

From “hostile infection” to “free ship, free goods”: Changes in French neutral trade legislation (1689–1778)

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Introduction: the development of French legislation of neutral trade*

Within French historiography, the topic of neutrality has remained relatively understudied. During the great European wars of the seventeenth and eighteenth centuries, France hardly ever remained neutral and so never directly benefited from neutral trade. This, perhaps, is the reason why there was no great French theoretician of neutrality during this period. However, France was the state with the greatest interest in the development of neutral rights because of its relative maritime weakness in comparison with England's. With successive conflicts came the need to curtail the effects of war on foreign trade, compelling the French government to ponder the nature of neutral trade and the rights and duties of neutrals. Studying royal legislation and commercial treaties is an adequate starting point for tracing the ways in which the French changed their conceptions of trade neutrality in the eighteenth century.

The focus of this chapter lies on the main stages in the evolution of French conceptions of the law of neutrality until 1778.¹ In that year, the Franco-American treaty of Commerce and Navigation (2 February) and the *Règlement concernant la navigation des bâtimens neutres en temps de guerre* (26 July) recognized the freedom of neutral navigation and the right to transport all kinds of goods, war contraband excepted. France thus became one of the countries that adopted the

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1 This chapter is the first part of a project on French discourses and practices of neutrality between the beginning of the Nine Years' War (1688) and the War of the American Independence.

most favourable legislation toward neutral trade, whereas in the sixteenth and the seventeenth centuries it had put into place the most restrictive measures. The evolution of the French conception of neutrality of trade can be brought out by the study of the French-Scandinavian relations, because Denmark, particularly, and Sweden, to a lesser degree, stayed out of the conflicts between France and England from the Nine Years' War until the American War of Independence. For this reason, the northern countries were those which, on the one hand, suffered most from the severity of the French legislation and, on the other, were the most able to profit from the opportunities of a less restrictive legislation as it developed in France in the middle of the eighteenth century onward.

The first written rules of neutrality were contained in the *Consolato del Mare*, a collection of Mediterranean maritime rules of the fourteenth century, which drew a distinction between the nationality of a ship and that of its cargo. According to the *Consolato*, in wartime, a privateer could seize the goods belonging to enemies but carried under a neutral flag, but not the ship itself and the rest of the cargo.² This principle was still valid for Hugo Grotius, who held that only enemy goods could be legally seized.³ But when his major work *De jure belli ac pacis* was published in 1625, French legislation took a much more restrictive turn through the doctrine of *robe*.⁴ The ordinances of 1538, 1543 and 1584 put an end to the general principle of free navigation for neutral ships. Instead, the new rules prescribed that all goods, ware, or ships that came into contact with any property of the enemy was henceforth seizable. From this moment "la robe de l'ennemi couvre celle de l'ami"⁵ would be known as the rule of "hostile infection" because a ship and all its cargo would be contaminated by enemy character. The enforcement of these new laws met some difficulties. For example in 1592, the *Parlement* of Paris, the highest judicial court in France, freed a ship from Hamburg that had been taken with enemy wares on board.⁶ Subsequently, the principle of *robe* seems to have been placed in doubt by several royal ordinances, particularly that of 1639, and a number of international treaties. Articles 10 and 12 of the Franco-Ottoman capitulations of 1604 contained an arrangement opposite to the principle of *robe*. Henri IV obtained from Ottoman authorities the assurance that his subjects and their wares carried on ships of the Sultan's enemies remain free.⁷ The French, on their side, granted the same right in several international agreements, among others, in the treaty

2 Chapter 231, "Du navire chargé de marchandises pris par un navire armé", Jean-Marie Pardessus, *Collection de lois, maritimes antérieures au XVIII^e siècle* (Paris: Imprimerie Royale, 1831), vol. 2, p. 303.

3 Hugo Grotius, *Le droit de la guerre et de la paix* (Paris: PUF, 2005), p. 668.

4 *Robe* comes from the Italian *roba* which means merchandises.

5 Sylvain Lebeau, *Nouveau code des prises* (Paris, 1799), vol. 1, pp. 17–18.

6 Charles de Boeck, *De la propriété privée ennemie sous pavillon ennemi* (Paris: G. Pedone-Lauriel, 1882), p. 39.

7 Henry Wheaton, *Elements of international law* (Philadelphia: Carey, Lea and Blanchard, 1846), p. 482.

concerning the restitution of maritime prizes of 1646 with the United Provinces, and in the third article of the commercial treaty of 1655 with the Hanseatic cities which stated “la robe de l’ennemi ne confisque point celle de l’ami”,⁸ and the treaties with Denmark in 1663 and with England in 1667.⁹ At the beginning of the Dutch War, the ordinance of 19 December 1673, introduced an exception favouring the subjects of Louis XIV’s allies. The Swedes, the Danes and the English, providing they had papers in due form, would not be arrested by privateers even if their cargo belonged to enemies of France. This was a sharp contrast with ships under other flags, which could sail freely only on the condition that they carried no goods or subjects of enemy powers.¹⁰ In other words, Dutch trade under certain flags was *de facto* licit, but was still forbidden under others. All these measures constituted an inconsistent whole, reflecting the hesitations between the old principles of the *Consolato del Mare* and the rigorous doctrine of *robe*. This incoherent situation was underlined by the famous jurist René-Josué Valin. He observed that France had no real legislation for neutral navigation matters before the great ordinance of the Navy of 1681.¹¹ In the field of neutrality, as in many others, this ordinance put everything in order and established consistent rules. The ordinance provided, first, that vessels lacking the required papers may be seized (art. 6) and, second, that all ships carrying enemies’ wares will be seized with their cargo, including neutrals goods (art. 7).¹² The rule of the “hostile infection” thus found a new mode of enforcement.

The extension of war to commerce during the Anglo-French wars at the end of the reign of Louis XIV

During the Nine Years’ War (1688–1697), the question of neutral trade acquired a new dimension. The personal union between England and the United Provinces under William of Orange, gave France’s enemies an undeniable superiority at sea, which made it possible for them to interrupt trade between France and other countries.¹³ At this stage, neutral trade became a new issue in the political rivalry between Louis XIV and William III. The French representatives in Stockholm

8 Jean Dumont, *Corps universel diplomatique du droit des gens* (Amsterdam, 1728), vol. 6, part 1, p. 342 and part 2, p. 103.

9 Louis Gessner, *Le droit des neutres sur mer* (Paris: Guillauman & Cie, 1876), p. 43.

10 “Ordonnance portant qu’à l’avenir les vaisseaux anglais, suédois et danois, et ceux de toutes les autres nations neutres, seront libres dans leur navigation, aux conditions portées par la dite ordonnance”, Ordonnance royale, Saint-Germain-en-Laye, 19 Dec. 1673, Bibliothèque Nationale, Paris.

11 René-Josué Valin, *Nouveau commentaire sur l’ordonnance de la Marine du mois d’août 1681* (La Rochelle, 1776), vol. 2, book 3, art. 9, p. 265.

