THE DECLARATION OF PARIS 1856

SIR FRANCIS PIGGOTT

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"LAW OF THE SEA" SERIES
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THE DECLARATION OF PARIS

1856

A STUDY

– DOCUMENTED –

BY

SIR FRANCIS PIGGOTT

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THE time has come at last when all theories as to the manner in which war ought to be waged are to be revised by the light of experience of war as it is, in fact, waged; those especially which attempt to control the relations of the belligerents with the neutral merchant. It is essential therefore that the veil which for sixty years has surrounded the Declaration of Paris should be withdrawn, and its story told from Hansard, some few White Books, and documents preserved in the Public Record Office.

The task of piecing together the scattered fragments has been made easier by the able assistance and energetic collaboration of Miss Sylvia Seeley.

In telling the story I have found the need of a moderating influence, and Mr George A. B. Dewar, bringing an open mind to the subject, has supplied it.

F. T. P.

14 OLD SQUARE, LINCOLN'S INN.

TABLE OF CONTENTS

Part I.—HISTORICAL

1854

1855

I

II

III

IV

1856

I

II

III

IV

V

1860–1862

I

II

III

IV

Part II.—COMMENTARY

I

II

III

IV

V

VI

VII

VIII

Part III.—DOCUMENTS

PART I

HISTORICAL

* * *

The immediate cause of the war which broke out in 1853 was a dispute which had arisen between France and Russia upon the custody of the Holy Places in Jerusalem. The real cause was the intention of Russia to hasten the dismemberment of the Turkish Empire. Nicholas, in a memorable conversation, actually suggested to the British ambassador at St Petersburg that England should receive Egypt and Crete as her own portion of the spoil. This conversation, which took place in January 1853, was at once reported to the British Government. It undoubtedly prepared the way for future trouble. . . . It had the effect of rendering the British Ministry suspicious of his intentions, at a moment when a good understanding with this country was of the first importance to the Czar of Russia. . . . Almost at the same moment he affronted France by declining to call Napoleon "Monsieur mon frère." . . . Nicholas had the singular indiscretion to render a British Ministry suspicious of him, and a French Emperor angry with him, in the same month. Napoleon could easily avenge the affront. . . . The Greek and Latin Churches both claimed the right of protecting the Holy Places of Palestine. Both appealed to a Mahometan arrangement in support of their claim: each declined to admit the pretensions of the other. The Latin Church in Palestine was under the protection of France; the Greek Church was under the protection of Russia; and France and Russia had constantly supported, one against the other, these rival claims. In the beginning of 1853 France renewed the controversy. She even threatened to settle the question by force. The man whom Nicholas would not call "mon frère" was stirring a controversy thick with trouble for the Czar of Russia. . . . The dispute about the Holy Places was soon superseded by a general demand of Russia for the adequate protection of the Christian subjects of the Porte. In the summer of 1853 the demand took the shape of an ultimatum; and when the Turkish Ministers declined to comply with the Russian demand, a Russian army crossed the Pruth and occupied the Principalities. In six months a miserable quarrel about the custody of the Holy Places had assumed dimensions which were clearly threatening war. At the advice of England the Porte abstained from treating the occupation of the Principalities as an act of war; and diplomacy consequently secured an interval for arranging peace. The Austrian Government framed a note, which is known as the Vienna Note, as a basis of a settlement. England and the neutral Powers assented to the note; Russia accepted it; and it was then presented to the Porte. But Turkey, with the obstinacy which has always characterised its statesmen, declined to accept it. War might even then have been prevented if the British Government had boldly insisted on its acceptance, and had told Turkey that if she modified the conditions she need not count on England's assistance. One of the leading members of Lord Aberdeen's Ministry wished to do this, and declared to the last hour of his life that this course should

have been taken. But the course was not taken. Turkey was permitted, or, according to Baron Stockmar, encouraged to modify the Vienna Note; the modifications were rejected by Russia; and the Porte, on the 26th of September, delivered an ultimatum, and on the 4th of October 1853 declared war. These events excited a very widespread indignation in this country. The people, indeed, were only imperfectly acquainted with the causes which had produced the quarrel; many of them were unaware that the complication had been originally introduced by the act of France; others of them failed to reflect that the refusal of the Porte to accept a note which the four Great Powers—of which England was one—had agreed upon was the immediate cause of hostilities. Those who were better informed thought that the note was a mistake, and that the Turk had exercised a wise discretion in rejecting it; while the whole nation instinctively felt that Russia throughout the negotiations had acted with unnecessary harshness. In October 1853, therefore, the country was almost unanimously in favour of supporting the Turk. The events of the next few weeks turned this feeling into enthusiasm. The Turkish army, under Omar Pasha, proved its mettle by winning one or two victories over the Russian troops. The Turkish fleet at Sinope was suddenly attacked and destroyed. Its destruction was, undoubtedly, an act of war: it was distorted into an act of treachery; a rupture between England and Russia became thenceforward inevitable. . . .—(Spencer Walpole, *Foreign Relations*, ch. iii. pp. 99–102.)

* * *

So early as 28th of January 1853 the French Emperor perceived that his measures had effectually roused the Czar's hostility to the Sultan, and he instantly proposed to England that the two Powers should act together in extinguishing the flames which he himself had just kindled, and so endeavour to come to a joint understanding, with a view to resist the ambition of Russia. Knowing beforehand what the policy of England was, he all at once adopted, and proposed it to our Government in the very terms always used by English statesmen.—(Kinglake, *History of the Crimean War*, i. p. 343.)

* * *

La Russie, souveraine absolue de la Mer Noir, n'ayant qu'à étendre la main pour toucher le Bosphore, plaçait la Méditérranée sous la menace des flottes de Sébastopol; du fond de ses ports inaccessibles, elle atteignait tous les empires et tous les royaumes.

Les quatre grandes puissances européennes s'unirent afin d'empêcher une guerre qui semblait imminente, et dans le but, tout en sauvegardant l'amour propre de la Russie de sauvegarder aussi l'indépendance de la Turquie.

Toutefois la France et l'Angleterre devant le dévéloppement de l'aggression Russe tinrent leurs escadres à portee de secourir efficacement le Sultan.

. . . .

Le sort est jété: les dernières croyances de paix sont évanouies, les rélations diplomatiques de la France et de l'Angleterre ont cessé avec la Russie. Les déclarations de guerres sont échangées, on se prepare à combattre.—(Bazancourt, *L'Expédition de Crimée*, Introduction, xxvi, and t. i. ch. i.)

1854

I

The Declarations of the Neutrality of the Scandinavian Powers.[1]

EARLY in January 1854, the spread of the war begun between Turkey and Russia in the previous October appeared imminent. Lord Palmerston resigned from the Aberdeen Administration in December 1853, because he thought the Government's policy towards Russia was not firm enough. The British fleet was ordered to the Black Sea, and a few days later he resumed office. The coming of the Western nations to the assistance of the Porte then seemed certain; and the neutrals began to take steps for fostering the commerce which follows in the train of war. The neutrals were the Scandinavian Powers, their people long-established traders in material essential to naval warfare; the steps were those assertions of rights which had become a tradition among them. The spell of peace which had blessed the nations for forty years was about to be broken; the supply of materials was fully equal to the heavy demands of the pending war; the trade prospects were good; there would certainly be the traditional difficulties in getting cargoes safe to belligerent ports. Turkey's allies were those two countries who in their great wars had wrangled over the rights of neutrals almost as strenuously as they had fought; divided counsels on such vexed questions were more than probable. There were rumours, too, that a change had been gradually coming over certain sections of British public opinion; prompt action was therefore advisable. If the rumours were true,

[1] This chapter is based almost entirely on despatches preserved in the Public Record Office.

These despatches, as well as those referred to in other chapters, are to be found in the official volumes as under :—

Sweden : F.O. 73 ; Nos. 254, 259, 260, 261.
Denmark : F.O. 22 ; Nos. 205, 207, 208.
Prussia : F.O. 64 ; Nos. 359, 364, 367, 368, 369.
France : F.O. 27 ; Nos. 996, 997, 1005–1012.

even premature action was not likely to be resented, more especially as the advocates of the new ideas were in power. Moreover, although negotiations were still going on, although the scales which held peace and war had not yet dipped, Russia was taking steps to strengthen her position. The occasion seemed specially favourable for a forward policy.

On 2nd January 1854, Sweden and Denmark presented identical despatches containing premature declarations of neutrality [1] which, in plain language, were polite but firm intimations to Britain, France, and Russia of what they might expect from these neutrals in the event of war. It was an ultimatum with the familiar burden, "respect for the neutral flag." The documents are true to the tradition of the Armed Neutralities, of which these two countries had been such prominent members. They were not couched in the old crude terms. There was no appeal to the applause of all Europe. A more sober diplomacy had intervened: but the old point, that the neutral claim was a "right," was expressed in clear and unmistakeable language. The steadfast adherence to "a strict neutrality founded in good faith, impartiality, and an equal respect for the rights of all the Powers," would impose on the Kings of Sweden and Denmark certain obligations, and assure to them certain advantages. The obligations were many—to abstain from participation, direct or indirect; to admit to their ports the warships and merchantmen of the belligerents, with certain restrictions; to refuse admittance to privateers; to accord to belligerent vessels facilities for the supply of stores, not contraband of war; to exclude prizes from their ports except in cases of distress. The terms in which these obligations were defined would not, on the face of them, cause any discussion. The time, indeed, appeared specially opportune for a strong line as to privateers. The "advantages" were comprised in a single sentence—"To enjoy" in their commercial relations with the countries at war "all security and all facilities" for their "vessels as well as for their cargoes, with the obligation at all times for such vessels to conform to the regulations generally established and recognised for special cases of declared and effective blockade." There was, however, a touch of the old Armed Neutrality spirit in the concluding paragraph of the declarations: "Such are the general principles of the neutrality adopted by His Majesty the King . . . in the event of war breaking out in Europe. His Majesty the King flatters himself that they will be acknowledged as in conformity with the Law of Nations."

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[1] Document No. 1.

Rumours of concerted action between Sweden and Denmark as neutrals in the event of war had reached London in the autumn of 1853, and Mr Grey, British Minister at Stockholm, was instructed on the 12th November to ascertain what arrangements had already been made. The King declined to give Mr Grey the required information; but he informed him that it was his intention to make a declaration of policy as soon as a communication had been received from Copenhagen. M. Lobstein, the French Minister, had, however, received important intelligence from the King, which he communicated to Mr Grey. There were to be two chief points in the declaration of neutrality: (1) a specification of ports to be closed to the belligerents; and (2) "que le pavillon neutre couvre la marchandise." With regard to the second point, it had been proposed by Sweden to Denmark, but Mr Grey adds: "I have reason to believe that there is not the same unanimity upon the subject. The King in his conversation with M. Lobstein told him that he took it for granted Russia would recognise the principle laid down in it, but I do not hear that he made any allusion to England." The following extract was enclosed from the *Svenska Tidningen* of the 18th November:—

> Russia is preparing for a European War, but we prepare for a neutrality in keeping with our rank and advantageous position—not one which may be trampled upon, or the honour of which may be impaired by anyone making use of our peaceable coast for their benefit.

On the 19th December Mr Grey reported that Baron Stjerneld, the Swedish Minister of Foreign Affairs, had asked him if he knew the views of the British Government with regard to the neutral flag, dwelling on the injustice of refusing to admit that the flag protects the merchandise. Mr Grey thought that doubt as to the course the British Government would take had caused great distrust of England, and was the reason why he could obtain no information as to the forthcoming declaration of neutrality. The French Minister had told him that the matter of the declaration was entirely agreed upon between Sweden and Denmark. In the same despatch Mr Grey informed Lord Clarendon of a statement made to him by Baron Stjerneld, that "if England refused to admit the principle that the neutral flag protects the merchandise, before six months were over she would have a war with the United States." This statement might have been based on inferences drawn from the history of the early years of the century; it might also have been based on information of actual negotiations on the subject

between Washington and Copenhagen. Mr Grey evidently had suspicions that such negotiations were in progress, and they were confirmed. He wrote on the 11th February 1854, that from conversations he had been led to believe that " the Swedish Government might endeavour to come to some understanding with the United States, in case of difficulties arising between Sweden and England, upon the question of the neutral flag."

The declarations of neutrality had, in fact, been notified to the United States by Denmark on the 20th January,[1] and by Sweden on the 28th,[2] as also to the other neutral Powers. The reason for this action was explained in the Danish Note to be that the King, having nothing more at heart than to maintain and cement the relations of friendship and understanding which so happily reigned between him and all the Governments of Europe, regarded it " as a duty not to leave the allied and friendly Powers in ignorance of the line of policy " which he proposed to follow in the possible contingency of a maritime war. The body of the documents reproduced the Notes which had been sent to the belligerents.

The American Secretary of State replied in both cases, on the 14th February,[3] that the views expressed by the two Governments were regarded by the President " with all the interest which the occasion demands."

Mr Grey also wrote on the 11th February that he had been informed " that Sweden could not count upon the support of America upon this question, and the sympathies of the latter were certainly on the side of England in case of a war with Russia," an intimation which Baron Stjerneld was said to have received with some disappointment. This information was the more important, as our Minister understood that the American Chargé d'Affaires had proposed on his own motion " that it might be advisable to send a small squadron to the Baltic in the spring, in the event of a war, for the protection of American commerce."

The replies received from the other Powers, especially those from Prussia and Austria, were reported by Mr Grey to be " entirely satisfactory."

Even more interesting information as to the attitude of the United States in the event of war came into the possession of the Government in February. The Czar had been endeavouring to obtain its consent to the issue of Russian letters of marque to United States citizens. The information had been received by the French Government, and was immediately reported to

[1] Document No. 1 C. [2] Document No. 1 D. [3] Document No. 1 E.

London. M. Drouyn de Lhuys intended to address the United States, saying that the old cordial relations which had existed between the two countries assured him that the proposal would not be countenanced. Lord Cowley was instructed to inform the French Minister of the British Government's sympathetic concurrence with the despatch.

Reports tend to show that public opinion in the United States was entirely favourable to the allies,[1] but this question of serving in Russian privateers presented difficulties which stood in the way of its effective prohibition. On the 22nd March, Mr Mason, the United States Minister in Paris, informed the Secretary of State that it was the point on which most apprehension was felt.[2] Lord Clarendon in the same month discussed the question of privateering generally with Mr Buchanan, the Minister in London, and the means of suppressing it, speaking in highly complimentary terms of the treaties which the United States had concluded with different nations "stipulating that if one of the parties be neutral and the other belligerent, the subjects of the neutral accepting commissions as privateers to cruize against the other from the opposing belligerent, shall be punished as pirates." Mr Buchanan added:[3] "These ideas were doubtless suggested to his mind by the apprehension felt here . . . that our sailors will be employed to cruize against British commerce." The apprehension had not subsided in April, when Mr Marcy referred to it in a despatch to Mr Buchanan. Great Britain and France, he says, would both most readily enter into conventions, but in spite of the provision in existing treaties he did not think that the President "would permit it to be inserted in any new one."

I have not come across any record of Americans having accepted Russian letters of marque; but it will not be uninteresting to record Mr Mason's opinion on this question, and the somewhat ingenious way in which he links it up with the other question of the neutral flag.

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[1] Consul Bancroft to Lord Clarendon.

Cincinnati, 5th July 1855.

Public opinion in this city and State and the adjacent States, and generally, and I might say universally, throughout the interior, where the true American opinion is best to be gathered, is decidedly favourable to Great Britain in respect to the Russian war. This favourable opinion pervades all classes. I speak only of the interior, as it is my Consular district, leaving those on the seaboard to report according to their information: but I can confidently affirm that the favourable feeling is persistent throughout the whole of the United States.—(*State Papers*, vol. xlvii. p. 360.)

[2] Document No. 8 C.

[3] Document No. 8 D.

> The point on which most apprehension is felt, is the engagement of citizens and vessels of the United States in privateering under the Russian flag. I have urged that, with every disposition to prevent such unlawful proceedings by our people, the Government would find much difficulty in enforcing its laws, unless sustained by public opinion in the United States, and aided by the people, as well as by officers of Government; that with the vast extent of sea-coast of the United States, the Government could not have information of the preparation of vessels for such enterprizes, in all cases, in time to suppress them, unless the people felt an anxious desire that the laws should be executed; that if the allies adopted just and liberal measures in regard to neutral rights, it would give profitable returns to a safe business, and the entire mercantile community of the United States would, from a sense of justice and of national duty, as well as of their own interest, be found ready to aid the Government in executing the laws; that, tempting as might be the offers to engage under the Russian flag, to cruize against the commerce of the allies, the danger of the service, the difficulty of realizing their prizes by adjudication, and, above all, the actual profit of lawful trade, under equitable and fair rules in respect to neutral rights, and the public satisfaction at seeing just principles established among nations, would probably prevent our citizens, however bold and adventurous, from taking part in the assaults on the commerce of the allies.

The second question discussed in the preliminary conversations related to the closing of the Baltic ports. It was reported that Russia had demanded, in the event of war, that Swedish ports should remain open to her but closed to England and France. According to another report, Russia's demand was that all the ports of Sweden should be closed to all belligerents, including herself. According to yet another, that she should have permission to carry her prizes into Carlscröna, and also into Slitö in case of necessity, the same favour not to be accorded to England and France. These demands, whichever might have been the true one, were refused. Sweden declared that she would only close those ports the entrance to which she could defend; but the whole question, as Mr Grey's despatch of 30th January pointed out,[1] caused the King great anxiety lest Russia should be tempted to support her demands by force.

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[1] Mr Grey to Lord Clarendon.

Stockholm, Jan. 30, 1854.

After reporting that the arrival of the Russian courier, M. Daschkoff, aroused public curiosity in Stockholm, and that M. Daschkoff had read

If Russia could persuade Sweden to close all her ports, she would place the allies at a great disadvantage. If some of them remained open it would enable the English and French ships to refit, whereas if all were closed, Russia would suffer no inconvenience, for she had her own Baltic ports to rely on. It was worth a diplomatic discussion to press the assumption of the international lawyers that the conditions of perfect neutrality require that neutral action must be equal on both sides: what is granted to one belligerent must be granted to the other. So the question was seriously raised by Russia that this condition of equal treatment would not be fulfilled if the allies derived a benefit from the action of Sweden of which she *need not* avail herself! Therefore all the ports must be closed.

A question of the same nature arose on the other side. The allies pressed for the closing of Copenhagen by Denmark. Her Majesty's Government could not consent to be excluded from

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to them a despatch to the King of Sweden, expressing the Emperor of Russia's desire that Sweden should close all her ports to *all* belligerents in the event of war, Mr Grey continues: "This demand was founded upon the disadvantage under which Russia would lie if the English and French fleets were allowed to enter the Swedish ports. The demand was made in temperate and conciliating language, and the King of Sweden's answer will be sent from here to-morrow. That answer is a decided negative, and both Baron Stjerneld and Baron Manderström said to me that they were convinced Her Majesty's Government would be satisfied with it. The King had desired that the greatest reserve should be observed with regard to the Corps Diplomatique at Stockholm, in order that it might never be alleged that his answer to Russia had been dictated by foreign influence, for though Sweden was a small Power, she was an independent one. The Swedish Government were, however, bound not to lose sight of the fact that whatever might be the issue of the war, if war there was, Russia would always be the neighbour of Sweden, and that it was therefore doubly important to the latter to avoid giving offence to the former. In the present instance, it could not be denied that the attitude of Sweden would, in the event of a war, be more advantageous for England and France than for Russia, but they could not alter her geographical position, and there was no hesitation on the part of the King, whose refusal to comply with the demands of Russia was most decided.

"There appears to me to be a very general dread among the Swedes of a sudden attack being made by Russia upon the Island of Gottland. The Crown Prince has repeatedly expressed to me his alarm with regard to the position of Gottland, and he lately gave me to understand that the Russian forces were being increased in Finland. I accordingly asked Baron Manderström to-day if he had heard of reinforcements being sent to that quarter. He answered, 'Not yet, but they are *being* sent,' and he, I am bound to say, added that he had no apprehension as regards Gottland, but that he feared the Russians might mean to take possession of a portion of Finnmark, where there were ports which were never closed by ice. He mentioned particularly the Waranger Fiord. Baron Manderström is, however, the only person I have seen who has expressed this opinion, and the fact of two regiments being now under orders to march for Gottland as soon as the weather admits, is a proof that the Government see the necessity of being on their guard in that quarter."

those fortified ports in the Baltic which would be convenient to the allies, while the only Danish port which they could not use was to be left open for the use of our enemies. The question was ultimately settled, and Copenhagen was closed as far as necessary for the safety of the town and arsenal.

The Prussian ports were not closed because, not being a naval power, Prussia had no means of enforcing her neutrality.

To revert to the Scandinavian declarations, the interest of which centres in the advantage to be assured by their neutrality to the subjects of Sweden and Norway and Denmark. They were " to enjoy all security and all facilities for vessels belonging to them, as well as for their cargoes " : in other words, their " free ships " were to make " free goods." On the receipt of these declarations one of two courses might have been adopted, either of which would have been appropriate to the occasion. A curt reply might have been sent pointing out that as a state of war did not in fact exist, neither did a state of neutrality, and therefore the questions raised were premature ; or a polite intimation might have been given that the declarations had been received and note taken of their contents—an *accusé de réception*,—leaving the consideration of them to a more convenient hour.

But from the unpublished despatches it appears that the British and French Governments had been informed in the autumn of 1853 that Sweden and Denmark intended to make a declaration, and that they were particularly anxious to ascertain what attitude the allied Governments intended to adopt towards the neutral flag. The allies were themselves anxious to know what would be the attitude of the Scandinavian Powers, and they had a very clear intimation that they intended to press for the recognition of " free ships free goods."

Yet another curious point will presently appear. The King of Sweden seems to have been more ready to impart information to the French than the English Minister. M. Lobstein, however, at once passed on all that he had learnt to Mr Grey. And yet the French Government appears to have been in the dark as to Lord Clarendon's intentions. M. Drouyn de Lhuys wrote twice to Count Walewski, the French Ambassador in London, on the subject : on the 4th January, instructing him to ascertain what those intentions were ; on the 12th more particularly to try and discover what answer to Sweden and Denmark would be given by Great Britain. He would give much, he said, for Lord Clarendon's answer to be in the same terms as his own.

M. Drouyn de Lhuys to Count Walewski.

1854, *Jan.* 4.

Tâchez de connaître à cette occasion, quelles sont les dispositions actuelles du gouvernement anglais en ce qui concerne les neutres. C'est une matière sur laquelle a régné jusqu'ici entre l'Angleterre et nous une grande différence d'opinions. J'ai d'ailleurs sujet de penser, d'après un commencement de polémique que j'ai remarqué dans les journeaux anglais, que le commerce serait peu favorable à l'application des anciennes doctrines du gouvernement britannique dans toute leur rigueur. Je vous prie, tout en évitant d'entamer une discussion prématurée sur la question de droit, de recueillir sur ce point des informations aussi exactes que faire se pourra, et de chercher à savoir notamment à quelles obligations le cabinet de Londres croit le Danemarck et la Suède tenus envers lui dans l'exercice de la neutralité. Lord Clarendon n'ignore pas, sans doute, que la Russie éprouve un vif mécontentement de l'attitude de ces deux puissances, et en particulier de celle de la Suède. C'est une raison de plus pour nous, ce me semble, de croire à la sincérité des résolutions des cabinets de Copenhague et de Stockholm et de ne pas augmenter, par de trop grandes exigences, les embarras de leur position.

1854, *Jan.* 12.

J'attacherais un grand prix à ce que la réponse de lord Clarendon fût conçue, autant que possible, dans le même sens que la nôtre, et pût tranquilliser entièrement la Suède et le Danemarck sur l'exercice de leur neutralité. Je sais que le gouvernement anglais n'est pas préparé à se départir de ses anciennes maximes en matière de droit maritime ; mais je désire qu'au moins dans la pratique il mette sa conduite d'accord avec la nôtre, si la guerre vient à éclater. Tout prouve en effet que ce sera le meilleur moyen d'accroître les sympathies que nous témoignent les deux Cours scandinaves, et à cause de notre bon droit dans la question générale, et à cause des exigences blessantes que le cabinet de Saint-Pétersbourg a mises en avant auprès d'elles. La neutralité même est un acte d'indépendance envers la Russie que leurs liens de famille et les événements de ces dernières années rendent très-méritoire et dont leur puissant voisin ne se dissimule pas le caractère peu bienveillant. C'est donc une attitude qui peut les rapprocher plus encore de nous dans certaines éventualités, et qu'il faut ménager avec soin. Trop de rigueur au contraire dans la surveillance des relations commerciales que le pavillon marchand de la Suède et du Danemarck tâchera d'entretenir avec les ports russes, pourrait refroidir des

sentiments qui sont en ce moment tels que nous devons les désirer et amener les discussions d'une nature fâcheuse. Je sais que la Suède compte avec confiance sur la liberté du commerce sous pavillon neutre.

