1 Doing the Necessary: The Declaration of London and British Strategy, 1905–1915

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The Declaration of London (DOL) has been struck from the study of power politics and British policy, although it illuminates international law and the links between diplomacy and naval strategy between 1905 and 1915. Few scholars of law, diplomacy or seapower address the DOL. None integrate these issues fully. Scholarly attention centres on two issues: why Britain accepted a deal that would have suited it so badly in the Great War, and whether the Royal Navy (RN) intended to honour the DOL. Jan Lemnitzer and Christopher Martin criticize Andrew Lambert and Avner Offer for allegedly asserting that when Britain signed the Declaration of Paris (DOP) and the DOL, it intended to violate them whenever convenient. Isabel Hull, Lemnitzer and Martin believe that Britain rated honouring agreements about law in war, more than do Avner, John Coogan and Andrew Lambert. These questions are significant, but so are others. The DOL illuminates British and German war plans, and the role of the United States within them; the links between humanitarianism, law and realpolitik; how the relationship between ideology, bureaucratic politics, diplomacy and naval policy shaped British strategy; and how the failure of sea law drove the radicalization of

economic warfare. This chapter will address those questions and, thus, the evolution of the distinction between the civilian and the military.

**Strategy, Seapower and Sea Law**

During the rise to Pax Britannica, sea law bolstered seapower. British claims for belligerent rights in war swelled, especially regarding the seizure of contraband on neutral merchantmen. At the peace conferences of 1815 at Ghent and Vienna, Britain refused even to discuss belligerent rights. That would compromise claims to maritime supremacy, admit error and invite diplomatic defeat, when the RN could beat every other navy at once. Over time, different views arose on these issues. Memories of the Great War eroded. Ideas of progress emerged. International trade mattered more than before to leading states, especially Britain, the centre of a world economy of unprecedented intensity and complexity. Increasingly, statesmen doubted that Britain could ever again exercise such rights, and thought claims to do so pointless. As the foreign secretary, Edward Grey, said in 1911, if Britain rejected an international consensus on sea law,

> because you wish to keep your hands free and impose your own rules on the world – if you will have no agreement with them unless you get your own way in everything, because you will make no concession – you will be increasing the tendency, not of one or two Powers, but of several Powers to enlarge their naval expenditure, and you will be adding to the risk that you will be interfered with in time of war by neutral Powers.²

Even if Britain could exercise that power, any case which might merit such action was distant. Such rights might be essential during existential wars, but not otherwise, while the cost to maintain the claim was great, raising the questions: why pay, unless necessary? and why pay in advance?

Victorian statesmen replied through a loose logic suiting a hegemonic seapower, based on a good grasp of how sea law worked in peace and war – pragmatic hegemonism. It aimed to encourage support for a sea law that protected British interests as a neutral, and as a combatant during minor struggles, at the price of weakening belligerent rights regarding neutral trade. Strong belligerent rights were unnecessary for wars at the moment, but could expand when needed. Law regarding maritime war was mutable. Force and interest would change it. No state would die for law. During existential war, law would fail if it damaged the vital interests of any belligerent, as was likely to happen. Enemies would break these laws if they

helped Britain dominate the seas. Yet given the RN’s strength, any laws must do this somehow, even those restricting belligerent rights, unless the RN lost the ability to seize items on neutral vessels as contraband. Law alone could not ensure that outcome. Alternately, Britain would find an excuse to abandon these rules. Until then, as long as Britain could write the rules, it was willing to enforce them equitably, or see them used by others, even to its own cost. As a neutral, Britain accepted how other states exercised belligerent rights, even when it did not like the outcome. As a belligerent, Britain would do what it willed, or must.

Pragmatic hegemonism was a variant of the way all states reconcile law, power and war. It was not a school of thought, but a way to think about the unthinkable, the incalculable and the unpredictable. It was a means to manage uncertainty, generated by complex conflicts between time, interests, tools and strategies. No doctrine guided decisions through one case to the next. Instead, actors applied the same logic to similar problems, often without knowing how it had been done before. This logic emerged whenever people considered how to make strategy in the future conditional tense. They sought to maximize the certainty around current problems, and the gains from solutions to them, while minimizing gambles about issues stretching into the future. Actors did so by maintaining flexibility and freedom – not foreclosing options or making commitments which might be embarrassing to endure or to repudiate. The aim was to maximize success for immediate interests without damaging the requirements for a Great War, when what could and should be done was uncertain.

In the generation before 1914, pragmatic hegemonism remained powerful among sailors and Unionists, but its logic faced unprecedented challenges. Liberals, diplomats and civilian officials became more committed than before to rules, even when these worked against Britain, and to international interests. More than the Victorians had, they thought law would govern war. Still, pragmatic hegemonism survived among Liberal statesmen. Even opponents of contraband rights agreed that if Britain could force its will on neutrals in war, it should strengthen those claims.  

Maritime Law

Before 1914, the rights of belligerents and neutrals in maritime war were, as Grey, said, ‘in a state of chaos and confusion’. Every nation had

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3 Report, Committee on Trading with the Enemy, Appendix XXVI, March 13, 1912; Note by C.J.B. Hurst, CAB 16/18A, The National Archives (TNA), Kew.
distinct laws and practices. In most major wars since 1756, British claims had clashed with those of all other nations. Britain dominated the definition of maritime rights, because it was strong enough to do so when necessary and wise enough to restrict such practices to necessity. Meanwhile, it policed the maritime commons in ways which suited the collective interests of western states. The main addition to sea law after 1815, the DOP of 1856, rejected the extreme belligerent claims of the previous century. It rendered illegal two practices that had been standard before 1815 – privateering and blockades which were not ‘effective, that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy’. Belligerents could not seize goods belonging to a neutral, or carried on a neutral ship, including enemy property, save ‘contraband of war’ – which was not defined, gutting that clause. Countries retained different rules regarding blockade. Belligerents could examine all neutral ships at sea and bring them ashore for trial by Prize Courts – national tribunals enforcing the law of nations, tempered by their own regulations. The DOP defined principles which might rule between some states, but its gaps were obvious.\(^5\)

