

is in accordance with accepted rules. It has, however, been suggested that the presumptions as to destination specified in Article 34 would admit of the condemnation of food which was not in truth conditional contraband but destined for the general food supply of the population.

These presumptions are as follows :—

(a.) *If the goods are consigned to enemy authorities.*

To this, it is submitted, no exception can be taken, for it is literally in accordance with Article 33.

(b.) *If the goods are consigned to a contractor (English text) established in the enemy country who as a matter of common knowledge supplies articles of this kind to the enemy.*

It is suggested, firstly, that the French word “commerçant” should be translated “merchant” and not “contractor,” and secondly that the word “enemy” includes the population of the enemy State and is not limited to the enemy authorities.

With regard to the first, the distinction is not, as it appears to me, of very great importance. A “merchant” who as matter of common knowledge supplied goods to the enemy authorities would almost certainly do so under formal contract, apart from the principle that all transactions of sale and purchase are, strictly speaking, contracts. In any case, if the merchant habitually did it, it would not much matter for this purpose whether he did so under a formal contract or not. The real points are that he must be established in the enemy country, and that as matter of common knowledge he supplies (which implies that he does so habitually) goods to the enemy authorities.

With regard to the second point, it is the case that the word “enemy,” not “enemy authorities,” is used in this connection, but this is an article which is merely explanatory of Article 33, and it is perfectly clear that, if it included the population of the enemy country, the presumption would be inconsistent with the governing provisions as to conditional contraband, and the food could not be treated as contraband. Shortly, it is clear that conditional contraband is created by and depends on its destination to the armed forces or Government of the enemy State, and, if it does not fulfil that condition, it cannot be seized and condemned.

But in any case the Secretary of State has stated that he will only ratify the Declaration if it is made clear that enemy in this article means the enemy State, and that must remove any ambiguity that may be said to arise from the unintentional omission of any qualifying adjective in the passage under consideration.

It is also to be observed that the foregoing are only *prima facie* presumptions, which may be rebutted, as they could be by showing the real destination of the suspected articles.

On the general observations that have been made that food should in no circumstances be contraband, this would be to suggest a rule of international law which would be impossible of attainment and unreasonable in itself. Food for the maintenance of the forces of a Government engaged in war is now held in such circumstances to be contraband.

It is to be observed in this connection that the chapter as to contraband expressly limits, so far from extending, the right to intercept foodstuffs on their way to the country of a belligerent. It has in former wars been claimed that when a belligerent might be reduced to submission by the starvation of a population dependent on a seaborne food supply, food might be declared to be absolute contraband. To take a comparatively recent instance, this course was actually adopted in the war between France and China in 1885 by the former Power. Protests were made by other Powers, but owing to the conclusion of the war shortly afterwards the right was never tested. The effect of the French Declaration, however, was, according to Hall's “International Law” (sixth edition, p. 659), a complete cessation of shipments of rice to China, trade was seriously injured, and the purpose of the French might have been attained before the protests of other Powers could have had any effect or result.

Russia in 1904 placed provisions on her general list of contraband, and though she withdrew this under pressure, she did so without conceding the principle that it might be generally contraband, and another great Power asserted at the same period that all articles declared contraband by either belligerent must be treated as such. Japan during the war condemned rice, the food of the Chinese, on the way to Manchuria, on the ground that in case of necessity the Russian army could eat rice, without evidence that it was destined for Russian authorities, and our protest produced no results.