German Naval Strategy
1856–1888

Forerunners of Tirpitz

DAVID H. OLIVIER

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SERIES EDITOR'S PREFACE

One major focus of the Naval series to which *German Naval Strategy* is the latest addition is to explore the sources of naval conduct. Here the fundamental question is what navies are for. Contemporary answers to this deceptively simple question help determine a navy's construction policy, its size and shape, its operational functions and success, and the way it is seen by other navies and states.

This book provides a unique case study of a very new navy at the earliest stage of its development. It tracks the contending ideas about what purposes the new German Navy should serve. Should it concentrate on coastal defence and army support as the generals wanted? Should it, alternatively, adopt the sweeping and radical ideas of the French *Jeune Ecole* and focus on attacking the merchant shipping of putative adversaries? And what should it do about protecting German shipping?

David Olivier shows how the external environment helped shape answers to this question. The transformation in naval technology of the time, which affected everything from concepts of battle and naval doctrine to the traditional concepts of maritime law, was one such influence. The primacy of the army in German defence was another. Germany's strategic outlook and, particularly, its acquisition of an overseas empire that had to be sustained and defended were especially important in framing the way that German naval policy evolved. In essence, if Germany wanted a place in the sun, if it wanted to be more than a regional superpower, it would need to build a navy capable of operating at the appropriate level and in more distant places. The answer would reflect a classic balancing act between land power and seapower, and so would act as a window into Germany's concept of its place in the world.

In the end, of course, the German Navy adopted some very Mahanian ideas under the influence of Admiral Tirpitz. Within a few decades, it was to emerge as the world's second most powerful navy, completely upsetting the comfortable naval assumptions of the nineteenth century. This was an extraordinary development but it did not spring from nowhere. David Olivier explores the early days of this process and his perceptive analysis helps us really to understand one of the most remarkable and important aspects of twentieth-century naval history.
In so doing, he also throws light on the much more general phenomenon of navalism. Through an exercise in contrast and comparison, his analysis should provide us with helpful insights into the world's other navies as well.

Geoffrey Till
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I am also indebted to many other people for their encouragement and assistance. The staffs at the Bundesarchiv-Militärarchiv in Freiburg im Breisgau and the library of the Marineschule Mürwik were generous with their time and patient in their dealings with me. Among the academic community, I also acknowledge the assistance of Dr Patrick Kelly of Adelphi University, Dr Lawrence Sondhaus of the University of Indiana, Dr Rolf Hobson of the Norwegian Institute of Defence Studies, and especially Dr Holger Herwig of the University of Calgary. My parents, Harold and Rita Olivier, have been supportive in every possible way.

My wife, Elizabeth, has lived with this manuscript as long as I have, and probably can still quote whole sections of it. She has always acted as my able first line of defence against faulty logic, poor grammar, and misused commas. Any faults in this book are there probably because I did not pay enough attention to her advice. This work is dedicated to her.
On 25 July 1877, the corvette SMS Bismarck was launched at the Norddeutsche Schiffbau A.G. in Kiel. She was the embodiment of current naval technology, of a strategic philosophy, and of diplomatic concerns. Like the five sister-ships of her class, and like many other cruising warships of this period, the Bismarck had an iron hull but was sheathed in wood, and was equipped with two forms of propulsion: a steam engine and full rigging for sails. Throughout her career, the Bismarck was constantly on duty overseas, serving as the presence of the German Empire in distant waters. Her tasks included the protection of German commercial interests and German citizens abroad, the gathering of scientific data, and the enforcing of foreign policy and diplomacy as determined by the Foreign Office in Berlin. Such a warship symbolized an era of industry and empire, but, more specifically, she exemplified the conflicted doctrine and identity of a modern armed force projecting on a global scale the power of an ambitious state.

SMS Bismarck never took part in wartime activities, and her armaments were used only in the establishment of the German colonial empire in the 1880s. However, had there been a war between Germany and another European power, the Bismarck's role would have changed considerably. One faction in the German naval officer corps looked forward avidly to the unique kind of warfare it believed would ensue. The Bismarck, and all the other cruising warships the German navy had stationed overseas, was expected at the commencement of hostilities to attack the enemy's unarmed merchant fleet and destroy precious cargoes and ships. Such cruiser warfare was not the preferred approach of Germany's military establishment. It was, rather, a radical and modern alternative, advanced by those who saw global commerce and industry, and speed and technology, as the concerns of a new era of warfare.

During the so-called `transition era', from roughly 1860 to 1890, there existed a unique opportunity for navies to engage in a successful guerre de course, a war on enemy commerce. This opportunity was created by two factors: changes in both maritime law and technology. By outlawing privateering in 1856, the world's seafaring states forced the war on maritime shipping out of the control of private interests and into the hands of the navies. This meant that the motive for interdicting commercial trade changed from one of profit to one of denying
the enemy the means to wage war. In turn, this made pursuit of the *guerre de course* more ruthless than privateering.

Furthermore, the introduction of steam power to shipping fleets was a laborious and expensive process, one which took effectively half a century. Meanwhile, warships could be built from scratch with steam power, and could chase down slower or becalmed merchantmen. This fact was amply illustrated during the American Civil War, and led a number of theorists to speculate on the possibilities of a war on commerce.