Belligerent rights were a minor issue for Victorian politicians, diplomats and admirals, enabling ambiguity to rule. They could differ over the issue, because they had never decided it. However, clashes between neutrals and belligerents, especially over contraband, marked the Boer War and the Russo-Japanese War. The results were inconvenient to British trade and showed how easily maritime wars might involve all great powers, which increasingly also were seapowers. Arguments about these issues began within the Unionist government of Arthur Balfour and multiplied under his successors. Initially, they were driven by civilian officials, diplomats and George Clerk, secretary of the Committee of Imperial Defence (CID), who projected recent experience into the middle distance of strategy. That every nation had different sea laws exacerbated clashes in war, Clerk warned, endangering Britain more than any other power. Redefinition of maritime law was a strategic imperative:

the definition of ‘contraband’ is of supreme importance to neutrals, and existing international custom leaves this question to be settled by the belligerents . . . So long as contraband of war is not defined by International agreement this evil will remain, and the peace of Europe may at any time be endangered through the misguided zeal of any naval officer who strains or misinterprets instructions which may never have been accepted by neutrals.\(^6\)

\(^5\) Lemnitzer, *Power, Law*.

\(^6\) CID 41 B (reprint, with addition of (C) and (D)), Nov. 1906, ‘The Value to Great Britain of the Right of Capture of Neutral Vessels’, FO 881/9328X, TNA.
Such views were widespread. Most British diplomats, most official and unofficial authorities on law and trade, and some RN officers thought belligerent control of contraband carried on neutral vessels gave Britain little at war, while endangering national firms when it was neutral. Contraband was hard to find. Britain’s power to seize it was uncertain, because European powers rejected the doctrine of continuous voyage, which enabled belligerents to seize items destined for an enemy but ostensibly bound first for another neutral. To exercise such powers would antagonize all neutrals, especially the United States, central to any attempt to block contraband in a European war. If the offensive value of seizing contraband declined, attention turned to its inconvenience. The relationship between legalism, liberalism, political economics and realism, combined with experience or the lack of it, led many to underestimate the offensive value of contraband rights, though not of blockade or attacking enemy trade. The value of contraband rights in existential war became academic. The main concern became protecting British trade from belligerents during wars when it was neutral, not surprisingly for a nation with the world’s dominant mercantile fleet and an economy and population requiring the safe import of large volumes of food and raw materials. Critics later assailed these ideas as naïve. Some naïveté was there, but it was countered by or combined with realism. All advocates of the DOL believed that it maximized the offensive value of British seapower. These tendencies of thought distorted decisions on contraband rights against neutral trade. That Unionists and sailors disagreed with Liberals and diplomats over those matters shows the impact of ideology. Liberal internationalists and legalists openly attacked realism and pragmatic hegemonism, but challenged them less than did political economists, authoritative in a sphere independent of power politics. Together, they produced the idea that war should not be directed against civilians or economies. Diplomats and even two directors of Naval Intelligence (DNI), Charles Ottley and Edward Slade, expressed such ideas, which were heresies of seapower. These DNIs also made the technical case deployed by the Foreign Office on contraband rights.

Liberal Realism. Seapower and International Law

In 1905, after years of Unionist dominance, a Liberal government wanted to reform internal and external policy. While it is remembered for

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7 BR 7, ‘Report of Lord Cave’s Committee of December 1918’, memorandum by Hankey, 18.1.28, FO 800/93, TNA; Osborne, 34–41.
8 Memorandum by Admiral Slade regarding the Declaration of London’, February 1911, FO 371/1279, 10608; ‘Note by Sir Charles Ottley’, Feb. 11, 1911, CAB 17/87, TNA.
rearmament, it did not intend this effect. Realism marked Liberals, but so did opposition to power politics. Liberal internationalists preferred arbitration and disarmament. Liberal legalists claimed that law could solve strategic problems. Political economists, particularly Cobdenites, disassociated commerce from states and war. Most Liberals combined these ideas with realism. All disliked the strategic situation they had inherited. From 1890, foreign states routinely built navies, creating more and stronger seapowers. France and Russia, and later Germany, produced the first sustained challenges to British seapower since 1815. Unionist governments responded effectively through power and politics. Liberals feared that these very successes created tensions with Germany and an international arms race, which they preferred to avoid. Between 1905 and 1914, Britain easily outmatched German naval competition and boosted its position against every other seapower, but still its position eroded against all of them, if from an unusually high base. Liberals saw looming the end of their ability to pay for seapower. They wished to halt the arms race on their terms, solving strategic problems by means of arbitration, disarmament and law, to save money, the nation and mankind. Disarmament and the DOL were their preferred solutions to the problem of the German navy.

These strategic and ideological imperatives were transformed into an interdepartmental debate over technical issues. The Liberal prime ministers between 1905 and 1914, Henry Campbell-Bannerman and Herbert Asquith, shaped strategic issues primarily through the selection of ministers. Only two ministries, the Foreign Office and the Admiralty, had the power to start or stop the reform of sea law. It could succeed only if they cooperated. They did not disagree on most aspects of that task, through sailors thought diplomats misconstrued the offensive value of contraband rights, and how far law could command war. These differences sparked the celebrated retort by the First Sea Lord, Admiral John Fisher, to Eyre Crowe, Britain’s chief negotiator at the London conference of 1908–9. As recounted by Crowe, “in the next big war, our commanders would sink every ship they came across, hostile or neutral, if it happened to suit them”. He [Fisher] added, with characteristic vehemence, “that we should most certainly violate the Declaration of Paris and every other treaty that might prove inconvenient”.

The political heads of the Admiralty, the First Lords, were able and powerful, especially Richard McKenna and Winston Churchill, but Grey, close to Asquith, primarily managed Britain’s response to the German challenge. Legalist, imperialist, internationalist and realist, Grey embodied the contradictions among

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9 Minute by Crowe, Dec. 24, 1908, FO 371/794, TNA.
Liberals and within liberal realism. He and his officials supported a realist stance towards Germany and a liberal line on international arbitration.