12 Valin, *Nouveau commentaire*, vol 2, pp. 243 and 252.

13 This was the object of the Convention of London of August 1689, Jean Dumont, *Corps universel* (Amsterdam, 1731), vol. 8, part 2, p. 238. See George Clark, *The Dutch alliance and the war against French trade, 1688–1697* (Manchester: Manchester University Press, 1923), pp. 32–3.

and Copenhagen received orders to bring together the Nordic kingdoms in close cooperation to defend their rights to neutral navigation.¹⁴ These diplomatic steps proved rather successful, since Denmark and Sweden came to an agreement over the formation of a union of neutrals for the safety of their navigation and trade (10 March 1691). Its main objective was to maintain the freedom of navigation in conformity with the stipulations of their respective treaties, and to provide shared protection of each other's vessels against privateers.¹⁵ Due to shared convoys, French-Scandinavian trade increased significantly.¹⁶ Yet, no one in the French government ignored that this augmentation was caused by the transfer of a large part of the enemies' trade under Nordic flags in the first months of the war.¹⁷ In order to restrict this new activity under neutral flags, Louis XIV established a range of measures that further increased the severity of the ordinance of 1681. Article 13 of a new instruction for prizes at sea of 16 August 1692 stipulated that all members of the crew of the vessel under arrest had to face questioning in order to determine the nationality, both of the ship and of the goods on board.¹⁸ The doctrine of the "hostile infection" was enforced a few months later on the occasion of the judgment of the Portuguese ship *Notre Dame du Pilier*, which was carrying goods belonging to the Dutch. The first court decision that released it was overturned, and the Secretary of State of the Navy Ponchartrain, reaffirmed on that occasion that article 7 of the ordinance of 1681 had to be followed "without any modification or restriction".¹⁹ The severity of the French legislation was regularly denounced by the neutral nations, particularly by the Swedes, who wanted their flag to protect wares on their vessels from seizure.²⁰ Yet French laws did not prevent the northern neutrals from increasing their navigation by covering the Dutch.²¹ This is why

14 A.A.E. [Archives des Affaires Etrangères, Paris] C.P. [Correspondance Politique], Suède, vol. 70, f. 32, Croissy to La Piquetière, 25 Jan. 1690.

15 Knud. Jespersen and Ole Feldbæk, *Dansk udenrigspolitik historie. 2: Revanche og neutralitet (1648–1814)*, (Copenhagen: Danmarks Nationalleksikon, 2002), p. 161.

16 In 1691, the intendant of Bordeaux wrote that the Danes and the Swedes "*font le plus gros commerce*" in Bordeaux, quoted in André Rebsomen, *Recherches historiques sur les relations commerciales entre la France et la Suède* (Bordeaux: Féret, 1921), p. 37.

17 The French resident in Stockholm, Asfeld, informed his government in January 1690 to be "assuré que sous le pavillon suédois, les Anglais et Hollandais se rangeraient et éviteraient par là que nos armateurs ne leur fissent tout le mal qu'ils pourraient", A.A.E., C.P., Suède, vol. 69, f. 23, Asfeld to Louis XIV, 25 Jan. 1690.

18 "Instruction sur les procédures des prises faites en mer" in Isambert, Decrusy, Tallandier, *Recueil général des anciennes lois françaises* (Paris: Belin-Leprieur, 1830), vol. 20, pp. 156–7.

19 "Arrêt du conseil d'Etat du Roi" 26 October, 1692 in Valin, *Nouveau commentaire sur l'ordonnance de la Marine du mois d'août 1681*, p. 245.

20 See for instance A.A.E., C.P., Suède, vol. 71, f. 111, Béthune to Louis XIV, 26 Mar. 1692, and f. 144, from the same to the same 24 Apr. 1692.

21 "Nos corsaires ne trouvent presque point de vaisseau avec pavillon hollandais, au lieu que la mer se trouve couverte de vaisseaux danois, suédois, polonais et hambourgeois, comme si ces nations s'étaient attirées tous les vaisseaux de l'Europe à eux", *Mémoire au sujet des armements et du commerce des hollandais et des moyens de le ruiner pendant cette guerre*, May 1690, A.A.E., [Mémoires et Documents] M.D., France, 2021, f. 29.

French legislation became more rigorous for neutrals with the new regulation on passports of 17 February 1694.²² The objective was to combat the improper distribution of passports by neutral authorities, especially the Danes.²³ Confronting to the Scandinavians' complaints about "hostile infection", the French justified their policy by arguing that the doctrine of *robe* was the fairest means to neutrals; under it, they could continue to export their own products to France on their own vessels with the greatest security.

The Nine Years' War was an important stage in the history of neutrality insofar as it was the time when the conduct of war against enemy trade was pushed beyond all the limits known hitherto. On one side, the United Provinces and England set out to destroy French trade wherever they could, while on the other side, France followed the doctrine of "hostile infection" to its most rigorous form. For Louis XIV, the severity of his legislation on neutral trade was just an answer to his enemies' measures. The king declared he was ready to accept the principle of "free ships, free goods" under the condition that neutrals secured the same right from London and The Hague, a concession he knew perfectly well was impossible.²⁴ This attitude shows that "free ships, free goods" was not rejected in itself, but rather the fact that it could not be conceded without reciprocity. The brief period of peace between the conclusion of the peace of Ryswick and the beginning of the War of Spanish Succession did not change anything for the general conditions of neutral trade. After 1702, as before, the French government faced the necessity of fighting the Anglo-Dutch trade under Nordic flags and the need to support Scandinavian neutral trade in order to import the naval stores. That is why, without changing the substance of the previous legislation, a new regulation of 23 July 1704 established a new legal framework for neutral navigation. It was intended to define precisely the field of the privateers' activity as a response to the increasing number of complaints from the representatives of neutral powers. This regulation was the first real French legal text that tried to take into account all the problems proceeding from neutral navigation. It was the product of reflections initiated during the Nine Years' War and the very first years of the War of Spanish Succession. Beyond the objectives directly connected with the conflict, the preamble of the royal regulation reflects the ambition to preserve the subjects of neutral princes from the effects of war. This

22 "Règlement du roi concernant les passeports qui seront accordés aux vaisseaux ennemis par les princes neutres", 17 Feb. 1694 in Valin, *Nouveau commentaire sur l'ordonnance de la Marine du mois d'août 1681*, p. 246.

23 "Il est vrai, Monseigneur, qu'il se commet de grands abus dans les passeports du roi de Danemark. Quoique le Danemark ait beaucoup moins de commerce que la Suède, il se trouve toujours sous leurs convois quatre fois plus de vaisseaux danois qu'il ne s'en trouve de suédois", A.A.E., C.P., Suède, vol. 77, f. 112, La Piquetière to Croissy, 25 Aug. 1694.

