

Protecting Neutrality at Sea in a Global Age, 1815-1914

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When it comes to maritime warfare, the ‘long’ nineteenth century had a distinct character. Bookended by the global Napoleonic wars that concluded in 1815 and the outbreak of the First World War in 1914, this century witnessed exceptional levels of global change, not least in the expansion of industrial empires and the extensive use of the world’s seas and oceans as highways of commerce, migration, investment and ideas. Historians estimate that more than 100 million people migrated across the planet between 1815 and 1914.¹ Many did so by moving across the Pacific, Atlantic and Indian Oceans. The invention and development of steamships sped up the movement of these peoples as much as it mobilized the sinews of global industrial capitalism. The laying of trans-oceanic telegraph cables, which by the turn of the century traversed the planet, also globalized communications. The nineteenth century, then, was an age in which the seas played a pivotal role. Perhaps surprisingly, it was also a century in which not a lot of formal naval warfare occurred. Rather, the relationship between the naval powers and the seas seemed to be less about asserting military dominance over the world’s salty waters (even if in practice and by dint of its sheer size, the British Royal Navy dwarfed all others and did just that)² and more about opening up the highways of trade and exchange that crossed on and under the open seas.

As Stephen Neff argues, most economic warfare contends with two questions: who controls the seas and who owns goods captured outside of sovereign territory?³ Seas can act as barriers between states as much as they are conduits of commerce, migration, communication and state power. They are also sources for foodstuffs and commodities. The act of claiming authority and rights to access and utilize the seas as channels for the movement of ships, people, goods, money and ideas as well as to extract resources has pre-occupied human society for centuries. In the nineteenth century age of industrial imperialism, these waterways were particularly essential. Without easy access to the ‘open seas’, the mechanisms of a globalizing industrial capitalist economic system with its heart in Atlantic world could not have formed.

This chapter contends with the shift away from the ‘might makes right’ premises that sat at the heart of much early modern maritime warfare, particularly when conducted by the British in the Atlantic world. It focusses on the shift to what the American Rear Admiral C.H. Stockton described in 1920 as the anomalous separation between a ‘commercial peace’ and

¹ Adam McKeown, ‘Global Migration, 1846-1940’, *Journal of World History*, 15.2 (2004), pp. 155–189.

² Cf Olive Anderson, *A Liberal State at War: English Politics and Economics during the Crimean War* (New York: St Martin’s Press, 1967); Maartje Abbenhuis, ‘A Most Useful Tool of Diplomacy and Statecraft: Neutrality and the “Long” Nineteenth Century, 1815-1914’, *International History Review*, 35.1 (2013), pp. 1–22.

³ Stephen Neff, *The Rights and Duties of Neutrals: A General History* (Manchester: Manchester University Press, 2000) pp. 23–24.

a 'military war' that evolved in the wake of the Congress of Vienna of 1815.⁴ Stockton's conceptualization of 'limited warfare' as a situation in which the global economy operates almost uninhibited by the occurrence of a military or naval conflict is essential to understanding the nature of the 'concert of Europe' system that operated among the nineteenth-century great powers.⁵ In this system of 'limited warfare', wars occurred frequently but were almost always constrained geographically and economically by the neutrality declarations of other states, many of which were great powers. In this era of limited warfare, neutrals were almost always in the majority and, thus, the assertion of neutral rights (as opposed to belligerent rights) came to predominate. Much of the shift to limited warfare depended on Britain's willingness to forego some of its traditional naval warfare strategies – not least the 'rule of 1756' – in favour of protecting its own neutral maritime rights when other states were at war.⁶

As the previous chapters in this collection show, across the centuries, the principle of neutrality formed the fulcrum of the regulation of maritime and economic warfare: who could trade with whom in time of war and what they could legitimately carry across the seas without fearing interference from a belligerent power. The policing of economic warfare was almost always done at sea and relied on the interpretation of key principles of belligerency and neutrality in international law.⁷ Throughout the early modern period, neutral states proclaimed the right to trade unhindered ('free ships make free goods'). Some even suggested that private property should be free from belligerent capture altogether. They certainly demanded that contraband should be defined and that belligerent blockades were only binding on neutrals when they were effectively sustained at the entrance of a port. In turn, and depending on circumstances, belligerent powers were keen to defend their right to capture enemy goods (even when carried on a neutral vessel), the right to issue letters of marque to privateers and, at minimum, to itemize contraband, impose the principle of continuous voyage (that the ultimate destination of goods determined whether they could be captured even when carried by a neutral ship) and to sustain blockades by declaring them in name only. The British were particularly staunch enforcers of the concept of 'might makes right' and repeatedly ignored or overruled the proclaimed trading rights of neutrals in favour of interfering in the economic affairs of their enemies. Much early modern warfare involving Britain revolved around competing assertions of neutral and belligerent rights.⁸ Even the War of 1812 was the product of the clash of interpretations between the erstwhile neutral United States and Britain regarding the principles of economic warfare conducted by the Royal Navy on the Atlantic Ocean during their Napoleonic campaigns.⁹

⁴ C.H. Stockton, 'The Declaration of Paris' *American Journal of International Law*, 14.3 (July 1920), p. 360.