Apparently the English answer was sent without having been communicated to France; and a despatch from Mr Grey, of the 30th January, shows that the French answer was not so explicit in its acceptance of the principles put forward by Sweden and Denmark, and did not give entire satisfaction. The non-receipt of the English reply is difficult to follow, as Lord Clarendon's despatch was dated the 20th January; it should have been received in Stockholm on the 30th. On the 6th February, however, the King of Sweden wished Mr Grey to report "the satisfaction of the Swedish Government at receiving so friendly a reply to their Declaration." There was another despatch, dated the 23rd February, which will be referred to presently.

MR GREY TO LORD CLARENDON.

Stockholm, 30 *Jan.* 1854.

MY LORD,

Mr Lobstein, the French Minister, communicated on the 24th inst. to the Swedish Government the reply of the French Government to the Swedish Declaration of Neutrality. The Government have expressed themselves as being satisfied with it as far as it goes, but they would have wished it to be more explicit, and I am informed that Count Löwenhielm, the Swedish Minister at Paris, will be instructed to apply for a further communication on the subject. Baron Stjerneld said to me to-day that he was most anxious to receive the reply of Her Majesty's Government, and begged me to write to Your Lordship to that effect. He said that the Swedish merchants were somewhat alarmed on account of the doubt which existed as to the course England would take as regards the privileges of the Neutral flag.[1]

[1] Doubts as to the sincerity of the allies' promises in their Declarations seem to have been felt in Sweden. The United States Chargé d'Affaires forwarded to the Secretary of State from Stockholm on the 10th April a translation of the new Swedish Ordinance [Document No. 14 K] relative to contraband of war. His comments on the Declaration throw a curious light on the gratitude of neutrals for benefits received:

"You will best know what reliance may be safely placed upon the equitable promises which have been held out to neutrals by the belligerent Powers; seemingly triumphs of the enlightened age over historic reminiscences of war. It would ill become me to offer an opinion of the realities to be looked for; but the forebodings of the more intelligent men of the country weigh upon this community; and, although unconfessed by Government, they are the real controlling influences in the Council of State."—[Document No. 8 G.]

It is difficult to reconcile all these inconsistencies. But the policy of a Government must be judged by its public statements. Even in January some of the problems of maritime law which the war would bring in its train must have been apparent. If war were declared, England and France would be in alliance: it would be in one of its aspects a maritime war: the principles of maritime law recognised by the two countries were not uniform. But, seeing that joint action was inevitable, consultation with our ally was essential. It was impossible for Lord Clarendon to take upon himself to assert that he intended to adhere to the traditional British belligerent policy of seizing enemy goods on neutral ships: equally impossible for him to accept the proposition that the principle asserted by the Scandinavian Powers was in conformity with the Law of Nations, or to say without further consideration that in the circumstances it would be acquiesced in. When the views of France had been ascertained, the policy which would be adopted during the war, should it break out, would then be decided. But Lord Clarendon adopted the one course which was in direct opposition to the traditional policy of the country; and apparently without consulting the French Government. The Note had received the best attention of Her Majesty's Government, and he was "glad to express the satisfaction with which they have learned the neutral policy" which it was the intention of the Scandinavian Powers "to pursue," and the measures "adopted for giving effect to that policy." Her Majesty's Government did not doubt "that if war should unfortunately occur, the engagements taken will be strictly and honourably fulfilled," and would use their best endeavours "in support of the neutral position" that these Powers proposed "to maintain."

The matter was not referred to in Parliament until the 10th February, when the Earl of Ellenborough asked in the House of Lords whether any communication had been received from the Scandinavian Powers "as to their intentions with respect to their utter neutrality, or modified neutrality, in the event of hostilities occurring in the Baltic." Lord Clarendon replied:—

> Yes, they have announced their intention of preserving a strict and perfect neutrality, and given a list of ports and fortified places to which ships of war of the belligerents could not be admitted. Our answer was that we approve the system of policy which they propose to adopt, and the manner in which they intend to carry it out. I may also say that we shall respect that neutrality.

In answer to a further question whether "exception had been taken with respect to certain Baltic ports essential to the

practical action of our fleet," as " we stood on great inequality with Russia, whose fleet could shelter in her own ports in stress of weather, while we had no refuge at hand," Lord Clarendon said that, " no exception has been taken by us to any part of the communication, and the naval authorities were consulted before our answer was sent." He added that great exception had, however, been taken by Russia. The House being still in the dark as to the nature of the communication, papers were asked for on the 13th February, and there being no objection, the Scandinavian notifications, together with the answers, were issued in a White Paper.[1]

The terms used in these despatches are worthy of note. Sweden and Denmark had informed the prospective belligerents that they as neutrals intended to *adopt* certain principles, asserted to be in conformity with the Law of Nations, which would assure to them certain advantages. Lord Clarendon expressed satisfaction with the policy, and the measures *adopted* for giving effect to that policy, and stated that the British Government would support the neutral position which these States proposed to *maintain*, and had taken no exception to *any part* of the communication. So far as concerned the obligations which neutrality imposes on non-belligerents, the terms used by Sweden and Denmark were justified ; but so far as the advantages which a neutral would derive from it, the last word rests with the belligerents. In Lord Clarendon's opinion, however, it is permissible for neutral Governments to lay down principles on which belligerents are to conduct the war in so far as the commerce of those neutrals may be affected. And, further, the principle which Sweden and Denmark required the belligerents to adopt was " free ships free goods." It is therefore clear that Lord Clarendon, after full warning of the intention of these Powers to claim the benefit of the principle, and after full consideration, had adopted this principle by the middle of January.

Lord Clarendon appears to have consulted Lord Cranworth, the Lord Chancellor, whose view was that the attitude of Sweden and Denmark was " one of which we cannot complain." The Queen's Advocate was Sir J. D. Harding.

LORD CRANWORTH TO LORD CLARENDON.

40 *Upper Brook Street*,
16 *Jany.* 1854.

MY DEAR LORD CLARENDON,

I send you back the Swedish and Danish Declarations of Neutrality, with the Queen's Advocate's opinion on

[1] Document No. 1.

them. There can be no doubt but that he is right in saying that the course of conduct which Sweden and Denmark prescribe for themselves will be one of perfect neutrality, and one of which we cannot complain. I doubt whether in such circumstances it would be wise to ask these States to modify the regulations which they have proposed for themselves. But this must depend on the degree of disadvantage which, in a naval and military point of view, we shall be likely to incur from having the ports in question left open to both belligerents. Unless it is very apparent, I should be inclined not to interfere with their own proposals.

It would be very desirable to get these States to treat coal as contraband of war. It is not, as I believe, one of the articles so agreed to be treated in the existing conventions, and, if I am right, then it is *by treaty* an article which is not contraband of war. If they will not agree to add it to the articles now forbidden as contraband, it will be for consideration whether the altered state of things since the dates of the existing treaties, does not warrant us in saying we shall, in spite of the treaties, prevent its importation into an enemy's port. But this would be a strong measure, and not to be resorted to until all other measures fail. I think you should ascertain what are the existing treaties with Sweden and Denmark (if any) as to what articles are and what are not contraband. The Queen's Advocate would, I dare say, tell you at once.—Very truly Yours,

CRANWORTH.

I have so far considered the Scandinavian declarations of neutrality solely as an incident which preceded the outbreak of the war with Russia, and from these points of view: their prematurity, their pretensions, and the acceptance of these pretensions by Lord Clarendon. There is another and more important aspect—their historical relation, already hinted at, to the Armed Neutralities. In the manner of putting forward the claim, in the assumption that these two Kings were the infallible interpreters of the Law of Nations, these documents were so reminiscent of the claims made, and of the manner of the documents issued by the League of the Northern Neutrals, that their inspiration must have been palpable even to the least profound student of history.[1] There was more; it was the traditional attitude of Sweden towards Great Britain at war.

At the outbreak of the war in 1793, in accordance with their plan for isolating revolutionary France, Sweden, with other

[1] See vol. i. of this series—*The Documentary History of the Armed Neutralities*; and vol. v., where the history of the Leagues will be dealt with at length.

countries, had been invited by Russia and Great Britain to join their alliance. The offer was rejected, the King's intention to preserve the strictest neutrality being conveyed through Holland. But rumours getting abroad in Haarlem and other towns giving an erroneous interpretation of his attitude, an instruction on the subject was issued by the King renewing his intention of observing " la neutralité la plus stricte tant envers les Puissances combinées qu'envers la France." The document [1] concluded with this sentence :—

> Sa Majesté attend de même, que le Pavillon Suédois sera duement respecté durant la presente guerre, et en suffrira pas la moindre insulte, mais au contraire éprouvera toute assistance possible, et ne sera point troublé dans ce commerce, auquel un pavillon neutre est autorisé.

There is no mistaking the meaning of this declaration ; it was an intimation that Sweden expected the belligerents to respect the principle " free ships free goods." The intention expressed by Sweden and Denmark in their convention of 1794 to protect their ships in the exercise of rights based on treaties, or founded in the Droit des Gens Universel, " dont la jouissance ne sauroit être disputée à des Nations neutres et indépendantes," [2] was a more circuitous method of saying the same thing.

In the earliest stages, therefore, of the story of the Declaration of Paris, Lord Clarendon put himself in this dilemma : either he had forgotten the history of our troubles with the neutrals in 1780 and 1800, or he had deliberately ignored it in favour of the new opinions which had begun at this time to gain ground—that our policy during those periods was wrong, and the neutral contentions right. It seems probable that the new policy was deliberately adopted. It is not surprising that it was vigorously attacked by those who believed that England's position in the world depended, and rightly depended, on the principles on which her belligerent action was based.

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[1] Swedish Declaration of Neutrality, 5th March 1793. De Martens, *Recueil*, v. p. 237 : (2nd ed.) v. p. 567.

[2] Convention, 27th March 1794, art. iv. ; De Martens, *Recueil*, v. p. 274 : (2nd ed.) v. p. 606.

II

The General Position, 1853–54.

A.—The Other Neutrals.

The declarations of neutrality issued by the Scandinavian Powers were too much infected with the spirit of the Armed Neutralities for this question not to present itself to other neutral Governments—Were they not bound in their own interests to follow the lead? Indeed, the formation of an armed neutrality by the German States seems at one time to have been considered possible.[1]

Yet another unusual question arose. It is the right of nations that are not parties to the quarrel to remain neutral: it is customary for them to make a formal statement of their intentions. But the premature issue of these declarations, stating the conditions which the belligerents were required to observe towards these neutrals, gave them an opportunity to say whether they agreed; and they did, in fact, answer as if the declarations were in order. But then, almost inevitably, this led to discussion whether the answers received from the belligerents were satisfactory. The Russian answer was considered unsatisfactory. The neutrals were thus allowed to take charge. The records are incomplete and do not throw too much light on this curious position; and the general principles of neutrality are confused with the question already alluded to, the closing of the Baltic ports. The geographical position of the Scandinavian countries, lying midway between the belligerents in the northern area of the conflict, the proximity of Sweden to Russia, the certainty that there would be fighting in the Baltic, made the question of the neutral ports one of grave concern to both belligerents as well as to the neutral countries. In the absence of any definite guiding principle, a triangular discussion became inevitable between nations who were not yet neutrals and nations who were not yet belligerents; and it was accentuated by the efforts made by each belligerent to invest the neutrality of the other States of Europe with the appearance of friendliness to its cause. For the allies had persuaded themselves that they were embarking on a holy war; and, though the invitation to other countries to join them in the crusade was not so formal as that given by England and Russia to join the alliance against revolutionary France, the hope that their neutrality might at least be benevolent was conveyed *par voie diplomatique*. M. Drouyn

[1] See p. 20.

de Lhuys, in a *Mémoire* [1] published in 1868, referring to the joint policy which was clearly traced for the allies, says: "Elles devraient donc veiller à ce que rien dans leur conduite ne vint blesser les neutralités bienveillantes qu'elles désiraient transformer en concours avoué." On the part of Russia there were counter-efforts to eliminate from it anything in the nature of covert friendliness, and make it "rigorous." Prussia and Austria were the uncertain factors in the situation. Nominally they were linked by the common interests of the Germanic Confederation of which Austria was the leading Power, but the long-standing elements of discord between them affected the discussions. Austria very early in the year had proposed to Prussia that the smaller States of Europe should be invited to associate themselves with the two leading German Powers in a declaration of neutrality, urging the necessity of consolidating the whole of Central Europe into one united body whose combined military force would enable it to withstand an attack from any quarter. Baron Manteuffel seems to have treated this suggestion as referring to political neutrality, and to have ignored any commerical bearing which might have been intended. He replied that "the concert and the union which was most efficacious was that of the four Powers [England, France, Austria, and Prussia] which was at present most completely attained in the Congress at Vienna." Lord Clarendon learned of this answer with much satisfaction.

The King of Prussia was wavering: firm while he relied on his Foreign Minister, Baron Manteuffel; weak when his brother-in-law, the Czar, used his influence over him, which he did without remorse. For the Scandinavian Powers a joint declaration of neutrality from Prussia and Austria would evidently be a source of strength. It was the policy of the Czar to separate them. Sir Augustus Loftus reported from Berlin on the 2nd December that the King's rejection of the joint declaration had given rise to the suspicion that he "was about to take an opposite course of action to Austria with regard to the Eastern

[1] The *Mémoire* read before the Académie des Sciences Morales et Politiques by M. Drouyn de Lhuys in April 1868, is entitled "Les Neutres pendant la Guerrè d'Orient." It contained a full account of the negotiations between England and France from January to March 1854, relative to the Declaration issued to the neutrals at the outbreak of war, together with copies of his own despatches to Count Walewski, French Ambassador in London. Copies of the pamphlet have entirely disappeared in England; but I was fortunate enough to obtain a copy from Paris through the exertions of my friend Mr J. T. B. Sewell, Solicitor to the British Embassy. Subsequently I discovered that a translation of it had been included in the Appendix to the Report of the Royal Commission on Neutrality, published in 1868. Mr David Urquhart wrote of it with characteristic vehemence in the *Diplomatic Review*.

question." For Prussia the success of either side would be the inevitable prelude of the reconstitution of the kingdom of Poland. The British Ambassador had no fear that the King would place himself at the mercy of Russia so long as Baron Manteuffel remained at the head of affairs; "but the Russian party at Court had lately brought great pressure to bear on the King and others, by describing the danger to which Prussia would be exposed if she did not make common cause with the Emperor Nicholas." At a special interview Baron Budberg pressed the Russian case with so much success that Baron Manteuffel interrupted the conversation, asking the King how Russia would prevent the 1200 Prussian ships which were dispersed over the world from being captured by British cruisers, and how Russia would prevent the destruction that would no doubt instantly fall on the Prussian ports in the Baltic, of which sea the English would soon be masters. He thought that instead of the Emperor coming to the defence of Prussia, he would probably be unable to defend himself, and his capital would not be safe. The Czar wrote privately to the King, "and used arguments almost amounting to menaces if he would not agree to some distinct declaration of neutrality." More astutely he requested the services of some Prussian officers, which were, however, refused. The King had shown great distrust of England, and had caused the British Government to be informed that he could not go against Russia "if England continued in the path which she was now doing"—her high-handed demand that Russia should withdraw from the Danubian Principalities. Her Majesty's Government expressed disappointment that Prussia was not prepared to go to war, but hoped she would be influenced by the conduct of Austria. The utmost that Baron Manteuffel could promise was that Prussia might be depended on to strike a decisive blow later. So the King wavered to and fro—"a reed shaken by the wind," as the Prince Consort described him to Baron Stockmar—as fear of Russia and distrust of England alternately got the upper hand: between alliance with Russia, individual neutrality, joint neutrality. When joint neutrality seemed almost inevitable, Count Orloff was instructed to endeavour to induce Prussia and Austria "to bind themselves by a declaration that whatever the consequences of their neutrality might be, nothing should make them take part against Russia." [1]

[1] Ultimately, on the 20th April 1854, Austria and Prussia entered into a treaty mutually guaranteeing each other's territories, and agreeing to give mutual assistance in case of aggression. An invitation was to be issued to all Governments of the German Confederation to accede. In an additional article it was declared that Austria and Prussia regarded

The joint neutrality of Austria and Prussia being essential, the King of Sweden, urged by the Crown Prince, and possibly encouraged by Austria, decided to send a message to the Diet "asking for supplies to enable him to take the necessary measures to maintain the declaration of neutrality." Declarations of neutrality in theory fell within its province. But Denmark, represented in the Diet in respect of the Elbe Duchies, was uncertain as to the advisability of the step. The Ministry did not see how it would be of service in promoting the object of Austria, and thought that a joint declaration of neutrality on the Eastern question by the Diet would never be obtained; but it might save Denmark from embarrassment with regard to Holstein. The Diet did, in fact, adhere, on the 24th July 1854, to the treaty of alliance between Austria and Prussia, concluded on the 20th April.[1]

The attitude of the Crown Prince of Sweden was entirely favourable to the allies. He suggested that the best way of bringing the King of Prussia's wavering to an end would be to include the Prussian Baltic ports in the blockade; supported France when she made the definite suggestion, a few days after the declaration of war, that Sweden should throw in her lot with the allies and recover the provinces wrested from her by the House of Holstein. A proclamation of neutrality was, after all, not necessarily permanent.

Thus it came about that this premature declaration of neutrality before a state of belligerency existed, though apparently intended only to ensure the safety of neutral commerce, developed into a question of a general European neutrality, stirring all the Chanceries to open up some of the most critical problems in European politics. Smouldering questions, which might or might not have been affected by the terms of the peace, were fanned into a flame before the war began.

B.—The Relations between England and France.

The interest of the question of belligerent and neutral centres in the relations of England and France. For good or evil they were allies. The alliance created two hostile currents of public

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the occupation of the Lower Danube by Russia as dangerous, but that they understood that the troops would be withdrawn in accordance with concessions made to the Christian subjects of the Porte. By a further separate article Austria was to request Russia to stop her invasion of Turkish territory, and to guarantee the evacuation of the Danubian Principalities. Prussia was to support the request, and should Russia refuse, the article of the treaty providing for mutual assistance in case of aggression was to be put in force.

[1] See Table of Historical Events at the commencement of the Documents.

opinion. A strange influence pervaded non-political England in the middle of the nineteenth century, yielding to the glamour, indefinable but very real, of a memory, of a name—"Napoleon." The third Napoleon mantled himself with all the virtues of the First; and the recognition, characteristically English, of the greatness of the great enemy they had at last vanquished, enabled him to manufacture the glamour that surrounded in this country the name he bore. The Emperor of the French and the English Prime Minister were "the idols of the public."

But there was also strenuous unbelief in any hereditary virtues having descended to the "Man of December." The views of those who held this opinion find expression in Mr Herbert Paul's bitter statement that "England was not her own mistress, but was tied and bound, not to France, but to the man who had made France his own."[1] That sardonic historian declared that for the purpose of these negotiations Palmerston was as much Napoleon's Minister as Walewski himself.[1] How far the English Ambassador was under the influence of the French Minister of Foreign Affairs we shall be able to judge when we come to deal with the negotiations between the allies in regard to their attitude towards the neutrals. There is an uncomfortable humility about Lord Cowley's own version of his discussions with M. Drouyn de Lhuys which makes the reading of his despatches most unsatisfactory. But whatever were the undercurrents, French opinion was clear: the world was to be impressed with the solidarity of the alliance. "On se rappelle," writes M. Drouyn in his *Mémoire*, "le prodigieux élan de ces jours de résolution énergique et de cordiale confiance. Les gouvernements, animés du même esprit qui entraînait les deux nations l'une vers l'autre, s'attachaient à faire disparaître, au profit de la civilisation et de l'humanité, les traces de divisions séculaires." And all means which could promote its success were taken. The Consular officers of the two nations, the Consuls of their respective colonies, and their naval officers, were to give reciprocal protection to each other's subjects in different parts of the world[2]:—"Ainsi, aux yeux des nations étrangères, la France et l'Angleterre confondaient leurs drapeaux." On one point only there seemed to be a possibility of friction. When war should be declared there would be joint action at sea; but the laws of the two countries differed radically on fundamental points of prize law. England seized enemy property on the sea, but paid great respect to neutral property; if the enemy property was ships they were seized, and any

[1] Herbert Paul, *History of Modern England*, vol. ii. p. 6.
[2] Document No. 3.

neutral property on board was restored to its proprietors; if the enemy property was cargo and the ship neutral, the cargo was confiscated and the ship released with freight. France, on the other hand, since 1778, had paid more regard to the flag than to the property carried under it. If the flag was neutral, the cargo, even if it belonged to the enemy, was allowed to pass; if the flag was enemy, the cargo, even if it belonged to neutrals, was confiscated. France believed in the virtue of one formula—"free ships free goods," but took the benefit of another, "enemy ships enemy goods." England asserted the bare fact—she seized enemy property. How were these conflicting principles to be reconciled, and the two fleets act in harmony?

This is not the moment to discuss the merits of the respective principles; it was not the moment, in M. Drouyn de Lhuys' opinion, to discuss them on the eve of war: "l'opposition . . . était tellement radicale, qu'en les dressant les uns en regard des autres, on se condamnait à une contradiction sans issue."[1] A compromise was essential, because the action of fleets acting in concert must be uniform. A compromise, a common declaration, if only the *rédaction* could be successfully settled, would be more satisfactory to all parties concerned, especially the neutrals. It would redound to the glory of the alliance if they could achieve "une seule déclaration . . . qui, en constatant mieux notre parfait accord, frapperait plus fortement les esprits."

C.—Political Opinion in England.

In the letter which M. Drouyn de Lhuys wrote, 4th January 1854, to Count Walewski, French Ambassador in London,[2] he said that he had reason to think, "d'après un commencement de polémique que j'ai remarqué dans les journaux anglais," that the commercial world in England was unfavourable to the rigorous application of the ancient doctrines of her maritime law.[3]

It would be out of place here to attempt to analyse the various springs from which the different political parties in England drew their inspiration; but it is material to note how far that inspiration conduced to the acceptance of the Declaration of Paris, and there are certain facts, to be developed in due

[1] This sentence in the *Mémoire* is quoted in full on p. 28.

[2] This letter is set out on p. 13.

[3] I have unfortunately been unable to trace the discussion referred to in the file either of *The Times* or of the *Manchester Guardian*.

course, which throw light upon the question. The most important fact to note is that public opinion as a whole did not support it; it cannot claim to accord with what is called the "trend of political thought." Nor, except in so far as party supports its leaders in accepting the accomplished fact, can it be said to have been treated as a party question. It seems rather to have been the result of the coalition of different sections of thinkers, each acting under the influence of temperament released from the hard pressure of fact. On the merits of the war itself the public supported the policy of the Cabinet, but there was a small section bitterly hostile. As to the method of conducting war at sea there was a considerable division of opinion, and it was here that temperament ultimately got the better of sound judgment based on knowledge of the necessities of war.

The forty years of peace had influenced men's minds in different ways. Those who called themselves practical men of business espoused the cause of commerce. To the Manchester school successful commerce was the noblest aim of existence, its creed that "the one object of foreign policy was the advancement of trade." To that school were allied the pacifists of those days, whose doctrine was parodied by the formula, "All war is wrong, therefore this war is wrong." More accurately, as proclaimed by its greatest exponent, John Bright, it took form in the belief that the blessings of peace being so great, the curses of war so terrible, man, as a reasonable being, when left undisturbed must naturally so yearn for peace that eventually war would become impossible.[1]

But there were others with more dangerous views. As the facts receding into the distance became dimmer, they subjected the causes of past wars to cold analysis. Professing to search for right in the abstract, they assumed the semblance of wisdom, and were treated as philosophers. The tendency of such inquiries is towards self-examination, a process which detects flaws in one's own conduct, the conclusion almost inevitably taking the common form "perhaps after all we were wrong." The Philosophical Radicals, as they were curiously called, boldly passed from their legitimate occupation of bettering the people into the region of foreign relations, for which they were not too well equipped. Disregarding the facts of history, they did not hesitate to give their verdict against England. That which passes as "independence of thought" enabled them to assume an attitude of detachment from the affairs of their country, and this, coupled with an intense conviction in the virtues of

[1] See John Bright's speech in the debate of 1862: "1862," Chap. IV

the age in which they lived, brought them to regard what others called the "glorious past" as an "age of barbarism."