24 "On s'est souvent expliqué ici de ma part au secrétaire Palmquist [Swedish ambassador] que je consentirais que le vaisseau et l'équipage suédois affranchissent les marchandises, pourvu que la cour où vous êtes fasse déclarer aux Anglais et aux Hollandais qu'ils y acquiescent pareillement. Mais tant que ces deux nations prendront et confisqueront tous les effets des Français qu'ils trouveront sur les vaisseaux suédois, il ne serait pas juste de me demander que j'en use autrement" A.A.E., C.P., Suède, vol. 71, f. 141, Louis XIV to Béthune, 8 May 1692.

underlines the idea that the scope of neutrality must guarantee its beneficiaries the same rights and freedoms of trade in wartime that enjoyed in peacetime.²⁵

The first four articles enumerated the cases in which it was strictly forbidden for French privateers to seize neutral vessels. The principle of free trade between a neutral place and any other place, including those under the enemy's sovereignty, was acknowledged. The law thus recognized the natural right of neutrals to export to the enemies their own products or those coming from any other countries. This freedom, however, suffered from two limitations. The first was the classic prohibition of carrying contraband goods, which covered all the materials useful for war. The second restriction concerned the journey of the ship and the origins of the wares on board. The transport of enemy goods, "du cru ou fabrique des ennemis", was still forbidden, except when they belonged to neutral subjects who were returning home. In all other cases, the enemy's wares on board would to be seized, but the ship would remain free under the condition it came from a neutral place. At the same time, the articles 5 and 6 provided that if there were goods on board belonging to enemy powers, the principle of the "hostile infection" would be applied, and all the cargo and the ship would be seized in accordance with article 7 of the ordinance of 1681. The regulation of 1704, therefore, introduced a distinction between the origin of goods and the nationality of their owner. This illustrates the problem of determining what exactly were enemy goods: those made in an enemy place or those belonging to an enemy? Since the objective was to cause harm to France's foes, goods were seizable in both cases, but in the second one the ship was involved as well.

However, in many respects, the reign of Louis XIV also showed some ambiguities in regard to the regulation of neutrality. In order to win the favours of Charles XII of Sweden while facing the economic necessity of maintaining exchanges with Holland, the Swedes were given special derogations from several articles of the regulation of 1704. They were allowed to carry foreign products freely, and they received acknowledgement of the status as Swedish ships for vessels bought after the beginning of the war.²⁶ If the general principle of the enemy *robe*, i.e. the nationality, was to cover the goods of allies still in force, this rule underwent several exceptions which makes a French doctrine of neutrality difficult to characterize. In addition to granting special privileges to neutral nations, the "hostile infection" was contradicted by provisions contained in various peace treaties, those of the Pyrenees (1659), Nijmegen (1678), Ryswick (1697) and Utrecht (1713). The former enemies, whether Spanish, Dutch or English won new important privileges, like the right of navigation to the enemy ports and the freedom to carry all kinds of goods,

25 "Règlement du roi pour les prises faites en mer et pour assurer la navigation des Etats neutres et alliés pendant la guerre", 23 July 1704, Valin, *Nouveau commentaire sur l'ordonnance de la Marine du mois d'août 1681*, p. 248.

26 A.A.E., C.P., Suède, vol. 100, f. 270, "Dérogations aux règlements en faveur des Suédois", Sept. 1704, and A.N. [Archives Nationales, Paris], F^{12/51}, f. 369, Procès verbaux du Conseil de Commerce, 8 Jan. 1706.

contraband of war excepted. In other words, this amounted to the acknowledgement of “free ships, free goods”.²⁷ There was, therefore, a real difference between the scope of neutrality as defined in the peace treaties and as provided by royal legislation. The discrepancy can be explained by the difference of the nature of the acts which defined neutrality. The first were peace legislation, and the second war legislation, including the ordinance of 1681, which was intended to empower the French navy with regard to the Dutch. The peace treaties always contained a promise to keep the re-established peace and disregard earlier disputes. In this case, the wider scope of neutrality should be connected to the culture of peace, and the idea that a new war should not penalize non-belligerents. By contrast, the royal regulations developed during wartime were intended above all to harm the trade of the enemies, even by reducing the rights of neutrals. Yet, it appears from a cynical point of view that the concessions in peace treaties were not very significant, because they were granted to powers with which France were most likely to be at war, in which case these concessions would inevitably be cancelled. This was different from the situation of the Hanseatic cities, for example. In their commercial treaty of 1655, the subjects of Hamburg, Bremen and Lübeck obtained the freedom to transport enemy goods on their vessels for fifteen years. Yet, in the new treaty of 1716, the Hanseatic citizens were denied the right to carry enemy goods. Ultimately, the Hanseats were treated less favourably than the Dutch and the English, despite the fact that they had renounced all political claims and insisted only on maintaining their neutral status, even in the case of a war between France and the Empire. It was precisely because a great part of Hanseatic navigation consisting of a carrying trade that their flag became a threat to French political aspirations.²⁸

The gradual loosening of French restrictions on neutral trade from the mid-eighteenth-century

From the 1740s onwards, French legislation on neutrality changed decisively. Articles 14 and 15 of the commercial treaty with the Dutch of 1739 and articles 20 and 28 of the Franco-Danish treaty of 1742²⁹ stipulated that a ship's flag covered its cargo and granted broad freedom of navigation to enemy ports. Yet in 1744, six months after the beginning of the war against England, a new regulation regarding seizures defined the new general framework of neutrality for the French government. If the

27 Article XIX of the Franco-Spanish treaty of the Pyrenees (1659), articles XIII and XXII of the Franco-Dutch treaty of Nijmegen (1678), *idem* in Ryswick (1697) and in Utrecht (1713) for the United Provinces and England, see Henri Vast, *Les grands traités du règne de Louis XIV*, (Paris, 1899), vol. 1, p. 103, vol. 2, pp. 69, 72 and 199, vol. 3, p. 101.

28 According to the administrator Rouillé de Fontaine *aucune marchandise des ennemis, n'osant confier les leurs sur les vaisseaux ennemis, ce sera pour les ennemis de l'Etat une géhenne qui sera avantageuse à la France* A.N., Marine, B³-233, f. 190, Rouillé de Fontaine to Pontchartrain, 29 July 1715.

29 A.A.E., Traités, Pays-Bas, 17390004 and Danemark, 17420001.

freedom to sail directly from a neutral place to any other harbour was accepted, the flag nevertheless did not cover cargo. The prohibition against carrying enemy goods was reaffirmed, but “hostile infection” concerned only the cargo and not the ship itself (art. 3, 4, 5). The Dutch and Danish enjoyed exclusive derogations by which they were allowed to continue to take advantage of their commercial agreement with France. However, in 1745, Louis XV cancelled the concessions of the treaty of 1739 as retaliation against Dutch partiality toward England.³⁰ The Danes retained their privileges, which were even extended to the Swedes, although the preliminary commercial convention of 1741 did not lead to any treaty.

The obvious inferiority of the French navy and the need to maintain trade with northern Europe and the colonies encouraged the French to think about expanding neutral rights. Reflections on natural right and on the Law of Nations gave rise to the principle of covering cargo by the flag. The flag being considered a stamp of sovereignty, it was no more licit to search and confiscate wares on board neutral ships than it was to penetrate in a neutral territory.³¹ The passport, representing the word of State, had to be considered as a guarantee of the good faith of trade that consequently could not be questioned. Once again, the principles of French government in peacetime contradicted practices in wartime, as demonstrated by the regulation of 1744 forbidding trade of enemies’ properties, which was still in effect.