This was watched with great interest by all the world's naval powers, but was of immense significance to the new and growing naval service developing in first Prussia and later the German Empire. Without the encumbrance of centuries of tradition, and without an equally impressive array of obsolete sailing vessels, the Prussian and German navies were free to implement policies which made use of new technology. In fact, their need to establish their importance and legitimacy drove them to do so. This is a fact little credited by most historians of the German navy: the general impression is that German theories on cruiser warfare were merely symptomatic of the overall confusion in strategic thought endemic to all navies at this time, or at best an adjunct of the French school of thought, the *Jeune Ecole*, which came into being in the mid-1880s. These impressions are false. There was a distinct emphasis in the 1870s and 1880s on planning for cruiser warfare. When the German advocates of a *guerre de course* adopted the language of the *Jeune Ecole*, they did so for its clarity and boldness, not because they were merely aping its methodology. German cruiser warfare doctrine was shaped by a distinctive mix of strategic, imperial, commercial and technological imperatives.

However, an important point must be made regarding this German school of cruiser warfare. The primary strategy assigned to the Prussian and German navies during this period was always some form of coastal defence, whether passive or aggressive. Army officers led the navy until 1888, and commerce-raiding was not their priority. The advances in and preparations for cruiser warfare often took place in spite of that leadership. Nevertheless, it is significant that the senior levels of the naval hierarchy, despite their army bias, never explicitly rejected cruiser warfare. In the face of enthusiasts among the officers, imperial interests and parliamentary factions, they often reconciled themselves to the fact that the overseas elements of the German navy would have to fight a cruiser war. The construction and operations policies of the German navy during this period cannot be understood unless this tacit acceptance of cruiser warfare is recognized for what it was.

Was cruiser warfare a viable strategy for the German navy? This question was of great importance after the First World War, when opponents of the prewar German policy of battleship construction pointed to the successes of the submarine fleet as proof that the navy had erred in its strategic calculations. The arguments of the 1870s and 1880s were the same debate, only 30 years earlier, and geared towards surface, not underwater, warfare. Showing that cruiser
warfare was viable meant proving that battleship-building was wrong, and vice versa; that was why this debate, kept within the navy and the government in the 1870s and 1880s, became such a public matter once the Tirpitz programme became policy, and even more so after the failure of the navy in the First World War.

With no past history of its own in the era of sailing-ship navies, the German navy had no tradition and, hence, no orthodoxy. Within the scope of the German navy's limited history, the cruiser and the single-ship action had a longer and prouder tradition. This book is a study of how what was heresy elsewhere—cruiser warfare—was, to all intents and purposes, an accepted orthodoxy in the German navy—a navy that felt itself inferior to its chief foes, France and Russia.

When the topic of commerce-raiding is discussed in connection with the history of the German navy, it is usually linked directly to the French school of commerce warfare theories in the mid-1880s, namely the *Jeune Ecole*. The German navy considered the possibilities of commerce-raiding as a philosophy of naval warfare for two decades prior to the advent of the French theories. The initial influence was the American Civil War and the actions of the Confederate commerce-raiders. Unfortunately, the methods used by the Southern states were best suited to the specific time period of that war; by the late 1880s, both legal and technological conditions had changed sufficiently that the unique set of circumstances in the mid-1860s for commerce warfare no longer existed. Thereafter, the German navy had to grapple with rapid technological advances that likely made such a philosophy obsolete. Yet, in spite of all doubts, cruiser warfare remained a compelling possibility.

This work is meant to contribute towards improving on that general scarcity of studies of the pre-1888 German navy, and more specifically, to fill a gap in the examination of cruiser-warfare doctrines and their significance. The argument is that elements of the German navy recognized the effects of the legal and technological changes on the nature of warfare at sea and, coupled with the navy's dispersement of warships around the globe, sought to take advantage of this situation in the event of war by pursuing its own worldwide war on enemy shipping. This was not something that began with the opponents of Tirpitz's battleship-building policy, nor with the rise of a German *Jeune Ecole*, but can be traced at least to the beginning of the Imperial German Navy in 1871.

The first two chapters examine the underlying forces that changed the strategic situation up to the conclusion of the American Civil War. Chapter 1 is an examination of the changes in maritime law regarding attacks on merchant trade, and uses the memoirs of the most successful Confederate commerce-raider as illustration of how the ways of war at sea were changing.

Chapter 2 looks at the technological changes in warships and weapons, and the writings of two noted naval theorists of the period, to see how war at sea was about to change. These works were widely read by naval officers, and were often printed versions of speeches and lectures given to fellow professionals and
interested amateurs. This interaction advanced what debate there was through the constant clash and disagreement between various authors.

The remaining six chapters trace the development of doctrine, specifically on cruiser warfare, in German naval history from 1848 to 1888. They analyse the construction policies, operations planning, strategic thought and the navy's tactical development, with a view to highlighting the way in which strategic ideas revolved around commerce-raiding. Prior to 1871, the Prussian navy was a comparatively weak instrument, and did little to improve its stature or self-esteem in the Wars of Unification. The post-unification Imperial German Navy had to cope with the psychological burden of being a second-class service led by army officers as a legacy of the navy's poor showing in the Franco-Prussian War. However, the events of the Franco-Prussian War gave a new encouragement to believers in the strategy of commerce warfare. The ability of the French navy to stop German merchantmen, coupled with the inability of the Germans to put any dent in the flow of arms from Great Britain and the United States to France, provided them with proof that the war on land could have been shortened if only the navy had done its part. It was impossible for the first two leaders of the Imperial German Navy, Albrecht von Stosch and Leo von Caprivi, to avoid some reference to the idea of a war on enemy commercial maritime trade. The parliamentarians were caught up in the possibilities, and the majority of naval officers believed such warfare offered the navy its best means of contributing to the war effort. Commerce-raiding was, in effect, the first effort of a new and modern service to define its role in global power politics. The opposition to battleships lay not with the adoption of some foreign theory of naval warfare, but with a theory created within the navy itself. This theory of cruiser warfare was the first means devised by naval officers to take the battle to the foe, to legitimate the navy by offensive action and to uphold the honour of the junior branch of the German military.