Ideology and political pressure from Campbell-Bannerman and the Radical wing of their party drove Grey to reform maritime law, but he favoured that idea, especially the creation of an International Prize Court (IPC), a court of appeal to all national prize courts, which fused Cobdenism with liberal legalism and internationalism into a tool to temper power politics. Legalism and Cobdenism shaped his officials, but he and they moved primarily to calculations of interest. They sought to maximize British power through diplomatic solutions to strategic problems. Recent experience of handling contraband in war alarmed diplomats. In 1906, Charles Hardinge, permanent undersecretary in the Foreign Office, emphasized ‘the futility of the present system of contraband from the point of view of the belligerent’. Definitions of contraband were ‘out of date and not in accordance with our current situation and needs’. Belligerents could name anything contraband, harming all neutrals unfairly. To prove that any item really was contraband was almost impossible. In war, Britain could not stop contraband being shipped to Germany via neutrals, since ‘all indications of its eventual destination would be carefully concealed’. More broadly,

The geographical position of Great Britain, the large increase of British sea-borne trade during the past 40 years, the improvement of roads and the multiplication of railways in the Continent render necessary that every effort should be made as much as possible to restrict the list of contraband and to make & extend the suggested list of articles never to be accepted as coming within that category. The possible advantages to us as a belligerent of a continuation of the present views on contraband appear to be more than counter-balanced by the disadvantages which our trade must necessarily suffer at the hands of other belligerents when we are in the position of a neutral Power.

Hardinge complained that Russia had made cotton contraband ‘solely’ to cripple a central Japanese industry, so ‘producing suffering which would tend to reduce Japan to submission’, implying that belligerents should not attack enemy civilians or their economy.\(^\text{10}\)

The Foreign Office linked the problems of contraband with the increased number of seapowers. Unlike in 1800, several seapowers were ‘sufficiently powerful’ to keep Britain from treating neutrals in ways ‘obviously contrary to the established practice of nations’. Division over international law would make every neutral ‘resent any action contrary to its own ideas . . . Where the protesting nation was a power to be feared, it

\(^{10}\) Minute by Hardinge, May 18, 1906, FO 372/23, TNA.
would be necessary to compromise.'

These views were widespread. In 1911, a spokesman for the Unionist Party and retired admiral, Lord Ellenborough, held that ‘we are not strong enough to insist on all the maritime rights that we possessed a century ago. If we have the misfortune to become belligerents, we must do all we can to avoid quarrels with neutrals.’ Grey noted:

The ideal condition used to be that we should have no rules restricting our action in time of war, and for this reason. In the old days our naval power was good against the world. If we had a two-Power standard then it was a world-Power standard, and all that neutrals might do when we were at war was a matter of indifference to us. Then we could value the position that we should be bound by no rules but make all rules, and that was a very favourable position from a naval point of view. But the conditions have changed, and are changing. I put this point. Your two-Power standard, your three-Power standard, if you have it, is no longer going to be a world-Power standard, and it is not going to be possible for any Power to have a world-Power standard.

Britain confronted one strategic problem which naval construction could not solve. The United States could challenge British maritime dominance if it wished, but not without reason. Anglo-American relations were good, with more common than competing interests. The DOL sought to pre-empt causes for conflict with the United States. It was a British response to the rise of American power, more important than the famous decision to remove the United States from calculations of the two-Power standard. Participants in open and secret British discussions about maritime law and war frequently (if obliquely) noted this issue. Whenever Britain fought any European power, while the United States was neutral, the latter would have identical economic interests and preferences for law. When considering the ‘interference of a neutral, in time of war’, Grey said, ‘supposing we were at war with Germany or France, who could intervene effectively. Only the United States.’ Its attitude ‘was the most important point to consider.’

Balfour’s government suggested that a projected international peace conference should discuss maritime law so as to serve national interests. At the Second Hague Conference during 1907, his Liberal successors proposed a revolution in maritime law to serve the interests of Britain and humanity. An international code should supersede national ones, capped by an IPC, where neutral citizens could appeal the verdicts of belligerent jurists. Every nation must compromise on its laws to achieve these ends.

14 FO 881/10499X, TNA.
Following the DNIs’ arguments, the Foreign Office rank ordered British interests, accenting blockade powers and contraband rights as a neutral, and downplaying the latter as a belligerent. The Hague Conference failed to resolve these conflicts of national interest and law, but it did approach a compromise, and approved an IPC without any code to apply. These developments could only stagnate unless Britain, hegemon at sea and outlier in maritime law, took the lead. The Admiralty gave it reason to do so.

The Admiralty, Economic Warfare and International Law

RN policy regarding economic warfare and international law between 1900 and 1914 is often thought mysterious. It was complicated, but it is comprehensible. Sailors like Fisher sometimes said that law was irrelevant in war, but their opinions were more nuanced. Sailors were pragmatic hegemonists, but sophisticated ones. Many of them internalized ideas about civilized warfare. In 1903, when testifying before a key strategic committee as DNI, Prince Louis of Battenberg noted ‘the larger question of humanity. You cannot condemn forty millions to starvation on the ground that they assist in defending their country, because you include women and children.’ When asked whether ‘the Admiralty have framed their plans on the assumption that the International Laws of warfare will be binding under all circumstances upon all nations’, he replied that belligerents generally would obey ‘the International Laws of warfare . . . It is rather difficult to see how civilized warfare can be carried on unless you assume that.’ Enemies, however, might adopt some uncivilized methods: ‘it would be undoubtedly unwise to depend too strongly upon every point of International Law being adhered to’. As the retired admiral of the fleet, Gerard Noel, said in 1909, ‘naval action in war will, and must, to a certain extent be guided by International Law; but where we find that we cannot reasonably do this, why, we may have to break the law’. Sailors did not believe that they could break the law unilaterally. They merely forecast that in an existential war, events would cause this to happen.

Sailors wanted to conduct economic warfare against all comers, particularly by blockade and attacking enemy trade. They differed over contraband rights, which they ranked as less important. All agreed that

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16 ‘Nineteenth Meeting of the Royal Commission on the Supply of Food and Raw Material in Time of War’, Nov. 5, 1903, ADM 137/2872, TNA.
reduced contraband rights would aid Britain as a neutral. One Naval Staff officer noted:

When Great Britain is belligerent, she can be safely trusted to look after her own interests, but the dangerous time for her is when she is neutral and does not wish to take such a strong line as to render herself liable to be drawn into war. At such a time, the existence of a well reasoned-out classification of goods will be of enormous advantage, not only to Great Britain, but to all other commercial communities.  