From 1755, however, just before the outbreak of the Seven Years’ War, French objectives shifted to favouring nations that intended to remain neutral (Spain, Holland, Sweden, Denmark) by defending their freedom of navigation and their rights to trade based on the principle “free ships, free goods”. In so doing, France acknowledged its enemy’s maritime superiority and looked for the means of protecting at least part of its foreign trade from English privateers. These concerns lay most especially at the heart of negotiations in The Hague for the renewal of the treaty of commerce of 1739 between France and the United Provinces. The Dutch refusal to promise to defend by any means the rights attached to their neutrality, including that of joining the French in cases of undue seizures should they arise, led to the breakdown of commercial negotiations.³² But the French were more successful in the North.

Inspired by the example of the Nine Years’ War, Versailles wished the two northern kingdoms to renew a maritime union to protect their vessels. The French objective was to mobilize the northern navies to maintain their foreign exchanges

30 Alice Clare Carter, *Neutrality and commitment: The Evolution of Dutch Foreign Policy, 1667–1795*, (London: Edward Arnold, 1975), p. 327.

31 “L’espace qu’occupe le vaisseau est une portion momentanée du domaine national. Ce vaisseau est une colonie de la nation qui l’expédie. En vain objecterait-on qu’il n’y a point de territoire sur la mer. Il n’y a point sans doute de territoire fixe et limité en pleine mer, parce que l’usage en est commune à tous, mais il y a évidemment une propriété transitoire puisque nul n’a le droit de disputer à une autre l’espace qu’il occupe s’il n’est son ennemi ou son supérieur”, “Mémoire sur la navigation des neutres”, no date, 1757 ?, by Véron de Forbonnais, A.N., Marine B⁷/515, f. 144.

32 Richard Pares, *Colonial blockade and neutral rights, 1739–1763* (Philadelphia: Porcupine Press, 1975), p. 166.

as a counter to the English strategy of weakening France by the breakdown of its foreign trade.³³ Denmark was particularly in a delicate position. Copenhagen had to observe the obligations of its treaty of 1742 if it wanted to get the benefits from French trade, but at the same time had to act cautiously to avoid a conflict with England. The affair of Danish beef illustrates two kinds of difficulties Denmark had to face. First, under the provisions of the treaty of 1742, foodstuffs (*provisions de bouche*) were to be excluded from the list of contraband of war, contrary to the English laws containing a wider interpretation of the nature of contraband, which included food products. Second, London announced the blockade of Brest and Rochefort – the main naval dockyards of the French navy – even though English ships did not patrol in the vicinity of these harbours. However, in the Franco-Danish treaty of 1742 a blockaded port was clearly defined, as one in which it was not possible to enter “without an obvious danger”. This conception corresponds to the one that was commonly accepted, by Emer de Vattel among others.³⁴ The Danish conception of neutrality was fundamentally different neither from the Swedish one, nor from the one the French sought to promote. The Danish suggested that the definition of contraband of war should be based upon the articles 19 and 20 of the Treaty of Utrecht. They restricted the list to items that were directly useful for war, and they defended the freedom of neutrals to transport whatever and wherever they wanted, which looked like “free ships, free goods”.³⁵ In order to secure French recognition of this rule, the Danish ambassador Erhad Wedel-Friis, suggested holding negotiations on relaxing the French regulation of 1744.³⁶ His proposal did not receive the assent of his government, which was perfectly aware that such a conception of neutrality could not be accepted by Versailles without reciprocity on the English side.

The French, unlike the English, had already accepted that, under certain conditions, neutrals could transport enemy goods. For the Secretary of the Navy, Machault d’Arnouville, the Danish flag had to be a guarantee for French wares on board under the protection of the Danish king. Under these conditions, by extension of the duty of any king to be responsible for the goods under his protection, any removal of goods that were not contraband could be considered a violation of Danish sovereignty, just as it could be in cases when these products were taken into Danish territory. If the king of Denmark, in his quality as a neutral, could not ensure the security of the carrying goods in the face of the English, his subjects would risk seizure of their ships by French privateers without having the grounds to

33 J.R. Jones, ‘Limitations of British sea power in the French wars’ in Jeremy Black and Philip Woodfine eds., *The British Navy and the Use of Naval Power in the Eighteenth Century*, (Leicester: Leicester University Press, 1988), pp. 45–46.

34 Emer de Vattel, *Le droit des gens ou Principes de la loi naturelle appliqués à la conduite et aux affaires des nations et des souverains* (London, 1758), vol. 2, p. 92.

35 Jespersen and Feldbæk, *Dansk udenrigspolitik historie*, p. 303.

36 Ole Tuxen “Principles and Priorities: the Danish View of Neutrality during the Colonial War of 1755–1763” *Scandinavian Journal of History* 13, (1988), p. 216.

protest.³⁷ For this reason, the French insisted on an engagement from Copenhagen to guarantee the goods carried under Danish flag, in accordance with the Franco-Danish convention of 1749, which had confirmed the provisions of the commercial treaty of 1742.³⁸ In some respects, the Scandinavian maritime convention of 12 July 1756, corresponded to the French conception of neutral rights.³⁹ Its definition of contraband was the same as the one stipulated in the treaty of Utrecht and other treaties concluded by France. Although the principle “free ships, free goods” did not appear explicitly, the only forbidden trade by the text of the convention was contraband of war. It was also the only prohibition in the proclamation from the Swedish and the Danish kings to their subjects that informed them of their rights as neutral traders.⁴⁰ These provisions implied the right of free navigation and the right to carry enemy goods, rights that were not really consistent with French legislation.

During the Seven Years’ war, the main field of action for French privateers was the western Mediterranean. In order to maintain the favours of the Danish and the Swedish toward France, the minister of Foreign Affairs Rouillé asked his naval colleague Moras to render a speedy judgment of Scandinavian vessels that had been seized by privateers.⁴¹ Moras ordered inquiries into the seizures by the Admiralty’s officers in which they demonstrated their conformity with the legal framework governing the neutral trade in France. The minister reminded privateers of the instructions to respect neutral flags.⁴² Wedel-Friis wrote several memoranda about the confiscated Danish vessels. In July 1757, he complained about the cases of twelve ships seized by the French.⁴³ In Copenhagen, the French representative, president Ogier, had to give some explanations. The tensions of the first months of 1757 provided the opportunity to clarify the French framework of neutrality, which happened to be the most favourable for neutral flags.

The question at issue was whether the Danish could load local goods in English harbours for purposes of transporting them to neutral places that were not under their king’s sovereignty.⁴⁴ For example, on 14 January 1757, the Danish ambassador gave the French government a complaint about the ship *Le Prince*, which was coming from England and sailing to Italy when it was seized by a French privateer

37 A.A.E., C.P., Danemark, vol. 130, f. 147, Machault d’Arnouville to Ogier, 8 Dec. 1755.

38 A.A.E., C.P., Danemark, supp., vol. 5, f. 123 ‘Convention entre Sa Majesté Très Chrétienne et Sa Majesté le roi de Danemark qui proroge l’exécution du traité de 1742’ 30 Sept. 1749.