The biographies of these learned Radicals leave us in the dark as to the reasons which induced them to espouse the cause of the neutrals. Certainly neither the scientific method nor the historical research on which they prided themselves warranted the conclusions to which they came. It looks as if it were no more than a crude application of the doctrine that the criterion of right and wrong is the promotion of happiness of the greatest number. The neutrals represented the greatest number, their happiness depended on enhanced profits, therefore they were right. No sounder argument is discernible in the speeches of their spokesman, Sir William Molesworth.

The Philosophical Radicals based their theories on Bentham. For Bentham war was "mischief on the largest scale"; it was the greatest curse on the greatest number, and this was probably the connecting link between the two sections of the Radicals. Gibraltar, they thought, was held contrary to "every law of morality and honour"; and supremacy at sea meant arrogance and the assumption of dictatorial power, and the sooner it became obsolete the better.[1] These ideas prepared their minds for acquiescing in the claims of the neutrals, who also asserted that England was the arrogant dictator of the seas.

To these were added those, persistent in political life, who, not in the pride which apes humility, but in humility itself, believed that we were worse, not better, than other men.

The Declaration of Paris was the product of temperament. The grave problems which it professed to settle were not argued on their merits in the open; the two sides of the question were never discussed; the conclusions were come to in secret.

One result of these different currents of thought has already been emphasised. Consciously or unconsciously, the theories which the Armed Neutralities had put forward against England came to be acceptable to English politicians. Another still more curious result was that they accepted the story of the Napoleonic Wars in a humble, apologetic sort of way, and thought it their duty to the world to express contrition for our victory. These men deliberately advocated, though without acknowledging their authorship, as principles of the highest political morality, the very doctrines by which Bonaparte sought to wrest from England the supremacy of the sea, and reduce this presumptuous little island to its true position of having no part nor lot in the destinies of Europe.

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[1] *The English Radicals*, C. B. Roylance Kent, p. 385.

III

Discussion between England and France as to the Principles of Maritime Law to be adopted during the War.

The Scandinavian declarations of neutrality had made one thing perfectly clear: the question of the neutrals, traditionally difficult in our own belligerent relations with them, would be doubly difficult in a war, with France as our ally, on the sea as well as on the land. The two fleets had already operated together. On the 2nd June 1853 Admiral Dundas had been ordered to sail from Malta to Besika Bay to join the French fleet and put himself under the orders of Stratford Canning, British Ambassador at Constantinople. On the 22nd October the two fleets had entered the Dardanelles, and on the 4th January they were in the Black Sea. Joint action at sea against Russia was inevitable should war break out; it would not be fair to the neutrals if the laws on which their instructions would be respectively based were radically different. The British fleet would stop neutral ships with enemy property on board, which the French fleet would let go on their courses; the French fleet would seize neutral cargo on enemy merchantmen, which the British fleet would return to its owners. The neutrals would have a most legitimate grievance. All questions of their asserted rights apart, they were clearly entitled to know with certainty what would happen to them in the event of war. It was obvious that some arrangement must be come to before war was finally decided on. The French Government realised at once the importance of the question. In the two despatches set out in Chapter I.[1] from the French Minister of Foreign Affairs to the Ambassador in London he betrays his anxiety. Count Walewski is to ascertain what are the views of the British Government on the subject. He does not conceal his hope that public opinion in England may be coming round to the French view; but his policy is uninfluenced by this hope: there should be no discussion on the merits of the two systems.

As was natural, the question formed the subject of many discussions "dès les premiers jours de Janvier" between M. Drouyn de Lhuys and Lord Cowley, British Ambassador in Paris, the substance of which were given by him in the *Mémoire* already referred to.

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[1] See p. 13.

M. Drouyn dwelt on the importance of a public manifestation of agreement for the purposes of the war between the two countries on a question of such great moment as their relations with the neutral Powers. In order to achieve this end the enunciation of absolute principles was to be avoided, "car l'opposition entre ceux que l'Angleterre maintenait avec une énergie traditionelle, et ceux que nous faisions gloire de défendre, était tellement radicale, qu'en les dressant les uns en regard des autres, on se condamnait à une contradiction sans issue." It was necessary to find some ground of common action; these particular theories could be reserved, and only considered in case of need. This was only possible on one condition:

> C'est que chacun renonçat au moins pour la durée de la guerre, à user des facultés que l'un des deux s'estimait permises, mais que proscrivait l'autre. Il est concevable en effet que, sans répudier un droit, sans se départir d'une prétention, l'on s'abstienne pour un temps de les faire valoir, tandis qu'on ne saurait, sans inconséquence, exercer même exceptionnellement des actes dont on conteste la légitimité. Ce mode de transaction, laissant intactes les doctrines, ne heurtait aucun principe, ne soulevait aucun embarras. Destiné d'ailleurs à être accueilli avec reconnaissance par les puissances non belligérantes, il était conforme aux intérêts comme aux intentions libérales des alliés.

This would mean the abandonment of certain privileges claimed by the French marine, but it would be in harmony with the national traditions, always favourable to the rights of neutrals and the freedom of the seas. The general situation, M. Drouyn said, encouraged us to take this course. European opinion was for the most part favourable to France and England marching to the assistance of an oppressed ally; this was in itself an element of strength, which might possibly, in the times to come, be developed into a still more effective assistance. It would enable the alliance to be thrown open to all States which might desire to adhere. The allies were bound, therefore, to do nothing to wound a benevolent neutrality which they desired to transform into an open assistance.

The German Courts would have, M. Drouyn thought, a considerable influence on the progress of events, but they had been for too long under the ascendancy of Russia; great and little States were attached to her by many bonds. Prudence counselled us to be careful in our dealings with Prussian commerce; it counselled us similarly in regard to the Scandinavian Powers, owing to their geographical position, which made

their friendship precious, their hostility disturbing, to both parties. The memories of the Armed Neutralities—" ces deux grandes manifestations "—were among the principal traditions which bound Stockholm and Copenhagen to Petersburg. If we revived these old pretensions might we not revive the old resistance, and throw into the arms of Russia the nations which in those days had acted on her instigation ? The United States caused us similar preoccupation. Russia had made a bid for its sympathy, and was in agreement with that Government as to the interpretation of the law of the sea, for the Republic of the New World from all time had maintained the rights of the neutral flag. Was it wise to give our enemy an opportunity of rallying the United States to its side and turning her against us ?

The reference in the *Mémoire* to these political arguments concludes with this ominous sentence, which contains the key to the policy of secrecy adopted by the Cabinet :—

> L'Angleterre n'était pas insensible à ces considérations, mais elle les combattait en alléguant l'impossibilité où serait son gouvernement d'abandonner, *en face du pays*, les règles inviolables de son vieux droit maritime.

It would appear, however, that Lord Cowley had dwelt particularly on the British Government's fear that the United States would go against us and lend her seamen to Russia. In order to prevent this danger arising, and to conciliate the American Government, the Cabinet had submitted, not only to the States, but to France and to all the maritime Powers, a proposal to enter into an agreement for the suppression of privateers, declaring that in event of war any one furnished with letters of marque would be treated as a pirate. In a letter to Lord Shaftesbury, Lord Clarendon claimed to be the author of this proposal, but the idea seems to have been abandoned. In regard to it M. Drouyn says that while France agreed that privateering ought to be abolished as inconsistent with the customs of civilised nations, she thought nevertheless that it was desirable to ensure at the same time similar progress in other branches of the law of the sea. In his recollections of the conversation M. Drouyn adds this reflection, that the common practice which we proposed that the allies should adopt in this war with Russia seemed to us the best step that could be taken towards bringing about a collective reform on many points which in our opinion were correlative one with the other. The opinion of the French Government is noted at this place, because it had an undoubted bearing on the agreement arrived at after the war in 1856. It must be observed,

however, that nowhere during the negotiations in 1854 was the point insisted on. On the contrary, M. Drouyn de Lhuys' policy throughout was to keep this opinion in the background.

Conversations on such an important question would naturally be reported to London by the Ambassador; as M. Drouyn suggests in one of his despatches, there must have been daily letters. The only document that a thorough search in the Public Record Office has disclosed is a despatch from Lord Cowley to the Foreign Office, dated the 9th February 1854, and the general tenor of it shows unmistakeably that it was the first written record of the impression left on Lord Cowley's mind of what M. Drouyn had said to him, and of his recollection of his own replies. The despatch and Lord Clarendon's reply were as follow:—

LORD COWLEY TO LORD CLARENDON.

150.

Paris, Feb. 9th, 1854.

MY LORD,

I have had some conversation with M. Drouyn de Lhuys on the delicate subject of the rights of neutral Powers. It appears that some of the smaller States, possibly prompted by Russia, who knows the differences of opinion which exist between Great Britain and France on the subject of these rights, have either intimated to the French Government their intention to remain neutral, or have asked advice of the French Government whether they should declare themselves neutral or not. M. Drouyn de Lhuys informed me with great frankness and friendliness of manner of the language which he had held, and which he had since introduced into a circular sent to the French Missions abroad. He had strongly dissuaded, he said, any of those States from making any declaration of neutrality. In the first place they would remain neutral, he observed, without declaring themselves to be so. Nine times out of ten a declaration of neutrality implied partiality for, and was intended to be favourable to, one of the belligerents. Secondly, he argued, that it would be a dangerous proceeding for the smaller States to put forth declarations, which might provoke counter-declarations on the part of any one of the belligerents. If it was hoped to sow dissensions between France and England by raising questions on which it was known they were not agreed the plotters would be disappointed, for both nations would know how to regulate their conduct in respect of this matter so as not to impede the prosecution of the common object which they had in view. Thirdly, the less the smaller Powers put forward

their opinions on this subject, the more likely was the war to be confined to the East. If divisions became apparent among the European Powers, if some were tacitly neutral and others declared themselves to be so, if some put forward one doctrine and others another, the revolutionary party would profit by these dissensions to advance their own schemes, and a war would be kindled of which no one could foresee the end, whereas unanimity on the part of the Western States would confine the seat of war to the East. Lastly, it would be impolitic in neutral Powers to make declarations, when France, the great champion of the rights of neutrals, could not and would not take part with them.

It might be argued, M. Drouyn de Lhuys continued, that this language had not been held to Sweden and Denmark, but the case was not the same. England and France now knew that that declaration had been made partly from a desire to escape from the pressure of Russia in a different sense upon those two Governments, and it could not be denied further that if war broke out, it was more than likely that some of the principal operations would be carried on in the Baltic, and consequently in the immediate neighbourhood of those countries.

Nothing could be more amicable than the language with which M. Drouyn de Lhuys treated this very delicate question with me, and particularly the points on which he thought I might take umbrage. He said that the two countries must be mutually forbearing, that France would abstain from asserting any principles to which we could not assent, and that he was sure that we would not have recourse to measures calculated to provoke discussion. He had no doubt that Russia counted upon setting the two Governments at variance upon this point, and he had as little doubt that she would be disappointed.

I said that I was sure that your Lordship would do full justice to the frank and loyal manner in which M. Drouyn de Lhuys had expressed himself, and that every precaution would be taken by Your Lordship's Government to prevent the question of the rights of neutrals becoming a source of entanglement to any future operations undertaken by the Government in common.

Lord Clarendon to Lord Cowley.

87. *Confidential.*

Feb. 14*th*, 1854.

My Lord,

Her Majesty's Government have learnt with extreme satisfaction, from your Lordship's despatch, No. 150, the frank and friendly manner in which M. Drouyn de Lhuys

> has discussed with you a question upon which so much difference has existed between the two countries, and upon which no doubt in various quarters the hope of future dissension is founded; but nothing will more tend to frustrate such expectations than the wise and judicious advice given by M. Drouyn de Lhuys to those States which have sought the opinion of the French Government respecting their neutrality. Her Majesty's Government approve and confirm the assurances which Your Excellency gave to M. Drouyn de Lhuys, who may rely that upon this particular question, as in all others, no effort on the part of Her Majesty's Government will ever be wanting to preserve the perfect harmony that now exists between France and England.

It is difficult to believe that Lord Cowley's despatch refers to the same conversation which M. Drouyn has reported, and which is supported by the despatches printed in his *Mémoire.* Its contents seem to indicate that Lord Cowley's memory must have been singularly at fault. The first statement is difficult to follow. Do Governments, either of small States or large, ask the advice of a country on the verge of going to war, much less of one of two countries in alliance, "whether they should declare themselves neutral or not"? If they had, would a statesman of M. Drouyn's experience have given them the advice attributed to him: that a declaration of neutrality, nine times out of ten, "implied partiality for, and was intended to be favourable to, one of the belligerents": that it would be dangerous for them "to put forth declarations which might provoke counter-declarations on the part of any one of the belligerents": and that "the less the smaller Powers put forward their opinions, the more likely was the war to be confined to the East"? Sweden and Denmark had not sought advice; nor had their declarations provoked counter-declarations. They had indeed been singularly successful in obtaining recognition of their own views of neutrality.

The rest of the despatch, which relates to the relations between England and France "on the delicate subject of the rights of neutral Powers," is most disconcerting. It is difficult to understand the frame of mind of a British Ambassador who could find it necessary to emphasise the fact that the language used by the French Foreign Secretary was "amicable," that he had expressed himself in a "frank and loyal" manner, particularly in regard to "the points on which he thought I might take umbrage"; or what grounds he had for adopting without any qualification, or at least reporting without comment M. Drouyn's statement that France was "the great champion

of the rights of neutrals." These remarks create the impression that Lord Cowley read into M. Drouyn's conversation a homily on the impropriety of England's conduct in the past, and that it found an echo in his own conscience, weighted with a sense of the national guilt. Lord Cowley evidently belonged to that school of thought to which reference has already been made, which held England to have been in the wrong, and the neutrals in the right, in their old disputes, and whose adherents afterwards openly proclaimed their views in Parliament.

With regard to the law of France, although "free ships free goods" was incorporated into it in 1778, so long as she maintained "enemy ships enemy goods" she denied the right of free commerce with the enemy, as much as England did, when it tended to the assistance of the enemy. France's historical position will be fully examined in subsequent volumes. It was no more than this, that as a belligerent she found the principles advocated by the neutrals suited her purpose, and she supported them. But that was forty years before these friendly conversations. There is no correspondence on record to show that this question of the neutrals had ever been discussed between France and England after 1815. France might certainly have entered a protest, as a potential neutral, when Canning refused to ratify a treaty negotiated with Brazil which contained a "free ships free goods" clause, and with characteristic emphasis asserted our ancient principle.[1]

But diplomatists equally matched do not "take umbrage" at what is said when they are discussing wars in which their countries were involved nearly half a century before. It is quite consistent with perfect friendship for each courteously to maintain that his country was right in the past, and to pass on to the more important questions of the present.

The most extraordinary thing, however, is that, according to M. Drouyn's version of their conversation, these remarks

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[1] "The rule of maritime law which Great Britain has always held on this subject is the ancient law and usage of nations; but it differs from that put forth by France and the Northern Powers of Europe, and that which the United States were constantly endeavouring to establish. England had braved confederacies and sustained wars rather than give up this principle; and whenever, in despair of getting the British Government to surrender it by force, recourse had been had to proposals of amicable negotiations for the purpose of defining, limiting, or qualifying the exercise of the right of search, Great Britain had uniformly declined all such overtures from a conviction of the impracticability of qualifying, limiting, or even defining in terms that would be acceptable to the other party the exercise of a right without impairing, if not sacrificing, the right itself."—(From Canning's despatch to Sir Charles Stewart: quoted by Lord Derby, 22nd May 1856. Hansard, cxlii. col. 53.)

were not made. They are inconsistent with the policy which he had decided to adopt, not to raise any question on the respective merits of the two laws, and the subsequent correspondence shows that he loyally abided by that decision.

But, taking M. Drouyn's own version of the conversations as accurate, there were many historical points on which Lord Cowley could have set M. Drouyn right.

He might have reminded him that, so far from the memories of the Armed Neutralities being among the principal traditions which bound Stockholm to Petersburg, Sweden and Russia had been at war soon after the League of 1780 had been dissolved, and each had abandoned the famous principles. He might have reminded him that, so far had the Republic of the New World been from maintaining "from all time" the rights of the neutral flag, the principle of seizing enemy property on neutral ships had been expressly recognised in the Jay Treaty with England in 1796. He might have reminded him too of Jefferson's well-known answer to France :—

> The French complain "that the English take French goods out of American vessels, which is" said to be "against the law of nations, and ought to be prevented by us. On the contrary, we suppose it to have been long an established principle of the law of nations, that the goods of a friend are free in an enemy's vessel, and an enemy's goods lawful prize in the vessel of a friend. The inconvenience of this principle . . . has induced several nations latterly to stipulate against it by treaty, and to substitute another in its stead that free bottoms shall make free goods. . . . As far as it has been introduced, it depends on the treaties stipulating it, and forms exceptions in special cases to the general operation of the law of nations. We have introduced it in our treaties with France, Holland, and Prussia; the French goods found by the latter nations in American bottoms are not made prize of. It is our wish to establish it with other nations. But this requires their consent also, as a work of time; and in the meanwhile they have a right to act on the general principle, without giving to us, or to France, cause of complaint."[1]

There was also the earlier despatch from Secretary of State Pinckney to the French Minister of Foreign Affairs, dated the 27th January 1789 :—

> According to the law of nations, the goods of an enemy found on board the ship of a friend are liable to capture,

[1] Letter from Mr Jefferson to M. Genet, 24th July 1793; see *Letters of Historicus*, p. 79.

and the goods of a friend found on board the ship of an enemy are safe. The United States and France have consented to change this rule as between themselves. They have agreed that the goods of an enemy found on board the vessels of either party shall be safe, and that the goods of either found on board the vessel of an enemy shall be liable to capture. The one part of this rule is in consequence of and dependent on the other. The one part cannot on any principle of justice be abandoned while the other is maintained. In the treaty with England the United States retain unchanged the law of nations.

The reference of M. Drouyn de Lhuys to the proposal made by the British Government to the maritime Powers to abolish privateering is borne out by a letter from Lord Clarendon to Lord Shaftesbury, written on the 2nd March 1854,[1] in which he says :—

I take exactly your view of Letters of Marque, and I some time ago addressed myself privately to the Governments of France and of the United States saying that, as we had been driven into the brutal and barbarous methods of settling differences, we should at least endeavour to mitigate its horrors, and thus pay homage to the civilisation of the times we live in, and that I could see no reason why a licence should be given for robbery by sea, any more than by land, &c. &c.[2]

The proposal has been met in a corresponding spirit, and I hope shortly to settle some change in international law, for that will be necessary ; but the three greatest maritime Powers of the world have a right to effect such a change in the interests of humanity.

I am not yet prepared, however, to make any public announcement on the subject, because I wish, at the same time, with the privateering system, to bring our law, or rather practice, respecting neutral flags more in harmony with the practice and expressed wishes of other maritime nations.

M. Drouyn himself might have written the last sentence. It expresses his views, as recorded many years afterwards, of

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[1] Hodder's *Life of Lord Shaftesbury*, vol. ii. p. 467.

[2] Lord Clarendon would appear to have had several conversations on the subject of abolishing privateering with the United States Minister. Mr Buchanan records one in his despatch already referred to, of the 24th March. The conversation was general, and Lord Clarendon did not propose the conclusion of a treaty for its suppression, though "it was evident that this was his drift." According to M. Drouyn de Lhuys, however, the proposal for a convention had already been made to all the maritime States some months previously.

what he had hoped ultimately to achieve, but which he thought it inadvisable to press the British Government to accept, and did not press till the war was over. And here was the British Foreign Secretary ready to accept the new doctrines, but not openly, not " in the face of the people." He is conducting the negotiations " privately," and he tells M. Drouyn the reason—he *dare* not conduct them openly.

This letter throws a flood of light on all the dark places in the story; the absence of despatches in January; the non-publication of anything that was ever written on the subject; all the secrecy and the mystery that have surrounded it from that day to this. But although M. Drouyn knew the secret, he took no advantage of it. It may possibly be put no higher than this: that as an experienced statesman he saw the danger which the British Government were running, was not willing to run the risk of the people in England getting to know what was afoot, and so he took the game out of the hands of the British Ministers, and tried to play it for them in the only way in which there lay any chance of success. But it is a fact that throughout the negotiations he makes believe that the Cabinet is reluctant to accept any modification of the ancient law. Only their perversity, as we shall see, well-nigh baffled him.

I find no record in any biography of the men of the period, not even in Lord Clarendon's recently published Life, of his conversion, nor who was responsible for it—most probably Mr Milner Gibson and Sir William Molesworth.

The secrecy of February was broken on the 27th by what has all the appearance of a *ballon d'essai* sent up by Mr Milner Gibson. Sir William Wray was anxious to know whether Russian ships chartered by British merchants, laden with corn, would be allowed to pass British and French men-of-war, having been already permitted to pass the Bosphorus by the Sultan's firman. The answer was in the affirmative; whereupon Mr Milner Gibson irrelevantly asked this further question:—" Whether the Government had come to a decision, and whether they will announce that decision, whether free ships are to make free goods and neutral flags to be respected?" The question could hardly have been so worded unless the questioner had known that the matter was under consideration. Possibly he was impatient at his pupil's dilatoriness, and thought it necessary to force the pace, as he ought by now to be prepared to make a public announcement. Lord John Russell replied that the question was one of the greatest importance and was under consideration, but that an answer would be given before the declaration of war. Immediately the answer was reported to

Paris, M. Drouyn de Lhuys wrote a despatch to Count Walewski. He had put the matter so plainly before the British Government, the settlement of the question for the duration of the war, whatever might happen afterwards, was so logically simple, that he could not understand the delay in coming to a decision. Lord John Russell's answer seemed to suggest that the question was being considered independently of the French Government. Nothing could have a worse effect than a want of unanimity between the allies. A controversy such as Lord Cowley had indicated as possible was unnecessary if only the course he had suggested were followed. Once more M. Drouyn de Lhuys insisted on the wisdom of it. Time pressed, and he was impatient.

M. Drouyn de Lhuys to Count Walewski.

Mars 1, 1854.

Je regretterais vivement que l'Angleterre procédât à une mesure de cette importance sans se concerter préalablement avec nous. Il serait du plus mauvais effet, au début d'une guerre faite en commun, que les deux pays parussent divisés sur des théories, lorsque dans la pratique ils doivent agir ensemble. Veuillez appeler de nouveau l'attention de lord Clarendon sur cet objet. Il me semble que, sans réveiller une controverse qui alarmerait des intérêts que tout nous conseille de ménager avec soin, il serait suffisant de rédiger pour les commandants de nos bâtiments des instructions strictement calculées d'après les necessités de la guerre actuelle et de nature à rassurer les neutres, particulièrement ceux que les habitudes de leur commerce portent à navigeur de préférence dans la mer Noire ou dans la mer Baltique. De cette façon, l'Angleterre et la France reserveraient chacune leur doctrine, et leur action se confondrait dans une même pratique, que l'on serait toujours maître de rendre plus sévère, pendant le cours des hostilités, si les circonstances venaient à l'exiger.

An interview with the British Ambassador followed, in which the necessity for concerted action between the allies was again insisted on. M. Drouyn expressed the hope "that no decision might be taken, and, above all, no declaration on the subject published, without previous consultation with the French Government." The matter was reported by Lord Cowley, with a curious sense of detachment, on the 6th March, as having been "mentioned a day or two ago." From the rest of this despatch it might be imagined that the proposal for dealing with the rights of neutrals had emanated from the British Government, and that

they had omitted to consult their ally. By the light of Lord Clarendon's letter to Lord Shaftesbury the suggestion in the last sentence is disingenuous, that "it will be for your Lordship to consider whether an attempt may not now be made to set this question at rest as far as is in the power of the two Governments for ever."

LORD COWLEY TO LORD CLARENDON.

285.

Paris, March 6th, 1854.

MY LORD,

Mons. Drouyn de Lhuys mentioned to me, a day or two ago, that he had heard that Her Majesty's Government was occupied, at the present moment, in considering the delicate question of the rights of neutrals, and he expressed the hope that no decisions might be taken, and, above all, no declarations on the subject published, without previous consultation with the French Government.

I promised M. Drouyn de Lhuys to inform Your Lordship of his wishes, and I could not resist remarking how desirable it was that the friendly intercourse so happily subsisting between the two Governments should be further cemented by an understanding upon a question, on which, until now, they had been unfortunately divided. M. Drouyn de Lhuys responded with much cordiality to this remark, and it will be for Your Lordship to consider whether an attempt may not now be made to set this question at rest, as far as is in the power of the two Governments, for ever.

Lord Clarendon replied by the following despatch :—

LORD CLARENDON TO LORD COWLEY.

170.

March 9th, 1854.

MY LORD,

The subject to which Your Excellency adverts in your despatch, No. 285, of 6th March, relative to the rights of neutral flags in time of war, is under the consideration of Her Majesty's Government, but no decision will be taken nor any declaration published without previous communication with the French Government.

