Etat neutre et ami n'est loisible à aucun Etat belligérant.

Le Gouvernement de la Reine a constaté que le Gouvernement britannique s'efforce de justifier ces prescriptions, même dans leurs répercussions sur le commerce légitime des neutres, en faisant valoir leur caractère de représailles. Le Gouvernement de la Reine fait observer qu'à son avis le fait de présenter ces mesures comme des représailles n'enlève rien à leur illégalité vis-à-vis des neutres. Le Gouvernement de la Reine désire réitérer ses objections contre des représailles qui, loin de frapper exclusivement la partie belligérante contre laquelle elles sont dirigées, lèsent directement et d'une manière extrêmement grave les intérêts des Pays-Bas. Le respect dû par les belligérants à un pays neutre n'est pas compatible avec ces mesures, contre l'effet nuisible desquels aucune compensation n'est prévue.

Dans ces conditions le Gouvernement néerlandais doit protester de la manière la plus formelle contre les dispositions de l'Ordre en Conseil, en tant qu'elles violent les intérêts néerlandais. En réservant tous ses droits à ce sujet,

il déclare dès à présent qu'il devra tenir pour responsable le Gouvernement britannique de tous les dommages qui pourraient résulter de ces mesures pour les Pays-Bas et pour ses ressortissants, et il désire faire connaître d'ores et déjà que, si par la suite le Gouvernement de la Reine se voyait amené à faire des démarches concernant *l'application* des représailles britanniques, pareilles démarches ne signifieraient pas que la légitimité fondamentale de ces représailles cesserait d'être contestée.

Veillez agréer, Monsieur le Secrétaire d'Etat, l'assurance renouvelée de ma plus haute considération.

(get.) E. MICHIELS VAN VERDUYEN

16. Note des britischen Staatssekretärs für auswärtige Angelegenheiten an den niederländischen Gesandten in London vom 14. Dezember 1939¹⁾

14th December 1939

Sir,

1. I have the honour to invite a reference to the note No 4972, which you were so good as to leave with Sir ALEXANDER CADOGAN on the 22nd November relating to the measures then contemplated by His Majesty's Government in the United Kingdom for the seizure at sea of goods which are of German origin or German property. I have since had the honour, in my note of the 28th November, to communicate to you the text of the Order-in-Council describing the measures in question, and setting forth the reasons for which His Majesty's Government in the United Kingdom have felt constrained to resort to this step in retaliation for the settled course of illegalities upon which the German Government, in disregard of international law and the dictates of humanity, have seen fit to embark.

2. Your note has received all the consideration which His Majesty's Government are bound to give to a communication from the Netherlands Government on a matter which so intimately affects the interests of all maritime powers.

3. Since from your note it would appear that the Netherlands Government doubt the responsibility of the German Government for the situation which has arisen, I would beg leave to recapitulate the considerations which have moved His Majesty's Government to the decision to take the measures of reprisal now in question.

4. Since the outbreak of war, German submarines have in numerous cases sunk merchant vessels, not only British and Allied but neutral, in violation of the rules contained in the Submarine Protocol of 1936, to which Germany is a party. More recently, merchant vessels, British, Allied and neutral, have been sunk by mines laid by German forces indiscriminately and without notification in contravention of the provisions of The Hague Convention No. VIII of 1907, to which Germany is a party. The sinking of these vessels has been effected without regard to their nationality or destination or to the nature, ownership or destination of the cargoes, and these acts have already resulted in grave loss of non-combatant life, British, Allied and neutral. From these facts it is manifest that the German Government have deliberately embarked on a policy of endeavouring to destroy all sea-borne trade between the Allied and other

¹⁾ a. a. O. S. 37.

countries by a ruthless use of the forces at their disposal, contrary to the laws and customs of war, the rights of neutrals and the obligations of humanity.

