

## EDITORIAL COMMENT

### THE CESSATION OF DIPLOMATIC RELATIONS WITH GERMANY

Since February 4, 1915, when the Imperial German Admiralty proclaimed a "war zone" around the British Isles and declared its purpose to sink on sight, without warning, and without regard to the fate of the passengers or crew, any enemy merchant vessel found in that area, warning neutrals of the danger they would incur of being sunk without warning in those waters, there has been a serious diplomatic controversy between the United States and the Imperial German Government.

The illegality of this proceeding on the part of the Imperial Government is too clear to require extended discussion. The arbitrary designation and demarcation of such a "war zone" by a belligerent Power are not justified by the laws and conditions of effective blockade; for it cannot be pretended that a blockade is effective through which by far the major part of the vessels passing in and out of the alleged "war zone" are not, in fact, actually captured. But the chief offense to neutrals in this proclamation was not the arbitrary limitation of a prohibited area on the high seas. It was the assumption of a right to sink without warning, or any of the legally prescribed formalities of detention and search, any vessel found within this area. This declaration involved a menace of twofold consequence, for it exposed to destruction (1) the lives of neutral innocent noncombatants, and (2) neutral vessels with their passengers and crews. These restrictions upon the freedom of the sea were, from all points of view, so clearly in conflict with established neutral rights as to be intolerable. The Government of the United States, therefore, on February 10, 1915, expressed its urgent protest against the German declaration, and issued its now celebrated note regarding "strict accountability," in case of the sinking of an American vessel or the destruction of American lives as a consequence of the orders of the Imperial German Admiralty.

The reason for this disregard of the legal requirements concerning detention and search, and of provision for safety of passengers and crew,

in case of the destruction of a vessel, was the inability of a new instrument of naval warfare to effect its purpose without exposing itself to danger if it were held to comply with existing legal requirements. This instrument was the submarine torpedo boat, the only sea craft which the Imperial German Government was in a position to employ for the purpose of preventing commerce with Great Britain. The question at issue was, in effect, whether the naval exigencies of the Imperial Government were to be permitted to make an end of neutral rights and the established laws of the sea by employing an instrument of destruction that could not comply with them without risk to itself, yet was able by a secret blow to sink a ship and destroy the lives of innocent travelers and noncombatant crews.

The Imperial Government took the ground that the use of the submarine was essential to the accomplishment of its purpose. The Government of the United States held that noncombatant vessels could not be legally sunk without warning, and that provision must be made for the safety of passengers. Thus, from the beginning of the controversy in February, 1915, it has been evident that the Imperial Government must either conform to these requirements of established law or that the friendship between the United States and Germany could not continue. From that time forward, without waiting for the deplorable events that subsequently occurred, the Government of the United States would have been fully justified in presenting the alternative of an immediate abandonment of its policy by the Imperial Government or the cessation of diplomatic relations. The necessity for a choice was bound up in the opposing attitudes of the two governments and an immediate decision might properly have been at once insisted upon.

The patience of the Government of the United States in dealing with the Imperial Government is unexampled. The sinking of the *Lusitania*, on May 7, 1915, involving the loss of 1153 lives, among them 114 American men, women, and children, justified immediate action by the Government of the United States, which would have obtained the united support of the American people. Since that outrage was perpetrated many more American lives had been destroyed, when the sinking of the *Sussex*, on March 24, 1916, brought public indignation in the United States to a point that absolutely necessitated action.<sup>1</sup>

<sup>1</sup> See editorial entitled The Correspondence Regarding the S.S. *Sussex*, in this JOURNAL, Vol. 10, No. 3, July, 1916, pp. 556-560.

On April 18th the Secretary of State said:

Unless the Imperial Government should now immediately declare and effect an abandonment of its present methods of submarine warfare against passengers and freight-carrying vessels, the Government of the United States can have no choice but to sever diplomatic relations with the German Empire altogether.

The effect of this note was to call forth a *réponse de transaction*, under date of May 4th. Although the German Ambassador at Washington had stoutly declined by instruction of his government to admit that the sinking of the *Lusitania*, a settlement for which was then under discussion, was "illegal," the Imperial Government now practically conceded that the sinking of merchant ships without warning and the destruction of the lives of noncombatants were in violation of international law, and could be defended only on the ground of reprisal against a belligerent; a defense that wholly ignored the rights of neutrals. With evident reluctance, accompanied with the expressions of sentiments of unfriendliness toward the United States because of its exportation of arms and munitions, the Imperial Government did, however, agree thenceforth to conform its conduct to the requirements of international law; but, with a view to inducing the Government of the United States to place restraints upon the conduct of Great Britain, reserved "complete liberty of decision" in case the United States should not succeed in obtaining the desired concessions from that Power. To this the Secretary of State replied, in effect, that the Government of the United States could not entertain the idea of purchasing Germany's compliance with international law by negotiation with another Government.