The facts recorded in the foregoing pages bear out the statement that Lord Clarendon fulfilled his intention of keeping the proposals he was going to make in due course secret. The French Government, though they knew the plan, were in the dark as to how it would be carried out. It is curious, therefore,

to turn to a small collection of despatches which passed between the United States and the European Powers, both belligerent and neutral, in the early months of 1854, respecting the questions in issue.[1] From this correspondence we find that the United States Government were informed at all stages of the intentions of the Cabinet, though the intimate character of the negotiations with France do not seem to have been disclosed.

On the 23rd February, that is, three days before Mr Milner Gibson's question in the House, Mr Buchanan, United States Minister in London, informed Mr Marcy that he had asked Lord Clarendon whether the Government had determined on the course they would pursue in the impending war, in regard to neutrals, and whether they would adopt "free ships free goods." It was of the greatest importance that merchants in America should know the decision as speedily as possible. Mr Buchanan was informed that the Cabinet had not yet come to a decision; but Lord Clarendon had told him that he "should be the very first person to whom he would communicate the result." He then intimated a desire to converse with the American Minister upon the subject "informally and unofficially." Mr Buchanan had no instructions, but, as an individual, he was willing frankly to express his opinions. He would consider it a breach of confidence to report Lord Clarendon's private opinions on a question still pending before the Cabinet, "and on which its members are probably divided." He had, however, no objection to repeat the substance of his own observations.

The United States Courts, he said, have recognised the right of capturing enemy property on neutral ships, and the duty to restore neutral property on enemy ships. From a very early period of our history the Government had sought, in favour of neutral commerce, to change the rule by treaties with different nations, and to adopt instead the principle of the flag, the main object being to reduce the occasions on which the right of search would be exercised. He thought that this would be best achieved by adopting "free ships free goods" and "enemy ships enemy goods." The reason why the United States had not recently concluded any treaties on these lines, he presumed, was "that until the strong maritime nations, such as Great Britain, France, and Russia, should consent to enter into such treaties, it would be but of little avail to conclude them with the minor Powers." He would not, however, be astonished if the British Government "should yield their

[1] Printed in *State Papers*, vol. xlvi. pp. 821–843 [Document, No. 8].

long-cherished principle" and adopt the rule of the flag. He knew positively that Sweden, Denmark, the Netherlands, and Prussia were urging this upon them; "but what I did not know until the day before yesterday, was that the Government of France was pursuing the same course." He apparently did not know that Great Britain and France were working together as allies to come to some common form for their declaration; nor that a favourable answer had already been given to Sweden and Denmark.

The other despatches in this correspondence will be referred to at the different stages of the negotiations with France to which they are relevant.

IV

The Riga Despatch.

The position of affairs at the beginning of March 1854, is now clear. Lord Clarendon had decided in his own mind "to bring our law, or rather practice, respecting neutral flags more in harmony with the practice and expressed wishes of other maritime nations," not for the purposes of the war only, but permanently. He had confided his wish to his friend Lord Shaftesbury. M. Drouyn de Lhuys also knew his secret. Further, he had talked "informally and unofficially" with the United States Minister, who had drawn his own conclusions. Lord Clarendon did not think, however, that it was necessary to obtain an expression of the wishes of the maritime nation to which he belonged, in the usual way, through Parliament.

Being in favour of the greater and permanent change, he must also, "privately," have been in sympathy with the French proposal for the lesser, and temporary, change; and he cannot fail to have been impressed with the logic of M. Drouyn's argument as to the manner in which that change should be effected. He was still, however, not prepared to make a public announcement, and two despatches to Lord Cowley, set out in the following chapter, are entirely non-committal.

Ministers who propose, on their own motion, to make alterations in the ancient laws of England are not entirely free agents. They are guardians of their own consciences; but the Law Officers are guardians of the law, and, when they are consulted, guide the public utterances of the Ministers. Custom has prescribed the occasions on which the Law Officers must be con-

sulted. The Attorney-General at the time was Sir Alexander Cockburn.

The northern trade of Europe was largely in the hands of British merchants. Subsequent debates dealing with the commercial aspects of the war supply us with some interesting facts which are pertinent to the question now to be discussed.

Russia's trade with Great Britain was ten times greater than with any other country; it amounted to thirteen millions annually; and it was no exaggeration to say that her commodities were produced mainly by the aid of British money. The intimate commercial relations between the two countries was probably a relic of the old days of British factories. It is not difficult to imagine that the business houses established in Riga and the Baltic ports were in direct descent from their commercial ancestors who traded under the protection of the factory system. The trade consisted principally in flax and tallow: Ireland received large quantities of flax seed for her cotton industry. It was said authoritatively that as a result of the custom of cash payments the Russian interest in consignments did not exceed 15 per cent. What the proper designation of such trade is, whether "enemy" or "British," and how it should be dealt with in war, were serious questions which would inevitably have to be faced by the Government. Russia had assured the merchants of her protection; it is not surprising, therefore, that they should inquire, so soon as war was seen to be inevitable, what protection they would receive from their own country. We learn from Mr Mitchell's speech in the House of Commons on the 4th July, that Lord Clarendon had in December 1853, with "absence of official reserve," informed our merchants that "it would be highly unsafe to make the usual advances to Russia." [1]

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[1] The question of subscribing to Russian loans also arose immediately after the war broke out, and the British Consul-General to the Hanse towns was instructed to send the following circular to the Vice-Consuls explaining the law as to contributing to the foreign loan which the Russian Government proposed to contract. The circular was laid before Parliament on July 24, 1854:—

"*Hamburgh, June* 30, 1854.

"Sir,

"Her Majesty's Government having taken the opinion of the Law Officers of the Crown as regards the nature of the crime, and the degree of penalty which any subject of Her Majesty would render himself liable to in contributing to the foreign loan which the Government of Russia propose to contract, I am therefore informed by the Earl of Clarendon that a British subject contributing to a loan raised on behalf of a sovereign at war with Great Britain, will be guilty of High Treason, as adhering to the Queen's enemies.

"I have accordingly to instruct you to give every publicity to this fact within your Vice-consular district.—I am, etc.

"British Vice-Consul at . . . G. Lloyd Hodges."

But the question was more formally raised in February by the Board of Trade, and was referred to Lord Clarendon.[1] The result was a despatch sent on the 16th February [2] to the Consul at Riga, for the information of the British merchants, in which, after consultation with the Law Officers, the law as to trading with the enemy was explained. Persons resident and trading in an enemy country are treated as enemies, and their property is liable to seizure on the sea, even if on board a neutral vessel, "whether such persons be by birth neutral, allies, enemies, or fellow-subjects." Clearly then at this point the Attorney-General's opinion on the law overrode any question of policy.

This is a harsh doctrine, but it is embedded in our law of war, and it is not necessary to discuss it. I shall confine myself to making one suggestion. The position of a merchant who establishes a business in the ordinary course in a foreign country seems to differ in many respects from that of a merchant who has so established himself with the implied authority of his Government; to the latter it does not seem necessarily to follow that the same harsh principle of the law should apply. Such an authority would be implied where British merchants had established themselves in a country where "by treaty, capitulation, grant, usage, sufferance, or other lawful means," the King exercises foreign jurisdiction. The modern principle of exterritoriality is based on the old factory system, and, if I am right in my suggestion that the British merchants in Russia were lineal descendants of the old factory merchants, it would not have been unreasonable to modify the old principle of the law in their favour.[3]

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[1] Lord Clarendon on the 17th March said that the question was referred to him "about a month ago." But, allowing for the reference to the Law Officers, the consideration of their report, and the drafting of the despatch to Riga, it cannot have been later than the beginning of February.

[2] Document No. 2.

[3] The "factory system" was, as pointed out in the text, the forerunner of the modern system of consular jurisdiction which exists in certain Oriental countries, of which the chief remaining example is China. In virtue of the commercial treaties the subjects of other countries enjoy the privilege of exterritoriality, by which, speaking very generally, they remain subject to their own laws, and to the jurisdiction of their own Consuls. The difference between the exterritorial and the factory system is that, under the latter and older system, the whole *personnel* of the factory, irrespective of nationality, was subject to the Consul's jurisdiction. It was to all intents and purposes a separate colony. Very little is known of the foundation of the system in Russia; the following article of the Treaty of Commerce of 1787 between Russia and Portugal will therefore be of interest:—

> "V.—Les sujets des deux Puissances contractantes pourront dans les Etats respectifs s'assembler avec leur Consul en Corps de Factorie, et faire entr'eux pour l'interêt commun de la Factorie, les arrangemens qui leur conviendront en tant qu'ils n'auront rien de contraire aux loix, statuts et règlemens du pays, ou de l'endroit où ils seront établis." —(De Martens, *Recueil*, iii. 305: (2nd ed.) iv. 315.)

It was, however, decided that the law was to be applied. As Lord Clarendon said, one of the Riga merchants had intimated his intention of continuing his residence in Russia, and "he had been told the consequences." The consequences were stated with almost brutal frankness: their property was by law "enemy property"; the old doctrine of seizing enemy property on neutral ships would be adhered to in the impending war: in other words, free ships would not make free goods.

Lord Clarendon had now put himself in a curious dilemma. In so far as his own personal views were concerned, or even his intention, as confided to Lord Shaftesbury, to change the law, he was right to maintain the law officially. But within a month of his accceptance of the Scandinavian Powers' intimation that they expected that their free ships were to make free goods, he informed the Riga merchants that their goods, being enemy goods, should not be free on free ships. Yet Riga is a Baltic port, and it was conceivable that the merchants of Riga might charter Danish or Swedish vessels to bring their flax seed and tallow to England. The foundations of a policy of confusion were thus well and truly laid even before war began.

The Swedish Government itself appears to have been puzzled, and to have asked for, perhaps received, explanations; for, on the 23rd February, Mr Grey wrote that he had spoken to Baron Stjerneld on the question of the neutral flag, and had been assured that the Swedish Government was content not to press for any explicit answer on the subject from Her Majesty's Government. The answer of 16th January had not been "explicit" in the fact that Lord Clarendon had not stated, in so many words, that he accepted "free ships free goods."

So far as the English law of war was concerned, however, the principle was clear, and seemed to be clearly stated. But a firm of London merchants, Messrs Martin, Levin & Adler, saw difficulties, and put this question to the Board of Trade: whether "Russian goods imported from neutral ports would be considered contraband, or would they be fairly admissible into England?" The question had little relation to the point referred to in the Riga despatch, and the firm was informed[1] "that, in the event of war, every indirect attempt to carry on trade with the enemy's country will be illegal; but, on the other hand, *bona-fide* trade not subject to the objection above stated, will not become illegal, merely because the articles which form the subject-matter of that trade were originally produced in an

[1] See letter by Mr Emerson Tennent, Document No. 4 (4).

enemy's country." The letter [1] laid down two further principles of war law: first, that trading with the enemy, indirect as well as direct, is illegal; secondly, that the produce of an enemy country, commonly called goods "of hostile origin," are not *per se* tainted either as "enemy property" or as contraband. This point had been formally admitted by Great Britain in the treaty with Russia in 1801, and there had not since then been any question that it was the English view of the general law, quite apart from treaty arrangements.

The provision in the treaty with Russia was that goods of hostile origin which had become *bonâ-fide* neutral property were exempt from seizure, though, by a supplementary article, colonial produce was excepted. The same principle would obviously apply when such goods had become the property of British subjects.

The firm, however, thought they had detected a flaw in the official reasoning. "It appears," they wrote, "that a British subject buying (by his agents) Russian produce in Russia, and importing the same *via* Germany (a neutral country), will be acting illegally, and goods seized on arrival here; but that a neutral subject buying Russian goods and consigning them to this country from a neutral port will be considered as carrying on a *bonâ-fide* trade, and his merchandise will be admitted for consumption into England. This would give such a decided advantage to the neutral over the British subject, that we cannot believe such to be the intention of the Government."

It is possible that the combined results of the two rules might have been as the merchants stated. The rule treating British subjects in certain circumstances as if they were enemies is clearly arbitrary, but it is rendered necessary by the exigencies of war. Its consequences may not be very logical. It may well be that these consequences appear to be hard when compared with the consequences of another rule which is based on sound principle; they can only be avoided by a rigorous adherence to the spirit as well as to the letter of the law. The Board of Trade could do no more than refer the firm to the general principle stated in the former letter, and repeat "that in the case of articles originally produced in Russia, but since purchased from neutrals at a neutral port, and in the ordinary course of trade with such port by British merchants, the fact of their having been originally produced in Russia will be immaterial."

To revert to the Riga despatch. It was referred to in the

[1] The correspondence with the Board of Trade is printed as Document No. 4.

House of Commons on the 13th March, when a somewhat irregular discussion arose out of a question put by Mr Mitchell, Member for Bridport. He hoped that the Government would shortly state their intentions with respect to the neutrals, because a statement made on a previous occasion by the Secretary to the Treasury "appeared to be irreconcilable with the document issued by the Secretary of State for Foreign Affairs."

Sir Charles Wood, President of the Board of Control, said that the Government would make a statement at the earliest possible moment; whereupon Mr Milner Gibson "took the liberty" of drawing the attention of the House to the fact that a public declaration of policy had already been made in the Riga despatch, and dwelt on the hardship it would cause to British commerce if it were insisted on. He hoped they were not to consider the despatch of Lord Clarendon as the rule that was to be adopted in the Baltic, because, "not only would it be calculated to cause collision with friendly Powers, not only would it have no effect in bringing the war to a close, but it would rather, on the contrary, have the effect of prolonging it." Then, taking up the thread of the hints he had dropped on the 27th February, he indicated the policy which he and a section of the House were prepared to urge on the Government. Unless the question of the neutrals "should be dealt with in a different spirit from that which was manifested in former times, it might bring this country into a collision with the United States of America." The principle laid down in the Riga despatch would authorise the boarding and rummaging of every United States ship by British officials "to see if they could find some bale or package in which there might be, directly or indirectly, a Russian interest" which would lead to its condemnation. He was "in hopes that the sounder policy would be adopted, that free ships would make free goods, and that the country would be spared the risk of being brought into collision with the friendly Powers."

The Secretary to the Treasury (Mr J. Wilson) then explained his previous statement. The question put to him, he said, had nothing to do with imports to or exports from Russia. It was solely a commercial question which had been decided by the Treasury—whether Russian produce imported by a neutral Power in a neutral ship the property of a neutral subject would be held sacred or be liable to seizure; which was an entirely different question from any which might arise with respect to direct trade with Russia. Apparently the Treasury answer was that such produce would be held "sacred."

On the 17th March the question was formally raised in both Houses of Parliament: in the Lords, by the Marquis of Clanri-

carde, on a motion for copies of correspondence which had led up to the Riga despatch; in the Commons, on a motion by Mr Milner Gibson, that instructions be given to British cruisers not to interfere with neutral vessels carrying enemy property not contraband of war.

Lord Clanricarde did not question the law laid down in the despatch, but objected to the indistinct and abrupt terms in which it was couched. He was, however, anxious to know whether it was to be taken as "representing the positive decision of the Government"; and he presumed that it was not intended to convey the opinion of the Government in regard to the rights of the neutrals. "So grave a subject as that, and one which had led to so much controversy, ought not to be discussed in that sort of incidental correspondence."

Lord Clarendon replied in the Lords. Coming at this time, a speech from the Foreign Secretary must have been looked forward to with anxiety, as well by those who believed that no change ought to be made in our maritime practice as by the British merchants whose trade was in jeopardy. With the war practically certain, all parties would naturally expect that the policy in regard to the neutrals would by this time have been decided.

Lord Clarendon had not seen the Emerson Tennent letter.[1] But he justified the Riga despatch, regretting that it should seem to have been expressed with "unnecessary curtness or severity." On receipt of the Board of Trade letter, he said, "I immediately took advantage of all the means at my command to ascertain what the law really was in reference to it, and having ascertained it, I stated it as clearly and concisely as I could in my despatch. In such despatch I explained to him [the Consul at Riga] that by the law and practice of nations a belligerent has a right to consider as enemies all persons who reside in a hostile country, or who maintain commercial establishments therein, whether such persons are by birth neutrals, allies, enemies, or fellow-subjects; that the property of all such persons exported from such country is *res hostium*, and, as such, is looked upon as lawful prize of war. Such property, I said, would in fact be condemned as prize, although its owner might be a native-born subject of the captor's country, and although it might be *in transitu* to that country, and the fact of its being laden on board a neutral ship would not protect it."

But the hard case of the Riga merchants had not been overlooked. "It has not been possible hitherto to determine on what principle the dispensing power of the Crown will be exer-

[1] See p. 43.

cised, whether licences or Orders in Council shall be resorted to." Being for the first time engaged with a naval ally in war, "it is our duty," he added, "to be very clear as to the principles we are about to adopt, and the departure which we shall sanction from our former law and practice . . . before we can call on the French Government to adopt those principles, and to protect British commerce and property in a way that the French might not in ordinary circumstances see to be right." He concluded by saying that he had endeavoured to give all the information in his power; "but your Lordships will understand that great caution is necessary in doing so . . . not to commit the Government to courses which may involve great responsibility. I think we are nearly in a position to determine the principle on which we shall allow licences." [1]

This part of the speech refers entirely to the question of British merchants in Russia, and to the grant of licences to allow them to continue their trade. It is necessary to consider it separately from the second part, because the departure from

[1] In a bundle of loose Miscellaneous Papers preserved in the Public Record Office, there are many half sheets which bear witness to the fact that the question of licences was at that time seriously engaging Lord Clarendon's attention. It appears from a memorandum in his own handwriting, dated the 1st March, that for some time the Government were determined to avoid having recourse to licences, "as calculated to produce fraud and undue favour to individuals." But there is a slip on which a query is written, also in Lord Clarendon's hand, "Whether Russian produce from over the frontier to Prussian ports and shipped from thence by British or Neutral vessels will be subject to seizure and confiscated by H.M. cruisers?" This is enclosed in an office inquiry dated 20th March:—

"Lord Clarendon wishes to have the inclosed Query submitted in form to the Q's Ad^{vt} being a query put to Ld. Clarendon by the Deputation to-day.

"Ld. Clarendon wishes also to obtain a *form* of Licence for the free passage of ships laden with Russian produce, etc. He asked me whence such licences were issued. I said I believed from the Council Office. But I apprehend that the Law Officers must be first consulted as to the propriety of the wording. They must know at the Admiralty whence such licences are issued how they are worded."

It would not be legitimate to reconstruct a policy on such very slender foundations: but some inferences may reasonably be drawn from these fragments. The memorandum of the 1st March has the word "superseded" written on it in pencil. It would therefore appear that the question of licences was being again considered in connection with the Prussian transit trade; and it is possible that at the time Lord Clarendon made the statement given in the text he was hopeful that licences would furnish the remedy for what was going on in Prussia.

This memorandum was followed by another in Lord Clarendon's hand, dated 26th March, evidently dealing with an application for a licence:—

"I think the answer to this sd. be that his case with others of a like kind shall be taken early into consideration.

"A Com^{ee} of P.C. and B. of T. will be appointed for granting licences, and to them I apprehend we ought to refer all the cases we have rec^{d} together with the opinion of the Law Officers upon them.

M. 26/54. "C."

"our former law and practice" relates only to the system of licences adopted during the Napoleonic Wars, which was as much criticised at home as abroad. The statement of the position is unexceptionable. Being engaged with an ally in war, obviously the principles on which the licences were to be granted needed clear definition, for the French cruisers would be required to recognise British licences, and so to protect British commerce and property; manifestly the system could only be adopted by mutual agreement, for British cruisers would have in a similar way to protect French commerce and property. The point made in the speech that "the French might not in ordinary circumstances" agree to affording this protection, is not quite intelligible. Napoleon had resorted to licences to as large an extent as the British Government; he had indeed developed the system into the far more dangerous one known as "neutralisation," by which enemy ships were transferred to the neutral flag.[1] The difficulty that the French Government might not approve the reintroduction of the system in its simple form, which would enable our own merchants to get their cargoes home to England, was probably illusory. Possibly something might depend on whether the resulting benefit would be entirely for the British merchants, or whether the French trade with Russia was sufficiently considerable to make it an important factor in the situation; but this was not a question which should weigh with a loyal ally. As a matter of fact, practically all the Orders in Council and French *ordonnances* relating to trade with Russia were identical. It is doubtful whether any serious discussion on the question of licences really took place with France. The English despatches which are extant are not complete enough for any statement to be based on them, but M. Drouyn de Lhuys' *Mémoire* does not allude to it.

But the moment had apparently at last arrived when Lord Clarendon thought it advisable to make a public statement as to his new opinions in regard to neutral rights. Having disposed of the Riga merchants, he proceeded to lift the veil to prepare the country for what was going on. I assume that the "we" in his statement refers to the French and English Governments conjointly.

"With respect to the rights of neutrals," he said, "and in respect to letters of marque, I trust we are about to set an example of liberality by which we shall be able to show that, as far as it is in our power, it is our intention to mitigate the

[1] The Licence System is more fully explained in Chapter III. of "1855."

calamities of war, and to act in a manner that shall be consistent with the humanity and civilisation of the age."

This statement requires very particular attention, coming, as it does, immediately after the defence of the Riga despatch, and specially because it contains no indication that the contemplated change was to be limited to the duration of the war. It is possible that the cautious reference in the earlier part of the speech to a " departure from our former law and practice " was zeugmatic, and that it was intended to relate as well to the seizure of enemy goods on neutral ships as to the licence system. That, however, may be passed over in view of the much more serious confusion of two very distinct subjects in this short sentence. The " example of liberality " which was about to be set, the " calamities of war " which were about to be mitigated, the action which was about to be taken "consistent with the humanity and civilisation of the age," were referred indiscriminately to the rights of neutrals and to letters of marque. But these epithets are not applicable alike to both these subjects; none of them indeed are properly applied to the rights of neutrals. To abandon the English practice of seizing enemy property on neutral ships might be described as an act of " liberality " to the enemy; to the neutral it was a concession to their convenience and to their importunity, nothing more. The abandonment by the French of their practice of confiscating neutral property on enemy ships was a similar concession. The delay, the inconvenience, even the financial loss to neutrals resulting from these practices, could not be described as " calamities of war." And neither the English nor the French practice could by any stretch of language be referred to inhumanity or attributed to want of civilisation. " I do not see," Sir Edward Grey said in a debate in 1908, " that humanity has anything to do with seizing enemy property on neutral ships." On the other hand, to abandon privateering could not by the most imaginative person be described as an " act of liberality." But the excesses to which the system had given rise certainly were a " calamity of war "; according to the view held in many countries, it was inconsistent " with the humanity and civilisation of the age." There was undoubtedly a very strong feeling in this country against privateering. A petition had been presented from the Liverpool Chamber of Commerce praying that British ships should no longer be commissioned as privateers. The privateers were perpetually bringing us trouble, endless trouble, during the Seven Years' War. Sir Julian Corbett [1] says :—

[1] *England and the Seven Years' War*, vol. ii. p. 7.

> What the King's cruisers did might possibly have been borne, but the action of our privateers was outrageous beyond endurance. Every year it had been growing worse, and it is not to be denied that at this time there was a swarm of smaller privateers in the Narrow Seas who were not to be distinguished from pirates.
>
> Pitt was honestly doing his best to check the abuses, but the privateers were incorrigible. What oppressed his mind from the first was a vision of the three Northern Powers uniting to protect their trade. He saw how easily on such a pretence they might gather a powerful combined fleet to escort their convoys down Channel, and then, having seen them clear, it would be open to them to run into Brest, join hands with the French fleet, and declare war. We should then be unable to keep command of the Channel or the North Sea, and the threatened invasion would become a real danger.
>
> The vision does credit to Pitt's long sight and acute perception. It was far from fanciful. France was doing all she could at this time to tempt Sweden into taking a hand in her invasion project, and Denmark was actually approaching Holland as to the possibility of forming a maritime union and taking common action for the assertion of neutral rights. Pitt, who knew how to make concessions as well as to be bold, met the danger by bringing pressure to bear on the Prize Courts to release as many ships as possible, and by restraining the excesses of the privateers by administrative action.
>
> . . . By these means the air was cleared. The neutral Powers were pacified, and the special danger passed.