5. It cannot be contended that the recent sinkings of merchant vessels by mines could have been caused by mines laid by His Majesty's Forces. All areas made dangerous by British mines have been duly notified in accordance with the requirements of the Hague Convention. These mines are themselves so constructed as to become immediately and automatically innocuous should they break from their moorings. With the exception of controlled minefields in certain defended ports, all of which are under continual observation, no mines, other than anchored automatic contact mines have been laid by British Naval Forces. The recent sinkings of merchant vessels by the action of mines have occurred in comparatively narrow channels which are used by the great bulk of British and neutral shipping navigating up and down the East Coast of England. His Majesty's Government cannot bring themselves to think that the Netherlands Government could credit them with the deliberate sowing of mines in these channels for the purpose of destroying shipping approaching their own shores. Such a conclusion would be contrary to all reason. The evidence of German responsibility is, however, clear. German aircraft have been actually observed sowing mines in the areas in which the recent sinkings have occurred, and, moreover, the attitude of the German press and wireless news, claiming that Germany is completing her encirclement of Great Britain by means of these attacks on merchant vessels, is sufficiently unequivocal to leave no doubt of German responsibility for the recent disasters at sea.

6. His Majesty's Government much regret that as a result of this lawless campaign on the part of Germany, heavy losses should have fallen upon the Netherlands merchant marine and that precious lives should have been lost. It is to put an end to such lawlessness, whether in the conduct of war or in the field of international relations, that His Majesty's Government have taken up arms and in so doing they may justly claim to be acting in defence of international law and of the fundamental rights of nations to a free and peaceful existence.

7. I do not read your note as implying that the Netherlands Government seek to question the right of retaliation, which in appropriate cases is well recognised in international law. Their criticisms seem to be rather directed to the particular steps which His Majesty's Government have decided to take. They suggest that the purpose that His Majesty's Government desire to achieve would have been adequately served by a public exposure of the acts of the German Government, and they appear to think that such an exposure might have had the effect of causing these acts to cease. His Majesty's Government cannot believe, however, that any such action as regards German methods of warfare would be more effective than it has been in regard to the methods which Germany has adopted during the past few years in the conduct of her relations with other states. The opinion of the civilised world has expressed itself with no uncertain voice as regards the frequent disregard by Germany of the rights of her weaker neighbours to a free and undisturbed existence, but this has had singularly little effect in diverting Germany from the course of action which she has mapped out for herself and is still pursuing. So long as the German Government consider that they can derive some national advantage from a callous disregard of the rights of others and the law of nations, no mere expression of disapproval by world opinion is likely to have the slightest deterrent effect.

8. The Netherlands Government alternatively suggest that His Majesty's Government should have adopted methods of retaliation which would have affected only their enemy and would not prejudice the interests of neutrals. I need not say that the decision as to the method to be adopted was only taken by His Majesty's Government after the most careful consideration of this point. They found it, however, impossible to discover any effective method of reprisal which would not in some degree affect the interests of neutrals, except action against Germany from which they are debarred by their respect for the rules of war. In point of fact, the action against German commerce to which His Majesty's Government have decided to resort is exactly appropriate to the illegal action by Germany which has necessitated it. The German campaign has as its avowed object the stoppage of all sea-borne trade with the United Kingdom, without distinction between exports and imports, or between ships of belligerents and those of neutrals. In imposing an embargo upon German exports, in addition to the contraband control which they are already exercising, His Majesty's Government are thus adopting measures whose object is to impose in German commerce restrictions similar to those which the German Government are attempting to impose on commerce with this country. In their effect on neutrals, however, these measures are entirely different from the methods adopted by Germany, since they do not involve the destruction of innocent vessels with their cargoes and passengers.