39 “Convention d’union maritime signée entre le Danemark et la Suède le 12 juillet 1756”, A.A.E., C.P., Suède, vol. 231, ff. 37–41.

40 For Sweden see “Déclaration du roi de Suède sur la conduite que doivent tenir les négociants et navigateurs pendant la guerre présente entre la France et l’Angleterre”, A.A.E., C.P., Suède, vol. 231, ff. 72–4, 16 July 1756.

41 A.A.E., C.P., Danemark, vol. 133, f. 224, Rouillé to Moras, 28 Feb. 1757.

42 A.A.E., C.P., Danemark, vol. 134, f. 19, Moras to Rouillé, 9 May 1757.

43 “Etat des vaisseaux danois actuellement détenus par les Français à l’occasion de la guerre avec l’Angleterre”, 12 July 1757 by Wedel Friis, A.A.E., C.P., Danemark, vol. 134, ff. 277–84.

44 A.A.E., C.P., Danemark, vol. 133, f. 305, Ogier to Rouillé, 19 March 1757.

from Marseille. The diplomat, in accordance with the Franco-Danish commercial treaty claimed that the seizure was illicit because of its 20th and 28th articles.⁴⁵ The Danes affirmed that they had the right, even in wartime, to sail into enemy harbours and carry local goods to other locations in accord with the 14th article of the regulation of 1744, which departed from the general principle forbidding the transport of enemy wares. The question concerned the diplomats more than the traders, because the latter had to be told by their government where exactly they were allowed to go and what kind of goods they had permission to carry. According to Ogier, the reason for the Danish complaints was their ignorance of the precise provisions of the commercial trade treaty of 1742 and of the regulation of neutrals of 1744. The Danes appealed “to the wide maxim that in a general way the neutral flag must cover the cargo”, which had never been acknowledged by any French king.⁴⁶ Louis XV’s diplomat wrote a memorandum to inform the Danes of the exact extent of the neutrality they enjoyed in France. This document provided a summary of the French conception of neutrality in the mid-eighteenth century.⁴⁷ Starting from the idea that the *droit naturel*, the *droit des gens* and the *droit de la guerre* justified attacks on enemy trade in wartime, the French memorandum rejected the general principle of setting free enemy cargo under a neutral flag.⁴⁸ But bilateral treaties could make exceptions to this universal rule, as was precisely the situation between France and Denmark. The heart of Ogier’s argument lay in its exact definitions of Danish privileges. The most important were set forth in articles 20 and 28 of the commercial treaty of 1742. The first article allowed for free navigation between neutral and enemy ports, blockaded harbours excepted. It also permitted neutrals so sail between two enemy places, in which case all cargo was free, except for contraband goods.⁴⁹ Referring to these provisions, the Danes complained about the seizure of their vessels that carried no military goods. But actually they did not enjoy complete freedom of navigation and trade, because the right to load cargo in an enemy harbour and to carry it to a neutral place, other than Danish, was not granted and was consequently still forbidden. This implicit prohibition contained in the treaty was expressly formulated in an instruction from Maurepas, then Secretary of State of the Navy, to Le Maire, French diplomat in

45 Memorandum from Wedel Friis to Moras 14 Jan. and 27 July 1757, A. N., Affaires Etrangères, B³ 475, no f.

46 A.A.E., C.P., Danemark, vol. 134, f. 219, Ogier to Bernis, 5 July 1757.

47 “Mémoire et observations sur les prises faites en mer et sur l’usage de la maxime que le pavillon couvre la marchandise”, by Ogier with the dispatch of July 12, 1757, in A.A.E., C.P., Danemark, vol. 134, ff. 264–71.

48 “Mémoire et observations sur les prises faites en mer”, f. 264.

49 “Seront libres et franches toutes les marchandises qui se trouveront dans les navires appartenant aux sujets du sérénissime roi de Danemark, quoique la charge de ces navires ou une partie de cette charge appartient aux ennemis du sérénissime Roi Très Chrétien”, article 28 of the Franco-Danish treaty of 1742, A.A.E., Traités, Danemark, 17420001.

Copenhagen, on 18 December 1746.⁵⁰ For the French, what was principally at stake in this restriction was the Mediterranean and Levantine trade. In these markets French traders had increased their share since the early 1730s, while their English rivals had experienced decline, for instance, in cloth exports.⁵¹ War presented an opportunity to close these lucrative markets to the Maritime Powers without promoting the Danish flag, which had appeared more and more frequently beyond the straits of Gibraltar since the 1740s.⁵² The French wanted to limit neutral trade in the Mediterranean area in hopes of maintaining their dominance there and promoting economic development after the end of the war. But the Danes benefited in France from particularly favourable privileges as neutrals, especially in comparison with their treatment in England. The English not only had a wider definition of the contraband of war, which included naval stores and foodstuffs, but also strictly forbade all transport of the enemy cargo under any circumstances. These rules explain why the English faced most of the Danish complaints, since in the first three years of the war they seized 112 Danish vessels, while the French seized only 24.⁵³ The trading privileges granted by the French to Danes, in contrast to the severity of English laws, explain why Versailles rejected the demands of Wedel-Friis in the name of the strict reciprocity due to neutrals.

The commercial interest explains the new measures concerning the extent of neutral navigation in the year 1778. They appeared in the 25th article of the Franco-American treaty of friendship and trade signed on 2 February. It provided for a total freedom of navigation between all places, whoever their sovereign. Yet, most important, the treaty widened the rights of neutrals to a level unknown hitherto in French legislation: "It is hereby stipulated that free Ships shall also give a freedom to goods, and that every thing shall be deemed to be free and exempt, which shall be found on board the ships belonging to the subjects of either of the Confederates, although the whole lading or any part thereof should appertain to the Enemies of either, contraband goods being always excepted" (article 25). The 26th article limited the contraband of war to objects directly usable for war.⁵⁴ The new principle was not only confirmed, but also extended to all nations by the *Règlement concernant la navigation des bâtiments neutres en temps de guerre* of 26 July 1778. The first article of the regulation provided for a complete freedom of navigation. Confiscation was limited to the transport of contraband of war, which

50 "Mémoire et observations sur les prises faites en mer et sur l'usage de la maxime que le pavillon couvre la marchandises" A.A.E., C.P., Danemark, vol. 134, f. 267.

51 Between 1711/1715 and 1761/62 the fall of the English cloth exports to the Levant was around 75%, and the increase of the French around 60%, François Crouzet, *La guerre économique franco-anglaise au XVIII^e siècle*, (Paris: Fayard, 2008), p. 223.

52 Dan Andersen, "Denmark's Treaty with the Sublime Porte in 1756", *Scandinavian Journal of History* 17 (1992), pp. 145–66, and from the same *The Danish Flag in the Mediterranean. Shipping and Trade, 1747–1807* (Copenhagen: PhD thesis University of Copenhagen, 2000).

53 Tuxen, "Principles and Priorities: the Danish View of Neutrality", p. 216.

54 A.A.E., Traités, Etats-Unis, 17780012.

was tantamount to an implicit acknowledgement of the principle “free ships, free goods”. But, if before the end of the year, the English did not give the same rights to neutral navigation, the French king reserved the right to cancel all clauses of the regulation. This was only a possibility, a threat to encourage neutrals to defend their right of free navigation and trade in London. The French in fact lacked the means for retaliation, from which, from a political point of view, they had more to lose than to gain.