⁵ Maartje Abbenhuis, Gordon Morrell, *The First Age of Industrial Globalization: An International History 1815-1914* (London: Bloomsbury, forthcoming), especially Chapter 2.

⁶ Maartje Abbenhuis, *An Age of Neutrals: Great Power Politics 1815-1914* (Cambridge: Cambridge University Press, 2014), pp. 15, 35.

⁷ Neff, *Rights and Duties* p. 24.

⁸ Abbenhuis, *Age of Neutrals* pp. 27–38.

⁹ For a useful overview, see: Kathleen Burk, *Old World, New World: Great Britain and America from the Beginning* (New York: Atlantic Monthly Press, 2007) pp. 212-221, 247-248.

In 1815, at the conclusion of the Napoleonic wars and the War of 1812, the British government certainly was unwilling to concede any of its jealously guarded belligerent rights. As victors in the Napoleonic wars, it asserted that naval might continued to determine which rules applied in time of war.¹⁰ Yet in the wake of the Congress of Vienna, which redesigned the map of Europe and established the principle of war avoidance among the European great powers, British naval policies and practices shifted radically away from judiciously protecting belligerency. During the wars of independence which rocked Latin America in the immediate aftermath of the Napoleonic era, the British government quickly embraced the advantages of neutrality, not least to placate embattled Spain but also as a means to avoid losing commercial and diplomatic influence among the newly formed South American states.¹¹ In 1819, the British government designed its own version of the US Foreign Enlistment Act, to prevent its citizens from signing up to fight for Latin America's revolutionary armies.¹²

Britain sustained its neutrality practices at sea for much of the ensuing century. Britain's position as the century's superpower, the principles of the *Pax Britannica* and the country's phenomenal imperial and commercial expansionism after 1815 were built on neutrality: on its ability to avoid going to war with its great power and imperial rivals and to sustain its neutral rights (and thus also the neutral rights of other powers) at sea in time when its rivals went to war with each other.¹³ Neutrality presented a most useful tool for the consolidation and expansion of British industrial, imperial and commercial power, much of which moved across the global seas.¹⁴ Thus the protection of neutral rights came to feature prominently in British diplomacy, foreign policy and naval strategies alongside their assertion of a universal international law of war to define those rights. Clearly, British naval might still defined right, but that right now gave precedence to neutrality.

The best example of the centrality of these ideas to British practices has to be the one great power war that Britain did engage in, namely the Crimean War (1853-1856). In keeping with

Also: W.G. Dudley, 'The Flawed British Blockade 1812-1815' in B.A. Elleman, S.C.M. Paine (eds), *Naval Blockades and Seapower: Strategies and Counterstrategies 1805-2005* (New York: Routledge, 2006), pp. 34-45; John Hattendorf, 'The US Navy and the "Freedom of the Seas" 1775-1918' in Rolf Hobson, Tom Kristiansen (eds), *Navies in Northern Waters 1721-2000* (Portland: Frank Cass, 2004), circa p. 165; Robin F.A. Fabel, 'The Laws of War in the 1812 Conflict', *American Studies*, 14.2 (1980), pp. 199-218.

¹⁰ Abbenhuis, *Age of Neutrals* p. 35.

¹¹ D.A.G. Waddell, 'British Neutrality and Spanish-American Independence: The Problem of Foreign Enlistment', *Journal of Latin American Studies*, 19.1 (May 1987), pp. 1-18. Also: Matthew McCarthy, "'A Delicate Question of a Political Nature": The *Corso Insurgente* and British Commercial Policy during the Spanish-American Wars of Independence 1810-1824', *International Journal of Maritime History*, 23.1 (June 2011), pp. 277-292.

¹² Nir Arielli, Gabriela A. Frei, Inge van Hulle, 'The Foreign Enlistment Act, International Law, and British Politics, 1819-2014', *International History Review*, 38,4 (2016), pp. 636-656.

¹³ Cf Quincy Wright, 'The Present Status of Neutrality', *American Journal of International Law*, 34.3 (1940), pp. 411-413.