There is indeed little doubt that the privateers were at the root of almost all the troubles we ever had with the neutrals.[1] But to apply these high-flown terms to the seizure of enemy property on neutral ships was an abuse of language. What, then, was Lord Clarendon's object in linking together two perfectly distinct subjects by inappropriate epithets? Was he not quite master of his subject, speaking to men even less well-informed than himself? It certainly succeeded

[1] The following example may be cited:—

In March 1801 the Danish Minister in London complained of certain "atrocities" deliberately committed by British privateers. Lord Hawkesbury replied that a searching inquiry had been ordered into the conduct of the persons accused of violence and inhumanity. If the charges were substantiated, their conduct would receive the strongest marks of the Government's disapproval: "attendu que c'est le vœu uniforme de Sa Majesté, que, même dans les cas d'hostilités ouvertes, toute espèce de cruauté ou de sévérité non nécessaire soit scrupuleusement évitée par toutes les personnes, employées au service de Sa Majesté."—(De Martens, *Recueil, Supplement*, ii. p. 445.)

in producing a mystification, which has prevailed even to this day.

On the same day, 17th March, in the House of Commons, Mr Milner Gibson developed his previous hints in a long speech in support of his motion that

> an humble address be forwarded to Her Majesty that she will be graciously pleased to give special instructions to the officers commanding Her Majesty's cruisers, in the event of war, to abstain from interfering with the neutral vessels on account of any goods or property, not contraband of war, that may be contained therein, and praying Her Majesty to direct Her Ministers to consider a policy of entering into treaty stipulations with the United States of America, and any other foreign country willing to entertain the same, on the principle that free ships shall make free goods, and the neutral flag give neutrality to the cargo.

Like most of his speeches on the subject, it was singularly confused, the good being obscured by vague and useless generalities, such as this: "It must be obvious to everyone that after forty years of peace the usages which might have been adapted to the last war may not be equally adapted now. . . . Opinions have changed, and we all know that that mighty power, steam, has been introduced since the last war, and effected important alterations in maritime communications."

One result of the introduction of that mighty power seems to have escaped his attention. It had promoted neutral activities, and suggested important alterations in their methods of getting cargoes to belligerents, as the "broken voyages" at Nassau and Matamoros were soon to demonstrate. The time was hardly opportune to suggest that belligerents should relax their efforts to counteract these activities.

But the conclusion to which Mr Milner Gibson had come was that this was "a most favourable moment for entertaining the question whether great changes may not be introduced into the principles of international law," which was the view Lord Clarendon had expressed to Lord Shaftesbury. "We are on terms of the most perfect amity with France and the United States, two of the most important naval and commercial Powers in the world besides ourselves, and therefore we might probably obtain their assent to such an alteration of the international law upon this subject as would be befitting the times in which we live, and as would give liberal scope for commercial transactions in time of war. I ask you to consider whether [this] war cannot be carried on without infringing to the same extent as formerly on the rights of commerce and private

property." . . . He believed that there was " very good ground for considering at the present time the policy of entering into a treaty with the United States and other foreign countries, in order that free ships may make free goods."

It is singular that a statesman of the standing of Mr Milner Gibson, who was undertaking to guide the country into a new way of conducting its wars, should have betrayed so little grasp of his subject as to suggest that England might obtain the assent of France and the United States to such a change in the law. A very slight knowledge of the history of the subject would have told him that *our* assent to such a change was the one thing that those Powers had always been anxious to obtain, and that without that assent there was no possibility of the principle being recognised as a part of international law.

The point mainly insisted on, however, was that this maxim, the adoption of which would give " liberal scope for commercial transactions in time of war," was more suited to the " times in which we live." No more specific reason was given why the times had changed since Catherine of Russia had put forward the same argument, than the introduction of steam. She had advocated the same doctrine; she also was anxious to foster " commercial transactions in time of war," and did not hesitate to explain what she meant—commercial transactions between neutral and the enemy. She was certain, she wrote to Count Pouschkin, her Minister at Stockholm, that the real reason why England had attacked Holland in 1781 was that the States-General had adhered to the Armed Neutrality, " d'autant plus, que par là elle [la République d'Hollande] mettoit parfaitement à couvert la navigation et l'industrie commerçante de ses sujets, exercée pour la plus part en faveur des ennemis de l'Angleterre." [1]

Mr Milner Gibson seemed unconscious that he was advocating no new doctrine, only a very old one which had been asserted by the neutrals from 1752 to 1815, and on which at times they had threatened to insist by force of arms.

When he had aired his favourite theory Mr Milner Gibson was on more solid ground in dealing with the practical question of the moment. Although it had been pressed as a permanent principle suited to the times in which we live, the House must have been surprised to find him continuing in a lower key: " I do not propose to give up any of our maritime rights." He admitted that our practice in war was in accordance with the Law of Nations; he desired only a modification of the Riga

[1] Rescript of the Empress to Count Pouschkin, 1781: *Secret History of the Armed Neutrality*, by a German nobleman (Count Goertz), 1792, p. 209.

despatch; he considered that "searching neutral ships for enemy goods is totally nugatory for the purposes of this war," because the bulk of Russian produce on the high seas was not Russian property. He asked simply that special instructions should be issued that the right be not exercised during the war; and he reinforced his arguments by words which might have been, had in fact been, written by M. Drouyn de Lhuys. If such instructions were issued we should "make no surrender of principle—we do not deprive ourselves of the power of exercising those extreme rights whenever we think fit."

Lord Clarendon had just made an announcement in the other House as to the Government policy. Mr Milner Gibson promised to address the House again should that announcement have fallen short of the principle which he believed to be the only safe one.

Mr Horsfall seconded the motion, and "could not conceive how any Government could think otherwise."

Lord John Russell said that the Government would "issue in some shape or other" a document which should declare its policy.

Mr J. L. Ricardo said that the Riga despatch and the Board of Trade correspondence[1] were totally at variance. He then started a new point, of which more was to be heard in subsequent debates. Dwelling on the injury to our own manufacturers if we "prevented the imports of Russia coming into this country," he hoped we should not be governed "by old and antiquated notions," but abide by the "sounder and fairer notions" we had adopted in regard to commerce. Mr T. Baring complained, more practically, of the injury to trade caused by the delay in the announcement of the Government decision.

John Bright spoke a few words. He hoped the Government would "take a wise course" and change the law. If they did not, our commerce would be overtaken by the United States; "otherwise war with the United States was inevitable." As for the law, he never could see "any justice in what we called the Law of Nations on this subject." Then, not weighing his words with his customary care, he declared that "The property on board a neutral ship should be as sacred from the intrusion of enemies as the property of a neutral on shore."

Lord John Russell requested the forbearance of the House. The question was being considered, and a document was being prepared which required very especial care, as France had to be communicated with. He added the important statement: Though the views of the Government are decided, "it was

[1] Document No. 4.

necessary to see whether they were agreeable to the Government of France."

These two debates of the 17th March taken together, as well as the preliminary discussions on the 13th, are incomprehensible. As we shall see in the next chapter, negotiations had been for some time going on with France as to the policy which the allies were to adopt with regard to the neutrals. They had reached a difficult stage, and the utmost circumspection was necessary. A debate in Parliament is often the least circumspect of discussions. It was eminently undesirable at the moment; it was obviously premature, as the allied policy had not been definitely decided; and it might lead to evasive statements by Ministers, which the House of Commons dislikes. But the parliamentary tradition recognises the expediency of caution when delicate negotiations are pending, and the House would certainly have acquiesced in the forbearance which Lord John Russell requested at the end of the debate if he had more boldly asked for it at the beginning. As it was, he made a statement which, if it had been true in fact instead of being very wide of the mark, might have jeopardised the whole of the negotiations: "The views of the Government are decided." They were, most unfortunately, very undecided. The result was a general discussion in Parliament of a policy not yet determined, than which nothing is more likely to bring either parliamentary debate or diplomatic discussion into disrepute. But the debate gave Lord Clarendon the opportunity to lift the veil.

On the 16th March he had done something more than lift the veil to the United States Minister. It transpired from a letter of Mr Buchanan to the Secretary of State at Washington that Lord Clarendon had explained to him exactly how the question stood. This important letter will be considered in the next chapter, in connection with the then-pending negotiations with the French Government.

The remarkable feature about the debate, however, is not so much what was said as what was left unsaid. The merchants were in real alarm at the consequences threatened by the Riga despatch; they were unreasonably alarmed at the Board of Trade correspondence; the subject was evidently one of great complexity, which it was difficult to explain in official correspondence. But there was not one word said in either House, by speakers on either side, referring to the answer which had been given to the Scandinavian Declarations of Neutrality. The correspondence had been published in a White Paper[1] in

[1] Document No. 1.

February. Had nobody read it? Or, reading it, had no one understood? Undoubtedly the law laid down in the Riga despatch was harsh, but it was the law of war. Mr Milner Gibson could have made a strong case for mitigating it if he had reminded the House of the answers given to Sweden and Denmark. His vague allusions to international law would have been unnecessary if he had referred to Government action actually taken, to opinions which seemed to have been actually formed, to promises actually made to the important neutrals of the North, all of which were at variance with the despatch. Yet he did not mention them. Still more extraordinary, those —and there must have been many—who objected to the concessions made to Sweden and Denmark, who knew that the Riga despatch did accurately state the ancient law of war against trading with the enemy, might have effectively contrasted the two policies, and pointed out the manifest variance between them. Yet they omitted all reference to the documents but lately issued for their information.

There is much that is incomprehensible in every stage of the story; it is perhaps not surprising that this characteristic should show itself thus early in the course of events.

V

The Negotiations between England and France prior to the Declaration of War.

Lord John Russell's statement at the close of the debate on the 17th March—that a document was being prepared, but that the French Government had to be communicated with—did not give a definite idea that negotiations with France had been going on for some time. The further statement that the views of the British Government "were decided" suggested that the Government had made up its mind, but that the delay in making its views public arose from this necessity of consulting the French Government and persuading it to adopt those views. Lord John wisely, and more accurately, added: "There are other causes for unavoidable delay."

During the first week of March, as we have seen, M. Drouyn de Lhuys was urging prompt concerted action between the allies in regard to the neutrals, and dwelling on the bad effect which would be produced if separate and contradictory action were taken. M. Drouyn's anxiety can hardly have been relieved

by Lord Clarendon's dilatory reply that the Law Officers were being consulted, but that no declaration would be published without consultation with the French Government. The rôles of the two Governments had in some curious way become inverted. The discussion had been initiated in Paris in the early days of January, the attention of the British Government had been called to the extreme urgency of united action, the simplest and speediest way of arriving at united action had been pointed out—but so far in vain. February passed, and nothing had been done; but at the beginning of March the British Government had apparently taken the matter into its own hands—might, for all M. Drouyn knew, be deciding in favour of separate action. Hence his urgent message to Count Walewski. The only consolation vouchsafed to him was that "no decision will be taken nor any declaration published without previous communication with the French Government": not "without previous consultation," but "without previous communication." M. Drouyn, however, interpreted this to mean *sans se concerter*, and continued to negotiate. His narrative gives us an insight into what the British Government had been doing. Although by no means exhaustive, it is illuminating. A draft for the declaration to the neutrals had been prepared, and on the 14th March Lord Cowley presented it to the French Government, intimating that it had been the subject of much discussion in London, in order to make it conform as far as possible with French doctrines.

M. Drouyn gives a summary of the draft and of the important concessions which had been made. Reserving the question of law, the British Government undertook to confine visit on the high sea to the verification of a ship's nationality, and to the steps necessary to establish the absence of contraband of war, and of enemy despatches: it would admit that the neutral flag covered enemy property, and neutral goods under the enemy flag were to be untouched: letters of marque would not be issued, and British subjects accepting them would be treated as pirates.

M. Drouyn rejoiced especially at the acquiescence in "free ships free goods." Enlightened as to the political side of the question, the British Government, he says, saw the necessity of reassuring the neutral Powers. Writing in 1868, he cannot resist giving us his version of the age-old dispute; and after his interviews with Lord Cowley, as recorded by him, it is hard to say he was not justified.

> Eclairé sur le côté politique de la question, le gouvernement britannique avait senti la nécessité de rassurer les puissances neutres, qu'effrayait le souvenir de la violation

constante de leur pavillon par ses croiseurs pendant les dernières guerres, et de toutes les vexations qu'avait entrainées l'exercice du droit de visite poussé à outrance. Quand ce droit en effet impliquait la recherche de toutes les marchandises auxquelles pouvait être attribuéc une provenance ennemie, il revêtait la forme la plus intolérable, et l'emploi qu'en avait fait la Grande Bretagne était de nature à répandre l'effroi parmi les nations non belligérantes.

But M. Drouyn was not satisfied. The " right of search," even as restricted in the draft declaration, seemed to him to leave the door open to abuses, and the French Government thought that its exercise should be surrounded with guarantees giving greater protection to the neutrals. Discussions with Lord Cowley on this subject, as well as on several other details, having taken place, the draft was sent back to London, recast in such a form that it was hoped it might be used by both Governments. The date of its despatch is put by M. Drouyn as the 20th March. There is, however, a telegram from Lord Cowley to the Foreign Office, despatched at 11.55 a.m. on the 19th, which gives a different account of the interviews.

Telegram from Lord Cowley to Foreign Office.

Drouyn stated to me yesterday that I should have a copy of the proposed French declaration in regard to neutrals this evening. I asked him several questions with a view to ascertaining whether there was any hitch. The general impression left upon my mind was that the declaration would be substantially the same as ours, but that it would be accompanied by a Note " to Her Majesty's Government " explaining the French view of certain passages.

The words in inverted commas were added by a further telegram sent later on the same day.

The reference to " several questions " put " with a view to ascertaining whether there was any hitch " is inconsistent with the idea that the new draft was the result of collaboration, but it is not necessary to unravel this discrepancy. From the first, as we have already seen from his January despatches, Lord Cowley's recollections of his intentions differed radically from those of the French Minister. It will be sufficient to give M. Drouyn's despatch to Count Walewski concerning the draft, in which he makes a very explicit statement as to its joint authorship. He again emphasised the principle on which the draft rests—that the fundamental principles of the two countries were left intact. In this way he hoped to achieve the joint declara-

tion, so essential for bringing home to the world the fact of the alliance.

From M. Drouyn de Lhuys to Count Walewski.

Mars 20, 1854.

Ce projet a été préparé entre lord Cowley et moi dans des entretiens confidentiels sur cette matière délicate. Je viens d'en donner communication à M. le Ministre de la Marine en le priant de me faire connaître son opinion le plus tôt possible. Nous avons, ce me semble, à opter entre une déclaration commune qui, s'appliquant uniquement à la présente guerre, n'engagerait pas les maximes de l'Angleterre et dans laquelle nous n'abandonnerions pas les nôtres, ou deux déclarations simultanées qui, annonçant les mêmes intentions quant à la conduite et aux instructions données aux commandants des forces navales respectives, réserveraient également la différence de nos doctrines : mais j'inclinerais pour une seule déclaration, qui serait plus satisfaisante pour les neutres, et qui, en constatant mieux notre parfait accord, frapperait plus fortement les esprits.

On the 24th March, in answer to a question by Sir Fitzroy Kelly, Lord John Russell said that the document, to the existence of which he had referred in the debate of the 17th, would be ready " very shortly." He added that there would probably be an Order in Council or a Declaration, but he was not sure whether it might not be necessary to introduce a Bill into Parliament.

It it difficult to make out exactly what Lord John meant by this answer. The draft as recast must have been received in London ; " very shortly " could have no other meaning than that in its new form it had been practically accepted by the Cabinet. The facts, however, were very different.

On the 24th, M. Drouyn sent a second and fuller despatch to Count Walewski on the subject of the draft, in which he developed the points already alluded to in the short despatch of the 20th. It seems probable that this second despatch, elaborating the position taken up by the French Government, was prompted by the invertebrate debates in Parliament on the 17th March, the report of which would not have reached him till after the short despatch of the 20th had been posted. With so clear a perception of what the necessities of the case demanded, he must have been in dismay at reading the speeches of Mr Milner Gibson and his friends urging the Government to take a step at once which he, M. Drouyn, knew they had already decided to take in due course of time, and at finding no frank

statement of the fact made by the Minister: and puzzled to understand the meaning of Lord Clarendon's circumlocutions. It must have appeared to him necessary to bring the Foreign Secretary back to the realities of the position: to remind him that, though he knew his secret desire to change the English practice in regard to the neutrals, though he sympathised with this desire, while regretting the necessity for keeping it secret, there was not then time to bring about the change even by indirect methods. It certainly, at that moment, was not the wish of France to bring that question to the front. Knowing the secret, that Lord Clarendon dared not, he was too astute a diplomatist not to know that, if the ulterior desire were to become generally known, it might wreck the temporary arrangement he contemplated making for the war. Hence, it seems to me, this second despatch was written: Count Walewski must once more remind Lord Clarendon of the real position taken up by the French Government.

It will be well fully to appreciate that position. The point insisted on from the first was again emphasised: whatever course of joint action was decided on, it must preserve intact the fundamental principles, so widely divergent, of the two countries: in this way only a joint declaration would be possible. But if the British Government wished to indicate that it reserved the right to apply such and such principle for the present, thus insisting that that principle was a recognised right, then two declarations would become necessary, similar in principle but different in form. It would be impossible for the French Government to say that it renounced a right the existence of which it had always contested. This was a question of form: the essential thing was that the two Governments should agree as to the principles to be applied.

M. Drouyn then dwelt on the fact that his Government was ready to abandon the practice of confiscating neutral property on enemy ships, in spite of the delicate nature of the question. It was to be feared that enemy goods on board enemy ships might escape capture by means of the old trick so familiar to the neutrals in former wars, lending the neutral flag to the enemy's ship, known as "neutralisation"; [1] and possibly a law would be required to give effect to this new arrangement, more especially as it would deprive the French marine of a considerable portion of their prize money. He would, however, consult the Minister of Marine so soon as he knew definitely the proposals of the British Cabinet.

[1] See the chapter on the "Licences to trade with the Enemy," Chapter III. of "1855."

M. Drouyn thought that the abandonment of this practice would sufficiently counter-balance the abandonment of the British practice of seizing enemy goods on neutral ships. On the face of it, and accepting M. Drouyn's estimate of its value, the bargain seemed to be the only possible one; it fell within the broad principle of mutual surrender of divergent principles which he had laid down at the commencement of the negotiations, and apparently the British draft had been based upon it.[1]

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[1] From M. Drouyn de Lhuys to Count Walewski

Mars 24, 1854.

Les observations que lord Cowley m'a présentées sur le projet de déclaration relatif à la neutralité, que j'ai eu l'honneur de vous adresser le 20 de ce mois, donnent lieu, de notre part, à certaines remarques sur lesquelles je crois utile d'appeler votre attention.

Pour parvenir à faire une déclaration commune, on devait se borner à formuler ce que les deux nations entendaient admettre ou repousser pendant la durée de la guerre actuelle. Les théories de la France et de l'Angleterre étant différentes, il était indispensable d'éviter tout ce qui pouvait ressembler à une sorte de déclaration de principes. Le projet que je vous ai communiqué était une transaction entre les systèmes des deux pays; il ne faisait prévaloir ni l'une ni l'autre de ces doctrines.

Si le gouvernement anglais désire que sa déclaration indique qu'il réserve l'application de tel ou tel principe ou qu'il renonce, quant à présent, à l'exercice de tel ou tel droit, en indiquant ainsi qu'il considère ce principe comme reconnu, et ce droit comme lui appartenant, il faudra nécessairement en venir à faire deux déclarations, semblables quant au fond, mais différentes quant à la forme; car évidemment le gouvernement français ne peut dire qu'il renonce à l'exercise d'un droit dont il a toujours contesté l'existence, ou qu'il réserve l'application d'un principe, quand il a sans cesse refusé de la reconnaître. Ceci du reste n'est qu'une simple question de forme; ce qui importe le plus en réalité, c'est que les deux gouvernements soient d'accord quant aux règles pratiques qui devront être appliquées.

Je passe à l'examen de deux points importants et sur lesquels je vous invite à appeler plus spécialement l'attention de lord Clarendon.

Le premier est relatif aux marchandise neutres saisies à bord de navires ennemis. Le projet que je vous ai envoyé déclarait que la confiscation n'en serait pas prononcée; c'est là une question très-grave en elle-même, très-délicate surtout pour le gouvernement français. Il est à craindre en effet, que les marchandises ennemis chargées à bord de navires ennemis n'arrivent à naviguer sans danger, au moyen de neutralisations simulées; et d'autre part, les lois françaises, prononçant la confiscation des navires ennemis sans admettre d'exception pour les marchandises neutres, il faudra peut-être une loi nouvelle pour enlever aux marins qui ont des droits à exercer, cette part souvent très-considerable de leurs prises. C'est une question du reste au sujet de laquelle j'aurai à m'entendre, comme sur toutes les autres, avec M. le Ministre de la Marine. Mais je ne puis le consulter utilement sur ces divers points que lorsque j'aurai été officiellement et complètement informé des propositions definitives du cabinet britannique.

Le gouvernement anglais paraît insister pour que le projet de déclaration défende aux neutres de se livrer, pendant la guerre, soit au commerce colonial, soit au cabotage, s'ils sont réservés pendant la paix.

We learn from this despatch, however, for the first time, that the British Government had raised in their draft a new and highly contentious point, which, curiously enough, was

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Je n'ai pas besoin de vous rappeler avec quelle persistance le gouvernement français, à toutes les époques, a soutenu les réclamations nombreuses et vives que l'adoption de cette règle souleva, dès l'origine, de la part des nations neutres. La France est donc liée par ses précédents historiques ; elle l'est également par des traités faits avec plusieurs Etats, donc elle s'est engagée à laisser les navires naviguer librement en temps de guerre, même entre deux ports ennemis. Comment pourrions-nous aujourd'hui nous associer à une disposition qui refuserait aux neutres un droit que nous avons toujours revendiqué pour eux, et que nous avons même proclamé solennellement dans nos traités ?

Je n'indique qu'en passant l'intérêt particulier que cette question présente pour la France, et les conséquences différentes que l'adoption de la règle proposée aurait pour les deux pays. L'Angleterre, qui admet en tout temps les pavillons étrangers à prendre part au cabotage et au commerce des colonies, n'a rien à craindre de l'application qui pourrait lui en être faite ; la France au contraire, qui réserve encore ces navigations au pavillon national, pourrait avoir éventuellement à souffrir de la règle qu'on l'invite à proclamer.

Je me demande du reste, s'il y a un intérêt considérable, pour la guerre actuelle, à insérer dans la déclaration une disposition semblable. La Russie, il est vrai, réserve en temps de paix le cabotage et le commerce des colonies ; mais, dans la Baltique, le cabotage ne se fait qu'entre un petit nombre de ports, qu'il sera facile aux flottes de fermer complètement au moyen d'un blocus effectif. Il en est de même de la mer Noire, sur laquelle les flottes combinées dominent. Quant au commerce de l'Amérique russe, qui est le monopole d'une compagnie, s'il vient à être exercé par les vaisseaux des Etats-Unis, il en pourrait résulter, dans un intérêt minime, des complications graves, que la France a d'autant plus le désir d'éviter sur cette question, que son traité de 1778 avec les Etats-Unis est un de ceux où le droit des neutres de se livrer, pendant la guerre, aux commerces réservés, a été formellement stipulé.

Je me plais à reconnaître, du reste, tous les efforts que le gouvernement anglais a faits pour se rapprocher autant que possible des doctrines de la France, et vous pouvez assurer de nouveau lord Clarendon de notre désir sincère d'entrer dans la voie des transactions mutuelles. Nous en avons donné la preuve sur la question des marchandises neutres à bord des navires ennemis. Mais, en ce qui concerne le droit des neutres de se livrer aux navigations réservées, lord Clarendon reconnaîtra, j'en suis certain, que la concession ne saurait venir de notre part. Le gouvernement anglais, en effet, qui regarde la prohibition comme fondée sur le droit des gens, peut bien reconcer à s'en prêvaloir, tout en réservant son système, tandis que la France ne saurait proclamer une règle que, d'après ses principes, elle ne se croit pas autorisée à appliquer.

Telles sont les observations que je vous prie de présenter à lord Clarendon. J'espère qu'elles le détermineront à écarter de la déclaration anglaise une règle que la France ne pourrait faire figurer dans la sienne. Jusqu'ici les deux gouvernements ont saisi toutes les occasions de faire ressortir la solidarité complète qui unit si heureusement les deux nations ; il importe que cette même pensée continue de se révéler jusque dans les règles à établir pour les questions secondaires. Si, sur certains points, les deux pays ne peuvent adopter les mêmes principes, il me parait du moins très-désirable qu'ils évitent, surtout dans une déclaration solennelle, d'en proclamer de différentes.

Vous voudrez bien me faire connaître le plus tôt qu'il vous sera possible, le résultat de l'entretien que vous aurez eu avec lord Clarendon .

omitted from M. Drouyn's summary of it. A clause had been introduced prohibiting neutrals from participating in the enemy's colonial and coasting trade; in other words, the British Government proposed to insist on the "Rule of 1756." Against this M. Drouyn de Lhuys vehemently protested. He recalled the persistence with which France had supported the frequent protests of the neutrals against this Rule. France was therefore pledged against it by historical precedents, as well as by her treaties with many States. How was it possible for her now to associate herself with a provision which denied to neutrals a right she had always claimed for them?