Neutral trade legislation and French policy in the eighteenth century

Between the end of the seventeenth century and 1778, French legislation on neutrality shifted from the highly restrictive principle of “hostile infection” to the more generous principle of “free ships, free goods”. This evolution can be considered in economic terms as a reply to the growing inferiority of the French navy compared to the English one. Neutral trade was increasingly recognized as a means to ensure the supply of naval stores to France and to preserve colonial trade. As a result of their relative maritime weakness, the French abandoned a restrictive policy toward neutrals and turned into advocates of the rights of neutral trade in wartime. The widening of the scope of neutrality in the French legislation did not tally with English laws, but rather reflects the interests and the commercial needs of the kingdom. That is why the general principles that lay behind the legislation were sometimes put aside and global severity was limited. For instance, during the Nine Years’ War, the Secretary of State of the Navy Ponchartrain weighed the possibility of granting neutral status to the Hanseatic cities and of releasing their seized ships, providing they were transporting the most wanted naval stores in the kingdom.⁵⁵ In wartime, France became dependent on neutral navigation for its northern trade. “C’est une nécessité pour nous en pareille occurrence” and this is “an expedient force” wrote Contrôleur général des Finances Machault d’Arnouville in 1755.⁵⁶ Another factor was that the French Navy was unable to secure the Atlantic trade, as evidenced by the spectacular decrease in French navigation with the ‘Isles’ in 1756, such that Louis XV suspended the stipulations of the 26th article of the regulation of April 1717 that prohibited foreign flags in the French colonies.⁵⁷ The French did not have the means to copy English policy and were forced to make concessions to save a part of their foreign trade. The preservation of commercial interests, beyond all other considerations, gave its coherence to the French policy of neutrality during the Seven Years’ War. The exceptional guaranties to neutral flags in wartime constitute,

55 “Extrait des négociations de la France concernant l’interdiction de commerce faite par les Anglais et les Hollandais aux puissances neutres”, A.A.E., M.D., France, vol. 2021, f. 19.

56 A.A.E., C.P., Danemark, vol. 129, f. 443, Machault d’Arnouville to Ogier, 29 Sept. 1755.

57 Valin, *Nouveau commentaire sur l’ordonnance de la Marine du mois d’août 1681*, pp. 23–24; Patrick Villiers, *Marine royale, corsaires et trafic dans l’Atlantique de Louis XIV à Louis XVI* (Dunkirk: Société Dunkerquoise d’Histoire et d’Archéologie, 1991), vol 2., p. 466.

in my view, a last resort solution. Although Versailles was convinced that the Danes had agreed to forego the transport of French goods in return for a more favourable treatment from the privateers and from the English Admiralty, reprisals against the red and white flag were quickly abandoned.⁵⁸ During the War of American Independence, the French, once again, could neither require neutrals to obtain from London the right of free navigation, nor treat neutrals as severely as they were treated by France's enemies. In 1779 Louis XVI suspended free navigation for the Dutch, except for the ships of Amsterdam.⁵⁹ Yet the Scandinavians were still subject to the stipulations of the regulation, even though Vergennes was informed that they had not really tried to secure the same advantages from the English.⁶⁰ Because their first concern was pragmatism, the French renounced *de facto* making reciprocity a condition of neutrality. The use of neutrals was a necessity, not a choice in the development of the French national economy, just as it was in the case of the Scandinavian countries, the United States, and Naples at the end of the eighteenth century.

Neutrality had implications not only for the economic matters, but also for political affairs. In contrast to other countries, there was no real debate in France over the optimal extent of neutrality. Yet there was a reflection on that subject, as shown by a few memoranda kept in the archives of Foreign Affairs and the archives of the Navy. All but one of the texts I have found were written after 1750, and most are anonymous. They generally have the same goal: to connect the struggle against England to a juridical conflict rooted in the Law of Nations. The structure of the argumentation did not change very much during the eighteenth century, even if new references appeared. The memorandum of 1703 states that the right of the English to forbid neutral trade to France is as legitimate as the neutrals' right to continue their activity, except if they have signed a treaty in which they renounced this right. Otherwise, if two belligerents decide to interrupt their enemy's trade "toute rupture entre deux nations deviendrait une rupture générale, et deux nations en se déclarant la guerre auraient le droit de nuire à tous les Etats neutres, de leur faire la loi et de leur prescrire ce qu'elles doivent faire ou non".⁶¹ This memorandum raises one of the basic problems of the concept of neutrality inasmuch as it stands at the meeting point of two natural rights, that of belligerents and that of non-belligerents. The object of neutrality was to find the means of limiting the impact of warfare on trade, i.e. to find a way to enable peaceful commercial activities in the middle of conflicts. This is why a study of neutrality is not a study upon peace itself, and

58 Choiseul to Bernstorff, 23 Sept. 1759, in *Correspondance entre le comte Johan Hartvig Ernst Bernstorff et le duc de Choiseul, 1758–1766* (Copenhagen: Gyldendal, 1871), p. 69.

59 A.A.E., M.D., France, vol. 2022, f. 150, Arrêt du Conseil du roi, 14 Jan. 1779

60 A.A.E., C.P., Danemark, vol. 161, f. 326, Caillard to Vergennes, 1st Sept. 1778 and C.P., Suède, vol. 269, ff. 245–246, Usson to Vergennes, 13 Oct. 1778.

61 A.A.E., M.D., Angleterre, vol. 9, f. 84, "Mémoire sur le commerce des neutres en temps de guerre entre la France et l'Angleterre" (1703).

why neutrality is not regarded as the contrary of warfare, since it is not possible to conceptualize neutrality in isolation from the conduct of war.

In the mid-eighteenth century, the gradual relaxation of the severity of French legislation accompanied a revival of the reflection on neutrality. This question was thus more political than economic. There were different opinions regarding the basis for the rights and duties of neutrals. One of these, already expressed by Grotius, was that non-belligerents had to conclude an agreement with powers engaged in war to secure recognition of their neutrality.⁶² This opinion endured until the Seven Years' War, as shown by a memorandum of September 1757 that dealt with the question of the conditions of neutrality. Its anonymous author, drawing upon the work of Vitriarius, one of Grotius's commentators, maintained that neutrality is "un acte ou plutôt une convention par laquelle on déclare que l'on ne veut pas prendre part à la guerre [...] ce qui constitue la neutralité est difficile à fixer."⁶³ Under such conditions, neutrals had to come to an agreement on their status with each belligerent at the beginning of a war to preserve their safety. This was not only because of the surrounding uncertainty of neutrality, but also because some authors were still attached to the idea that neutral transport of enemy goods was not compatible with the necessary impartiality of neutrality, and that therefore the freedom of trade had to be denied to neutrals.⁶⁴ That is why, in spite of their insistence, the Danish did not obtain the right to carry English merchandises to neutral places. One of the most important defenders of that prohibition was René-Josué Valin. His opinion on that subject began to appear in his major work, *Nouveau commentaire sur l'ordonnance de la marine du mois d'août 1681* (1756), and was strongly reasserted in his *Traité sur les prises* (1763). On several occasions he denounced the Danish jurist Martin Hübner, who seemed to him excessively favourable to neutrals. According to Valin the basic rule should be "hostile infection", except when particular treaties stipulate otherwise.⁶⁵