¹⁴ Abbenhuis, 'Most Useful'.

the globalizing nature of all geostrategic developments of the time, this war involved four major powers: Russia on one side; France, Britain and the Ottoman empire on the other. It was also a global event.¹⁵ Not only did military and naval operations occur across the planet, but the potential for the war to disrupt the global economy and to draw in even more belligerents was recognized by all. Tellingly, the French and British negotiated an agreement early on to not only renounce privateering but also to limit their economic warfare campaigns against the Russians to effective blockades of particular ports only.¹⁶ By localizing their naval engagements, they protected their relationship with key neutral powers (including Prussia, Austria and the United States) and kept their own mercantile and passenger shipping routes open.¹⁷ Essentially, this Anglo-French move suspended the 'rule of 1756', which asserted that all enemy trade regardless of its point of origin or the neutrality of the flag of its carrier was liable for capture by a belligerent.¹⁸ Thus, during the Crimean War, neutral rights trumped belligerency and did so with full acquiescence of the warring powers.

That these same principles were subsequently codified at the end of the war in the Declaration of Paris (1856) is, therefore, highly significant. As Olav Riste describes it, the Declaration of Paris was 'the most remarkable of the milestones that marked the progress of neutrality' because it consecrated previously claimed neutral rights in a multilateral treaty ratified by all the great powers, excepting the United States. By 1914, all sovereign states in existence, bar the United States and Venezuela, had signed the treaty.¹⁹ The Declaration, furthermore, highlighted how useful codification could be to enforcing compliance of contentious international laws.²⁰ In its wake, as Nicholas Tracy rightly asserts, Britain could no longer enforce its traditional maritime rights.²¹ Stronger still, as Scott Andrew Keefer argues, after 1856 Britain used its global naval dominance to enforce the terms of the Declaration and of neutral rights more generally, much as it already did in administering the abolition of the slave trade on the open seas.²²

¹⁵ Ian R. Stone, 'The Crimean War in the Arctic', *Polar Record*, 21.135 (1985), pp. 577–581; John D. Grainger, *The First Pacific War: Britain and Russia 1854-1856* (Suffolk, Boydell Press, 2008); Jan Lemnitzer, *Power, Law and the End of Privateering* (London: Palgrave MacMillan, 2014); Andrew C. Rath, *The Crimean War in Imperial Context 1854-1856* (London: Palgrave MacMillan, 2015).

¹⁶ For an excellent study of Britain's economic and foreign policies during the Crimean War, see: Anderson, *Liberal State*.

¹⁷ For a detailed study of the principles and diplomacy involved, see: Lemnitzer, *Power, Law*.

¹⁸ Cf Neff, *Rights and Duties* pp. 111–112.

¹⁹ Olav Riste, *The Neutral's Ally: Norway's Relations with Belligerent Powers in the First World War* (Oslo: Universitetsforlaget, 1965), p. 18.

²⁰ Amos S. Hershey, 'The History of International Law Since the Peace of Westphalia', *American Journal of International Law*, 6.1 (January 1912), p. 50.

²¹ Nicholas Tracy (ed.), *Sea Power and the Control of Trade: Belligerent Rights from the Russian War to the Beira Patrol, 1854-1970* (Aldershot, Ashgate and Navy Records Society, 2005), p. 3.

²² Scott Andrew Keefer, "'An Obstacle, Though Not a Barrier": The Role of International Law in Security Planning During the *Pax Britannica*', *International History Review*, 35,5 (2013), p. 1043; Jonathan Chappell, 'Maritime Raiding, International Law and the Suppression of

The Declaration of Paris asserted four basic principles of maritime warfare, namely: the abolition of privateering, 'free ships make for free goods' (except for contraband), neutral goods in belligerent ships are free from capture (except for contraband); and blockades, in order to be binding, have to be effectively maintained.²³ The implications of these four precepts were revolutionary. They privileged the power of states with navies (and thus also confirmed the power of the Royal Navy) as it removed the rights of states to 'buy' privately owned ships and crews to conduct economic warfare for them.²⁴ Furthermore, they legitimated the right of neutral merchants (ships flying a neutral flag) to conduct their economic affairs almost unhindered. Except for contraband (which had to be declared and defined by a belligerent) and the imposition of a belligerent blockade at port (which restricted all neutral access to the port), an instance of warfare should not affect neutral-to-neutral commercial affairs at all and should only have a limited impact on the economic relationships between neutrals and belligerents.

In effect, the Declaration of Paris restricted the use of naval power to influence the commercial use of the open seas in wartime. While belligerent navies continued to have the right to 'search and visit' neutral vessels and to take them, their crew and cargo into a belligerent port as a prize to be adjudicated by a belligerent prize court, the collective weight of the Declaration reduced the likelihood of that happening and localized such activities to the waters in and around a belligerent state. The age of the privateer had essentially ended, making the world's seas and oceans safer for all civilian traffic and, thus, enabling global commerce to thrive and industrial empires to expand their formal and informal networks across the world.²⁵

Significantly, the neutralization clause inserted in the Treaty of Paris,²⁶ which drew the Crimean War to a formal close in 1856, also aimed at the opening up of commercial opportunities in the Black Sea region. By neutralizing the Black Sea, not only were Russian and Ottoman naval ships restricted from using the waters, but in so doing, the sea also opened up as an 'international space' (as opposed to a militarized frontier of Ottoman-Russian imperial rivalry). In a fascinating account, the historian Charles King describes the move as befitting the general tenor of the nineteenth century as an age in which the internationalization of waterways for the attainment of geostrategic, commercial and

Piracy on the South China Coast 1842-1869', *International History Review*, 40.3, pp. 473-492.