Note

Part I

CHANGE IN A CHANGING WORLD

Naval law and technology in the nineteenth century
1

THE ROOTS OF PLUNDER
Privateering and the laws of war at sea to 1865

As the art of shipbuilding became increasingly advanced, and as the horizons of world trade expanded in the fifteenth and sixteenth centuries, cargoes became more and more valuable. Furthermore, as nations began to trade with far-distant realms, the cargoes became of ever greater importance. Cutting off that trade could conceivably do great harm to the economic well-being of the affected state.

The application of laws to the right of free passage on the seas usually breaks down when a state of lawlessness occurs, such as in war. Belligerents deliberately seek to cause as much harm as possible to their foes, and, if cutting or denying ocean traffic will hurt the enemy, then all suddenly becomes fair. The only true restraint on a belligerent's action is the possibility of causing other, non-involved, nations to become involved because of the harm they have suffered.¹

This has meant that the slow development of maritime law has always walked a careful line when dealing with those laws in effect during times of war: on the one hand, there is a recognition of the right of a belligerent to pursue a policy designed to bring maximum advantage to itself, and on the other hand, there is also a recognition of neutral rights, the freedom of non-involved states to enjoy unhindered and uninterrupted use of the seas. Until 1856, those laws developed depending upon current circumstances. The balance of who was favoured by those laws went back and forth between belligerents and neutrals, but by the middle of the nineteenth century world opinion seemed very much in favour of neutral rights and the limitation of war.

One of the most important sources of evolution in nineteenth-century naval doctrine lay in thought and opinion on the laws of the sea. This was made explicit in 1856. The Declaration of Paris was a significant concession by those powers, notably Great Britain, who had previously placed less restraint on the conduct of war at sea. In theory, the terms of the Declaration should have eliminated attacks on maritime commerce during war. In practice, it merely shifted the conduct of such a war from private investors and speculators to navies. This created a new element for states in the waging of war at sea.

Furthermore, this change altered the very motive for attacking an enemy's maritime commerce. Before 1856, the primary reason was profit; hence,
privateering was a lucrative business practice. After 1856, maritime trade was merely another cog in the enemy's war machine. Stopping that trade meant damaging the foe's war effort. Therefore, the fate of the cargo and of the captured merchantman became of less importance than preventing its safe passage. Destruction became an acceptable alternative to capture. The events of the American Civil War were a stark demonstration of that new reality.

Although the events covered in this chapter did not affect the German states significantly at first, they had a much greater bearing once a German navy had to consider its place in maritime law. The question of attacking enemy trade came up frequently in discussions of German naval policy. For instance, in January 1884, the Admiralty Council came to the conclusion that it was not worth going outside the boundaries laid down by the Declaration of Paris merely to interdict enemy trade, even after the events of the Franco-Prussian War, when German trade had been ruthlessly suppressed by the French. This reflects the standard German policy of this era: a willingness to abide by the laws of the sea, provided the enemy was equally willing to do so. Ultimately, German wishes, that private property on the seas be respected in times of war, did not change over this period. This was another development of the freer trade of the nineteenth century.

**Profit motive: the development of privateering**

Long before there were attempts to codify and enshrine maritime law in treaties or conventions, there was a gradual evolution of a common law of the sea. This process took place in the give-and-take environment of the oceans in the early days of travel, when might made the only right. Slowly but surely, states grew to realize their best interests were served in a more even-handed application of laws by themselves, a naval version of the Golden Rule. Practice taught painful lessons; while sovereignty could be enforced over immediate territorial waters, not even the strongest of powers could yet make its will supreme on the high seas.

It took a long time, however, before the idea of war at sea against an enemy's commerce was considered a feasible and justifiable action. Before then, actions were fought at sea, but they were rarely the actions of state vs state. Piracy had always been a thorn in the side of traders. Merchants sought the means to revenge themselves upon those who unlawfully plundered their goods. If the territorial origins of the pirates could be determined, a state could force another to deal with its unruly subjects. Thus was invented the concept of the `letter of marque and reprisal'. Such a letter was granted, during peacetime only, to a merchant or syndicate that had suffered loss of cargo at sea. The letter was specifically granted against the particular state of origin of the culprit, and was set at the estimated value of the goods lost. It allowed the holders of the letter of marque and reprisal to attack a ship, or ships, of that state and seize cargoes until the value of the lost goods had been recovered in kind. The first such letter was issued in England in 1295.
Roads and land thoroughfares may be subject to many external influences such as destruction, conquest, blockage and brigandage. All of these elements played a crucial role in war. The same is not as true of the high seas, however; while temporary restraint may be placed on passage in narrows or near ports, and some waters may be dangerous to the unarmèd and unwar[y], the seas cannot be held by right of conquest, nor can they be made physically impassable, even by the most powerful of states: ‘But a state which possesses a navy will not necessarily possess sea power, that is to say, consisting in the ability to exercise control over the maritime routes to the markets of the world, and thereby of influencing the course of world events.’

Thus, every nation that has access to the sea may make use of it freely for passage of both goods and persons. These were basic rights that were first made explicit in the sixteenth century by the Dutch jurist, Hugo Grotius. The ocean, Grotius wrote, ‘cannot be reduced to a state of private property’.