Yet, in spite of Valin's opinion it seems that a shift occurred in the conception of neutrality at the time of the Seven Years' War on the grounds that the rights and duties of neutrals should be defined by the conjunction of provisions contained in commercial and peace treaties of the time. In his *Mémoire sur les prises* (April 1753) Saint-Contest, French Secretary of State to Foreign Affairs, stood up for the general principle that, except for contraband goods, the flag should cover the cargo. Yet he acknowledged that considering the uncertainty of this rule, most states have concluded treaties of commerce in order to determine by a bilateral

62 Grotius, *Le droit de la guerre et de la paix*, p. 767.

63 A.A.E., M.D., France, 2021, f. 356, "Si le refus de la neutralité est une raison pour être regardé comme ennemi", Sept. 1757.

64 "Une nation neutre a droit de faire sans trouble son commerce, mais non celui des nations en guerre, sans cela elle protégerait le commerce de l'une au préjudice de l'autre, ce serait manquer à sa neutralité que de vouloir prêter ses vaisseaux pour couvrir avec un pavillon neutre la marchandise ennemie", A.A.E., M.D., France, vol. 2021, f. 347, Memorandum on Ogier's dispatch, 12 July 1757.

65 René-Josué Valin, *Traité sur les prises* (La Rochelle, 1763), p. 63.

agreement the scope of their right to carry enemy goods. The covering of the cargo by the neutrals' flag was accepted by most powers, including England in its treaty with the United Provinces of 1674 and in the treaty of Utrecht of 1713. For Saint-Contest these provisions amounted to a kind of jurisprudence acknowledged by the states of Europe.⁶⁶ This conception of the fundamental principles of neutrality was very useful for the French in the context of their rivalry with the English. Inasmuch as the English continued to regard enemy goods confiscable wherever they were found, they made their rule from an exception. Therefore the English laws were not compatible with the Law of Nations, which was a political argument we can find in the French political discourses in the second half of the eighteenth century.

For Véron de Forbonnais, the famous Encyclopedist and political economist, neutral trade had to be considered in light of the struggle against England. Forbonnais recommended the concession of more freedom for neutrals in French legislation for commercial and political motives. During the Seven Years' War, he strongly advocated for opening colonial trade to neutrals in a book published in 1756.⁶⁷ According to him, having recourse to non-belligerents enabled France to preserve its colonial trade for the state's greatest interest, thereby allowing France to "éluder les desseins des Anglais". As far as promoting neutrality in Europe was concerned, Forbonnais insisted less on economic justifications than on the Law of Nations as a shield for not only France's interest but also that of all European powers, England excepted. He contrasted the natural right to freedom of navigation and the covering of cargo by a neutral flag with the English laws.⁶⁸ In Forbonnais's view, the English despised natural rights and were therefore a threat to all neutral powers, which had to join together to protect their common interests. He articulated a theme that became more and more widespread in French works, namely the commercial selfishness of the English, which inevitably entailed a unilateral domination of the seas.⁶⁹ He underlined the necessity of defending the freedom of the seas "avant que les peuples de l'Europe se soient aperçus de la pesanteur des chaînes que leur forge l'Angleterre, si chacun continuant à considérer uniquement des intérêts

66 "Cette disposition uniforme des traités pourrait peut être s'envisager comme une sorte de jurisprudence maritime avouée par les puissance de l'Europe", "Mémoire concernant les prises", 20 April, 1753 in E.M. Satow, *The Silesian loan and Frederick the Great* (Oxford: Clarendon Press, 1915), p. 344.

67 François Véron Duverger de Forbonnais, *Essai sur l'admission des navires neutres dans nos colonies*, 1756. Another work which defends the same point of view on the admission of neutrals in colonial trade with a more distinct focus on economic matters is Louis Bonnaventure Saintard, *Lettres d'un citoyen sur la permission de commercer dans les colonies, annoncée pour les puissances neutres* (Paris, 1756). See the chapter by Antonella Alimento in this volume for a more extensive covering of Forbonnais's outlook on the politics of neutral trade.

68 "Mémoire sur la navigation des neutres", no date 1757 (?), by Véron de Forbonnais, A.N., Marine B⁷/515, ff. 141–2.

69 Edmond Dziembowski, *Un nouveau patriotisme 1750–1770. La France face à la puissance anglaise à l'époque de la guerre de Sept Ans* (Oxford: Studies on Voltaire and the Eighteenth Century, 1998), pp. 50–51. This threat is shared at the highest level of the government: 'Le dessein des Anglais est de s'emparer de la monarchie universelle de la mer' A.A.E., M.D., France, vol. 2022, f. 13, Bernis to Ogier, 25 June 1758., see also "Sur le projet de monarchie universelle des Anglais", A.A.E., M.D., Angleterre, vol. 51.

momentanées et particuliers, se refuse à l'évidence de l'intérêt commun et de la nécessité d'un équilibre maritime.⁷⁰

After the treaty of Paris (1763) some criticisms appeared in France regarding the legislation of neutral trade. The war revealed that some articles were too severe, while others did not protect against enemy fraud. The duke of Choiseul, in his grand design to greatly improve the French navy, ordered an inquiry into the imperfections of the legislation. As part of the reform of navigation laws, he wanted reciprocity to be the cornerstone of new rules.⁷¹ Yet, it seems that after his fall in 1770, the project was abandoned. Nevertheless, reflection on neutrality continued, as shown by the changes in French legislation on neutral trade between the Seven Years' War and the American War of Independence. These changes were connected to the growing importance of the Law of Nations as a real parameter in French foreign policy. After the first partition of Poland (1772), there were many criticisms of the *système de convenance* in international politics that totally ignored the Law of Nations and the general interest.⁷² The defence of the principles of the Law of Nations became an argument for just war, as stated by Vattel, for instance.⁷³ The reflection on neutrality in the 1770s should also be considered from that point of view. The denunciation of the English design to impose a universal monarchy on the seas became a recurrent argument in French diplomatic discourse, recalling the anti-Habsburg rhetoric of Louis XIV's epoch. Yet this time the heart of the argument was not the balance of power, but the Law of Nations. Just as in the seventeenth century, when the House of Austria had to be counterbalanced by a union of other states, in the eighteenth century an overly powerful England had to be counterbalanced by the establishment of a universal rule of neutrality in accordance with the principles of the Law of Nations.

This is, in my opinion, one reason for the great change in French legislation of neutral trade, in the form of the acknowledgement of freedom of navigation for non-belligerents by the regulation of 1778. During the War of the American Independence, Louis XVI and Vergennes represented their war against England as a struggle for

70 "Mémoire sur la navigation des neutres" (1761), A.A.E., M.D., France, vol. 2027, ff. 29–30. Although this memorandum is anonymous, I believe it is from Forbonnais on the grounds of the similarity of several paragraphs with the "Memoire sur la navigation des neutres" of 1757 (?) already quoted.