²³ Francis R. Stark, *Abolition of Privateering and the Declaration of Paris* (New York: Columbia University Press, 1987), p. 141.

²⁴ Pat O'Malley, 'The Discipline of Violence: State, Capital and the Regulation of Naval Warfare', *Sociology*, 22.2 (1988), p. 265.

²⁵ For a complementary argument showing that the opportunity costs of 'legitimate' shipping grew after 1815 making privateering less profitable, see: Henning Hillman, Christina Gathmann, 'Overseas Trade and the Decline of Privateering', *Journal of Economic History*, 71.3 (2011), pp. 730-761.

²⁶ Not to be confused with the Declaration of Paris that was negotiated soon after.

imperial goals was commonplace.²⁷ That the Danube river was also internationalized in the Treaty of Paris, enabling any merchant to navigate its entire length unopposed, spoke volumes about the commercial opportunism of the time.²⁸ When the Suez Canal opened in 1869 and as the world's first inter-oceanic waterway with widespread commercial and military potential (the Panama Canal would open at the outbreak of the First World War in 1914), it too was neutralized by international agreement. For, as Stockton so astutely described in a 1904 commentary, 'there are certain things that rise above even narrow territoriality, and the world's use of great straits connecting oceans is among such matters'.²⁹ In the 'long' nineteenth century, at least, the great powers recognized the peculiar advantages afforded to all of them by guaranteeing such access.

Both the neutralization of the Black Sea and the Declaration of Paris occasioned resistance, particularly from naval strategists (as did the neutralization of the Suez for that matter).³⁰ In 1856, the Russians were particularly incensed that the Black Sea decision reduced their imperial security. The Romanov government managed to abrogate the neutrality clause at the conclusion of the Franco-Prussian War in 1870.³¹ By this stage, however, the commercial expansion of foreign interests in the region was in full swing: railway lines wound their way to the Black Sea ports and tourism had also expanded across the Caucasus.³² In contrast, the only major resistance to the Declaration of Paris of 1856 came from the United States, whose government was unwilling to forego privateering unless a more universal declaration ending all warfare against private property was entered into.³³ Without privateers, so its argument went, the United States was left vulnerable to naval attack. Rather ironically, then, the United States attempted to sign up to the Declaration of Paris upon the secession of the southern states in 1861, hoping to prevent the Confederates from employing privateers during the American Civil War. Without privateers, the Confederacy could not conduct any naval operations, as it did not own a navy. As a result, it would either need to purchase naval ships from a neutral supplier (which neutral states were prohibited from doing by international law) or build them from scratch (which the Confederacy did not have the resources to do).

When during the course of the war, the British government failed to prevent the sale of several naval vessels (of which the CSS *Alabama* remains the most famous) by private British

²⁷ Charles King, *The Black Sea: A History* (Oxford, Oxford University Press, 2004), especially pp. 191–196.

²⁸ The Rhine River was internationalized for similar reasons in 1815: Joseph Perkins Chamberlain, *The Regime of International Rivers: Danube and the Rhine* (New York: np, 1923), p. 5.

²⁹ C.H. Stockton in T.J. Lawrence, 'Problems of Neutrality Connected with the Russo-Japanese War', *Royal United Services Institution Journal*, 48.318 (1904), p. 932.

³⁰ For the British debate, see: Tracy (ed.), *Sea Power* pp. xxiii, 4–5.

³¹ W.E. Moss, 'The End of the Crimean System: England, Russia and the Neutrality of the Black Sea, 1870-1', *Historical Journal*, 4.2 (1961), pp. 164–190.

³² King, *Black Sea* p. 200.

³³ Lemnitzer describes the diplomacy involved in: *Power, Law*.

firms to the Confederacy, the United States government exacted compensation.³⁴ Based on the claim that a neutral government should take responsibility for enforcing neutrality laws on its citizenry (as already occurred in terms of the Foreign Enlistment Act), the United States demanded that, as a neutral state, the British government was responsible for monitoring the anti-neutral activities of its citizens. Amidst much public furor,³⁵ the *Alabama* arbitration settlement of 1872 and the preceding Treaty of Washington, not only saw Britain pay sizeable indemnities for the belligerent actions undertaken by the Confederate ships but also confirmed that the principle of neutral rights coexisted with that of neutral duties.³⁶ Neutral governments from this point on, had to become more pro-active in applying those duties to their subjects. That the British government signed the Treaty of Washington and accepted the arbitral settlement without much opposition reflects how well it understood that imposing rights and duties on neutrals and demanding due diligence in enforcing them offered advantages to stabilizing the rules surrounding neutrality.