Consequently, when the idea of attacking trade came to warfare, it was viewed as a matter for private enterprise with its strong desire for profit. The increase in the value of goods transported by ship, which had taken place by the sixteenth century, made commerce-raiding a potentially profitable enterprise. The growth of privateering, the wartime counterpart to the letters of marque, was directly attributable to its lucrative nature. Many merchantmen, armed with no more than one or two guns, would combine trade with privateering, ensuring a profit on each and every voyage.

The best-known examples of early instances of privateering were the frequent attempts by the English and Dutch navies to capture or sink the Spanish treasure fleet in their wars of the late sixteenth and early seventeenth centuries. It was believed by the attackers that great harm would be wreaked on the Spanish economy if they succeeded in capturing the gold and silver shipped from the Spanish colonies in the Americas. This was an attempt at trade interdiction: to deny the enemy his goods, not necessarily in order to add them to one’s own, though this would have been a welcome result to the English or Dutch.

While the earliest attempts at trade interdiction were directed at revenue, the more likely target would be supplies needed for navies. With limited timber resources in the major seafaring powers’ territories, supplies had to be imported, especially the tall timber required to make masts. These goods normally came from the Baltic states. Over time, these items came to be considered by some states as contraband: specialized goods specifically destined for the war-making capacities of an enemy state.

As the supplies required to conduct war became more specialized, importation of these prohibited goods by the enemy power could only lead to their use in war. By 1780, goods considered contraband included ‘cannons, mortars, muskets, pistols, bombs, grenades, bullets or balls suitable for shooting, guns, gun-flints, fuses, powder, saltpetre, sulphur, breastplates, pikes, swords, scabbards, cartridge-boxes, saddles, and bridles’. This allowed a state to declare a vessel carrying such goods to be liable to seizure and confiscation. By the late
seventeenth century, the concept of trade interdiction had expanded into a philosophy of war, that of the *guerre de course*, or commerce-raiding.14

What set the *guerre de course* apart from the parallel developments taking place in naval warfare? As directed by the course of the three Anglo-Dutch wars of the mid-seventeenth century, true navies were evolving into fleets of relatively large men-of-war fighting in rigid, parallel lines. Building such a fleet was an expensive and time-consuming proposition, and required a large and capable body of officers and sailors. The only organization capable of raising such a fleet was the state itself. As shown by events in England under the reign of Charles I, the enormous expense of funding a navy could bring about both financial and political crises. The reverse could also be true: financial or political crises could adversely affect the ability to finance a navy, as was evident in Prussia in the 1860s.

The chief attraction of the *guerre de course*, and what would always attract many politicians and businessmen to its successor theories, was its relative cheapness. All the state needed to do was issue privateer licences and let individuals and syndicates with a few armed ships do all the dirty work of trade interdiction. The Crown could sit back and earn revenue, both through the issuing of letters for privateers and through receiving a share of the confiscated goods captured by the privateers.

However, the chief drawback of allowing privateering was the consequent loss of control over the course of war at sea. First, as privately owned vessels, the privateers were under the orders of their backers, not the government: the concern of the privateer was profit, not victory. The second problem was the extreme diffusion of force that took place: hundreds of tiny vessels scattered as best they could along the sea-lanes, each intent on its own share of the proceeds. Nevertheless, this flotilla of privateers needed to be able to return to secure bases, have access to supplies and make use of trained seamen who could otherwise be serving in the navy or on merchant vessels.

Despite these drawbacks, the use of privateers and the pursuit of a *guerre de course* were prominent features of the great conflicts between Great Britain and France in that period from 1689 to 1815 referred to by some historians as the `Second Hundred Years' War'. The overall superiority of Britain's Royal Navy often forced the inferior French *Marine* to abandon the traditional approach of fleet-to-fleet battle in favour of the *guerre de course* not for the motive of prize money, but to deny Britain its overseas trade. This meant that the navy became a competitor to the privateers already operating from French ports. Meanwhile, the strength of the Royal Navy provided security for the hordes of privateers operating from the British Isles or the colonies. Privateering was such a lucrative proposition in Britain that it was seen by many as a worthwhile financial investment; during the Seven Years' War, the Duchess of Nottingham and some court ladies equipped three large ships for privateering, intent on making their own profit.15
Privateering was effective in halting the merchant trade of a belligerent, but trade was never carried on solely by one country's vessels. Many ships conducting trade flew the flags of countries not involved in the war. It was the friction caused by encounters between privateers of a belligerent state and merchant vessels of neutral countries trading with the other belligerent that shaped the creation of the common law of the sea.

**War vs profit: belligerents' rights and neutrals' rights**

The interest of the belligerent must be to deny, to the very utmost possible, the use of the sea to the opponent. The interest of the neutral must be to contrive to conduct the normal trade he has been in the habit of conducting with both belligerents, and, human nature being what it is, to take advantage of the abnormal situation which war brings into existence to extend his own commerce of all kinds.  

In the thorny and complex world of war at sea, the question of trade during war has always been a source of great friction between states not at war with one another. Belligerents, concerned with shutting off their foe's flow of supply and revenue, developed strategies to complement the open sea's *guerre de course*, and specifically, the blockade. Stationing ships off an enemy's port to halt inbound and outbound vessels was an effective means of controlling trade. The challenge was creating a circumstance under which certain vessels could legally be stopped and certain cargoes seized.  