When balancing belligerent gains against neutral losses, DNIs, the experts on correlating law and strategy, thought these rights counter-productive. Most sailors and Admiralty officials thought that controlling contraband on neutral vessels was difficult but useful. DNIs generally presented these complicated views to others, spinning their own opinions. In 1905, the Admiralty rejected Clerk’s arguments that Britain should slash contraband rights. Unless ‘we do lose as a neutral more than we gain, which is at least doubtful, it would appear undesirable to relinquish a right whose effects may be at times very beneficial’. This formulation supported belligerent rights over contraband, but still focused on Britain as a neutral.  

In 1906, however, the Admiralty’s proposals for Britain’s policy at the Second Hague Conference, written by Ottley, the DNI, followed Clerk and Hardinge. ‘The crux of the whole question’ was how contraband affected Britain’s position as a neutral. Interdepartmental consultation had answered it. Britain should define the largest possible body of items which ‘under no circumstances’ could be seized. Contraband should be limited to munitions and military stores. As a belligerent, Britain could not profit from broad definitions of contraband:

We are no longer in a position to seriously embarrass a European enemy by the always dangerous method of interference with neutral commerce. In the case of a war with Germany, for example, we could not expect to prevent that country acquiring any contraband needed over her land frontiers.

Contraband from Germany, even if sent overseas from the United States, would always be landed in neutral European ports under the very guns of our cruisers, and the onus of proof as to its ultimate destination would rest with us.

To invoke the difficult and dangerous theory of continuous voyage in order to justify our interference with such traffic might imply a conflict with the United States.  

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18 Notes on Contraband, undated but 1908, no author listed, but typewritten and in official record, ADM 116/1073, TNA.
19 Admiralty to CID, June 10, 1905, FO 881/9328X, TNA.
20 Admiralty to Foreign Office, May 17, 1906, FO 372/23, TNA.
Yet the Admiralty entered the Hague Conference with reluctance, precisely because it feared the weakening of contraband rights. As Fisher wrote, ‘the next thing to be given up will be our hard won Maritime rights – ‘Continuous Voyage’ – ‘Private Property at Sea’ – ‘Contraband’ – for the inevitable result of Conferences and Arbitration is that we always give up something. It’s like a rich man entering into a Conference with a gang of burglars!’

Attitudes changed when burglars offered boodle. Italy, expanding on Anglo-American law, proposed that any member of a squadron which effectively blockaded a place could seize ships bound there over an undefined, and potentially large, ‘rayon d’action’ (operating range). This proposal would kill the continental doctrine that blockade could be exercised only near its target, and simplify its legal status. Other states signalled that they would accept this proposal in return for British concessions on contraband. Through mutual compromise, both Germany and Britain could gain their legal aims in maritime war, so boosting their war plans against each other: increasing British power to blockade, and Germany’s ability to trade, through the Netherlands.

These opportunities led the Naval Staff, revising its war plans against Germany, into temptation. If it mastered an area 100 miles long and 100 miles deep around the Heligoland Bight, 50 miles off the effluence of the Elbe, Jade and Weser rivers, the RN could shut every German entrepôt on the North Sea, save perhaps Emden, gateway to the Ruhr. In any war with Germany, Britain must fight for this area, but Italy’s proposal would boost the rewards for victory. A military blockade would enable a commercial blockade to be mounted far away, reducing the threat of defensive flotillas, mounted by destroyer, mine, submarine and torpedo, while strengthening the value of offensive ones. These opportunities galvanized the Admiralty to support reform of maritime law, within limits. It wished to strengthen blockade against all comers, especially Germany, but it knew that aim might fail. It tolerated a compromise on contraband (where British rules were ‘very effective, in certain circumstances, in bringing pressure upon a belligerent’) only by retaining a back door – that the doctrine of continual voyage cover absolute contraband.

As McKenna explained, continuous voyage

22 Martin and Nicholas Lambert assess the Admiralty’s approach to the DOL well. Martin, however, underrates how the Admiralty valued contraband, and rejects the idea that it intended to sidestep the DOL if effective blockade failed. Lambert underrates the Admiralty’s interest in the DOL and contraband. Coogan misconstrues the relationship between the DOL and naval matters. Hull offers a balanced account.
23 Admiralty to Foreign Office, Sept. 20, 1907, FO 881/9077, TNA.
would give an opportunity of checking imports to a belligerent country through a neutral port inasmuch as any goods of a contraband nature found in a neutral ship bound to a neutral port in close connection with the enemy would form a good reason for detaining the vessel, if there was prima facie reason to presume the hostile destination of the contraband; and even if the detention did not result in the condemnation of the goods or ship, the cost of freight and insurance would at once rise against the belligerent affected and assist in causing a financial crisis.

This approach to economic warfare, inspired by McKenna’s experience as a banker, combined effective blockade with coercive but not clearly illegal practices. Crowe accepted ‘the somewhat irregular procedure . . . to remain able to apply on the enemy by even unsubstantiated seizures in the hopes of driving up freights and rates of insurance’, while Grey saw the value of retaining ‘a pretext for creating a scare about freights and insurance’. They made Germany concede McKenna’s demand. Both perhaps assumed that if his procedures were practised, at worst, the IPC would mulct Britain for damages in a few cases long after the event, while it evaded costs for most damage inflicted on an enemy. The Admiralty also insisted that the conference ignore the issue of converting merchant ships to warships where Germany threatened British commerce overseas, leaving Britain to reply as it wished, irrespective of law.

The Foreign Office thought it had harmonized a triumph of liberal realism, bolstering blockade and civilization while minimizing contraband, thus helping Britain as both neutral and belligerent. The Admiralty accepted that the DOL suited British interests nicely as a neutral. Against the greatest potential foe, Germany, it bet on blockade, but retained loopholes against future considerations. A CID official later noted, after private discussions with McKenna, that Fisher allowed the DOL ‘to be negotiated with the deliberate intent of tearing it up in the event of war. Characteristic’. McKenna held that ‘the Germans are sure to infringe it in the early days of the war, then with great regret we tear it up. If they don’t infringe it than we must invent an infringement.’ These comments were overstated, because the Admiralty thought it could defeat Germany by and because of the DOL, but indicative. During August 1914, when the Declaration was stillborn, effective blockade was impossible and he had power over economic warfare, McKenna

24 ‘Naval Conference’, n.d., minutes of meeting, minute by Crowe, 24.12.08; Grey to McKenna, Dec. 26, 1908, FO 371/794, TNA.
26 Major AC Grant-Duff diary, entries 22–11, 24.11.11, Grant-Duff papers, 2/1, Churchill College, Cambridge.
took the first excuse to escalate contraband rights, by using accurate but unprovable reports about German nationalization of food, to justify making all shipments of foodstuffs absolute contraband. This position was soon abandoned, but it shaped Germany’s decision to pursue unrestricted submarine warfare. McKenna made his prediction come true.