The American Civil War and subsequent *Alabama* arbitration settlement also confirmed the central importance of neutrality in the global economy. After all, the whole world remained formally neutral while the United States waged war upon itself. As neutrals, how much economic support they could give either belligerent side was paramount not only to the course of the war but also to these neutrals' profit margins. The operation of an 'effective' blockade of the Southern ports by the Northern navy, for example, determined the rights of the neutrals to trade with the Confederates. Needless to say, blockade running was rife throughout the war, particularly out of the neutral Caribbean islands. How to sustain effective blockading tactics without upsetting the great power neutrals plagued the North and enticed the South.³⁷

The limits of neutral trading rights in time of war were repeatedly contested in the latter decades of the nineteenth century. Without a clear delineation of the rules (as had occurred with the Declaration of Paris) essential questions resurfaced repeatedly: could British merchants freely trade in arms with France and Germany and move them into their unblockaded ports as happened during the Franco-Prussian War of 1870-1871? Could France declare rice contraband, as it did during the Sino-French War of 1884-1885?³⁸ Could Japan legitimately sink a neutral British passenger liner carrying Chinese troops, as it did during the first Sino-Japanese War of 1894-1895?³⁹ Could the United States cut neutral sub-

³⁴ For an excellent overview of the *Alabama* situation, see: Frank J. Merli, *The Alabama, British Neutrality and the American Civil War* (Bloomington: Indiana University Press, 2004).

³⁵ For which, see: William Mulligan, 'Mobs and Diplomats: The *Alabama* Affair and British Diplomacy 1865-1872' in Markus Mösslang, Torsten Rottke (eds), *The Diplomats' World: A Cultural History of Diplomacy 1815-1914* (Oxford: Oxford University Press, 2008), pp. 105-132.

³⁶ Elizabeth Chadwick, *Traditional Neutrality Revisited: Law, Theory and Case Studies* (The Hague: Kluwer Law, 2002), pp. 22, 45, 56; Abbenhuis, 'Most Useful' pp. 10-11.

³⁷ For some of the issues involved, see: Samuel Negus, 'A Notorious Nest of Offence: Neutrals, Belligerents and Union Jails in Civil War Blockade Running', *Civil War History*, 56.4, 2010, pp. 350-385.

³⁸ Lawrence, 'Problems' p. 928.

³⁹ Neff, *Rights and Duties* p. 114.

oceanic telegraph cables leading to the Spanish territories of Cuba and the Philippines as it did during the Spanish-American War of 1898?⁴⁰ How might wireless telegraphy carried on neutral ships on the open seas be monitored and policed?⁴¹ All these issues created serious diplomatic situations, with the potential to endanger the peaceful relationship between neutral and belligerent states.⁴² Clarity on what neutral governments and their subjects could and could not do was paramount to sustaining the principles of the congress system and the balance of power between the great naval states.

Such clarity was also sought by merchants, financiers, insurance brokers, bankers, telegraph companies and anyone involved in the shipping industry. Neutrality handbooks, often written by international lawyers, proliferated at any time a war erupted. These advised companies and interested citizens on how to conduct their business across the seas and outlined the legal requirements of neutrality and belligerency. Newspapers too filled with articles describing the rules of war and the expected code of conduct of neutrals and belligerents alike, often with a focus on commercial issues. When disputes evolved (as it did in all the cases cited in the previous paragraph), lengthy editorials explained the legal and diplomatic complexities involved. Nineteenth-century newspaper readers were well informed about neutrality and well understood the stakes involved for the maintenance of their society's wealth, well-being and national prestige.⁴³ Enterprising businesses, international law associations and liberal internationalists lobbied their governments to adopt ever more lenient neutrality rules to both protect the global economy from the harsh impact of war and to advance the peace of the seas for the movement of private property.⁴⁴

It is utterly unsurprising then that neutrality featured prominently in the negotiations at the first Hague Conference of 1899. The subsequent Hague Conventions extended humanitarian medical intervention by the Red Cross to warfare conducted at sea and created clearly defined laws for the internment of belligerent soldiers found in neutral sovereign territory, including onboard neutral ships.⁴⁵ The international lawyer, J. Helenus Ferguson described the importance of these conventions in 1899 in effusive terms, for not only were neutral vessels entrusted with a grave humanitarian duty to rescue the victims of a naval battle

⁴⁰ For a list of requests for clarity on such rules by neutral merchants and shipowners from the British Foreign Office during the Spanish-American War of 1898, see: Foreign Office, 'General Correspondence before 1906, Spain' FO72/2092 and 2093, National Archives, London. Also: Elbert J. Benton, *International Law and Diplomacy of the Spanish-American War* (Gloucester: Peter Smith, 1968), pp. 183–218.