9. With reference to the contention of the Netherlands Government that the action which His Majesty's Government are taking involves a violation of the Declaration of Paris, His Majesty's Government reserve their attitude as to the extent to which Article 2 of the Declaration can be regarded in existing circumstances as covering German exports carried in neutral ships, but the main basis of their action is admittedly the right of retaliation the essence of which is a departure from the ordinary rules as reprisal for illegal action by the enemy. They desire to point out that the German action, in retaliation for which the measures in question are being taken, in itself involves a clear violation of both Articles 2 and 3 of the Declaration. German submarines and mines, employed as they are being employed in the present war, respect British goods on neutral ships no more than they respect neutral goods on British ships, and a contention that the Declaration is to prevent the seizure of German goods on neutral ships, while British goods on neutral ships and neutral goods on British ships are being destroyed by methods which are contrary to the rules of war, is not likely to commend itself to unprejudiced opinion.

10. His Majesty's Government much regret that the measures which they have felt compelled to adopt must involve some injury to the commercial interests of neutral countries; but since the Netherlands Government have seen fit to describe the measures in question as possessing an "odious character" in that they affect the interests of neutrals as well as those of Germany, I cannot refrain from pointing out that the members of the League of Nations accepted the obligation, in the case of aggression against a member of the League (and it will not be disputed that the immediate cause of the war in which His Majesty's Government are engaged was such aggression), to cease, and if necessary to prevent, all trade, financial relations or intercourse with the aggressor. It is obvious that compliance with this obligation would involve far more drastic interference with enemy trade, and far more injury to the commercial interests of the countries concerned, than can possibly result from the measures which

His Majesty's Government have decided to take. His Majesty's Government are, of course, aware of the attitude towards those obligations of the Covenant which has been adopted in recent years by the Netherlands and other countries, and they are not now making any complaint of that attitude; but when they find their own action described as "odious", they feel justified in reminding the Netherlands Government that far more drastic action was not so long ago regarded by that Government as perfectly legitimate and desirable in the case of aggression, and that the Netherlands voluntarily accepted an obligation to take such action in the interests of those principles of liberty and justice which it was the object of the Covenant to uphold. It is in the defence of these principles that His Majesty's Government are engaged in the present war, and they feel that as regards the measures which they have been compelled to take in order to ensure the triumph of these principles, they should be entitled to count upon some measure of sympathy from those countries to whom the ideals of liberty and justice are not less dear than they are to His Majesty's Government.

11. In point of fact, the measures which His Majesty's Government have decided to apply are, so far as concerns the interests of neutrals, of a particularly moderate character, and have been framed with all possible consideration for those interests. Although their decision to take action against German exports and property was announced on the 21st November, and the Order-in-Council was made on the 27th November, the measures in question will not be applied to any ships which left port before the 4th December, and provision is made for the release of any goods which the Prize Court is satisfied has become neutral property before the 27th November, and also for release in other cases with the consent of the proper Officer of the Crown. Moreover, if it appeared at the time when a vessel was being examined that a given consignment was of such a character that its release (should it be placed in Prize) would probably be ordered, it would be the desire of the competent authorities to avoid discharging the consignment at all, provided they were supplied in adequate time with all the necessary details, and always excepting cases in which special reasons required the discharge of the goods. Further, the Order-in-Council provided not for the confiscation but only for the detention of goods ordered to be discharged, and at the end of the war they are to be dealt with as the Prize Court may think just; nor is any penalty for the vessel prescribed on account of the carriage of the goods. It is the desire of His Majesty's Government to utilise the powers which they have taken with all the consideration for the interests of neutrals which is compatible with the attainment of the objects which they have in view; and if the Netherlands Government see fit to bring to the notice of His Majesty's Government any matters on which the strict application of the measures in question is likely to cause particular hardship to Netherlands interests, His Majesty's Government will be prepared to consider whether it will be possible, without prejudice to the general effect of these measures, to grant certain alleviations with a view to mitigating such hardships.

12. In conclusion, I would recall that His Majesty's Government have in the past been foremost in their desire to promote the general exchange of goods throughout the world and nothing is further from their minds than any desire to inflict permanent damage upon international trade, and in particular upon the commerce of a friendly Power with whom this country has common ideals, and to whom it is bound by close ties of history as well as of common interest. His Majesty's Government regret that the effects of war must neces-

sarily extend to countries which are not participating in it, but they can neglect no legitimate means of bringing the present conflict to a victorious conclusion and thus establishing the liberties of Europe on a firm foundation.