Britain dominated the London conference. It offered to cut belligerent powers over contraband in return for adoption of its definitions of that matter and also of its procedures on blockade. The Admiralty pressed for ‘rayon d’action’, believing that this would enable blockade, outweighing Germany’s enhanced ability to trade through neutrals. To maximize the force of blockade, it demanded ‘a formula which is capable of wide interpretation, and which will give us all that we were practically able to assert in former wars’. The DOL was a compromise over a compromise: a highest common denominator between national schools of sea law and views about how to balance the interests of neutrals and belligerents during war. It harmonized the aims of all participants. The rules for blockade maximized the advantages of all stronger belligerents, while narrow definitions of contraband aided all neutrals and weaker belligerents. Contraband was either (a) absolute, munitions sent directly or indirectly to an enemy country, or (b) conditional, foodstuffs and finished items like optical instruments sent straight (without an intermediate neutral destination) to an enemy military base, or else assigned to a contractor in hostile territory notorious for working with the enemy’s government. Absolute contraband could be seized anywhere at sea. All conditional contraband assigned to neutrals or sent straight to a neutral port, no matter what the final destination, was safe from seizure. When carried on neutral vessels, such items assigned to enemy civilians and sent straight to a hostile port which was neither a military base nor under blockade could be condemned only by proving that they were destined for a hostile government. Belligerents could expand their list of contraband, excepting materials, including cotton or metals, which were termed ‘free goods’ that ‘may not be declared contraband of war’. As a neutral, the narrow definition of contraband and the wide one of free items met British interests precisely while surrendering belligerent powers that the Foreign Office thought futile. Belligerents could capture all items (including free goods) on every ship moving directly to and from a port under effective blockade, seize all enemy merchantmen, or search neutral

27 ‘Declaration of London, Conference held at the Foreign Office, 19 August 1914’, ADM 116/1233, TNA.
28 Naval Conference Committee, Further Report, Oct. 26, 1908, FO 881/9753 X, TNA.
29 ‘Naval Conference Committee, Memorandum by the Director of Naval Intelligence’; ibid.
vessels for contraband at sea and bring them into a Prize Court. The latter
might condemn any items they thought contraband, subject to appeal to
the IPC.  

Other states accepted Britain’s views because they valued its compro-
mise on contraband. For the seapower most likely to be neutral, the DOL
would let most American exports and imports pass freely to and from all
markets during war. The DOL suited Germany, the seapower most
convinced that war with Britain was possible. Germany shaped the
DOL to suit the Schlieffen Plan, the centre of its strategy. Germany
doubted the power of law, save for the DOL. It aimed to avoid defeat
by economic warfare in a Great War through force and law. The Kriegsmarine
would contain or crush foes. The DOP and DOL
would make any enemy conduct economic warfare only through close
blockade, exposed to ambush, while letting Germans import and export
goods via Dutch ports, however inconveniently. The Rhine provided
access to the world, rendering other navies moot. To achieve these
defensive aims, Germany chose not to attack the Netherlands, complicat-
ing the Schlieffen Plan. These aims were achievable if Germany fought
only France and Russia, when Britain would back the DOP and DOL,
while Germany handled its naval foes. If England were an enemy, these
aims would be unlikely but not impossible as long as the United States
backed the DOL. The rise and fall of the DOL, and a naïve understanding
of international law and economic warfare, shaped German strategy
before the war and its redefinition during 1915 in ways few recognize,
save Isabel Hull.  

A Shaggy Dog Story

The DOL, the first and leading area of diplomacy where the government
followed a liberal internationalist course, was a symbol of intent to
Radicals and the world. Thus, Grey wanted parliament to ratify that
instrument, which, strictly speaking, was unnecessary, excepting
a Naval Prize Bill. He expected rapid approval. Politics blocked that
hope. The DOL missed the legislative queue during 1909. After the
election of January 1910, the minority Liberal government faced gridlock
in the Commons and reversal in the Lords. Though the government gave
much legislative time to the DOL, Unionists and advocates of belligerent
rights stirred public opinion against it. This opposition wished to preserve

30 James Brown Scott (ed), The Declaration of London, February 26, 1909: A Collection of
Official Papers and Documents Relating to the International Naval Conference Held in London
31 Hull, A Scrap of Paper.
offensive powers over contraband but, playing on fears of British vulnerability, claimed the DOL would help an enemy starve Britain. These ‘absurd’ arguments enraged diplomats, but they were forced to consider parliamentary tactics, even to work with pressure groups.  

Liberals countered that the DOL synthesized national and international interests and moved the world towards rule by law. Ultimately, the Commons passed the DOL, embodied in the Naval Prize Bill, but the Lords rejected it. Immediately, foreign governments froze efforts to ratify the DOL. The Foreign Office accepted that public opinion mistrusted the DOL. It tried to solve these problems though politics: to have all signatories accept interpretations of disputed clauses which would answer the main criticisms raised against the DOL, present the Naval Prize Bill again, and, if it fell, have the Cabinet denounce Unionist intransigence and approve the Declaration. These partisan ends required Admiralty support.

Opponents of the DOL had grounds to claim that enemies could define any British merchant as a notorious contractor and any town as a base, and seize all food bound there as absolute contraband. The DOL was drafted in a politicized and ambiguous fashion. Crowe agreed that the French term “‘Base’” was a compromise. We had “base d’operations” at first. Then the Germans wanted to add “base de ravitaillement” which would in practice have meant any port in the neighbourhood of which a military garrison of however insignificant a size was stationed. Finally it was agreed to have “base” only. As the War Office noted, ‘base’ was a ‘vague’ term ‘susceptible of more than one interpretation’. Though the common definition was narrow, ‘any belligerent whose interests might be served thereby’ easily could widen it. States had complex positions on these issues, producing international and interdepartmental debate which took years to resolve. Just as with Britain and blockade, Germany insisted on loose definitions over contraband. Even more than McKenna’s procedures, these definitions would have eased Britain’s ability to control contraband had that instrument been ratified. British authorities did not want to take that bait, which would catch them on the Unionists’ hook, by endangering popular acceptance of the DOL.