Two different schools sprang up, each at odds with the other over what constituted fair trade practices in war. On the one hand, the traditional position of continental European states, such as France and Prussia, was that `free ships made free goods', that no cargoes found in neutral vessels could be seized, even if owned by or destined for a belligerent. The corollary to that, `unfree ships, unfree goods', meant that all cargoes carried on enemy merchantmen were liable to seizure, even if the cargoes were owned by neutrals. On the other hand, the traditional English position was that belligerent cargoes, even on neutral vessels, were liable to confiscation as the enemy's goods. However, neutral goods in a belligerent's ship, once rightful ownership had been duly established, were to be returned to those owners, provided the goods were not contraband, and the English normally used a very wide definition of `contraband'.  

These opposing interpretations reflected the different states' relative strengths at sea. During the seventeenth century, Holland took a strong stance towards limiting the enemy's maritime trade as much as possible; in the eighteenth century, Holland became much more relaxed in its attitudes towards neutral trade. This paralleled the significant decline in Dutch naval power, but also reflected the mentality of any nation where naval power was less important than land power. To a continental state, the ability to receive goods was paramount...
regardless of which vessel carried it. Furthermore, with smaller merchant fleets than the British, the seizure of neutral cargoes mattered less to the continental states, so long as the British merchant fleet suffered financial damage. As well, with inferior navies, continental states cared only for attacking British vessels and not those of other continental states, which could lead to land war. British interests were best served by cutting off all seaborne commerce to the enemy, but not in harming neutral trade in its own merchantmen.

While this may seem to be a development best suited to the growing strength of the Royal Navy in the eighteenth century, it was a position enforced as far back as the Elizabethan wars with Spain. In June 1589, a fleet of 60 ships from the German Hanseatic ports was captured by the English while conveying naval stores from the Baltic to the Spanish. The English issued a proclamation regarding the matter:

Her Majesty thynketh and knoweth it by the rules of the law as well of nature as of men, and specially by the law civil, that whenever any doth directly help her enemy with succours of eny victell, armor, or any kynd of munition to enable his shippes to maintain themselves, she may lawfully interrupt the same; and this agreeth with the law of God, the law of nature, the laws of nations, and hath been in all tymes practised and in all countries betwyxt prynce and prynce, and country and country.\textsuperscript{18}

The position of England did not change over the years, but was rendered more or less flexible by the circumstances of the time. The enforcement of the Rule of 1756, that neutrals lost their protection if they undertook trade usually carried on by enemy vessels in peacetime (such as the normally exclusive trade in the French West Indies), reflected the overwhelming strength of the Royal Navy and a scarcity of neutral opposition, allowing for the greatest possible definition of contraband; conversely, the united front of the League of Armed Neutrality during the War of American Independence was sufficient to force a much more flexible definition of contraband on the British. To neutrals, there was no general acceptance of what constituted contraband, nor that there should be an interdiction of trade for economic reasons.\textsuperscript{19}

Blockade, therefore, was usually the weapon of choice of the stronger naval power. Commerce-raiding, which was less efficient, was used by both sides, but was more often the means of a weaker naval power to bring what strength it did possess to bear on the enemy's trade. Thus, many traditional navalists have scorned commerce-raiding as `the strategy of the weak at sea'.\textsuperscript{20} Probably the most famous condemnation of the strategy of commerce-raiding comes from the American naval theorist Alfred Thayer Mahan. A proponent of large navies of powerful battleships preparing to fight decisive encounters for command of the sea, Mahan thus had little patience for the nibbling and harassing strategy of the \textit{guerre de course}:
Commerce-destroying by independent cruisers depends upon wide dissemination of force. Commerce-destroying through control of a strategic centre by a great fleet depends on concentration of force. Regarded as a primary, not as a secondary, operation, the former is condemned, the latter justified, by the experience of centuries.21

Mahan's condemnation of commerce-raiding notwithstanding, attacks on merchantmen still produced results beyond the meagre financial expenditure by governments. The guerre de course remained a weapon, both of choice and of necessity, in the arsenal of the Marine. With bases throughout the world, and especially from their home ports which were so close to vital British trade routes, the French privateers made it impossible for British trade to escape their predatory attacks.

The Royal Navy experimented with several methods of dealing with this annoying foe. Defensively, the solution of convoy was discovered fairly early, and it became standard practice to group most large merchant vessels in convoys with few exceptions permitted. Offensively, however, the British were not content to remain passive in the face of any threat. Warships were dispatched to patrol the sea-lanes, looking for enemy raiders. However, the only truly effective means of eliminating commerce-raiders was to deny them the use of their bases, something that could be done in the West Indies and other distant points by capturing them, but not to Metropolitan France. The guerre de course remained a thorn in the British side until the end of the Napoleonic War in 1815.

The Declaration of Paris and the end of privateering

In the first half of the nineteenth century, several circumstances came to the fore which effected a change in thought on naval matters pertaining to belligerent and neutral rights, and profoundly affected British attitudes towards what actions were just in a war at sea. The first was the growth of free trade and the benefits it brought to the economic well-being of Great Britain. The second was the permanent presence of a strong advocate of neutrals’ rights, namely the United States of America. The third stemmed from legal and philosophical debates over the rights of private property and whether the property of individuals should be subject to the same treatment in war as that given to state property clearly intended for war use.

In the preceding centuries, privateering had been part of a vast system of fighting a war not to win, but to make as much money as possible from it. In a world with an economic system based on mercantilism and the belief that there was only so much trade and wealth to go around, this appeared to be a sound strategy. The British Crown sold licences to privateers and, for a time, collected a share of the spoils. The ships were owned by individuals or syndicates who saw profit in the confiscation and resale of captured cargoes or, before it was outlawed, in accepting ransoms from captured ships in lieu of taking the cargoes.
As well, French merchants insured their vessels and cargoes often through firms in London. To cover the costs of their claims, insurance companies raised the rates they charged French customers. Finally, a surplus of captured merchant ships could always be relieved by selling some back to the French shippers from whom they had been confiscated: ‘Mercantilist trade war was clearly a strategy rooted in the instincts of people who had not yet learned to find value in injuring an enemy unless the result was at the same time of direct profit.’