Coming to the merits of the question, he pointed out that the provision would result in different consequences to France and England, for England allowed foreign flags to participate in her colonial and coasting trades, while France, according to the old monopoly system, reserved those trades for the national flag. But, he added, after all, was it a practical question? In the Baltic the coasting trade—*le cabotage*—only existed between a few ports, and both in this sea and in the Black Sea a blockade by the joint fleets would be equally efficacious. In regard to Russian trade with its own dependencies in America it was in the hands of a Company, and, if it should be carried on by American vessels, questions might arise with the United States which France would desire to avoid, especially as, in her treaty of 1778, the right of the neutrals to participate in these trades during war had been expressly recognised.

M. Drouyn acknowledged the efforts made to bring the views of the Cabinet into harmony with French doctrines, but Lord Clarendon must realise that it was impossible to ask France to make this concession.

This despatch of M. Drouyn de Lhuys has an importance outside the special circumstances in which it was written. It is commonly assumed that the "Rule of 1756" is a doctrine of the past; it is certainly true that since the Declaration of Paris we have heard little of it. We now learn, and I believe M. Drouyn's account of these negotiations to be the only document which contains the information, that the Law Officers in 1854 considered it a very live doctrine.

This is not the place to enter into a long examination either of the Rule itself or of the vital principle which underlies it. That will be undertaken in a subsequent volume; but in view of the fact that its introduction into the English draft came near to wrecking the negotiations between England and France in 1854, a brief explanation of the "Rule" is necessary in order to understand the nature of the discussions which then took

place in regard to it. It is unfortunate that only one side of them remains. It would have been interesting to have read what Sir Alexander Cockburn had to say on the subject, and why he thought it necessary to revive it—as some would say—at so critical a time. But only M. Drouyn's comments upon it remain for our enlightenment, and a discussion of them is necessary to the understanding of the deadlock which was avoided by so narrow a margin of time.

There is another important question which will be considered in due course—how far the signing of the Declaration of Paris destroyed a Rule which was fundamental to the whole system of our maritime law. For the moment it is sufficient to note Mr Hall's comment, written some years after the Declaration was in force: It is not "easy to see that the question has necessarily lost its importance to the degree which is sometimes thought." [1]

The "Rule of 1756," as stated and enforced by the Prize Courts, is that a neutral has no right in war to participate in a trade of the enemy which is closed to him in peace. The special applications of the Rule were to the enemy's colonial and coasting trades. The examination of the decisions involves the larger question whether this is a complete statement of the Rule, or whether these are not merely two specific applications of a far wider principle. The judgments in the *Immanuel* [2] and the *Whilelmina* [3] as to the colonial trade, and in the *Emanuel* [4] as to the coasting trade, seem to indicate very clearly what that principle is: the right of the belligerent to prevent neutral assistance to the enemy.

It is sufficient here to refer to a few points which are incontestable: first, that during the Seven Years' War, and in subsequent wars, we seized neutral ships which were participating in the enemy's colonial and coasting trades, establishing thereby the "Rule" as a principle of our belligerent practice; secondly, that this Rule was one of the principles on which England acted which the Armed Neutralities sought to abrogate by their first contention—"Que les vaisseaux neutres puissent naviguer librement de port en port et sur les côtes des nations en guerre"; [5] thirdly, that the same clause was introduced into several treaties subsequently entered into, among them many to which France was a party; but fourthly—this on the

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[1] Hall, *International Law*, 7th ed., p. 682.
[2] 2 C. Rob., 186.
[3] 4 C. Rob., App., p. 4. [4] 1 C. Rob., 296.
[5] Russia and Denmark, Armed Neutrality Convention, 1780, art. iii. De Martens, *Recueil*, ii. 103: (2nd ed.) iii. 189.

authority of Mahan—that underlying the Rule there was a principle which inspired many of the English Orders in Council and French decrees during the Napoleonic Wars. If, therefore, we accept either of the theories often advanced, that during those wars France was seized by a madness which rendered her not accountable for her actions, but that England, remaining sane, was accountable; or, that both nations were mad simultaneously, and that their misdeeds must be regarded as flagrant violations of the Law of Nations; then so much of M. Drouyn de Lhuys' statement as referred to France being bound to oppose the Rule by her treaties with many States was irreproachable. But with regard to the objection to it—"La France est donc liée par les précédents historiques"—this cannot be put upon the same high plane, for the protests of France against the Rule were those of a belligerent. It is quite true that France with great persistence "à toutes les époques, a soutenu les réclamations nombreuses et vives que l'adoption de cette règle souleva, dès l'origine, de la part des nations neutres"; but reduced to a simpler expression this amounted to no more than that she did her best, by encouraging the neutrals in their protests, to diminish the rigour of British practice at sea which deprived her of their assistance. He was possibly, however, on safer ground when he pointed out that a rigorous blockade of the Baltic ports would render recourse to the Rule unnecessary in this war.

We may now continue the narrative of the negotiations.

The draft Declaration as recast in Paris was despatched on the 20th March. M. Drouyn de Lhuys had evidently seen the Ambassador after posting his long despatch to Count Walewski on the 24th, and on the 25th Lord Cowley sent the following telegram to the Foreign Office:—

TELEGRAM FROM LORD COWLEY TO FOREIGN OFFICE.

> Drouyn presses for a decision on the neutral question. If you agree to adhere to the first draft, he will make his declaration as near to it as possible, leaving out the coasting-trade clause. If you adopt any other, he begs to have it without loss of time, as he is asked questions on all sides, which he avoids answering as yet.

Following on the interview, perhaps not quite satisfied with Lord Cowley's share in it, M. Drouyn sent a further short despatch to Count Walewski instructing him to insist once more on the importance of a joint declaration, and begs for a decision.

M. Drouyn de Lhuys to Count Walewski.

Mars 26, 1854.

Insistez sur les très-graves inconvénients d'une déclaration séparée qui ferait douter de l'entente des deux pays, alarmerait les neutres, et amènerait d'involontaires et inévitables conflits entre les commandants. Si lord Clarendon accepte le principe d'une déclaration commune, sauf à regler le détail par des instructions séparées, priez-le de me faire communiquer son projet pour que je puisse m'entendre avec le Ministre de la Marine et arriver à une conclusion.

The next day a second and more detailed despatch followed, in which M. Drouyn dwells on the fact that he has had many conferences with Lord Cowley, and that Lord Clarendon must therefore have received almost daily information of his views, and again refers to the counter-project which he had prepared with the British Minister.[1] Again he expresses the hope that

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[1] M. Drouyn de Lhuys to Count Walewski.

Mars 27, 1854.

Mes entretiens avec lord Cowley ont été consacrés depuis quelques temps, à l'examen de l'importante et délicate question des droits des neutres. Lord Clarendon a dû être informé presque journellement de l'objet de ces discussions, et je sais que M. l'Ambassadeur d'Angleterre lui avait déjà transmis le projet de déclaration dont nous avons posé les bases ensemble. Ce Ministre se trouvait ainsi tout préparé à recevoir la communication que je vous chargeais de lui faire par ma dépêche du 24 de ce mois, et dont le but était de l'amener à émettre une opinion définitive sur des points qu'il a eu le temps d'examiner. Ma dépêche télégraphique d'hier vous aura prouvé l'intérêt que le gouvernement de l'Empereur attache à sortir d'une indécision qui, aujourd'hui que l'état de guerre est proclamé, ne saurait se prolonger sans les plus graves inconvénients. J'espère que vos efforts auront déterminé le principal secrétaire d'Etat de S.M. Britannique à renoncer au système pour lequel il avait laissé percer ses préférences et qui consisterait dans la publication de deux déclarations, non-seulement séparées, mais distinctes quant aux principes qui y seraient émis ou réservés. Ce n'est qu'avec le plus vif regret que nous verrions l'Angleterre adopter une marche qui, dès le principe même d'une guerre faite en commun, accréditerait l'opinion d'une divergence entre les deux gouvernements et affaiblirait, aux yeux de nos adversaires, l'effet politique de l'union intime et complète qui a donné à notre diplomatie la force qu'il est maintenant plus nécessaire que jamais de conserver pour nos actes.

Si de l'ensemble nous descendons aux détails, les dangers ne sont pas moins grands. Entre la déclaration de la France et celle de l'Angleterre, les neutres feront un choix et nul doute qu'ils ne se rangent plus volontiers autour de la puissance qui, par sa fidélité à des traditions auxquelles ils sont inviolablement attachés, leur apparaîtra comme le champion de leur propre cause. Ne serait-il pas préférable de leur montrer leur sûreté dans l'union des deux marines et d'éviter avec soin de raviver une vieille querelle qui alarmerait leurs intérêts, exciterait leurs passions et les reporterait peut-être moralement dans un autre camp que le nôtre ?

D'un autre côté, et ce n'est pas une des moindres objections à faire

the idea of separate declarations has been abandoned, dwelling on the advantages which the neutrals would derive from a single document. He has recourse to yet another argument. The United States would assume the rôle of protector of the neutrals. A treaty of commerce had been proposed to France in which the principles maintained by both Governments would be affirmed. If the allies were now publicly to declare different principles, it would not be possible for France to reject the proposal. But if they came quickly to an agreement, the consideration of it might very well be postponed. He suggests one way out of the difficulty: so long as the declarations were uniform, the Instructions to the fleets might deal with the details in a modified way—provided they were settled jointly —in the event of special doctrines being referred to in them by either country.

Without drawing too largely on the imagination, what had happened to call for yet another long despatch, another reiteration of the old arguments, is fairly clear. On the 26th or 27th

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au système indiqué par lord Clarendon, comment concevoir qu'en présence de deux déclarations distinctes établissant une séparation théorique entre les gouvernements, leurs amiraux et leurs officiers de mer s'entendent dans la pratique ? Il surgira entre eux, je ne veux pas dire des conflits, mais des divergences involontaires et inévitables qui nuiront aux succès de leurs opérations.

Les États-Unis enfin sont prêts, je ne saurais en douter, à revendiquer le rôle que nous déclinerions et à se faire les protecteurs des neutres, qui eux-mêmes recherchent leur appui. Le cabinet de Washington nous propose en ce moment de signer un traité d'amitié, de navigation et de commerce où il a inséré une série d'articles destinés à affirmer avec une autorité nouvelle les principes qu'il a toujours soutenus et qui ne diffèrent pas des notres. Le principal secrétaire d'Etat de S.M. Britannique comprendra que nous n'aurions aucun moyen de ne pas répondre favorablement à l'ouverture qui nous est faite, si la France et l'Angleterre, bien que se trouvant engagées dans une même entreprise, affichaient publiquement des doctrines opposées. Que les deux gouvernements, au contraire, s'entendent sur les termes d'une déclaration commune, et nous pouvons alors ajourner l'examen des propositions des Etats-Unis. Il me parait difficile que ces considérations ne frappent pas l'esprit de lord Clarendon, et j'espère qu'il se décidera à accepter un projet, qui, se bornant à tenir compte des conditions de la guerre actuelle, laissera de côté des principes qu'il est d'autant moins opportun de soulever ou de rappeler que leur application serait inutile, et dont les effets, comme dans la question du cabotage sur les côtes des pays ennemis, par example, peuvent être remplacés par l'emploi de mesures pratiques au sujet desquelles tout le monde est d'accord. Les instructions données aux commandants des bâtiments de guerre des deux pays suppléeraient naturellement à ce qu'il y aurait d'incomplet dans la déclaration identique ; il serait toutefois nécessaire, même dans le cas où ces instructions devraient conserver quelques traces des doctrines particulières de la France et de l'Angleterre, qu'elles fussent concertées en commun, et vous donnerez à lord Clarendon l'assurance que M. le Ministre de la Marine emploierait tous ses soins à se rapprocher autant que possible de l'Amirauté dans les directions qu'il transmettrait à nos amiraux.

March, Count Walewski had received the despatch, dated the 24th, and on that very night in Parliament Lord John Russell had said that the document would be ready " very shortly," and talked vaguely about Orders in Council, or Acts of Parliament. Knowing what was passing in the Minister's mind, Count Walewski probably telegraphed this speech to Paris, and its uncertainty must have impelled M. Drouyn to write once more upon the old theme.

We have now reached a point when cross-purposes obtained the upper hand: on the 24th March the Russians crossed the Danube and invaded Turkey, and war had become a question of hours. But, in spite of its imminence, projects and counter-projects from London and Paris crossed one another so frequently that it is impossible to maintain a sequence in the narrative of events. The 26th was a Sunday. There must have been an informal meeting of some of the Ministers, for at 11 a.m., in reply to Lord Cowley's of the 25th, the following telegram was sent to Lord Cowley :—

TELEGRAM FROM FOREIGN OFFICE TO LORD COWLEY.
(11 A.M.).

> We have endeavoured to meet the views of the French Government as far as possible, and I do not think we can make further changes in the draft sent to you last night. I believe the Declaration will not be published before Thursday;

followed at 9.30 p.m. by a second:

TELEGRAM FROM FOREIGN OFFICE TO LORD COWLEY.
(9.30 P.M.).

> Further alterations have been made in the Declaration which will be satisfactory to France, though we cannot abandon our principle. I will send a messenger with it to-morrow.

Meanwhile M. Drouyn had not been idle. After sending his long despatch to Count Walewski, he sent a new draft for the Declaration prepared in conjunction with the Minister of Marine, in which he endeavoured to approximate as much as possible to the English view. This draft has not been preserved, but it appears to have been based on the idea suggested in the despatch of the same day, that the Declaration should contain a statement of principles only, leaving the details to be worked out in the Instructions to the fleets.

M. Drouyn de Lhuys to Count Walewski.

Mars 27, 1854.

Cette déclaration, que j'ai concertée définitivement avec M. le Ministre de la Marine, ne consacre que les principes essentiels sur lesquels il importe de constater l'accord des deux gouvernements; des instructions séparées, qui pourront d'ailleurs être réciproquement communiquées, régleront l'application de ces principes suivant la législation de chacun des deux pays et resoudront, sous ce point de vue spéciale, les difficultés sur lesquelles la divergence des doctrines respectives ne permet pas un accord patent, du moins immediat.

This counter-project crossed one sent from London which appears to be the draft referred to in the first of the two Sunday telegrams, for M. Drouyn says that it contained a coasting-trade clause; and that on the 28th Lord Cowley informed him that it had been definitely adopted by the Cabinet. The maintenance of the clause made it impossible for the French Government to accept it. Lord Cowley sent a telegram to London to that effect:—

Telegram from Lord Cowley to the Foreign Office, 28th March.

It is impossible to get an answer respecting the Instructions to naval commanders to-day. Drouyn will say nothing without consulting the Minister of Marine, but that part of them restricting neutrals from the exercise of the coasting trade will, I fear, not be agreed to.

The reasons for the French attitude were explained by M. Drouyn to Count Walewski on the 28th.[1] From this despatch

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1 M. Drouyn de Lhuys to Count Walewski.

1854, *Mars* 28.

Je regrette, qu'en rappelant dans cet acte des théories qui ne sont pas les nôtres, et en y insérant l'interdiction du commerce de cabotage ainsi que le principe de la limitation du commerce des neutres au seul commerce permis en temps de paix, le gouvernement britannique nous place dans la nécessité de faire une déclaration séparée. Cette déclaration comprendra tous les points indiqués dans le projet joint à ma dépêche d'hier, sauf le préambule, dont j'ai fait l'objet d'un rapport à l'Empereur. J'ai obtenu, ainsi que vous le verrez, l'assentiment de M. le Ministre de la Marine à la règle qui exempte de la saisie la marchandise neutre à bord d'un navire ennemi.

Lord Cowley m'a communiqué en même temps le projet des instructions destinées aux commandants des bâtiments de guerre anglais, en m'anonçant qu'il était sur le point d'être signé. Dès lors il est superflu de relever les questions qu'il tend à résoudre dans un sens opposé à nos principes

it appears that the Instructions to the British Fleet also had been presented with the intimation that they were on the point of being signed. It only remained therefore for independent Instructions to the French Fleet to be prepared, which M. Drouyn hoped would not create great inconvenience.

The *Times* records that a meeting of the Cabinet was held on Monday, the 27th March, at which all the Ministers were present, and that it lasted two hours. M. Drouyn gives the result of it as reported to him :—

> Au dernier moment, le conseil fut assemblé de nouveau. Après une longue discussion, il fut décidé que l'article qui avait provoqué nos objections serait rayé de la déclaration anglaise. Dès lors l'entente était complète. Pour arriver à une identité absolue, il nous était facile de plier notre projet aux formes traditionnelles que doivent revêtir les ordres en conseil émis au nom de la reine du Royaume-Uni. En quelques heures, grace au télégraphe, les deux cabinets purent constater leur accord et aviser à la publication immédiate de leur déclaration commune.

Here the story ends, but there is one other source of information from which some of the innumerable gaps may be filled in—the American despatches which have already been referred to.

We have seen, from Mr Buchanan's despatch of the 24th February,[1] that Lord Clarendon had taken the United States Minister unofficially into his confidence. He would be the first to whom the decision of the Cabinet would be communicated. On the 16th March [2] Lord Clarendon sent for the Minister and read to him " the declaration which had been prepared for Her Majesty, specifying the course she had determined to pursue towards neutral commerce during the war." A summary was sent to Washington the next day. " Free ships free goods " had been adopted, and neutral cargoes were to be free on enemy ships. The subject of blockades was dealt with in an " entirely

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et à notre législation. Il ne nous reste qu'à rédiger, à notre point de vue, les instructions destinées à nos propres croiseurs. Je viens de prier M. le Ministre de la Marine de préparer ce travail, que j'aurai soin de vous communiquer pour être porté à la connaissance du gouvernement britannique. J'ai l'espoir que, dans l'exécution, cette divergence des instructions n'entraînera pas d'inconvénients graves, car nous sommes d'accord sur les points les plus essentiels, et je reconnais particulièrement l'esprit de libéralité avec lequel le gouvernement anglais s'est rapproché de nos principes en matière de blocus. Cependant, si quelque dissentiment se présentait, je n'aurais qu'à regretter d'autant plus les retards qu'ont éprouvés la préparation et la communication des projets sur lesquels une entente préalable aurait été si désirable.

[1] See p. 39. [2] Document No. 8 B.

unexceptional" manner, and in conformity with American principles. No letters of marque would be issued.

"His Lordship then asked me," continued Mr Buchanan, "how I was pleased with it; and I stated my approbation of it in strong terms. I said that in one particular it was more liberal towards neutral commerce than I had ventured to hope, and this was in restoring the goods of a friend, though captured on the vessel of an enemy."

Lord Clarendon also informed the Minister that he had repeated to the Cabinet the conversation he had had with him, "and this had much influence in inducing them to adopt their present liberal policy towards neutrals." He hoped that this would prove satisfactory to the United States, "and I assured him that I had no doubt it would prove highly gratifying to them."

Permission had been given to communicate the substance of the declaration to Washington, which Mr Buchanan interpreted to include the publication of a notice informing the shipping interest of the new practice. One other sentence in this despatch is of great importance. The draft "had not yet undergone the last revision of the Cabinet; but the principles stated in it had received their final approbation and would not be changed." This throws light on Lord John Russell's statement on the 17th March, that "the views of the Government are decided." [1]

The draft read to the United States Minister must have been the one presented to the French Government by Lord Cowley on the 14th March. Mr Buchanan's summary of it practically coincides with that given by M. Drouyn de Lhuys, though he refers to some additional details.

Lord Cowley's telegram of the 19th clearly indicates that the coasting-trade clause was included in the first draft; and a despatch of the 13th April from the United States Secretary of State also mentions it. So that Mr Buchanan must have overlooked it, or seeing it had approved. Mr Marcy refers to the declaration as "distinct in interdicting to neutrals the coasting and colonial trade with the belligerent, if not enjoyed by them previous to the war"; and after glancing at the use to which the "Rule of 1756" was put during the French wars, "which this country held to be in violation of the law of nations," he enters an emphatic protest against its revival by Great Britain. "Should she still adhere to those principles in the coming conflict in Europe, and have occasion to apply them to our commerce, they will be seriously controverted by the United States, and may disturb our friendly relations with her and her allied

[1] See p. 54.

belligerents." The liberal spirit, he adds, which she had indicated in the other principles with reference to neutral ships and cargoes " gives an implied assurance that she will not attempt again to assert belligerent rights, which are not well sustained by the well-settled principles of international law."

Mr Marcy then expressed the opinion that in some respects the law of blockade is " unreasonably rigorous towards the neutrals," and that when they had visited a port " in the common freedom of trade," they ought to be allowed to take in cargo after the blockade is established, and freely depart. He concludes with a brief commentary on the right of search " so freely used, and so much abused, to the injury of our commerce, that it is regarded as an odious doctrine in this country, and, if exercised against us harshly in the approaching war, will excite deep and widespread indignation." Caution in its exercise by the belligerents would therefore be " a wise procedure." He alludes to the " settled determinations of the English Admiralty," that persistent resistance to a search renders a vessel confiscable : " It would be much to be regretted if any of our vessels should be condemned for this cause, unless under circumstances which compromitted their neutrality."

Mr Marcy's despatch was written (13th April) before the receipt of a copy of the Declaration which was posted by the Minister in London on the 31st March. The difficulty of clearly understanding the whole story is increased by Mr Buchanan's statement in his covering letter, that the Declaration was " substantially the same as that which I informed you it would be in my despatch of the 17th instant."

The British Minister at Washington communicated the Declaration to the United States Government officially on the 21st April, intimating the confident hope that it would, " in the spirit of just reciprocity," give orders that Russian privateers should not be equipped or victualled, or admitted with their prizes into United States ports, and that its citizens should rigorously abstain from taking part in armaments of this nature, or in any other measure opposed to the duties of a strict neutrality. This communication was acknowledged by what is commonly known as the First Marcy Note, of the 28th April.

Before we consider the terms of the Declaration itself, we must realise the strange fits of indecision through which, on the eve of war, the Cabinet passed before agreement was come to as to the attitude to be adopted to the neutrals.

There was, as I read it, a conflict between Lord Clarendon, supported by such of the Ministers as were in his confidence, and those members of the Cabinet who, having no pronounced

views of their own on the subject, were probably influenced by the opinion of Sir Alexander Cockburn. When he was consulted, the strict letter of the law maintained the upper hand; when his opinion was dispensed with, the predilections of Lord Clarendon prevailed. The Riga despatch was, as Lord Clarendon declared, written on the advice of the Law Officers. The drafts of the proposed Declaration were naturally prepared by them; the insistence of the "Rule of 1756" was obviously due to their advice. We may be quite sure that the final decision not to insist on its retention in the draft was come to by the yielding of the Cabinet to the wishes of its "governing member," as Lord Clarendon has been called. But the influence of the Attorney-General is, I think, visible in the two Sunday telegrams. They contain a point of considerable difficulty which I shall not attempt to solve, but it is too important to overlook. In the morning no further changes can be made. In the evening, further alterations have been made—"though we cannot abandon our principle." Had these two telegrams stood alone we might reasonably assume that the alteration made was the temporary adoption of "free ships free goods"; the principle that could not be abandoned, the seizure of enemy property on neutral ships. The reference to "the coasting-trade clause" in Lord Cowley's telegram of the 25th (which the copying clerk turned into "the coaling-trade clause") would have remained mysterious. But we now know that this clause was included in the earliest draft, and the meaning of the Sunday evening telegram is clear: the practice would be waived during the war, but the "Rule of 1756" on which it rested could not be permanently abandoned. The Rule was, as we shall see in Chapter VI., suspended by the Order in Council of the 15th April 1854, which put the Declaration in force.

As to the effect of the United States Minister's opinion on the Cabinet when it was reported by Lord Clarendon, the one point which is clear from the correspondence analysed above is, that it may have induced the dissenting members to accept "free ships free goods," but that it did not bring about the suspension of the "Rule of 1756." Mr Marcy's strong protest was not written till the 13th April.

Thus far, then, the influence of the Law Officers seems to be unmistakeable. But when Lord Clarendon acted independently of them he gave full rein to his intention; he had accepted "free ships free goods" directly the Scandinavian Declarations of neutrality gave him the opportunity. It is equally clear that he did not intend to make a public announcement of his new faith until he was compelled, and it was too late for him to

be forced by Parliament to draw back. It would not be fair to say that the confusion of his speech on the 17th March was deliberate; but the only other explanation of it is that he had but the haziest notion of the meaning or of the far-reaching effect of the new doctrines he had espoused, and that he was hypnotised by the invocations of humanity and civilisation in which Mr Milner Gibson and the Philosophical Radicals so freely indulged.

