

It has been pointed out in the despatch of the Secretary of State of 20th January,\* relating to the agenda of the Conference, that this question will require to be settled by the Conference at its first meeting.

Colonial Office,

16 February, 1911.

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(II.)

Declaration of London.

No. 1.

MEMORANDUM BY THE EARL OF DESART RESPECTING THE EFFECT  
OF SOME OF THE PROVISIONS OF DECLARATION OF LONDON,  
1909.

BLOCKADE.

It is common ground that the ships and goods of neutrals who knowingly endeavour to carry or send goods to a blockaded port or coast are proper subjects of capture and condemnation, and that the owners have no claim to the protection of their Government against the recognised rights of the blockading belligerent.

The rights of the neutral trader are that his property shall not be condemned if he is in ignorance of the blockade and unless it is established that at the time of capture the destination of the ship is the blockaded port or coast, while the blockade must be effective and impartially enforced against all nations.

All these rights are preserved by the Declaration, and, so far as the interests of traders are concerned, they benefit (for what it is worth) by the limitation of the area of capture and of the right of pursuit.

On the other hand, by the abandonment of the French rule that a ship should not be condemned in the absence of special notification of the blockade to the master, they might lose something in case of a war in which the French were the blockading Power. This right has, however, never been admitted by us.

From the neutral trader's point of view, therefore, there is nothing in the Declaration which injuriously affects the position from the British point of view.

It remains to be considered whether by the Declaration Great Britain has abandoned any belligerent right which is of practical importance for the purposes for which blockade is used as a weapon of war.

It is submitted that articles 1-16 practically restate rules which have been hitherto recognised by our Courts, and make no alteration in the established practice. The same may be said of articles 18 and 19, and article 21 in substance corresponds with the English rule.

It is to be observed that the Declaration establishes the English rules as to sufficiency of notification, and that the French rule of special notification to a vessel before she can be condemned has not been adopted.

This is a matter of some importance, for the admission of that rule would have enabled vessels to endeavour to break blockade with complete immunity. They might succeed, and the worst that could happen to them would be to be turned back.

Articles 17 and 20, however, undoubtedly contain concessions as to principles hitherto adopted in theory by the English Prize Courts.

Those Courts have expressed the view that a vessel setting forth with the intention of breaking a blockade might be captured at any stage of her voyage after leaving her home port or original port of departure for the voyage, and equally at any stage of her return voyage from the blockaded port or coast.

By Articles 17 and 20 of the Declaration this principle is abandoned, and the right of capture is limited to the area of the blockading operations or to any place to which there has been continuous pursuit from any part of that area.

It is alleged that by this concession the British Government have abandoned rights of importance and of high value to Great Britain as a belligerent when using the weapon of blockade against her adversary.

Somewhat careful examination is required to test the real value to a belligerent of the principle conceded.

It is also desirable to consider whether the advantages of a recognised rule do or do not compensate for any sacrifice that may be involved in the concession, bearing in mind that there is a large body of Continental opinion that some fixed

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\* See page 10 of [Cd. 5513].