Such a system was all to the good in an era when British commercial interests were as protective as they were in the eighteenth century. However, with the adoption of free trade and open markets in the early nineteenth century, the attitude of the British underwent a remarkable transformation. It was much more economically advantageous to conduct trade in as widespread a manner as possible. Of course, the enforcement of free trade was made much easier by the unquestioned primacy of the Royal Navy; this was truly the era of Pax Britannica.

The emergence of the United States as a trading nation created difficulties for the British war effort during the Revolutionary and Napoleonic Wars. American commerce was interdicted by both the French and British; meanwhile, the Americans refused to accept any restraints on their right to trade with either party. France and the United States nearly went to war in 1798 over, among other causes, the vicious guerre de course waged by French privateers. The British policy of seizing enemy goods on neutral vessels was one of the causes of the War of 1812 between Great Britain and the United States. It was believed that the Treaty of Ghent, which ended the war, was more in the nature of a truce between the two sides, and that their disputes over maritime law would lead to conflict again in the near future. No further Anglo-American wars broke out simply because the British did not establish any blockade opposed to American trading interests in the nineteenth century.

The third issue concerned the concept of contraband. Neutrals and belligerents had never come to an agreement on what constituted contraband goods; the effectiveness of enforcing contraband lists always lay in the relative strength of the belligerent vis-à-vis neutrals. Some items were always easy to declare as contraband such as, for instance, a cargo of muskets destined for the enemy government's arsenals. However, the great majority of cargoes were not so clearly determined. Was a shipment of canvas contraband? Was it contraband if it was destined for a private shipbuilder instead of a royal dockyard? The philosophe Jean-Jacques Rousseau, in his work The Social Contract (1762), argued that war was a condition that existed between states, ‘in which individuals are only enemies accidentally, not as men, or as citizens, but as soldiers; not as members of a country, but as its defenders’. More and more jurists began to see a distinction between state property and private property, the former being subject to confiscation in times of war but the latter being sacrosanct.
What made the matter of private property at sea so pressing was the increasingly sharp distinction between practice at sea and practice on land. Pillaging and looting no longer being considered a part of modern war on land, the confiscation of privately owned cargo at sea, a still common occurrence, was considered tantamount to looting.26

It was frequently argued that the capture of private property should be considered an unnecessary exercise of belligerent rights. What harm had the individual done to the belligerent state? Rousseau argued that it was the responsibility of a `just prince' to respect `the persons and property of private people, because he respects the right by which he holds his own'.27 Increasingly, capture of private property in war was seen as an archaic practice.

By the middle of the nineteenth century, it was apparent that a major concern of many nations was to be able to conduct a war at sea without incurring the wrath of neutrals. The outbreak of the Crimean War in 1854 saw the unusual coalition of the Royal Navy and la Marine apply a fairly relaxed blockade of Russia's Baltic and Black Sea ports, while the Admiralty issued no licences to privateers. This was a means of avoiding a settlement of the differing codes between the two navies, as there was still no agreement over the treatment of neutral ships and cargoes.

At the conclusion of the war in 1856, it was decided to adopt some codification of maritime laws towards belligerents and neutrals. The result was the Declaration of Paris, a four-point programme designed to clarify issues raised in past conflicts. The preamble to the declaration made it clear that the purpose of the agreement was to put an end to the kind of neutral-belligerent disagreements that had led to `serious differences, and even conflicts'. The four points of the declaration were:

1. Privateering is, and remains, abolished.
2. The neutral flag covers the enemy's goods, with the exception of contraband.
3. Neutral goods, with the exception of contraband of war, are not liable to capture under the enemy's flag.
4. Blockades, in order to be binding, must be effective, that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.28

In theory, these four points were supposed to revolutionize warfare at sea, to bring it to the same legal standard used in land warfare. Unfortunately, the declaration failed to define the word `contraband', making it subject to future squabbles between belligerents and neutrals. As well, while the declaration outlawed privateering, it did not ban the use of force against merchant shipping. Instead, it took war at sea out of the realm of private enterprise.29 Without a profit motive to stimulate attacks on enemy merchantmen, the incentive for attacking trade changed from seizure of goods to denial of goods, ultimately by
any means possible, including destruction. Commerce-raiding slowly made the transition to commerce-destroying.\textsuperscript{30}

The declaration was eagerly subscribed to by many European states, especially the smaller German states, as it fitted in with their belief in the free and unrestricted movement of commerce. The Hanseatic city of Bremen, for instance, passed a resolution regarding the immunity of private property at sea: "The inviolability of persons and property in wartime at sea, extended to the subjects of belligerent states, so far as it is not necessary to restrict it for the purpose of the war, is an irrefutable principle of the legal mentality of our time."\textsuperscript{31}

Three states, however, refused to ratify the declaration, namely Mexico, Spain and the United States. These countries contended that privateering should not be abolished, that the declaration was merely a means for the major naval powers to deny second-rate powers the ability to raise a large navy in times of war. Furthermore, the United States argued that the declaration did not go far enough; only if the declaration was amended to abolish the seizure of all private property at sea would any American government consider adhering to its provisions.\textsuperscript{32}

This demand was not met and the Americans withdrew, holding fast to their refusal to ratify the declaration. Thus, the one power that had steadfastly and unceasingly championed the rights of neutrals and the right to trade without impediment declined to adhere to the single greatest step forward in neutrals' rights.