The Admiralty’s refusal to support the DOL annoyed the Foreign Office, which feared the RN might abandon the instrument. During

32 Minute by Crowe, June 30, 1910, FO 371/1030, TNA.
34 Minute by Hurst, July 17, 1912, FO 371/1553.
36 War Office to Foreign Office, Oct. 10, 1910, FO 371/1031, TNA.
1911–12, Grey pressed the new First Lord, Churchill, and First Sea Lord, Battenberg, to have the Board of Admiralty support the DOL, but failed.\textsuperscript{37} Sailors worried over the definition of terms. Perhaps they declined to be the drudges of diplomats or to fight a partisan battle against many of their own supporters. Perhaps they had second thoughts about the DOL, especially as hopes for effective blockade waned.\textsuperscript{38} Still, by 1913, the Admiralty accepted the German definitions of disputed terms, reluctantly, even though they would help any belligerent turn food into absolute contraband. ‘From the naval point of view’, it was ‘generally satisfied with the position now reached’. All that remained was ‘to obtain the concurrence of the Powers to a definition of ambiguous phrases which will satisfy public opinion’ and to assure the latter that the IPC would not adopt ‘an unreasonable interpretation’ of these clauses.\textsuperscript{39} The Board approved the Naval Prize Manual of 1913, incorporating the DOL.\textsuperscript{40} By late 1913, the Foreign Office had found political cover, but faced other complex issues, such as having all signatories officially accept definitions of disputed terms and then ratify the DOL. The Foreign Office did not move quickly on these issues. It saw no immediate need – that is, possibility of war – to justify trying (and perhaps again failing) to ratify the DOL in Britain through partisan means during a political crisis. By July 1914, the DOL was unratiﬁed by any state and rejected by Britain.

**War Plans and the DOL**

From 1815, the RN believed it could effectively blockade German ports on the North Sea. Probably it thought so in 1909. Certainly it did in 1911, when the Home Fleet defined its war plans against Germany and ‘Arrangement for Rendering the Blockade Effective’. Fourteen cruisers and 36 destroyers, accompanied by submarines and backed by battleships, would blockade the Bight with the principal object of:

(a) preventing raiding expeditions leaving German Ports in the earlier stages of hostilities

(b) preventing the German Fleet putting to sea without the British Commander-in-Chief knowing it and, when it is known to be at sea, conveying to him such information as to its movements as will enable it to be brought to action by the British Main Fleet.

\textsuperscript{37} Grey to Churchill, Dec. 23, 1911, FO 800/87; minute by Grey, July 19, 1912, FO 371/1553.

\textsuperscript{38} Lambert, *Planning Armageddon*, 94–98.

\textsuperscript{39} Admiralty to Foreign Office, July 7, 1913, FO 371/1862.

Comparing these plans with the DOL, the Admiralty agreed, in the words of the DNI Admiral Bethall: ‘the military blockade will be effective as a commercial blockade’. All ships in ‘the area of operations’, the North Sea, ‘belong to the blockading force’.  

This conclusion, resting on what the DOL said and did not say, probably was accurate as regards the North Sea, save perhaps Emden, though not the Baltic Sea. The DOL only vaguely defined the ‘rayon d’action’ and the nature of blockaders. Warships across the North Sea could seize ships as long as German ports on that coast were blockaded. Effectiveness was ‘a question of fact’, varying with circumstances. ‘The General Report Presented to the Naval Conference on Behalf of its Drafting Committee’, which was a powerful means to interpret the meaning of the DOL, supported the Admiralty’s view. It rejected traditional concepts of close blockade against a coast possessing all modern means of defence … there could be no question of enforcing a rule such as that which formerly required that ships should be stationary and sufficiently close to the blockaded places; the position would be too dangerous for the ships of the blockading force, which, besides, now possess more powerful means of watching effectively a much wider zone than formerly.

One ship might make blockade effective. Only Prize Courts could define whether a blockade was effective, which might not happen until long after it was over. Since such rulings never were made, these points are moot.

The Admiralty’s case for distant blockade rested on closing German ports. Here, issues of planning and historiography become complex. Naval records for 1912–14 are fragmentary. Conceptual difficulties surround economic warfare. The prevalent descriptor, ‘distant blockade’, is slippery. Its strict meaning is that enabled by the DOL: a legal blockade, with most blockaders far from the target. This meaning took different forms when maritime law struck icebergs in 1914–16. Preparations to execute that concept matched those required merely to attack enemy trade and to control contraband, different animals in legal terms, but the only ones the RN hunted in 1914. RN planning for military blockade and all forms of economic warfare against Germany were distinct in aim, yet overlapping in means and area. In any war, opportunistically, Britain would take what it could get: at worst, seizing German ships, ignoring contraband and blockade; at best, blockading all German ports in the North Sea, intensifying control over contraband, and looking to the Baltic. After 1918, the term ‘distant blockade’ described all pre-war policy for economic warfare, and every retaliation against unrestricted

41 Vice Admiral Commanding 1st and 2nd Divisions, Home Fleet to Admiralty, Aug. 31, 1911, 5.S, ‘Blockade of North Sea Coast of German Empire’, ADM 1/ 8132.
42 Scott, The Declaration, 135–6, 144–5.
submarine warfare, including actions which by pre-war standards were illegal and so were not practised until March 1915.