⁴¹ Amos S. Hershey, *International Law and Diplomacy of the Russo-Japanese War* (Indianapolis: Hollenbeck Press, 1906), pp. 115–123.

⁴² Abbenhuis, *Age of Neutrals* pp. 180-187.

⁴³ Cf Annalise Higgins, 'The Idea of Neutrality in British Newspapers at the Turn of the Twentieth Century, c.1898-1902', *New Zealand Journal of Research on Europe*, 11 (2017), pp. 2–51.

⁴⁴ As an example: 'The International Law Association Exemption of Private Property at Sea' *Incorporated Chamber of Commerce of Liverpool Monthly Magazine*, 5.10 (October 1906), pp. 147–149.

⁴⁵ Maartje Abbenhuis, *The Hague Conferences and International Politics 1898-1915* (London: Bloomsbury, 2018), pp. 86, 90; Abbenhuis, *Age of Neutrals* pp. 191-194.

(much as the Red Cross did on land) but ‘a vessel distinguished by the *neutral flag*’ will also ‘henceforth ... incur no danger She is now intrusted [sic.] to the honour of the naval Commanders; her safeguard is the humanity of civilized nations. ... [a] sacred trust!’⁴⁶ Above all, the successful ratification of the conventions highlighted the potential of a future Hague meeting to regulate the law of neutrality at sea more fully. All the major powers were cognisant of what they stood to gain from neutrality if and when their neighbours went to war, and what they might lose if those same belligerent neighbours interfered with their economic affairs too greatly. The potential to economically localize a war remained a powerful incentive to regulate the rules of economic warfare.

Such issues became particularly important in the context of the Boer War (1899-1901), and Russo-Japanese War (1904-1905).⁴⁷ In the former conflict, Britain was particularly careful to monitor the movement of contraband into the Transvaal by neutral ships and from neutral territory, but it did very little to enforce its rights of capture for fear of alienating neutral Germany and the United States.⁴⁸ In the latter conflict, the Russian navy conducted itself with an eye to reasserting key belligerent rights. It sank several neutral merchant vessels carrying what it declared as contraband (including post and cotton) and did so without first taking the ship into a Russian prize court for adjudication.⁴⁹ It also converted several Russian merchant ships into armed naval vessels on the open seas, after traversing the neutral waters of the Dardanelles Straits as merchants. This development not only risked the neutrality of the Ottoman empire (who controlled the straits), but was of particular concern to Britain as it proffered the possibility of the reintroduction of privateering, increasing the danger of a full-blown ‘war’ against all neutral shipping and a decline in the Royal Navy’s dominance of the global seas.⁵⁰

When the American President Theodore Roosevelt called for a second Hague conference in the midst of the Russo-Japanese War, he did so in part to delineate more clearly the rules of neutrality as they applied at sea.⁵¹ The second Hague conference met in 1907 and made considerable progress on issues that plagued maritime relations, and not least on the limits of territorial waters, the laying of sea mines, the exemption from capture of post at sea

⁴⁶ J. Helenus Ferguson, *The International Conference of The Hague: A Plea for Peace in Social Evolution* (The Hague: Martinus Nijhoff, 1899), pp. 72–73.

⁴⁷ Abbenhuis, *Age of Neutrals* pp. 194-209.

⁴⁸ J.H.W. Verzijl, *International Law in Historical Perspective*. Volume 10 (Leiden, A.W. Stijhoff, 1968), pp. 136–137; Richard Langhorne, *The Collapse of the Concert of Europe: International Politics 1890-1914* (New York: St Martin’s Press, 1981), pp. 79–80; John W. Coogan, *The End of Neutrality: The United States, Britain and Maritime Rights 1899-1915* (Ithaca: Cornell University Press, 1981), p. 30.

⁴⁹ For the controversies with neutrals, see: Foreign Office, ‘Confidential Print: Japan & Russia’ FO881/8512, National Archives, London. Also: Lance E. Davis, Stanley L. Engerman, *Naval Blockades in Peace and War* (Cambridge: Cambridge University Press, 2006), p. 10.

⁵⁰ For more, see: Matthew Seligmann, *The Royal Navy and the German Threat 1901-1914* (Oxford: Oxford University Press, 2012), pp. 95-105.

⁵¹ Abbenhuis, *Age of Neutrals* p. 209. Also: Douglas Howland, ‘Contraband and Private Property in the Age of Imperialism’, *Journal of the History of International Law*, 13 (2011), pp. 117–153.