The Declaration of Paris created problems for Prussia and other states that would only become apparent in later years. In the nineteenth century, warfare had become a carefully restrained and legalistic action, as the ultimate expression of state vs state. However, war was also passing from the conditional or limited conflict it had once been and was now becoming absolute in nature, as the concept of the nation in arms took hold. As jurists and diplomats sought to reduce war to its purest form while leaving full freedom of action for the private individual, the demands of total war were preparing to exempt no one from duty to the state. Formal agreements, such as the Declaration of Paris, were attempts to reconcile the traditional limited war to the new technologies of warfare which were inherently much more destructive in nature, and to the ever-increasing demands for raw materials of industrializing states.\textsuperscript{33} However, the abolition of privateering had another effect, perhaps one of an unintended nature: by taking the costs of one aspect of naval warfare out of the hands of private individuals or corporate entities, it placed the full onus of funding such a war on the state treasury. Navies became responsible for designing, building and operating their own commerce-raiding vessels. Furthermore, as the technology required to construct such a warship increased the cost of each ship built, it became more useful for such types of ships to serve a valid purpose in both war and peace. In peace, cruisers could enforce an overseas presence for political or economic \textit{raison d'état}; in war, they could pursue a \textit{guerre de course}.\textsuperscript{34}
From seizure to destruction: the new style of commerce warfare

Ironically, the next major naval war was the American Civil War, which saw the American government aggressively assert belligerent rights it had so steadfastly opposed other nations assuming, especially Great Britain. The United States found itself facing its secessionist southern states completely unprepared for the attacks on its merchant shipping which the fledgling Confederate navy carried out through ruthless commerce-raiding. The American government attempted to indicate its acceptance of the Declaration of Paris and the provisions against privateering to the other signatories, provided that the acceptance could be backdated to 1856. This would have meant the Confederacy would have been bound to the provisions without its consent, and naturally the major European powers refused to agree to such an underhanded tactic.

While the Confederate States practised privateering on the high seas, the United States set about establishing a blockade of the South's coasts. This blockade, especially for the first two years of the war, was in direct contravention of Article 4 of the Declaration of Paris, which stated that a blockade had to be `effective' and `maintained by a force sufficient really to prevent access to the coast of the enemy'. Nevertheless, the Americans pursued the enforcement of the blockade with what few naval resources were at their call, while vigorously hunting down the Confederate commerce-raiders.

The results of the naval campaigns of the American Civil War affected naval thought for the rest of the nineteenth century in various fields, including war on enemy commerce. First, blockade had been shown still to be effective in modern times: the South's inability to import manufactured goods and to export cotton and earn revenue to pay for what few imports were brought in crippled the Confederate war effort. The handful of blockade-runners that had made it through underscored this point even further.35

Second, the unprecedented success of the CSS Alabama and her sister commerce-raiders showed that the possibility of fighting a guerre de course against enemy merchantmen was equally feasible. The Alabama was an unarmoured ship equipped with a steam engine; the majority of her prey consisted of sail-powered merchant vessels. The commerce-raider made use of her sails for long-range cruising, resorting to her engine to overhaul becalmed or slow-moving merchantmen.36 This demonstration that ships could operate effectively far from home captured the imagination of several naval thinkers in the succeeding years, especially those in the Prussian and German navies.37

Legally, however, vessels such as the Alabama posed a number of problems, the greatest questions all revolving around the rights, obligations and duties of neutral nations towards belligerents. Several Confederate commerce-raiders were built by or purchased from European shipbuilders during the war. Were the countries that sold these ships and permitted them to be outfitted as men-of-war going beyond the bounds of neutrality in providing aid to a belligerent? This
became a test case after the war, as the American government sought compensation from the British government for having permitted the construction, equipping and crewing of the Alabama. Furthermore, the wide-ranging operations of these commerce-raiders made it necessary for them to put in at neutral ports for supplies, repairs and communication. How much use of neutral ports could commerce-raiders make without a clear favouritism being shown that extended beyond even a benevolent neutrality?

The traditional methods of commerce-raiding had to be changed in the American Civil War because of the worldwide scope of the Confederate raiders’ action and the introduction of steam technology. In prior wars, the normal action of privateers was to stop, search and seize; if necessary, a prize crew would be placed on board the captured ship and it would be taken to the nearest friendly port. Soon, a fourth ‘s’ had to be added to the list: sink. Previously, prizes were sunk solely because they were unseaworthy or the captor was unable to form a prize crew; enemy merchantmen were not to be attacked, captured or destroyed without at least first being visited by an officer of the commerce-raider. The increasing size and complexity of merchantmen made it more difficult to properly inspect and evaluate cargoes on the high seas; since there were no available Confederate ports for the prize to be taken to, the only remaining recourse was to sink the merchantman. This would, in time, lead to further problems of both a moral and a legal nature, namely what to do with the captured crew?

The man most experienced at high-seas commerce-raiding was Commander Raphael Semmes, the captain of the Confederate navy’s first raider, the CSS Sumter, and subsequently captain of her best, the CSS Alabama. Commander Semmes was forced to improvise his solutions while at sea. Forbidden by neutral states to leave captured ships in neutral ports to await adjudication by a Confederate prize court, Semmes instead found himself acting as prize court pro tem, condemning cargoes and ships based solely on the papers of the captured ships, testimony of their captains, and his own judgement. His decisions were swift and final; when unable or unwilling to spare a prize crew, he would evacuate the merchantman’s crew, take what cargo would be of use to his ship and set the abandoned prize on fire.