71 "Mémoire sur la nécessité et la manière de réformer la législation maritime relative à la navigation des neutres" (1767), A.A.E., M.D., France, vol. 2027, ff. 33–34, and "Lettre circulaire aux ambassadeurs étrangers leur annonçant la volonté du roi de rédiger une nouvelle ordonnance sur le commerce des neutres ayant comme base la réciprocité, il demande aux représentants étrangers les lois maritimes en vigueur chez eux", Versailles, 12 April 1767, A.A.E., M.D., France, vol. 2027, f. 37.

72 Marc Bélissa, "Les causes de la première partition de la Pologne selon les contemporains", *Revue d'Histoire Diplomatique* (2007), pp. 249–70.

73 "Toutes les nations sont en droit de réprimer par la force celle qui viole ouvertement les Loix de la Société que la Nature a établie entr'elles, ou qui attaque directement le bien & le salut de cette Société", E. de Vattel, *Le droit des gens ou Principes de la loi naturelle appliqués à la conduite et aux affaires des nations et des souverains* (Londres, 1758), vol. 1, p. 13. See also Jean-Matthieu Mattei, *Histoire du droit de la guerre (1700–1819)* (Aix-en-Provence: Presses universitaires d'Aix-Marseille, 2006), pp. 324–5.

the “freedom of the seas”, which involved the promotion of neutrality beyond the “liberty of trade”.⁷⁴ In this respect, the regulation of 1778 should be examined not only in terms of its practical effects, but also as a weapon of propaganda, for it established the first national legislation truly founded on the principle of covering of cargo by the flag. In this way, France offered new rules for commerce in wartime that constituted a fundamental alternative to English laws, enabling neutrals to band together.⁷⁵ That is why, after the publication of the regulation, French ambassadors began to work on a league of neutrals to be founded, according to Vergennes, on “l’énoncé des principes évidents du droit des gens et du droit public and give une espèce de code universel sur les droits des neutres qui serait à l’avenir la sauvegarde de la liberté des mers et l’appui des bâtiments des puissances qui n’auraient pas de part aux guerres trop fréquentes dont l’Europe est tourmentée.”⁷⁶ These words were not just tricks in diplomatic discourse, because we find them beyond the political circles. In his *Annales civiles, politiques et littéraires* of 1779, the journalist Simon Linguet deplored the passivity of neutral states in the face of English despotism on the seas.⁷⁷ In this context, even if French diplomats did not take a real part in the foundation of the League of Armed Neutrality, that League corresponded to the desires of Louis XVI and Vergennes. Because the minister thought that Catherine II’s proclamation was directly inspired by the principles of the French regulation of 1778, he was even more inclined to support the League.⁷⁸ The political dimension of the laws on neutral trade explain why from the onset of the war Vergennes asked the Admiralty’s officers to judge neutral prizes with leniency in order to win the neutrals’ goodwill.⁷⁹ During the summer of 1780, Louis XVI ordered his admirals as well as his privateers to act with the greatest caution when

74 Vergennes wrote “l’objet de la dernière guerre était la liberté des mers et par conséquent celle du commerce”, quoted in Jean-François Labourdette, *Vergennes. Ministre principal de Louis XVI* (Paris: Desjonquères, 1990), p. 262.

75 By the regulation, “[Louis XVI] a fait connaître d’une façon bien évidente sa religion à ne pas léser non seulement les intérêts de ses alliés et amis de toutes les nations mêmes auxquelles la liberté de la mer est nécessaire malgré ce prétendu droit exclusif et offensant que les Anglais se sont arrogés”, A.A.E., C.P., Suède, vol. 270, f. 81, Corberon à Usson, 26 Feb. 1779. See also Isabel de Madariaga, *Britain, russia and the Armed neutrality of 1780* (New Haven: Yale University Press, 1962), p. 59.

76 A.A.E., C.P., Suède, 270, ff. 149–50, Vergennes à Sainte Croix, 6 April 1779.

77 Simon-Nicholas Henri Linguet, *Annales civiles, politiques et littéraires*, (1779), vol. 5, pp. 83 and 215, vol. 6, pp. 64–65, see also Joseph de Rayneval, *Observations sur le mémoire justificatif de la cour de Londres* (Paris, 1780).

78 “Laissons les Russes se glorifier à juste titre du beau rôle qu’ils jouent, il nous suffit d’avoir été les premiers à embrasser toute l’étendue d’un projet qui a été calqué sur les principes que le roi a professés pendant tout le cours de cette guerre” A.A.E., C.P., Russie, vol. 104, f. 459, Vergennes à Corberon, 19 July 1780. Rayneval, who was one of Vergennes’ collaborators, affirms also that the regulation of 1778 “avait servi de texte à celui de l’impératrice de Russie”, Rayneval, *De la liberté des mers* (Paris, 1811), vol. 1, p. 292.

79 “Il importe que nous donnions lieu aux étrangers de faire un parallèle avantageux pour nous de notre conduite avec celle des Anglais” A.A.E., C.P., Suède, vol. 269, fo. 366, Vergennes to Chardon, 15 Dec. 1778.

handling the ships of neutrals.⁸⁰ Political priorities required the softening of French legislation as a means to isolate England.

To conclude, the above overview of the evolution of French legislation between the end of the seventeenth century and the War of American Independence shows that the strategy of increasing the freedom of neutral trade was, in the long run, rather successful. Even if the French faced difficulties, neutral ships were regularly seen in the Kingdom's harbours. French legislation created sufficiently attractive conditions to incite neutrals to sail to France despite English privateering. The northern neutrals in particular supplied French dockyards with indispensable naval stores to sustain the fight against Great Britain. The gradual loosening of French restrictions on neutral trade, given in by the necessity to respond to British maritime supremacy was also a means of political propaganda. It provided arguments to brand English practices as aimed at establishing what was called a tyranny of the seas. However, despite the strong pressures of neutrals throughout the eighteenth century which may be argued to have culminated in the principles of the League of Armed Neutrality, the French failed to compel the English to a general acknowledgement of a narrower definition of war contraband and use neutral trade to defeat British maritime supremacy.. The history of French neutral trade legislation may also be related to legal and moral philosophy, as its reshaping took place contemporaneously to the development of the of the law of neutrality as part of the Law of Nations. Indeed, the freedom of trade and the neutralisation of warlike mechanisms in international relations cannot but be seen as closely related to the most prominent themes of the French Enlightenment.⁸¹

80 A.A.E., M.D., France, vol. 2022, f. 209, Circulaire sur la neutralité, 16 May 1780 ; fo. 212, Déclaration royale, 4 Aug. 1780 and f. 214, "Lettre du roi à M. l'amiral, concernant la navigation des bâtiments appartenant aux sujets des puissances neutres", 7 Aug. 1780.

81 Jean-Pierre Guicciardi "Guerre, paix", in Michel Delon ed., *Dictionnaire européen des Lumières*, (Paris: PUF, 2007), p. 609.