As was pointed out in this JOURNAL in the concluding comment on the *Sussex* correspondence, the interchange of views during April and May, 1916, did not, therefore, result in a final solution of the controversy. The conduct of the Imperial Government for a time, however, seemed to indicate a triumph of American diplomacy, but the attitude of both Governments remained substantially unchanged.

The negotiations regarding the *Sussex* incident, had, however, resulted in an ultimatum on the subject of submarine warfare. The Government of the United States had firmly and irrevocably expressed its determination to sever diplomatic relations with Germany altogether, in case the practice complained of was not abandoned. The counsels of the Imperial Government, while temporarily leaning toward

the total abandonment of the sinking of merchant vessels without warning and the merciless destruction of noncombatants, as international law demanded, appear, in fact, to have been divided. The sinking of ships by submarines continued, but it was practiced for a time with a certain degree of restraint.

On January 31, 1917, the German Ambassador presented to the Department of State at Washington a memorandum reading as follows:

From February 1, 1917, all sea traffic will be stopped with every available weapon and without further notice in the following blockaded zones around Great Britain, France, Italy and in the Eastern Mediterranean.

(Then follows the circumscription of the zones.)

Neutral ships navigating these blockade zones do so at their own risk.

Provision is made that "neutral ships which are on their way toward ports of the blockaded zones on February 1, 1917, and have come within the vicinity of these zones, will be spared during a sufficiently long period;" but, if they have not reached these zones, they are warned to return. Then follows an edict which is, without doubt, the most dictatorial attempt to lay down the rule of the sea and the conditions upon which neutral nations may make use of it ever communicated by one government to another:

Sailing of regular American passenger steamers may continue undisturbed after February 1, 1917, if

- (a) the port of destination is Falmouth;
  - (b) sailing to or coming from that port course is taken via the Scilly Islands and a point 50 degrees north 20 degrees west;
  - (c) the steamers are marked in the following way which must not be allowed to other vessels in American ports: On ships' hull and superstructure 3 vertical stripes 1 meter wide each to be painted alternately white and red, and the stern the American national flag.
- Care should be taken that, during dark, national flag and painted marks are easily recognizable from a distance and that the boats are well lighted throughout.
- (d) one steamer a week sails in each direction with arrival at Falmouth on Sunday and departure from Falmouth on Wednesday;
  - (e) the United States Government guarantees that no contraband (according to German contraband list) is carried by those steamers.

Comment upon these extraordinary decrees is superfluous. They read like regulations for vessels sailing in German territorial waters. They prescribe not only the one port of destination to which American vessels may go, but the route to be followed, the precise dimensions

and colors of the zebra-like stripes with which they must be decorated, and even the days of arrival and departure as well as the number of sailings.

To this memorandum there was only one possible answer. On February 3 the Secretary of State addressed a note to the German Ambassador recalling the correspondence concerning the *Sussex* and concluding in the following language:

In view of this declaration (that all ships met within the zones will be sunk), which withdraws suddenly and without prior intimation the solemn assurance given in the Imperial Government's note of May 4, 1916, this Government has no alternative consistent with the dignity and honor of the United States but to take the course which it explicitly announced in its note of April 18, 1916, it would take in the event that the Imperial Government did not declare and effect an abandonment of the methods of submarine warfare then employed and to which the Imperial Government now purpose again to resort.

The President has, therefore, directed me to announce to Your Excellency that all diplomatic relations between the United States and the German Empire are severed, and that the American ambassador at Berlin will be immediately withdrawn and in accordance with such announcement to deliver to Your Excellency your passports.

Thus officially terminated a relation of friendship which had long been sincerely cherished, and which the Government of the United States, with unprecedented forbearance, had striven to maintain. Serious as such a step is, it is approved and sustained by the unanimous opinion of loyal American citizens. It had been provoked by an attitude of indifference to the claims of friendship and the rights of humanity that invalidated all professions of amity, and subsequent revelations of the spirit and designs of the Imperial German Government regarding the territorial integrity of the United States confirm the decision that further intercourse with the Imperial German Government was derogatory to the honor and dignity of the United States.

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#### LIMITED USE OF FORCE

The Special Session Message of President Adams of May 16, 1797, at the time of strained relations between the United States and France, offers suggestive material for comparison with conditions at present confronting the United States. President Adams said: