

Contraband

According to Oppenheim , “ Contraband is the designation of such goods as are forbidden b either belligerent to be carried to the enemy on the ground that they enable him to carry on the war with greater vigour .” It is the right of a belligerent to condemn neutral property which is destined for the use of its enemy . The doctrine of contraband can be traced to the declaration of Paris , 1856 . Belligerents may seize enemy contraband goods which are being carried to an enemy destination on neutral ships , or neutral contraband goods which are being carried to enemy’s destination or enemy’s ships or neutral ships .

For Contraband , articles can be classified into three categories , viz –

(a) Absolute contraband ,

(b) Relative contraband , and

(c) Free articles .

(a) Absolute contraband : Articles clearly of warlike military character like arms and ammunitions or machinery for the manufacture of such arms , are considered to be absolute contraband .

(b) Relative Contraband : Articles which may be used both for purposes of peace and of war are considered to be relative contraband , for example , foodstuff , clothing , fuel etc .

(c) Free Articles : Articles which can never be declared as contraband like soap , paint , fancy goods , watches , etc , are considered as free articles .

Articles which are considered as an absolute contraband are always considered to be contraband material . They can be seized and confiscated if intended for enemy destination , whereas articles of relative contraband can be seized if destined for the armed forces of belligerent . The free articles cannot be seized and cannot be treated as Contraband .

Doctrine of Continuous Voyage : The very essence of the test of contraband material is that it is destined to a hostile territory . The material may be destined to a neutral State , with the view that it may be resold an sent to the adjacent enemy territory . The main object of such device the capture of the material by the other

belligerent State . In such circumstances doctrine of continuous voyage is applicable

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Effect of Carriage of Contraband :

- (1) Contraband material can be seized , provided the belligerent can seize it in the open sea or in the territorial waters of such belligerent State. But it cannot be seized in neutral territorial waters .Sometimes , even the ship carrying the contraband cargo is liable to seizure .
- (2) Cargo , or the vessel so captured , must be confirmed as contraband by the adjudication of a Prize Court established by that State . If the Prize Court holds that the seizure was legitimate , the cargo or vessel is declared to be a good prize .
- (3) The cargo can then be confiscated by the State which has captured it .

Blockade :According to Oppenheim , “ Blockading by men of war of the approach to the enemy coast or part of it for the purpose of preventing ingress or egress of vessel or aircraft of all nations .” The following ingredients of blockade must be noted :

- (1) Blockade must be by men of war , though it may be reinforced by other means .
- (2) Blockade may prevent ingress or egress or both.
- (3) Only Enemy coast or part of it is to be blockaded .
- (4) Blockade , to be admissible , must be impartially applied to vessels or aircraft of all nations .
- (5) Blockade is warlike operation .
- (6) Blockade is not siege which aims at the capture of the besieged place , it only intercepts intercourse by sea .

Essentials of a Valid blockade

- (a) Proper establishment : It must be established under the authority of a belligerent Government or its Naval Commander .

- (b) Effectiveness : According to Declaration of Paris and London , blockade must not be nominal or a paper blockade , but it must be real and present danger to vessel in any attempt to pass through .
- (c) Continuously maintained : The blockade must be continuously maintained . If the blockading is driven off by a superior force of the enemy , then it is void .
- (d) Notification : Notification must be made either by a belligerent Government or a Commander of a naval force acting on behalf of his State , and must specify the date when the blockade begins , the geographical limits of the coast line under blockade and the period within which the neutral vessels may come out .
- (e) Impartiality : A blockade must be impartial against all the vessels . Any relaxation , in favour of any belligerent state to the exclusion of neutral state renders the blockade inoperative .

Breach of Blockade and its Consequences : Ships which breach a blockade bear the same consequence as that of a contraband cargo , by the belligerent operating the blockade . After the capture , such ships must be sent to a port for adjudication by a Prize Court . If the Prize Court declares the ship as good prize , it is liable to be confiscated .

Aerial Warfare : In principle, it could be said that air warfare is a set of offensive and defensive aerial operations carried out using the air force with the intention of imposing one's will on the adversary by achieving a sufficient degree of aerial superiority. The rules of aerial warfare are mainly not specific to that mode of hostilities , and there is no general treaty on that matter . However , Hague Rules of Aerial Warfare adopted by a Commission of Jurists on 29 February 1923 , while not adopted as binding are reflected in military law manuals .

- (a) Terror bombing is prohibited (Art 22) .
- (b) Targets must be of military nature (Art 24) .
- (c) Civilian targets must be avoided (Art 25) .

(d) Undefended targets (hors de combat) shall not be attacked (Article 26).

The weapons that may be used are governed by the principle of limitation and military necessity laid down in international humanitarian law, which imposes certain constraints on the choice of means of warfare and stipulates that their use must be necessary.

The 1868 Declaration of St. Petersburg provides an example of this; it states that hostile operations must be aimed exclusively at securing a military advantage and prohibits the use of projectiles weighing less than 400 grammes which are either explosive or charged with fulminating or inflammable substances.

There are other prohibitions and regulations relating to the means that may be employed for air warfare, among which the following are the most important

(a) Causing superfluous injury or unnecessary suffering. In addition to being expressly stated in Article 35, para. 2, of Additional Protocol I, this restriction stems from the application of the principle of humanity, whereby war should cause only the minimum necessary suffering: no more, as that would be inhumane and hardly effective, and no less, as that would be insufficient.

(b) Causing widespread, long-term and severe damage to the natural environment. The possible identification of this prohibition with the potential effects of nuclear weapons is perhaps what prevented the countries in possession of such weapons from ratifying Protocol I additional to the Geneva Conventions. Be that as it may, it should be borne in mind that nuclear weapons have been neither banned nor even condemned by any international treaty. Only the United Nations General Assembly condemned their use in 1953, in resolution 1653 (XVI).