VI

The Declarations to the Neutrals.

The Declaration by the Queen to the neutrals was issued on Tuesday, the 28th March, and was followed immediately by the declaration of war.

THE DECLARATION TO THE NEUTRALS.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland having been compelled to take up arms in support of an ally, is desirous of rendering the war as little onerous as possible to the Powers with whom she remains at peace.

To preserve the commerce of neutrals from all unnecessary obstruction Her Majesty is willing, for the present, to waive a part of the belligerent rights appertaining to her by the Law of Nations.

It is impossible for Her Majesty to forgo the exercise of her right of seizing articles contraband of war and of preventing neutrals from bearing the enemy's despatches, and she must maintain the right of a belligerent to prevent neutrals from breaking any effective blockade which may be established with an adequate force against the enemy's forts, harbours, or coasts.

But Her Majesty will waive the right of seizing enemy's property laden on board a neutral vessel unless it be contraband of war.

It is not Her Majesty's intention to claim the confiscation of neutral property, not being contraband of war, found on board enemy's ships, and Her Majesty further declares that, being anxious to lessen as much as possible the evils of war, and to restrict its operations to the regularly organised forces of the country, it is not her present intention to issue letters of marque for the commissioning of privateers.

Westminster, 28th March, 1854.

The French Declaration, in identical terms, was approved by the Emperor on the 29th March, and appeared in the *Moniteur* of the 30th April, accompanied by a Report of M. Drouyn de Lhuys.[1]

On the same day M. Drouyn wrote to Count Walewski in terms of great enthusiasm at the successful termination of the negotiations which had so nearly come to an untimely end :—

M. Drouyn de Lhuys to Count Walewski.

1854.

Je me félicite vivement de la preuve éclatante que la France et l'Angleterre viennent de donner de leur bon accord dans la question si importante des droits réservés aux neutres pendant la guerre actuelle. L'harmonie qui s'est établie entre les deux cabinets sur un point où l'on aurait pu croire qu'il leur serait, malgré leur sincère envie d'y parvenir, extrêmement difficile de s'entendre, produira partout la meilleure impression et conciliera aux puissances auxquelles appartient l'initiative de cette généreuse résolution les sympathies des nations commerçantes dans le monde entier. Veuillez dire à lord Clarendon que le gouvernement de l'Empereur apprécie comme il le doit l'esprit qui a présidé aux délibérations du gouvernement de la reine Victoria sur un sujet qui lui tenait particulièrement à cœur, et qu'il en considère le règlement, dans les termes où il s'est fait, comme un des meilleurs résultats de l'intime alliance des deux pays.

On the 30th a circular despatch was sent to the French diplomatic and consular authorities in neutral countries.[2] It dwelt on the advantages which the solicitude of the allies had conferred upon the neutrals, and took the opportunity of impressing upon them the advisability of the neutral Governments taking all necessary steps to prevent their subjects engaging in any enterprise inconsistent with the duties of a rigorous neutrality, this being the condition and the guarantee that the advantages conferred on them would be maintained. The British Government was congratulated on having been animated by the same desires as the Government of the Emperor, and already penetrated with the idea of leaving the neutrals in possession of all the advantages which the indispensable necessities of the war did not make it a duty to restrict. In reciting these advantages, the Minister of Foreign Affairs pointed out that they were to be enjoyed only during this war ; but he did not fail to note that, when the war should be over, " cette déclaration commune

[1] Document No. 5 B.

[2] Document No. 7 B.

demeurera comme un précédent considérable acquis à l'histoire de la neutralité."

The circular letter was followed on the 5th April by a more formal notification to be addressed by the diplomatic agents to the Governments to which they were accredited.[1] The point was emphasised that in making the concessions to the neutrals the allies had restrained within very narrow limits the exercise of their rights as belligerents. A similar notification was sent to the British agents.[2]

Instructions to the fleets followed.[3] From M. Drouyn's account it appears that although the fundamental principles had been settled in common, some difficulties in their application on secondary points had arisen. He treats these differences as inevitable, and as having their origin in the practice of the two countries which had for so long been opposed. The Instructions, therefore, were intended to minimise the effect of these differences, and appeared to have been the result of a complementary series of amicable explanations between the two Governments. M. Drouyn de Lhuys concludes his survey of the negotiations in exuberant language :—

> Placés à l'abri des violences de la guerre, ils [les neutres] n'avaient plus à craindre d'être entrainés dans la querelle d'autrui, et ils demeuraient libres de poursuivre en paix, au milieu de combats auxquels ils étaient étrangers, leur commerce accoutumé, pourvu qu'aucune fraude n'appelât sur eux la sévérité des belligérantes.
>
> Les neutres profitèrent largement de toutes les facilités qui leur étaient accordées. Ils n'en abusèrent point, et pendant toute la durée de la guerre la France et l'Angleterre n'eurent pas à regretter leur généreuse initiative. Cette expérience, comme on devait s'y attendre, fut concluante. Le progrès des mœurs secondant la réforme des doctrines, les nouvelles règles, éprouvées par la pratique des deux grandes puissances maritimes, furent universellement acceptées comme un bien pour toutes les nations. En Angleterre comme en France, les classes commerçantes, loin de voir avec jalousie la sécurité que ce régime libéral donnait à des intérêts rivaux, se félicitaient du dévéloppement général des transactions qui en étaient les conséquences, et sentaient que tous étaient appelés à y trouver également leur avantage. L'Exposition universelle de 1855 organisée à Paris pendant que nos armées de terre et de mer combattaient en Crimée et dans la Baltique, fournit, on s'en souvient, une preuve éclatante de la vigueur et du succès

[1] Document No. 7 C.
[2] Document No. 7 A.
[3] Documents No. 10 A and B.

> avec lesquels les travaux de la paix étaient poursuivis au sein même d'une guerre acharnée. Un tel spectacle était une gloire pour le siècle où il se produisait pour la première fois, et il devait inspirer une juste confiance dans l'avenir des ideés dont il signalait le triomphe. De plus en plus les cruelles nécessités de la guerre étaient circonscrites dans un cercle étroitement tracé, en dehors duquel l'humanité pacifique et industrieuse gardait ses droits.

How far the actual events justified or falsified his rhapsody; how far this picture of a commercial Arcadia, where no one thought of the war which the foolish world outside was waging, much less of mixing in the quarrel, where each pursued his own business in peace, is true to fact will be seen in due course.

The identical Declarations which resulted from the tedious negotiations between the allied Courts require careful study. In view of M. Drouyn de Lhuys' determined effort to avoid a recognition in the French Declaration of any principle against which France had always protested—" évidemment le gouvernement français ne peut dire qu'il renonce à l'exercice d'un droit dont il a toujours contesté l'existence, ou qu'il réserve l'application d'un principe quant il a sans cesse refusé de le reconnaître "—he seems, in his anxiety to achieve absolute uniformity, perhaps in the hurry of the final drafting, to have waived the point: " Sa Majesté consent pour le présent, à renoncer à une partie des droits qui lui appartiennent comme puissance belligérante en vertu du droit des gens."

One of the belligerent *rights* thus renounced for the purposes of the war was the seizure of enemy property (other than contraband) on neutral ships. This was a declaration of an absolute principle. The right of the neutrals which it was assumed to infringe, freedom of enemy goods on board their free ships, was one of those " que nous nous faisions gloire de défendre." Yet here was a positive assertion that this was a belligerent right recognised by the Law of Nations! Similarly, in the Queen's declaration there is a positive assertion that the right to seize neutral goods on enemy ships was a belligerent right recognised by the Law of Nations which was not to be enforced during the war.

It is impossible to exaggerate the importance of this sentence in the Declarations. It annihilated in advance all the declamation in Parliament against the English principle of seizure as not warranted by the Law of Nations. The answer which might have been given by anyone who had read the documents carefully was: The French Government has recognised it as a

belligerent right which the Law of Nations approves ; has only asked for it to be held in suspense during the war.

The point will be elaborated hereafter ; but it is well to note at once that the common ground of belligerent right on which both these principles of seizure rest can only be the prevention of neutral assistance to the enemy. The French practice was aimed at one form of assistance, loading neutral goods on enemy ships, because of the possibilities of fraud which it opened up, by means (as M. Drouyn de Lhuys pointed out) of " neutralisation " ; the English practice was aimed at another but less occult form of assistance, openly carrying the enemy's goods.

It is interesting to note in passing that the French Declaration led to a voluminous, and not uninstructive, correspondence between the Sheffield Foreign Affairs Committee and the Lord Advocate.[1] His statement that the French law accepted " free ships free goods " was challenged by the chairman, Mr Jacob Ironside, who contended that, in the face of this paragraph in the French Declaration, the statement could not be correct. It was an ingenious but inaccurate contention. The Lord Advocate's replies were not very illuminating ; he supported his statement as to the law of France by reference to an American text-book, Lawrence's edition of Wheaton !

Thus far we have been dealing with theory only ; there was a practical question behind it—that question to which Lord John Russell had alluded on the 24th March, how these new principles of maritime law ought to be put into force in England.

M. Drouyn de Lhuys was conscious of the same difficulty in regard to the alteration of the maritime law of France. Would it not be necessary to legalise the new regulation as to the non-confiscation of neutral goods on enemy ships, for it would deprive the French sailors of part of their prize money ? The question was really the same in both countries ; but we are specially concerned with its solution as it affects England. The English question is indeed more complex, because, though France has adopted in her organic laws the principles of the British Constitution, the mere fact of reducing them to a written law eliminated all those thousand and one minute details of constitutional principle—more especially those relating to the prerogative—which, being unwritten in our own case perplex the English statesman.

The issue of the Declaration to the neutrals on the 28th

[1] " The Part of France and Russia in the Surrender by England of the Right of Search," Sheffield Foreign Affairs Committee (London, 1866).

March was not the solution of the difficulty propounded by Lord John Russell. The constitutional effect of that Declaration had to be determined. This question arises again in connection with the Declaration of Paris, and the discussion will be more convenient when we have the whole case before us. In connection with the Declaration of 1854, however, the Government took definite action: an Order in Council was issued on the 15th April.

The marginal note to the White Paper describes it as "in furtherance of" the Declaration. It carried the Declaration into effect, and at the same time explained its practical operation. After reciting its terms, it proceeded:—

> Now it is this Day ordered, by and with the Advice of Her Majesty's Privy Council, that all Vessels under a neutral or friendly Flag, being neutral or friendly Property, shall be permitted to import into any Port or Place in Her Majesty's Dominions all Goods and Merchandise whatsoever, to whomsoever the same may belong; and to export from any Port or Place in Her Majesty's Dominions to any Port not blockaded any Cargo or Goods, not being Contraband of War, or not requiring a special Permission, to whomsoever the same may belong.
>
> And Her Majesty is further pleased, by and with the Advice of Her Privy Council, to order, and it is hereby further ordered, that, save and except only as aforesaid, all the Subjects of Her Majesty and the Subjects or Citizens of any neutral or friendly State shall and may, during and notwithstanding the present Hostilities with Russia, freely trade with all Ports and Places wheresoever situate which shall not be in a State of Blockade, save and except that no British Vessel shall under any Circumstances whatsoever, either under or by virtue of this Order or otherwise, be permitted or empowered to enter or communicate with any Port or Place which shall belong to or be in the Possession or Occupation of Her Majesty's Enemies.

Eliminating all superfluous words, and inserting some which are of necessity implied, we arrive at the meaning of these very complicated provisions:—

First.—All neutral or friendly vessels may import into the British dominions all goods, whether of enemy origin or enemy property; and may export from the British dominions to any enemy port not blockaded all goods, not contraband of war, even if they be enemy property.

This is a practical expansion of the formula "free ships free goods."

Second.—Subject to the exception of contraband of war, British subjects and subjects of neutral or friendly States may trade freely with enemy ports which are not blockaded, notwithstanding the war.

There is no limitation in respect of the port of departure; therefore, so far as neutral and friendly vessels are concerned, it includes trading with the colonial or coast ports of the enemy, and is, therefore, a suspension of the "Rule of 1756." But—

Third.—No British vessel may (under any circumstances, either under the Order or otherwise) enter or communicate with an enemy port.

This excludes British vessels from the privileges granted to neutral or friendly vessels under the second provision. It also excludes them from the privileges granted to neutral or friendly vessels under the second part of the first provision, but includes them in the privileges granted to such vessels under the first part of that provision so long as it did not involve communicating with enemy ports; in other words, a British vessel was limited to carrying enemy property to the British dominions from any port which was not Russian. To this extent they were "free ships," and enemy property on board became "free goods."

French vessels were accorded all the privileges granted to neutral vessels.

But although the privileges of British vessels were limited, it would seem that British traders were under no restrictions; for, quite apart from the somewhat vague terms of the trading privileges in the second provision, the very large terms in which "free ships free goods" had been stated in the first provision, both in regard to import and export, to whomsoever the goods might belong, enabled the neutrals to carry the trade of British merchants.

The Instructions to the Fleets.

There remained one more document to be issued by each Government to its fleets, the Instructions to enable the sailors to carry out the policy of the Government. They had been referred to on many occasions in the correspondence, and at one time M. Drouyn de Lhuys thought that the solution of the difficulty in coming to an agreement might be found by relegating all details to the Instructions, which would not be published to the world at large. He was anxious, however, that the two sets should be uniform. This idea could not be carried out, as the

English Instructions were signed simultaneously with the issue of the Declaration. The only article which need be noticed is Art. 7, which provided that neutral ships should not be stopped because they had enemy goods on board, and that enemy goods on neutral ships should not be seized.[1]

The French Instructions,[2] issued on the 31st March 1854, are somewhat more detailed, and at one or two points seem to go beyond what the circumstances required. Thus Art. 6 lays down the general principle: "Les neutres étant autorisés par le droit des gens à continuer librement leur commerce avec les puissances belligérantes. . . ." Neutral vessels, therefore, were only to be stopped for breaking blockade, or when carrying contraband of war to the enemy, or on enemy account, official despatches, or soldiers or sailors. In these cases both the ship and cargo were declared to be confiscable, unless the contraband should be less than three-fourths of the whole cargo, in which case the contraband only was confiscable.

There appears to have been no attempt to come to an agreement on this point, as under English maritime law the ship is not confiscated on account of her cargo, unless she belongs to the owner of the contraband. It would seem as if the general principle had been expressly asserted, in view of the discussion which had taken place with regard to, and as a direct denial of, the English "Rule of 1756."

The other articles dealt with the "effective blockade" and its violation (Art. 7), the definition of contraband (Art. 8), and the recognition of the right of convoy (Art. 14). In none of these cases was there a similarity between French and English practice, nor apparently had there been any attempt to arrive at an agreement.

The Answer of the United States: First Marcy Note.

On receipt of the Declaration the United States Government sent, on the 28th April, a formal acknowledgment in what is known as the "First Marcy Note."[3] It expressed the President's satisfaction that "free ships make free goods, which the United States has so long and so strenuously contended for as a neutral right, and in which some of the leading Powers of Europe have concurred, is to have a qualified sanction by the practical observance of it in the present war by both Great Britain and France—two of the most powerful nations of

[1] Document No. 10 A.
[2] Document No. 10 B.
[3] Document No. 8 J.

Europe." The sincere gratification at the Declaration would have been enhanced if Great Britain had announced that she would observe it in every future war. The unconditional sanction of the rule by Great Britain and France " would cause it to be henceforth recognised throughout the civilised world as a general principle of International Law." The same consideration which had induced the concession in the present war —the desire to preserve the commerce of neutrals from all unnecessary obstruction—would, it was presumed, have equal weight in any future war. With the object of settling the question once and for all, so that it should never again be called in question, the United States suggested that the Powers should unite in a declaration that it should be observed hereafter as a rule of international law. The President was also pleased to observe that Great Britain did not intend to bring into question during the war the exemption of neutral goods on enemy ships from seizure. Finally, the United States, while claiming full enjoyment of these rights as a neutral Power, would observe the strictest neutrality towards each and all the belligerents.

A similar but shorter note was sent to the French Government on the 23rd May. As France was already an adherent to the " free ships free goods " principle, a homily on the impropriety of the opposite practice was not required. The paragraph in the Note to Great Britain referring to the freedom of neutral goods on enemy ships was out of place, for the seizure of such goods had never formed part of her maritime law. For the sake of consistency, a homily on the impropriety of this practice might have been addressed to France.

It may also be noted that the statement that the United States had " so long and so strenuously " contended for the freedom of enemy goods on neutral ships " as a neutral right " is not quite consistent with the fact that in the Jay Treaty [1] the opposite is expressly recognised ; and from the long period of contention for " free ships free goods " must be omitted the time when President Jefferson emphasised, in answer to the complaints of France, the fact that it depended solely on mutual agreement and could in no sense be regarded as a right.[2]

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[1] Treaty between Great Britain and the United States, 19th Nov. 1794, art. xvii. (De Martens, vi. 338 : (2nd ed.), v. 642).

[2] See p. 34.

VII

Mr Phillimore's Motion, 4th July 1854.

The issue of the Declaration to the neutrals inevitably aroused the fears of those who believed that England's position as a maritime power rested in large measure on the right which had been abandoned. The Declaration, though it professed only to suspend the exercise of the right during the war, might after all prove to be the prelude to permanent abandonment.

On the 4th July Mr J. G. Phillimore moved in the House of Commons, in studiously moderate language,

> that however, from the peculiar circumstances of this war, a relaxation of the principle that the goods of an enemy in the ship of a friend are lawful prize, may be justifiable, to renounce or surrender a right so clearly incorporated in the Law of Nations, so firmly maintained by us in time of greater peril and distress, and so interwoven with our maritime renown, would be inconsistent with the security and honour of the country.

The terms of the motion exactly fitted the situation. Even those who regretted what had been done, not knowing how it had been done, were willing to admit that the Government had found itself at the outbreak of hostilities in a difficult position. But the transition from the defence of the Riga despatch to the adoption, even temporarily, of Mr Milner Gibson's theories had been too abrupt not to make them fear for the future. He had made no secret of the desire of the Philosophical Radicals to see the practice of seizing enemy goods on neutral ships permanently abandoned. Lord Clarendon had lifted the veil just high enough to raise the suspicion that he might have become a convert. Some had dwelt on the danger of offending the neutrals, especially the United States; they thought it likely that the neutrals of their generation might emulate the action of the Armed Neutralities. There was the possibility that the Government might be disposed to take the easy path of concession. Seeing how little the public then knew, the motion was well conceived. On the one hand, it was right that the nation should understand; on the other, it would enable the Ministers to explain the difficulties of the situation, and, if they were so minded, take the nation into their confidence.

The task of defending the action of the Government was assigned to Sir William Molesworth, First Commissioner of Works,

the "accomplished leader of the Philosophical Radicals," who was supposed to have paid much attention to the subject, and he spoke through thirty-four columns of Hansard. He admitted that the common practice of belligerents had been to treat the goods of an enemy on the ship of a friend as lawful prize; but the reason was that "in war, passion and hatred and seeming necessity, and the fancied interests of the moment, are apt to determine the actions of combatants; and powerful belligerents, relying on their might, oftentimes set at defiance the best-established rules of war." But the merits of the maxim "free ships free goods" had been, he asserted, conceded by its recognition in so many treaties, even by Great Britain, during the two previous centuries. Developing this thesis, he made an elaborate analysis of the different treaties, and drew from it the conclusion that the tendency of national opinion was in its favour.

I do not propose to dissect this analysis; a more careful and more accurate study of the treaties in which the maxim had been adopted, as well as of those in which it had not been adopted, had been published in 1801 by Robert Ward at the request of the then Foreign Secretary, Lord Grenville.[1] His conclusions were radically different from those of Sir William Molesworth. There is only one comment necessary on this part of the speech: it is a pity it was not preceded by a study of Robert Ward's book.

It is, however, of great importance to point out the fundamental error into which Sir William Molesworth fell, and into which all advocates of "free ships free goods" fall. They assume that the principle is "adopted" because a provision agreeing to it for a very limited purpose is to be found in some treaties, is in fact included in the treaties concluded by Great Britain with France, Holland, Spain, and Portugal. The principle that the neutral flag covers enemy goods, that is, protects them from seizure, can only be *adopted* by a country when it admits it as of universal application, and incorporates it unconditionally into its general maritime law. "Adoption" of a principle means that its acceptance is not made subject to any condition; the question whether other countries accept it too is immaterial. England adopted Free Trade; Sir William Molesworth endeavoured to prove that she had also adopted "free ships free goods." Thus, even in this earliest attempt by the Philosophical Radicals to substantiate their case, their weakness in argument was apparent. Putting all ulterior motives on one side, France adopted the principle in this sense

[1] Reprinted in the series of English Classics on "The Rights of Belligerent and Neutral."

in the *Règlement* of July 1778,[1] on which so much turned during the American War of Independence. Further, from the nature of the maxim "adoption" must mean adopted as a belligerent. Adoption by any number of neutrals carries the case no further.

A more limited form of adoption is where by treaty two countries agree that if they go to war with one another—"ce qu'à Dieu ne plaise," as the treaties say—then their goods respectively shall be free on neutral ships. This is a concession by each party to the other, as a potential enemy; but it satisfies one condition of adoption because, though not applicable to all wars, it is applicable in the specified wars, through this potential enemy, to all neutrals. I doubt whether such an article is to be found in any of the treaties concluded before the Armed Neutralities.

The agreement which is commonly found in the treaties is quite different, and amounts to no more than this: if either of the contracting parties should be at war with a third State, then the other, remaining neutral, may continue to trade with the enemy, may even carry his goods "free." To assert that this form of agreement, which is a privilege granted only to one prospective neutral, recognised the principle, or is even based on it as a principle, is a misuse of language. And the case can be put no higher.

The main point of Sir William Molesworth's argument was that England had accepted the principle, because she had agreed to it in this reciprocal form in the treaties mentioned above. This point will be more fully dealt with in due course; but it is necessary to say at once that the statement is a complete perversion of the facts of history. In the first place, it ignores the fact that in some treaties the agreement, either by omission or by express stipulation, was in precisely the opposite sense, was a recognition of the practice of seizing enemy goods on neutral ships. In the second place, it is misleading even in regard to those treaties in which the principle was included. When England did accept it, it was always as part of a bargain, and always when a political as well as a commercial alliance was in negotiation—except in the case of France. The idea that it was accepted generally and unconditionally in the commercial Treaty of Utrecht between England and France in 1713, on which so much emphasis is always laid, is entirely mythical. It had already been accepted in 1677 in the Treaty of St Germain-en-Laye, and then for a very specific purpose—in order to obtain a relaxation in favour of English vessels from the

[1] Printed in the *Documentary History of the Armed Neutralities.*

severity of the French law, which not only condemned enemy goods on board neutral vessels, but also the vessel as a penalty for carrying them. Further, in view of the maritime law then existing, the true version of what happened in 1677 is that *both* countries adopted this principle. The provisions of the Treaty of Utrecht were no more than a renewal of the agreement of 1677.

Yet even this is not the limit of Sir William Molesworth's mistakes. He agreed that "free ships free goods" was almost invariably accompanied by the other principle, "enemy ships enemy goods." The Powers that accepted the former rule generally stipulated, he said, that neutrals should pay for the lenity of that rule by the confiscation of their property when found on board enemies' ships. But, he maintained, there was no logical connection between the two rules other than "the jingling of a verbal antithesis." His excursions into the region of international commercial policy led him completely astray. There *is* an intimate connection between the two rules; the jingling antithesis was only adopted as a convenient method of statement. The two rules are based on the principle that the flag is to determine the right of belligerent seizure, not the ownership of the property seized. And there is a deeper principle connecting the seizure of neutral goods on enemy ships with the seizure of enemy goods on neutral ships; they are both methods of preventing neutrals giving assistance to the enemy.

Sir William Molesworth was wrong in his principles; he was still more wrong in his history. He ventured to assert that the Armed Neutrality of 1780 attained its object! How wrong he was the volume in which the story of that League will be told at length will demonstrate.

The important part of the speech was, however, the concluding statement:—"We have not renounced or surrendered any belligerent right appertaining to us by the Law of Nations. . . . Her Majesty did not renounce nor surrender any of her belligerent rights. For I need hardly assure the honourable and learned gentleman that to waive for the present a right, and to surrender it, are two quite distinct things."

"To waive is not to surrender" summed up the defence of what had been done at the opening of the war. Did it really express the intention of the Government? Lord Clarendon had confided to Lord Shaftesbury his desire to alter the law permanently. Mr Milner Gibson had boldly advocated this permanent change. Was Sir William Molesworth in the dark as to what his friends thought on the subject? It is a question

of conscience which I shall not attempt to answer. But this may be said—if anyone will read through that lengthy speech, he will find it difficult to connect the concluding sentence with the very deliberate opinions which preceded it.