The DOL provided a target for operational planning against Germany, which rested on overconfidence in British capabilities and an underestimation of the power of torpedoes, mines and the Kriegsmarine. That operational gambit failed, although the RN’s strategic planning succeeded. The literature misses these points because it ignores the DOL, with two exceptions. Martin pioneered but did not fully develop this argument. Nicholas Lambert transformed our concept of RN work with flotillas, but denies that the RN pursued effective blockade, ignoring evidence to the contrary. An economic Schlieffen Plan, if it even existed, was not the only plan followed by the RN.43

During 1912–14, the Admiralty increasingly doubted that it could effectively blockade Germany. Its war plans became more cautious, at some point losing the armour of international law.44 The literature on the Anglo–German naval race focuses on capital ships, where Germany lost, overlooking the areas it won. German aircraft, destroyers, minelayers and submarines expanded in quantity and quality, eliminating Britain’s superiority in that sphere and thus its ability to dominate the Heligoland Bight or to blockade effectively. The RN was uncertain about the outcome until war began. In July 1914, its fleet exercises tested modes of distant blockade.45 When calling a conference for all admirals in the United Kingdom, the Admiralty noted, ‘surface craft, and even Submarines in surface conditions, closely blockading an enemy’s port, will run great risk of being stalked and torpedoed by Submarines’. The scholarly debate over flotilla defence misses the significance of flotilla offence to economic warfare. When war began, flotillas prevented either side from dominating the North Sea, wrecking pre-war concepts of effective blockade. On the eve of war, Naval Staff officers considered blockading the Heligoland Bight by seizing Dutch, German or Norwegian islands as forward bases, but disregarded these ideas.46 Had effective blockade been possible, the RN would have had the Cabinet honour the DOL. Instead, when war began, Britain had no legal means to enable its operational abilities. It could control all trade to and from Europe but not close enemy ports. It could not conduct effective blockade. Hence,

43 Martin, The Declaration; Lambert, Planning Armageddon.
45 Admiralty to Flag Officers, M. 0673, July 1, 1914, ADM 1/8387; Admiralty to Commander in Chief, Home Fleet, July 11, 1914, ‘War Orders No. 1 (War with Germany)’, ADM 137/1936, TNA.
46 Plans L a, L b and T, by LWD, July 27, 1914, ADM 137/995, TNA.
Britain did not declare one, proving how seriously it took sea laws, contrary to conventional claims that it broke them. Instead, like many a barrister, Britain merely bent the law.

The DOL at War, 1914–1915

Had the DOL ruled during 1914, Britain would have had the worst possible result – being unable to blockade or to control neutral trade with Germany. Instead, the DOL, accepted in principle by all leading states but ratified by none, had no legal force, though there was some political impact. All neutrals wished Britain to adopt the DOL, as it would have done in their place – that instrument suited neutral interests. Britain declined, just as Germany followed the DOL, unlike treaties Berlin actually had signed, because in this war that instrument suited Germans and harmed Britons. Instead, Britain pledged to follow the DOL ‘so far as may be practicable’. Belligerents and neutrals cherry-picked from the legal buffet of the DOL, the DOP and their own laws. The sea had laws, but no law. Everyone interpreted them to suit themselves, using the parts they liked and ignoring the rest. The DOL multiplied the chaos Grey had hoped to end.

In 1914, Britain could have conducted the most ruthless campaign of economic warfare ever known. Its acceptance of law limited that power. The central problems were defined in legal terms rather than economic, naval or strategic ones: not how best to damage the German economy, but rather, how to ensnare free goods, redefine absolute contraband and handle conditional contraband shipped to neutrals near Germany. Sailors, diplomats and politicians let the DOL’s contraband clauses cripple economic warfare until March 1915, though national law might have had similar results. Churchill and Battenberg combined those clauses with their attack on German trade and limited control of contraband. When Fisher returned to office, he tightened economic warfare only slightly. Grey, bitter towards Germany, valued neutral rights and hoped for American cooperation with British policy. He was mindful of the danger he had foreseen in 1911. If Britain rejected the DOL, any continental enemy ‘knowing perfectly well the risk, and desiring to avoid the danger of any friction with the United States’ would propose that each

47 Coogan, The End of Neutrality; Siney, The Allied Blockade.
accept the DOL and ‘refer to arbitration any question which arose
between them’, endangering England. He kept two politically explosive
commodities, cotton and food, conditional contraband, while rejecting
coercion against Scandinavian neutral entrepôts for Germany.
Experience confirmed his scepticism about contraband rights. In 1915,
as economic warfare exploded, Grey held

that if we can be secured against aggressive war being made upon us we should
agree to forgo [sic] interference with commerce in time of war. I believe also that
in view of the future development of the submarine and our excessive dependence
on oversea commerce it will be to our interest that the sea should be free in time of
war.  

Grey supported the DOL for ideological reasons, but also because to
denounce it would create an incoherent legal basis for economic warfare,
with diplomatic costs for this war and future ones, damaging neutral
rights Britain might again need. The civil, diplomatic and naval author-
ities managing economic warfare, including those identified with the
DOL, like Crowe and Slade, concluded that victory required abandoning
the Declaration’s restrictions on contraband. This advocacy failed until
the enemy made the case.

In 1914, Germany destroyed its defensive strategy for economic war-
fare by attacking law, liberalism and its neighbours. The Germans
assumed that they could break treaties, attack France, violate Belgian
neutrality and drive Britain to battle, yet still survive a long war through
Dutch treats. By attacking the expectations of liberals, Germany changed
their attitudes and the political processes abroad on which German
strategy for economic warfare relied. German actions drove Britain to
war. They made the American public and government enable rather than
restrain the RN, changing basic elements in British and German strategy.
Germany lost the protection the DOL gave weaker belligerents. Britain
exercised the power the DOP – not to mention the RN – gave stronger
ones. Germans saw items essential to their economy turned from free
goods to absolute contraband, the Dutch windpipe closed and food
shipments to civilians temporarily blocked. When Britain removed food
from the class of absolute contraband, it warned that this status would
resume if Germany established government control over food – which was
unavoidable. Believing themselves trapped by perfidious Albion, German
leaders simultaneously launched control over food and unrestricted sub-
marine warfare, unleashing the hunger blockade on their people. From

References:

51 Minute by Grey, undated, on memorandum by Eric Drummond, June 7, 1915, FO 800/95, TNA.
April 1915, driven by U-boats and Unionists, Britain ruthlessly controlled any goods carried by neutrals to or from Germany.

**Backdoors and Trapdoors**

The DOL could have been ratified before 1914. To assess that counterfactual illuminates how international law affected power politics. If so, Germany would have won the gamble of 1909. Britain would have followed the DOL, weakening economic warfare, which, however, was soft in any case, partly because of the political impact of the Declaration. Before March 1915, almost all food shipped across the Atlantic to neutral European ports reached them, even when destined for Germans. Never before had Germany imported so many calories, especially from the United States, or so much metal. However, the DOL would probably have slowed the hunger blockade by just a few months more than law actually did. Unrestricted submarine warfare caused that blockade. The DOL could not have slowed this decision much because of the backdoors and trapdoors within it.