This still left the other problem of supply. Not only did the Confederate commerce-raiders require the traditional victual re-stocking, but they also needed coal for their steam-engines. After only a week at sea in the Caribbean, a small vessel like CSS Sumter (a 437-ton barque-rigged steamer) needed to replenish 100 tons of coal and 5,000 gallons of water. Again, how much aid was too much aid? The United States protested against any favours shown the Confederacy, but did not pursue the matter far enough to declare war, unlike its response to similar transgressions by France and Great Britain during the Revolutionary and Napoleonic Wars.

The rules of war regarding neutral ports had developed over the years, but the events of the last half of the nineteenth century brought them into a position of
particular importance. Regular supplies of coal and water had become necessities of life for the steam-driven commerce-raider: 'The use of neutral ports by belligerent warships can amount to their becoming in fact bases of naval operations. For this reason customary law developed the rule that access to neutral ports is limited in period and to maintenance of seaworthiness.' Furthermore, to preclude the taking of unfair advantage, and to avoid clashes in neutral territorial waters, the departure of enemy warships from neutral ports had to be at least 24 hours apart. Finally, belligerents were permitted to refuel in a neutral state only once in a three-month span. This was a provision which would have the greatest effect on states which did not possess a chain of overseas bases or a number of colonies, such as Germany. This was later recognized by the German theorist Curt von Maltzahn, when he argued that the freedom of the seas would belong only to those states with sufficient sea power to protect their overseas interests.

Some states, due to their experiences in the American Civil War, placed more stringent controls on their citizens' involvement as neutrals in a war. The British government, forced to pay compensation to the Americans for its complicity in Confederate naval actions, especially over the sale of the Alabama to the Confederacy by a shipbuilder fully aware she was destined to be used for commerce-raiding, passed the Foreign Enlistment Act in 1870. The Act forbade British subjects from furnishing munitions, stores and fuel to belligerents. British colliers could not be chartered by belligerents, nor could they supply coal. The worldwide network of British ports was now closed to belligerents in war. This posed a significant problem to many states as it was the British who, thanks to both their global positioning and their supplies of the world's best steaming coal, had secured a near-monopoly on overseas coal sales. As always, the rules had been changed to benefit those who stood the most to gain from the changes.

**Conclusion**

The concept of freedom of the seas changed during the nineteenth century, with the explosion of worldwide trade and commerce after the Napoleonic Wars. Fuelled by both the legalistic desires of philosophers and jurists and by the dreams of laissez-faire free-traders, the idea of commerce as near-sacrosanct began to assume greater importance. The protection of commerce, either by force or by treaty, became paramount in the movements of mid-century. Besides, it seemed that the protection of the omnipresent Royal Navy would be sufficient for all who sailed the seas.

Where, then, did the situation stand by 1865? Privateering had been abolished, but this merely put the potential for attacking enemy trade in the hands of governments and their instrument of maritime policy, the navy. Belligerents were limited as to what ships they could stop and what cargoes they could seize, but there had been no agreement on what cargoes comprised contraband and what should be permitted free passage. As well, destruction of prizes was now
becoming an accepted alternative to capture, thanks to the spread of commerce and commerce-raiding to points far distant from friendly harbours. There was general agreement that private property should be exempt from seizure, but with private firms becoming more and more involved in manufacturing the sinews of war, and with the list of goods that were necessary for that war effort increasing, that rule seemed equally difficult to enforce. Finally, neutrals were supposed to have the right to engage in fair trade with all belligerents and were, under strict conditions, to provide limited assistance to belligerent vessels calling at neutral ports.

All of these points conflicted with one another: belligerents still sought the widest use of their power and authority; neutrals sought to profit from wartime conditions; and some neutrals even displayed an open bias for one belligerent over another by limiting or granting use of facilities and supplies beyond those specified by international agreement. Conventions and treaties were designed to limit the spread and damage of war as much as possible, to confine the struggle between distinctly defined identities, the belligerent states. However, this situation was further compounded as new technology threatened to revolutionize all aspects of war, including that against trade at sea. Restraints were no longer possible as war moved from conditional to absolute.

Notes

4. There are many spelling variations for the word `marque'; this is the version that will be used, excepting only in direct quotations.
12. Ibid., p. 31.


19. Ibid., p. 32.


29. Stark, *Abolition of Privateering*, pp. 142±3. Stark’s contention is that points 1 and 2 were trade-offs: the British agreed to the continental doctrine of ‘free ships, free goods’ in exchange for the abolition of privateering, to which its vast merchant fleet was so vulnerable.


31. Cited by Stark, *Abolition of Privateering*, p. 30; italics in original. It is unclear from the text whether the resolution was passed in connection with the Austro-Prussian War of 1866 or the Franco-Prussian War of 1870±71.


38. Sir Frederick Smith (Earl of Birkenhead), *The Destruction of Merchant Ships under International Law* (London: J.M. Dent, 1917), pp. 15±16. There were numerous reasons why an enemy merchantman could not be attacked without warning; for example, it might belong to an exempt class of ship (e.g. hospital ship), or it might hold neutral-owned cargo.

39. Julian S. Corbett, *Some Principles of Maritime Strategy* (London: Longmans, Green, 1911), pp. 272±3: `The only escape from this difficulty [fewer men available as stokers in engine-rooms through the formation of prize crews] is to sink the captured ship. But this course has objections scarcely less weighty than the other. No Power will incur the odium of sinking a prize with all hands, and their removal to the captor's ship takes time, especially in bad weather, and the presence of such prisoners in a cruiser in any number soon becomes a serious check on her fighting power.'


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