I have the honour to be,
with the highest consideration
Sir,

Your obedient Servant
(For the Secretary of State)
(get.) N. B. RONALD

**17. Note des französischen Ministerpräsidenten und Außenministers
an den niederländischen Gesandten in Paris vom 20. Februar 1940¹⁾**

Paris, le 20 février 1940

Monsieur le Ministre,

A la date du 13 décembre dernier, vous avez bien voulu me faire connaître le point de vue du Gouvernement Néerlandais relativement aux mesures prises par le Gouvernement Français en vue de l'arrêt en mer des marchandises de propriété ou d'origine ennemie.

Ecartant la question de savoir si le Gouvernement Français était fondé à recourir à des représailles contre l'Allemagne et si les dispositions du Décret du 27 novembre étaient justifiées par les violations de droit commises par cette Puissance, le Gouvernement Néerlandais s'élève contre les mesures de représailles dont il a été fait choix. Il allègue notamment que ces mesures sont préjudiciables, non seulement à l'Allemagne, mais aux neutres. Elles lui paraissent contraires aux principes sanctionnés par la Déclaration de Paris de 1856 et aux règles du Droit des Gens.

J'ai l'honneur de vous faire savoir que je n'ai pas manqué de soumettre à l'étude la plus attentive les considérations développées dans votre communication.

Il apparaît d'abord que dans l'appréciation des mesures prises par un belligérant et qui ont le caractère de représailles, il n'est pas possible de ne pas tenir compte, dans une large mesure, des circonstances qui les ont provoquées; sans en fausser complètement le caractère.

Encore que, dans le cas présent, ces circonstances, qui sont autant de violations par l'Allemagne du Droit de la Guerre maritime, soient de notoriété publique il n'est pas inutile de les rappeler. De nombreux navires marchands alliés ou neutres ont été torpillés sans avertissement et sans que des dispositions aient été prises pour sauver l'existence des non-combattants. A cette violation des règles du Protocole sur la Guerre sousmarine de 1936, est venue s'ajouter, au mépris de la Convention VIII de la Haye 1907, la pose, sans notification, de mines dérivantes. Des navires tant alliés que neutres sont coulés journellement sans que leur nationalité, leur destination, ni même la nature de leur chargement soit connue des mouilleurs de mines, qui cherchent seulement à rendre toute navigation commerciale impossible, quelles que soient les pertes de vies de non-combattants qui en résultent.

Il est difficilement contestable que des violations aussi choquantes et répétées des engagements pris justifient le recours à des représailles, alors que

¹⁾ a. a. O. S. 41.

le Droit International en reconnaît la légitimité dans les circonstances d'une bien moindre gravité.

Quant au choix qu'ont fait les gouvernements alliés parmi les mesures de représailles, il n'a sans doute pas échappé au Gouvernement Néerlandais qu'il a été guidé par le souci de ne mettre en danger aucune vie innocente.

Par ailleurs et tout en réservant expressément la question de savoir si les dispositions de la Déclaration de Paris de 1856 peuvent s'appliquer au commerce d'un pays soumis au régime de l'autarchie, je dois souligner que le Gouvernement du Reich n'a pas respecté les articles 2 et 3 de ladite Déclaration. Les Gouvernements Alliés ne sauraient être tenus au respect d'une disposition que leur adversaire a violé dès le début de la guerre en aggravant cette circonstance par des pertes infligées à de nombreuses vies humaines innocentes.

Sans doute, le Gouvernement Français eut-il préféré n'avoir pas à prendre des mesures dont l'incidence sur le commerce neutre était inévitable. Du moins a-t-il conscience, dans l'application du Décret du 27 novembre, d'avoir tout mis en œuvre pour en atténuer le plus possible les inconvénients. A tout prendre les mesures intervenues apparaissent comme beaucoup moins gênantes que celles qui eussent découlé, dans certains cas, de l'application du pacte de la S.D.N. et dont le Gouvernement Néerlandais a reconnu la légitimité.