(even when destined for an enemy port), the conversion of merchant vessels into belligerent vessels on the open seas, the right to coal in neutral harbours, the right to bombard undefended coastal towns by naval means.⁵² Most importantly, the conference established the International Prize Court (IPC), a court of appeal to which private individuals and companies (mainly from neutral states) could take their grievances if and when a domestic belligerent prize court decision went awry. The IPC was revolutionary: it was the first international court of appeal in existence, staffed by judges from neutral and belligerent states. Furthermore, its creation confirmed the principle that private individuals (as opposed to states) had 'inalienable rights' in international law.⁵³ Above all, the IPC and the Hague conventions recognized the centrality of neutrality in the international environment and highlight the contemporary expectation that neutrals would continue to feature prominently in modern warfare.⁵⁴ As the American lawyer James Brown Scott described it in 1909, the IPC confirmed that 'the interests of neutrals should be safeguarded by neutrals'.⁵⁵

But the 1907 Hague conference failed to do what many had hoped it would, namely codify more clearly the major laws of maritime warfare. Without a universally defined law the IPC, for one, would not be able to operate. While the delegates at The Hague spent many weeks negotiating, no consensus was achieved on central issues relating to contraband, blockade and the right of capture. Remarkably, a meeting of the great naval powers in London in 1909-1910, however, managed to overcome many of these same obstacles. The Declaration of London (1910) was another extraordinary document: it offered a well-defined set of laws relating the rights and duties of maritime powers in time of war, including classifying which resources could be declared as contraband, the powers of blockade and the abolition of continuous voyage.⁵⁶ The Declaration of London was even more neutrality-friendly than its Parisian predecessor of 1856.

That Britain ultimately failed to ratify the Declaration, signals something essential about the growth of neutral rights in the years leading up to the First World War, namely the fear that it would leave Britain, as the world's foremost naval power, without the means to maximize its one major military asset – the Royal Navy – when it went to war. The debate over neutral and belligerent rights consumed British newspaper media after 1909.⁵⁷ The President of the British Chamber of Shipping ably summed up the debate in a speech given to the Penzance Chamber of Commerce in March 1911:

⁵² James Brown Scott, *The Hague Peace Conferences of 1899 and 1907*. Volume 1 (Baltimore: Johns Hopkins Press, 1909), p. 114.

⁵³ Francis Anthony Boyle, *Foundations of World Order: The Legalist Approach to International Relations 1898-1922* (Durham: Duke University Press, 1999), p. 61.

⁵⁴ Cf Clive Parry, 'Foreign Policy and International Law' in F.H. Hinsley (ed.), *British Foreign Policy under Sir Edward Grey* (Cambridge: Cambridge University Press, 1977), pp. 103–104.

⁵⁵ Scott, *Hague Peace Conferences* Volume 1, p. 466.

⁵⁶ Coogan, *End of Neutrality* pp. 117-122.

⁵⁷ As an example: N.C. Fleming, 'The Imperial Maritime League: British Navalism, Conflict and the Radical Right c.1907–1920', *War in History*, 23.3 (2016), pp. 296–322. Also: Bernard Semmel, *Liberalism and Naval Strategy: Ideology, Interest and Sea Power during the Pax Britannica* (Boston: Allen & Unwin, 1986), pp. 109-118.

The problem of the Declaration of London must be regarded from two entirely different standpoints. We must ask ourselves first: "How will it affect us as a neutral Power when other nations are engaged in war; and, secondly, how will it affect us as belligerents when we ourselves are engaged in war?" I fear that the underlying assumption in this country is that we shall never again be engaged in serious warfare. ... [If this proves to be the case, then] ... we need not trouble further about the Declaration of London, the main object of which ... is to safeguard the interests of a neutral Power. While other nations were engaged in war, this country, with its vast mercantile marine, would be busily employed in carrying on the ocean the trade of the world at enormous profit to ourselves, and should any of our ships be captured by a belligerent Power we should not resent it, not declare war, but merely ... refer the matter in dispute to the Hague Tribunal [the IPC] ... [but if it proves not to be the case then] ... No Declaration, no code of international law can do anything for our protection when we are engaged in war. Our only hope then rests on the supremacy of the British fleet.⁵⁸

In the end in 1912, the House of Lords voted in favour of protecting the Royal Navy's belligerency and refused to ratify the Declaration or the accompanying Naval Prize Bill. Without Britain's adhesion to the Declaration of London, the IPC could not be formed either.

Above all, the British debate around the Declaration of London highlights how the contestation between neutrality and belligerency was never straightforward. Between 1815 and 1914, naval strategists in every major state had to plan for a potential wartime future in which their country was either a belligerent or a neutral. Given that most neutral rights impeded belligerent rights (and vice versa), how to advocate for a suitable balance between them was never easy and always contentious. Between 1815 and 1914, however, the odds almost always favoured the neutrals, where before 1815 and certainly after 1914, they favoured the belligerents. Yet for most naval powers in 1910, neutrality continued to win out: Germany, the United States and France all ratified the Declaration of London, for example. At the outbreak of the First World War, Britain also declared it would adhere to its terms, if only to stabilize the global economy in the short term. Neutrality then still defined the global landscape of maritime warfare at the outbreak of a global war.