Before 1914, the Admiralty was not alone in finding backdoors to the DOL. Ministers knew that in war, the DOL would let Germany trade through the Low Countries. In December 1912, the CID concluded that in war with Germany, ‘to bring the greatest possible economic pressure to bear’, the Netherlands and Belgium ‘should either be entirely friendly to this country, in which case we should limit their overseas trade, or ... definitely hostile, in which case we should extend the blockade to their coasts’. Britain must either dissuade the Netherlands from shipping additional quantities, even of free goods, to Germany or declare war, gaining the legal right to blockade Dutch ports and throttle the Teutonic windpipe. Implicitly, however, following the DOP, Dutch ships could export German goods. Britain also aimed to counter the contraband clauses of the DOL by forbidding British subjects to sell, or ships to carry to an enemy, any materials, including those on the Open List. Britain used all these extralegal means and McKenna’s ‘irregular’ procedures in 1914, and would have done so under the DOL.

Britain also would have exploited the trapdoors through which all rules for contraband fell, by concept, draft and fact. The DOL was drafted incompetently. It overgeneralized Cobdenite principles about the relationship between navies and societies from archaic evidence. Distinctions between conditional and absolute contraband assumed that liberal economics would rule war. Citizens would import items into societies

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52 120th CID Meeting, Dec. 6, 1912, FO 371/1862.
without involvement by states. When war began, that approach collapsed. Belligerent governments controlled the import and allocation of strategic materials, including free items, challenging that concept and converting conditional to absolute contraband. Terms used to distinguish conditional from absolute contraband, such as ‘bases’ or ‘notorious contractors’, could cover every port and merchant of enemy nationality, easing control of contraband. However arbitrary these ideas appear, for example, that rationing food enabled a hunger blockade, they were taken for granted and made law.

In previous wars, messages had travelled at the speed of ships, usually on those carrying the items they mentioned. Each ship carried papers showing the destination and ownership of cargo. Merchantmen could be examined at sea and contraband found quickly, safely and thoroughly. None of these conditions ruled in 1914. Through the General Report of the Drafting Committee, the DOL assumed they would exist. The DOL ignored well-known, crucial developments in commerce and communications. Exploiting the power and flexibility of radio, telegraph and steam, ships sailed without purchasers for cargo, marked ‘to order’. Ownership changed en route. Any item of conditional contraband labelled ‘to order’ or with changing ownership might be destined for an enemy state and could reasonably fall under that suspicion. These circumstances made cheating elementary for neutral firms, yet enabled belligerent states to retaliate without breaking the letter of the sea law. Such procedures exposed all conditional contraband to seizure under the inspection regimes assumed by a strict reading of the DOL – which any belligerent would adopt. The RN’s Naval Prize Manuals of 1903 and 1913 assumed that ship’s papers – invoices, manifests and bills of lading, including the name and address of consignees for cargoes – would indicate whether cargo contained contraband, without cheating. If problems emerged with papers, boarding parties were to search cargoes – which would take weeks, exposing cruisers and, illegally, merchantmen, to submarine attack – or else send them ashore.53

The rules for how belligerents could inspect merchantmen and detect contraband copied standard procedures from 1815. The DOL let belligerents bring any merchantman they wished to inspect ashore, though implying that this practice would be uncommon. Ship’s papers and crew statements were described as the main evidence, but unspecified sources might be used. Yet the practices of 1815 let every party present all the evidence relevant to any case: its scale would swell if that principle was

followed in 1914. On this basis, any barrister could build a case to bring every neutral ship ashore for inspection or to deny that any could be stopped, to condemn or to free every item, and to seek the smallest or greatest definitions of evidence. These weaknesses were known, yet ignored. The DOL was an open door to realpolitik. It could not enable the new era of international law and civilized warfare its advocates anticipated. As written, the DOL was unworkable; if applied, the clash between legal fiction, strategic friction and economic reality must wreck it. International law is an evolutionary conversation, changing to suit the environment, and not just in one direction. By 1914, liberal internationalism, political economics and legal positivism led the law of the seas to an evolutionary dead end. The winds of war drove it on a lee shore.

Conclusion

British policy over the DOL stemmed from a debate integrating diplomatic, economic, humanitarian, legal and naval issues, for all cases, against all comers. This policy was rational, but wrong about the war ahead. Between 1914 and 1918, economic warfare was aimed at civilians and economies. Effective blockade of Germany was impossible. Control of contraband was powerful, but costly. These errors were hard to avoid, though Unionist leaders did so. The Admiralty misconstrued the balance of seapower – how it could control the Heligoland Bight in open-ended competition, which the Kriegsmarine absolutely must try to win. The Admiralty covered that failure through backdoors on contraband and faith that the DOL would sink in existential war. More notably, British authorities believed that controlling contraband was impossible, while civilians and economies were not fair targets. These attitudes stemmed from ideology and technical miscalculations. Only in existential war could liberals, for the first time, consider how far humanitarianism should stay their hand against a ruthless foe. Pragmatic hegemonists already had their answer. Only when states commanded economies in total war, overthrowing conventional ideas of economics, did the power of control over contraband become clear, conducted through means which were incomprehensible until assayed.

These issues illuminate the relationship between law and war, and with this, the evolution of the distinction between the military and the civilian. Law and morality are strong. Realpolitik and power are stronger. In existential war, statesmen do the necessary, as they say in Body Heat. Hull and Lemnitzer are right to insist that, more than most states, when Britain signed laws of war it aimed to honour them. Andrew Lambert is right to argue that British authorities believed law would
break in existential war. These views are distinct, but not contradictory. In 1915, British authorities adopted ruthless tactics they had denounced before 1914. That does not make them hypocrites, merely naïfs about law and war. Seapower gave Britain the best of all worlds in sea law, no matter what the rules. Almost any law must threaten Germany in a war with Britain, unless the latter surrendered one edge of the trident of seapower. During 1914–15, law gave maritime war a jagged edge. It inspired Germans and Britons to see each other as treacherous monsters. Law links morality and strategy in paradoxical ways: the letter of the law triggered unrestricted submarine warfare and the hunger blockade. Law was among the tangled roots of total war.