Il convient de rappeler que le Décret du 27 novembre prévoit, non la confiscation, mais l'arrêt des marchandises saisies et que ce n'est qu'à la conclusion de la Paix que le Conseil des Prises statuera sur leur sort, dans un esprit d'équité et en tenant compte de toutes les circonstances. Enfin, le Gouvernement Français a manifesté l'intention d'examiner avec bienveillance les cas particuliers qui lui seraient soumis et il croit en avoir déjà donné une preuve dans les ménagements qui ont été apportés à l'application du Décret.

En conclusion, le Gouvernement Français qui a, en toutes occasions, manifesté son souci de ménager les droits des neutres et de satisfaire aux obligations internationales assumées par lui, ne saurait accepter la responsabilité des dommages qui pourraient résulter pour les ressortissants néerlandais de l'application du Décret du 27 novembre. Il estime que cette responsabilité retombe sur la Puissance qui par ses violations répétées des conventions internationales et des règles du Droit des Gens, par l'usage sans limite de la force, a rendu inévitables ces mesures de représailles.

Veillez agréer, Monsieur le Ministre, l'assurance de ma haute considération.

Pour le Président du Conseil
Ministre des Affaires Etrangères
et par délégation
l'Ambassadeur de France
Secrétaire Général
(get.) ALEXIS LÉGER

18. Note des niederländischen Gesandten in London an den britischen Staatssekretär für auswärtige Angelegenheiten vom 8. April 1940¹⁾

London, the 8th April 1940

My Lord,

With reference to Your Excellency's note No. W. 18568/16015 of the 14th December 1939, relating to measures by His Majesty's Government in the

¹⁾ a. a. O. S. 42.

United Kingdom for the seizure at sea of goods which are of German origin or property, I have the honour, under instructions received, to inform you as follows:

The Netherland Government maintain their standpoint that reprisals by belligerents should not at the same time be directed against and severely affect the lawful exercise of the rights of neutral shipping and trade, by exposing neutral ships and cargoes to detention and conveyance for other reasons than those recognized by international law, i.e. for carriage of contraband, breach of blockade or unneutral services.

Since the outbreak of war the Netherland Government have not failed to uphold their rights to both belligerents against violations of international law affecting Netherland rights and interests. It is not for them to set up as a critic of the question which belligerent in his conduct of the war against the other, first committed an act contrary to international law. Neither do they therefore desire to judge whether a measure which is contemplated by a belligerent by way of reprisal is justified between belligerents.

The Netherland Government distinguish clearly between serious and less serious acts of belligerents; in their proceedings they by no means disregard proportions. They cannot, however, accept the argument that they should submit to an illegal act by a belligerent because of similar acts or even worse illegalities committed by another belligerent.

Without criticizing the attitude of the Netherland Government with regard to art. 16 of the Covenant of the League of Nations, His Majesty's Government have pointed out that their measures against German exports were in substance the same which the Netherland Government themselves were not long ago prepared to carry out in a joint action by the League of Nations. It must be evident that the Netherland Government cannot follow the British Government in this contention, as they will no doubt admit that from a legal point of view a joint action in accordance with the stipulations of the Covenant of the League cannot be compared with a war which was started without recourse to the procedure of the League.

I have the honour to remain,
with the highest consideration,
My Lord,
Your obedient Servant,
(get.) E. MICHIELS VAN VERDUYNEN

Dokumente betreffend die amerikanische Sicherheitszone

1. Die Deklaration von Panama vom 3. Oktober 1939¹⁾

DECLARATION OF PANAMA

The Governments of the American Republics meeting at Panamá, have solemnly ratified their neutral status in the conflict which is disrupting the peace of Europe, but the present war may lead to unexpected results which may affect the fundamental interests of America and there can be no justification for the interests of the belligerents to prevail over the rights of neutrals causing

¹⁾ The Department of State Bulletin. Vol. I (1939), p. 331ff.