Of course, the dominance of neutrality did not mean that all belligerent rights were signed away between 1815 and 1914. Nor did it mean that states did not invest in expanding their naval power. The naval races of the turn-of-the-century period highlight just how significant they considered that power to be both in sustaining their relative global power and in planning for a future war as a belligerent.⁵⁹ The key to their naval planning revolved around understanding the need to prepare for the possibility of going to war and the likelihood of

⁵⁸ Edward Hain, President of Shipping, 3 March 1911, in Board of Trade and Ministry of Transport, 'Consultative Marine Files: Hague Peace Conference: International Prize Court – Declaration of London, 1908-1911' MT15/135, National Archives, London.

⁵⁹ Cf Jan Glete, 'Naval Power and Warfare 1815-2000' in Jeremy Black (ed.), *War in the Modern World Since 1815* (London: Routledge, 2003), pp. 217–227..

remaining neutral.⁶⁰ As had been the case for centuries, the balance between peace and war thus lay in the details of their diplomatic negotiations. Thus, Britain's advocacy at The Hague in 1907 for an end to contraband but the continuation of the right of blockade spoke volumes about how the Admiralty expected to maximize the size and strength of the Royal Navy (and not least the development of its *Dreadnought*-class battleships) to impose effective blockades. After all, if a blockade could be maintained, then neutrals could not reach an enemy port and thus the need for a defined list of contraband items disappeared alongside.⁶¹

In contrast, the German delegation at The Hague in 1907 presented a case for the right of any nation to lay sea mines in their own territorial waters to protect their borders. The argument aimed squarely at avoiding a future blockade of its own ports. Another way in which German naval planners expected to make the most of neutrality, even if they were belligerents, was to protect the right of neutrals to trade with belligerents. After all, several small but powerful trading nations like the Netherlands and the Scandinavian states (all of which were renowned long-term neutrals) bordered Germany. From a German perspective, a future British blockade may be surmounted if enough goods could be funnelled by river or rail through these neutral territories. To that end, the German delegation supported the creation of the International Prize Court. Protecting a neutral's right to trade, then, was as much part of the German naval platform as building up a sizeable fleet of warships.

Similarly, where France's *Jeune École* strategists considered that a fleet of torpedo boats could keep the ships of a future enemy (including Britain) in port, they also supported the widening of neutral merchant rights which could easily coexist with the expansion of its naval power that would ultimately target belligerent commerce.⁶² Meanwhile, the United States' on-going demand to declare all private property free of capture on the open seas reflected its government's expectation that it was unlikely to go to war with its major industrial and imperial rivals. Here too, Alfred Mahan's promotion of building up the United States as a strong naval power capable of asserting its 'grip on the sea' when necessary sat comfortably alongside its reputation as a staunchly neutral power willing and able to protect those neutral rights.⁶³

⁶⁰ Cf Gabriela A. Frei, 'Great Britain, Contraband and Future Maritime Conflict (1885-1916)', *Francia*, 40 (2013), pp. 409–418.

⁶¹ Cf Tracy (ed.), *Sea Power* pp. 96–97; Neff, *Rights and Duties* p. 97; Matthew Seligmann, 'Failing to Prepare for the Great War? The Absence of Grand Strategy in British War Planning before 1914', *War in History*, 24.4 (2017), pp. 414–437. Cf Andrew Lambert, 'Great Britain and Maritime Law from the Declaration of Paris to the Era of Total War' in Hobson, Kristiansen (eds), *Navies* pp. 23–31.

⁶² Tracy (ed.), *Sea Power* p. xxiii; Bryan Ranft, 'Restrains on War at Sea before 1945' in Michael Howard (ed.), *Restrains on War* (Oxford: Oxford University Press, 1979), p. 51. Cf Lincoln Paine, *The Sea and Civilization: A Maritime History of the World* (New York: Vintage, 2013), p. 555.

⁶³ John B. Hattendorf, 'Maritime Conflict' in Michael Howard, George G. Andreopoulos, Mark R. Shulman (eds), *The Laws of War: Constraints on Warfare in the Western World* (New Haven: Yale University Press, 1994), p. 110.

Some historians argue for a continuity in naval warfare strategies employed by Britain and the United States between 1815 and the First World War. Granted, the expansion of belligerent rights was phenomenal during the total industrial war that erupted in 1914 and the justification for many of them harked back to the pre-1815 period. But to suggest those rules stayed static across the century that separated these global wars, is to fail to recognize how central a role nineteenth-century globalization played in affecting the naval policies of the great powers. For between 1815 and 1914, as John Coogan also argues, Britain came to rely increasingly on neutrality and the rights of neutrals to trade and freely access the open seas.⁶⁴ Everyone's foreign and economic policies as well as their naval strategies had to accommodate this essential shift.

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⁶⁴ Coogan, *End of Neutrality* 1981.

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