(c) The use of asphyxiating, poisonous or other gases and of bacteriological methods of warfare. These weapons were prohibited by the Geneva Protocol of 1925, which aimed to update Declaration 3 of The Hague (1899). The issue was further addressed in the 1993 Paris Convention on the total prohibition of chemical weapons.

This was perhaps the most ambitious step of all, but the treaty will not enter into force until it is ratified by at least 65 countries, and at the time of writing (April 1997) it had not yet been ratified by such key countries as the United States, the United Kingdom, France, the Russian Federation and Iraq.

(d) The use of booby-traps. These are defined in Article 2 of Protocol II to the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which May be Deemed to be Excessively Injurious or to have Indiscriminate Effects [18] . Prime examples are the booby-trapped medicines used by the Vietcong, and the booby-trapped toys used in the war in Afghanistan.

(e) The use of biological and toxin weapons. The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (1972) covers not only the agent itself but also the means of delivering the agent. It should be pointed out in that connection that while the Western world considers toxins as biological agents, in the East they are classified as chemical agents, as they are not living organisms.

Given the qualifications required of all the protagonists in this type of warfare, and despite the fact that in theory it may be waged by all those persons mentioned in Article 4 of the Third Geneva Convention and Article 43 of Protocol I, in real and historical terms combatants will most likely belong to what are known as the regular armed forces. However, there have been some anecdotal incidents involving Bosnian Serbs in the Yugoslav conflict and cases where

fighter planes of the Albanian airforce were seized by dissidents in Valona in 1997.

In any event it may be stated as a general rule that any pilot who enters enemy territory with an aircraft bearing the prescribed distinctive markings will never lose his status as a combatant and can therefore in no way be considered as a spy.

Another point should be made in regard to pilots, should they be forced down and placed hors de combat. When Additional Protocol I was being drawn up, a proposal was tabled, but not accepted, that pilots who have ejected from their aircraft in an emergency should be treated as shipwrecked persons. That would mean that they would have to be sought, recovered and cared for. This approach ran counter to the policy followed by Germany during the Second World War, whereby enemy pilots who had parachuted from their planes and were likely to land on enemy territory were shot down, while those likely to land on German territory were captured for interrogation.

Ultimately it was Article 42 of Protocol I that dealt expressly with the matter of the hors de combat status of a pilot parachuting from an aircraft in distress .

Prize Court: The origin of a Prize court goes back to the Middle ages . In case of piracy , the Court of Admiralty would enquire into the authority of the captor and into the nationality of the captured vessel and of the owners of her goods . this practice was extended to captures made in time of war , and it gradually became a recognized customary rule of international law that in time of war , the belligerents should set up Courts to decide whether captures were lawful or not . These Courts , called Prize Courts are not International Courts , but municipal courts . They none the less apply international law to a great extent . Every State is under an obligation to enact only such

regulation or statutes which are in conformity with International Law to govern the operation of the Prize Courts .

The structure of Prize Court is not uniform in all States , but in the British Empire and the United States they are exclusively judicial tribunals .

If the Prize Court confirm the legitimacy of the seizure , the cargo or vessel is considered to be a ‘good prize’ and it can be confiscated by the captor’s State . Once the decree of the condemnation is passed , how the goods are disposed of is not the concern of International Law but is solely a matter of municipal law .

In India , the law of Prize Court is governed by Naval and Aircraft Prize Act , 1971 .

A prize means a ship or an aircraft and goods carried therein , irrespective of whether the ship is captured at sea or seized in port or whether the aircraft is on or over land or sea at the time of capture or seizure .¹ Prize Court are established by the Central Government .² The Court of more than one member as the Central Government may appoint from time to time .³ A member of the Court shall be a citizen of India and shall be qualified to be appointed as a Judge of the High Court .⁴

The jurisdiction of a prize court is exercisable in times of reprisals and self defense .⁵ Prize Court has exclusive jurisdiction if the prize is brought into or seized within the territories of India , or brought into or seized within a locality in the temporary or permanent possession or occupied by the Armed Forces of Union or appropriated for the use of Central Government and is brought within the territorial jurisdiction of the Prize Court .⁶ Every Prize Court shall also have exclusive

¹ Sec 2 (h) of the Act .

² Sec 3 of the Act .

³ Sec 3 (2) of the Act .

⁴ Sec 3 (3) of the Act .

⁵ Sec 4 of the Act .

⁶ Sec 4 (1) of the Act .

jurisdiction over prize property even if it is lost or entirely destroyed or cannot be brought before it because of its nature and condition .⁷ An Appeal from the order or decree of Prize Court lies to the Central Government within a period of Ninety Days from the date of passing of order . Sec 5 and Sec 12 of Indian Limitation Act are applicable .⁸ A prize court has all the trappings of a Civil Court because it has the power of :

- (a) summoning and enforcing the attendance of persons and examining them on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copies thereof from any court or office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) any other matter which may be prescribed by rules.⁹

Every ship and every aircraft that takes a Prize and brings it into part or to a place within the jurisdiction of a Prize Court is to be delivered to the Marshal of the Court .¹⁰ Capture of the prize makes it the exclusive property of the Central Government .¹¹ Prize proceedings are not applicable to enemy warships and military aircraft .¹² Central Government may at its discretion out of the proceeds of the prize , make a grant of sum of money to the benevolent funds of Armed Forces of Union .¹³

⁷ Sec 4 (2) of the Act .

⁸ Sec 6 of the Act .

⁹ Sec 7 of the Act .

¹⁰ Sec 8 of the Act .

¹¹ Sec 13 of the Act .

¹² Sec 12 of the Act .

¹³ Sec 13 of the Act .