Mr Robert Phillimore pointed out to empty benches that the Declaration of the Government was inconsistent with Sir William Molesworth's speech. Instead of talk about "waived rights," there ought to be, as that speech showed, an apology for wrongs formerly committed. That was a prophetic utterance, as we shall presently see; but the House cared neither for this nor for Mr Phillimore's demonstrations of Sir William Molesworth's historical inexactitudes. He pleaded special knowledge of the subject; he showed that if Sir William was right, Lord Stowell must have been wrong; but he was heard with impatience, and the House was counted out at 9.45.

1855

I

The Debates in Parliament—Trading with the Enemy—Land Transport through Prussia.

The Declaration to the neutrals had been accepted by all parties as inevitable: the public was mainly concerned with its consequences; on the one side, as they affected the successful prosecution of the war; on the other, as they affected trade. The debates in 1855 were confined to the economic side of the question.

It seems to have been admitted that the blockade of the Black Sea was most unsatisfactory. Delay had been caused by further negotiation as to details with France. When orders were at last sent out, the English and French admirals proposed to establish the blockade by a squadron stationed at the entrance of the Bosphorus. But doubts were raised at home as to its legality; and, after more delay, it was decided to be "illegal," and the admirals were ordered to blockade the Black Sea ports individually.[1] From one cause and another the blockade was only notified on the 1st February 1855, was then postponed till the 14th, and not finally instituted till some days after. Mr Cardwell, speaking on the 20th for the Government, described the state of affairs as due to "inevitable remissness." The Sea of Azov was, so it was said, not blockaded.[2] The blockade of the Baltic had, however, been carried out effectively; but it had been nullified by the action of Prussia.

King Frederick William's vacillation over his neutrality continued after the commencement of the war, till the Czar's influence prevailed on his brother-in-law to take up a definite attitude. Between them a very perfect system of transit of goods from Russia through Prussia to England was devised.

[1] Document No. 13.

[2] The Sea of Azov was blockaded on the 3rd March; see "Blockade Notifications," Document No. 12.

Russia developed her interior communications " to a degree of perfection that could scarcely have been anticipated " by means of very efficient roads to the Niemen and the Vistula, and to the Prussian frontiers generally. Prussia on her side offered a special inducement to the traders to adopt this route by abolishing her land import duties, and reaped great benefit herself by making a railway to Memel, just across the frontier. The result was that the roads were overflowing with Russian commerce, and vast stores of Russian produce, tallow, hemp, flax, and linseed, flowed to the Prussian port, whence they were shipped on board neutral vessels to England. The blockade of the Baltic ports was thus completely neutralised. A curious state of affairs, which, if tolerated, would put in jeopardy most of the fundamental principles on which the effective waging of war depends : such vital principles as the prohibition of trading with the enemy; the doctrine of " continuous voyage "; it raised the merits of " free ships free goods " and the value of blockades; and generally the relations of political economy with war.

On the 20th February 1855, Mr R. P. Collier moved for a return of Russian exports from Archangel to England, and advocated further restrictions, suggesting the application of the " Rule of 1756." On the 6th March Lord Berners sought information concerning a consignment of lead entered for shipment to St Petersburg *via* Hull and Memel, and commented on the increase of Russian goods imported into this country. " The Government," he said, " ought explicitly to avow the policy they intend to adopt towards the nations with which we are at war, and likewise towards nations which regarded themselves as neutrals." On the 27th April the Earl of Albemarle drew attention to the subject, and on the 15th May moved in the Lords that " in order to bring the war with Russia to a successful termination, it is necessary to restrict the trade with that country by more efficient measures than any which have hitherto been adopted."

There was a singular want of frankness on the part of the Government in dealing with Mr Collier's suggestion that the " Rule of 1756 " should be relied on. It is conceivable that there might have been some objection to referring to the fact that the Cabinet themselves had endeavoured to introduce it into the Declaration to the Neutrals, but had withdrawn it in consequence of French opposition. But at least this might have been said, that the question had received due consideration by the Government, and that the operation of the Rule had been suspended by the Order in Council of the 15th April 1854.

All the questions raised in the three debates centre round the attitude of Prussia. Here there was no action taken by a neutral merchant which his Government undertook to defend; it was action taken by a neutral Government itself in order to facilitate the trade of the enemy. It is called "unneutral service" when the trade thus officially fostered is with other neutrals; a new name had to be devised, new principles to be established, when it was with the subjects of the belligerent. This state of affairs had been foreseen even in the early days of the war; for, in the debate on the Riga despatch, 17th March 1854, it was stated that preparations had then already been made for evading the blockade by land transport through Prussia. It seems that even contraband of war was allowed to pass through to the enemy. For reasons of uncertain policy, which will presently appear, no serious effort had been made to grapple with the situation. Moreover, the question was so full of practical difficulties that nothing but the sternest purpose, backed by clear policy, could deal with it effectively.

We get back to the primitive facts underlying the whole question. When the subject of a neutral State sends contraband by sea to the enemy, the belligerent remedy, seizure and confiscation, arises because the ship which carries it is at large upon the ocean. The existence of the remedy depends on the possibility of enforcing it. But when it is sent by land across neutral territory, the belligerent is powerless to prevent it by active measures. He cannot enter the territory of the country which is in a state of neutrality with him to prevent its subjects trading with his enemy.

If the neutral Government lends a hand, as by allowing the transit on State railways, it is officially assisting the enemy, and a clear breach of neutrality. But remedies are not always so clear as the breach. There are practically only three: protest, rupture of diplomatic relations, war. Protests are usually met by assurances; and with assurances, even if there is no prospect of fulfilment, the belligerent often must rest content. The British Government rested, rather hopelessly, content with Prussian assurances. Lord Granville, in answer to Lord Berners, said: "Very early in the war application was made to the Court of Prussia to prohibit the transmission of articles contraband of war through that country to Russia, and an assurance was given that the Prussian Government would do their best to comply with the request—an assurance which," he was afraid, "had not been very perfectly complied with." However, the first assurance not having resulted in any amendment, a renewed assurance was given; the Prussian Govern-

ment " had expressed an intention of rendering more effectual the means in her power of preventing such traffic." Restoration of the land import duties and shutting down the new railway were the only effectual means of preventing it, and neither of them was adopted.

Lord Granville's answer referred only to the facilities for transit of contraband through Prussia; he did not deal with their peculiar feature, that they enabled the British subjects to trade with the enemy. It would appear that the omission was deliberate. Lord Granville indulged in some very vague and not very relevant remarks about the " very considerable concessions in our old interpretation of the rights of belligerents " which had been made, and expressed a hope " that no attempt would be made to revert to our ancient practices." He then referred to the Berlin and Milan Decrees as examples of ineffectual attempts to keep enemy produce out of a belligerent country, and suggested, by way, it must be presumed, of showing how ineffectual our ancient practice was, that if this enemy produce were sold to a neutral it " would have put it entirely out of the reach of our cruisers either in neutral or in our own vessels."

Having demonstrated the ineffectiveness of everything to stop the trade, Lord Granville added that it was nevertheless contrary to the wish of the Government that the blockade of the Black Sea should be ineffectual; but, as a matter of fact, that also came within the general ineffectiveness, for " it turned out to be impossible to establish such a blockade, and that was the reason why the imports from Russia to this country had been so great." Nevertheless, a recent article in the *Revue des Deux Mondes*,[1] he intimated, showed that the injury to Russian trade had been great.

If anything could be derived from such a very incoherent statement it was this: the Government, while making a show of stopping direct trade between British merchants and the enemy, intended to allow that trade when it was indirect.

This policy tended to encourage British traders in violating, or at least to find excuses for them when they had violated, the ancient law of war, which forbids trading with the enemy. The Earl of Albemarle pressed the point very strongly. To trade with the enemy was a violation of the common law; was an infringement of the statute of 25 Edward III., which made it treasonable " to give aid and comfort to the King's enemies in this realm or elsewhere "; to sanction it was to conduct war upon peace principles. Two-thirds of the goods which were

[1] See Chapter IV. of " 1855," where this article is referred to.

carried by the transit trade through Prussia were intended for British ports, and nearly all the money with which that trade was carried on was British money. It would not have been worth while for Russia to have incurred all the expenses of creating the new roads merely to carry the remnant of the trade which was not British. The policy of the Government, therefore, furthered Russia's object, and enabled her to sustain her national credit. This was the direct consequence of the Order in Council of the 15th April. It was asserted that no British merchant had infringed the law until, three weeks after the declaration of war, the Order in Council had authorised it. The blockade of the Russian Baltic ports was illusory, because the goods were brought to Memel and carried thence under the neutral flag to England. " If Prussia had supplied the enemy with arms and munitions of war, Her Majesty's Government had supplied him with those sinews in the shape of £10,000,000, to be paid for exports from his country." The Government itself was aiding and comforting the King's enemies.

If the evasion of the Baltic blockade profited Russia, it certainly benefited Prussia, and it was no wonder that she wished to preserve her neutrality; no wonder that the war was exceedingly popular with her people.

The virtue of the old law against trading with the enemy was thus put directly in issue, and the claims of political economy above the necessities of war. The Government had set themselves deliberately, in the words of Sir William Scott in the *Maria*,[1] " to introduce a state of things not yet seen in the world, that of a military war and a commercial peace."

But the Government had not only set at defiance the ancient common law, they had undermined the doctrine of " continuous voyage," which the Courts had expressly devised to deal with indirect trade with the enemy, carried on in such a way as to avoid the risk of the direct trade. The facts of the Prussian transit trade differed in no way from the facts of the celebrated case of the *Essex*,[2] except in being more flagrant.

How did the matter stand on the renewal of the war with France in 1803 ? In regard to trade with the enemy's West Indian colonies, we had waived our right to seize enemy produce going direct to the United States. The Americans could not carry their West Indian cargoes direct to Europe; they could, however, trade with the enemy from their own ports in goods which were their own property ; all that was necessary was to

[1] 1 C. Rob., 380.

[2] Referred to in Sir William Grant's judgment in the *William*, 5 C. Rob., 385.

import the goods from the West Indies and then send them on to Europe. The trade-winds determined the courses of sailing ships, and lent an air of reality to these ingenious proceedings. James Stephen, in 1805, wrote in his pamphlet, *War in Disguise*:[1]

> Such is the position of the United States, and such the effect of the trade-winds, that European vessels, homeward-bound from the West Indies, can touch at their ports with very little inconvenience or delay; and the same is the case, though in a less degree, in regard to vessels coming from the remotest parts of South America or the East Indies. The passage from the Gulph of Mexico, especially, runs so close along the North American shore, that ships bound from the Havannah, from Vera Cruz, and other great Spanish ports bordering on the Gulph, to Europe, can touch at certain ports in the United States with scarcely any deviation.

The Prize Courts, however, countered the practice of the "broken voyage," re-enforcing the doctrine of "continuous voyage" by the "common stock" principle. Only if enemy goods, imported into a neutral country, had passed into the "common stock" of that country, could they lose their enemy taint; having thus become neutral property, then only could they be freely re-exported to a hostile State.

Hence arose another and still more ingenious practice: the cargo was landed at a United States port and re-loaded immediately. Further, the landing of the cargo was given all the appearance of a *bona-fide* importation by the payment of import duties; and the Customs system of rebate or drawback facilitated the re-export. In the case of the *Essex* the duties amounted to $5278; the drawback was $5080.

On this ground the Prize Court held that the cargo had not gone into the common stock. The test originally accepted; that payment of duty implied *bona-fide* importation, was found to be insufficient to check the practice; and when it was proved that they had only been nominally paid, the cargo was condemned.

The analogy between the *Essex* and the Prussian land transit lies in this. The shippers availed themselves of the benefit of the law of the United States; "The duties were paid or secured, according to law, in like manner as they are required to be secured on a like cargo meant for home consumption; when re-shipped, the duties were drawn back with a deduction of 3½ per cent. on them, as is permitted to imported articles in all cases."

[1] Reprinted and edited by the author of this study in 1917.

Mahan criticises the first seizure on the ground of surprise, but is fully answered by Sir William Grant in the *William*.[1] Otherwise he is of opinion that the decision was sound in principle. There was no suggestion that the United States Government were conniving at the action of the shippers. The law of which they had taken the benefit was the ordinary law of the country. But the action of the shippers brought about condemnation in the Prize Court. In the case of the land transit through Prussia, the Government of that country had deliberately altered the Customs law to facilitate it—the breach of neutrality was clear, and the British Government acquiesced!

II

The Political Economists' Theory of War.

Behind the Government were the political economists with their notion that war must be waged in such a way as not to interfere with trade; that a war for arms and a peace for commerce *could* coexist. The Ministers had woven the old principle and the new ideas into an inextricable tangle; the

[1] ". . . It has, I understand, been said that our departure from that supposed rule in the case of the *Essex* was a surprise upon the merchants of America, who had by our former decisions been led to believe that proof of landing and payment of duties in America would in every case be held absolutely decisive of the legality of the voyage.

. . . . . .

"By the original evidence the landing of the cargo at Marblehead was proved; it was also in proof that the duties had been secured according to law—so the owners swore, so the custom-house certified. It was to be supposed that duties which were secured were one day to be paid, and it was doubtless meant to be so understood here; for the fact was suppressed that at the moment when the certificate issued from the custom-house, and the oath was made by the owners, a debenture had been granted which in effect extinguished almost the whole of the duties that had been previously secured. Here was what is now said to have been by us held conclusive evidence of importation. But what did we determine? That the importation was not sufficiently proved, and therefore we directed further proof of it to be made. Could any American, who at all attended to the proceedings of this Court, be really surprised by our again deciding a twelvemonth afterwards that such evidence was not conclusive? Yet this effect, I mean of surprise, is ascribed to our decision in the *Essex*, in May 1805.

. . . . . .

"On the whole, I trust I have demonstrated that we did not in the case of the *Essex*, and that we do not in the case now before us, depart from any principle which we have ever adopted. The application to this case of the principles on which we really have proceeded has been already shown. The consequence is that the voyage was illegal, and that the sentence of condemnation must be affirmed."—(5 C. Rob., 385.)

political economists were ready with their theories to unravel it. Lord Granville's excursions into this unfamiliar region had produced no argument of greater stability than the fatalist remark: If our own people are not allowed to import enemy goods, the neutrals will; then our own people will sell their goods to the neutrals, and so get them home: much better let them do it themselves. Mr Ricardo, son of the eminent economist, was equally fatalistic: "If the Russians wanted to sell their produce, and the Prussians had an interest in allowing it to pass, Englishmen would buy it whether that produce were Russian or not." Mr Cardwell was sunk in the depths of official despondency: "Depend upon it, means of evasion would be found to follow every enactment you might impose." We had travelled a long way from the stern lecturing of the Riga despatch, and the careful answer contained in the Emerson Tennent letter to the merchants' conundrums.[1] Only Lord Clarendon struggled to keep up a bold front of being consistent with inconsistency. Lord Duncan had accompanied a deputation to the Foreign Secretary, who had assured them, with grave circumlocution, that "however anxious he might be to maintain the trade of the country, he thought it right to say that, in the position he occupied, he should feel it incumbent on him to take every means in his power to vex, to harass, and to annoy the great enemy with whom we were at war."

Various methods had been suggested for counteracting the land-transit trade. Licences were banned, though without any clear perception of the reason which had led to their abuse in the Napoleonic Wars. Mr Cardwell exclaimed exultingly: "No privileges have been granted, no benefits conferred, by licences; there have been no favoured traders, no unscrupulous traders, but all have been dealt with alike." Mr Cardwell had forgotten that before the declaration of war the Government had announced that they were "very nearly in a position to determine the principle on which we will allow licences."[2] "Certificates of origin" were laughed out of court. Mr Mitchell had suggested, in favour of their adoption, that "it was notorious that hitherto no tallow had ever been shipped from Prussia, therefore our Consuls would be pretty well justified if an application were made for a certificate in the case of tallow, in suspecting its origin." But, said Mr Ricardo, seeing that flax and tallow were the produce of Prussia as well as of Russia, the suggestion was unpractical. "They could be supported by affidavits": but everybody knew, experience in former wars

[1] Document No. 4 (4).

[2] See p. 47.

had indeed shown, that when an affidavit was wanted an affidavit was forthcoming—at a price. Moreover, manufactured articles, by the Customs law, are treated as the produce of the country of manufacture, and a very slight process was sufficient to give them that character. Russian flax combed in Prussia became Prussian flax : Russian tallow melted in Prussia became Prussian stearine ; or even, without melting, a ladleful of Prussian tallow cleverly introduced into a cask of Russian tallow, by a process with which Mr Ricardo was familiar, would immediately convert it into Prussian tallow. Therefore it was manifest that if the import of these commodities from Russia were prohibited, it would at once, in the ordinary course of commerce, create a large manufacturing trade in Prussia. Indeed, the Prussian merchants need not go to so much trouble and expense ; they had only to keep the Russian produce for Prussian consumption and send on their own in place of it. And then again, if we were clever enough to stop the exports from Prussia, it would be perfectly simple to get the Russian produce sent through Holland and other continental countries. All the tricks that the Courts had for so long struggled against were to come into their own again. The neutral merchant is generally supposed to be exceedingly ingenious in inventing devices for evading our methods of preventing trade with the enemy : according to the political economist, the British merchant, even when his country is at war, is as bad. The idea of imposing heavy import duties on Russian produce was also suggested and rejected. Heavy duties and rigorous blockade, which stops egress as well as ingress, could not coexist with any pretence of logical principle.

That was Lord Derby's view ; but it was weighted with heavier argument. The principle advocated, he said, in the debate of the 15th May, is, " that you must not raise by financial restrictions the price of Russian produce in this country—that you must not check Russian trade—but that you must foster and encourage the commerce with that country in spite of the war. Then, away with your blockades at once ; do not let us go to the expense of blockading—or let us hear no more of the argument that you cannot prevent Russian trade, and that you ought not if you could."

It is difficult to get at the real facts of this part of the case in view of the conflicting statements which were made. The Earl of Albemarle asserted that the Russian products could be, and were being, easily obtained from other sources. Tallow, about which so much trouble had been made, was really of no importance, as we only obtained a tenth of our supply from Russia, and this could be found elsewhere ; and to stop that

supply would be a real loss to Russia, because her trade was very limited. Then again, excellent substitutes for Russian flax had been found in India. The increased cost was declared to be a fatal objection. Lord Albemarle asserted,[1] however, that the fact was that they had been discarded when the merchants discovered that Russian fibre was still easily obtainable.

The ground thus cleared, the political economists boldly laid down their doctrine—that when we are at war with a country from which our manufacturers obtained their raw material, they must be allowed to continue getting it from the enemy in spite of blockades, and in spite of the benefit which the enemy obtained from that trade: in other words, that raw materials must be exempted from the law which prohibited trading with the enemy.

This curious perversion of ideas is well illustrated by Mr Cardwell's answer to Mr Mitchell, in which he attempted to fuse the benefit and the damage which would result to the enemy by this doctrine. He denied that the blockade had been ineffectual; on the contrary, he had reason to believe that the Russian manufacturers "have suffered materially by your being able to put upon Russia, by means of your blockade, that very pressure which my honourable friend is so anxious to induce you to put upon Great Britain, namely, to prevent the supply of raw material with which our manufacturers are supported." Then followed statistics to show that the blockade had not been ineffective. "I think," he added, "it is surprising that so great an effect should have been produced in so short a time; for you will not forget that these are the results of a blockade as yet [20th February 1855] very imperfect, and that the advance of British capital by which in times of peace the trade of Russia is carried on had not yet been discontinued."

These were the advances which, even in December 1853, Lord Clarendon had recommended the merchants to discontinue.[2]

Emphasis was laid on the specific application of the benefit of this economic conduct of the war to the import of flax seed, of which large supplies were received from Riga for sowing in Ireland, and on which the Irish linen industry was said exclusively to depend. The linen trade of this country was nearly equal to the whole external trade of Russia, and, the idea of using substitutes being rejected, the most serious inconvenience would have resulted if the war had been allowed to stop the import.

So the insoluble problem—how to damage the enemy without inconveniencing ourselves—was continuously debated.

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[1] On the 15th May.

[2] See p. 41.

Cautious men like Lord Grey took the view that it was a dangerous and mistaken policy to attempt to put any further restrictions upon the trade of the world for the purpose of injuring the enemy. Bolder spirits like Mr Ricardo declared that blockades were "obsolete and useless." But the net result of all the talking must have somewhat disturbed those who knew what the practice of war was, and what the desire of the neutrals. It was the discovery of a new virtue in the maxim "free ships free goods," which its authors avowedly never dreamed of, that it enabled the subjects of a belligerent to trade freely with the enemy; and though by the Order in Council of 1854[1] no British vessel was allowed "under any circumstances whatever" to enter or communicate with any port of the enemy, yet their goods might be laden on neutral ships. As to those Englishmen who would buy raw material whether it were Russian or not, "if," said Mr Ricardo, "the maxim facilitated their purchases, so much the better for them"!

To criticise such reckless methods of solving the problem is not to deny its difficulty, which has perplexed many countries at war.[2] The historic example in which the law of war was set aside in order to enable war to be carried on, is the deliberate importation of cloth from England in order to clothe the French armies, first in 1797 by the Directory, and again in 1807 by Bonaparte.

The Council of Five Hundred in 1797 sent a complaint to the Directory "relative to English merchandize which has been run into France."[3] The Directory replied, admitting the importation through a Prussian merchant (on the security of the diamonds of the Republic) of thousands of ells of blue and red cloth, serge and white shalloons, and woollens, for clothing the soldiers. The message dwelt on the difficulty of obtaining these materials in France on credit for the most pressing needs of the troops. The opportunity which had arisen of procuring them from abroad, on terms of payment which the French merchants

[1] Document No. 9 (8).

[2] But there is another and a better way—self-help, which we have followed during the present war. In the autumn of 1914 Great Britain found herself exceedingly hard pressed in regard to various essential munitions of war which, hitherto, she had procured from Germany and other foreign countries. To take one of *many* instances, glass for optical instruments of precision for the forces—the eyes of the fleet, the army, and the flying service. Instead of trading with the enemy, or trying to do so, we set to work through the various departments of the Ministry of Munitions to make new or develop old industries. The results have been amazing. The discovery of the means of procuring potash, for which formerly we were almost entirely dependent on Germany, from iron ores in the blast furnaces, is one of the industrial romances of the war.

[3] Debrett's *State Papers*, vol. vi. p. 137.

would not have accepted, had induced the Directory to sanction these transactions, truly advantageous for the Republic, and without which both the land and sea forces would have been exposed to the utmost want. The remission of the duty was necessary, because otherwise the price would have been much higher, as the contractors, who received bills in payment, would never have agreed to advance the money for the duty.

In 1807 the armies of Bonaparte were in a similar condition of destitution; leather as well as cloth had to be imported by devious routes from England. Bourrienne, the French agent at Hamburg, and afterwards the Emperor's faithful secretary, was commissioned to arrange the necessary business, the Berlin Decree notwithstanding, which, in spite of the opposition of the Customs officers, he successfully accomplished.

L'empereur me demandait tant d'effets d'habillement pour ses troupes, que tout ce que contenait la ville de Hambourg, et ce qu'auraient pu fournir les villes de Bremen et de Lubeck n'aurait pu y suffire. Je fis, avec une maison de Hambourg, un traité par lequel je l'autorisais, malgré le décret de Berlin, à faire venir des draps et des cuirs d'Angleterre. Je les obtenais d'une manière sûre et à moitié prix Nos soldats auraient eu cent fois le temps de mourir de froid s'il avait fallu observer ridiculement le système continental et cette kyrielle de décrets inexécutables sur les marchandises anglaises. Le directeur des douanes à Hambourg prit de l'humeur; je tins bon; mes draps et mes cuirs arrivèrent; capotes, habits, souliers, tout fut promptement confectionné; et nos soldats se trouvèrent ainsi à l'abri des rigueurs de la saison. . . .

Dans ce temps, Hambourg ni son territoire n'avaient de fabriques de drap, toute étoffe de laine était, . . . interdite, et cependant j'avais dû fournir et j'avais fourni cinquante mille capotes à la grande-armée. Par suite d'un décret impérial tout récent, je devais faire confectionner, sans délai, seize mille habits, trente-sept mille vestes; l'empereur me demandait deux cent mille pairs de souliers, outre les quarante mille paires que je lui avais déja envoyées, . . . et je fis le commerce avec l'Angleterre, au grand avantage des armées, qui furent bien habillées et bien chaussées.[1]

These transactions were, for the English merchants concerned, in breach of the common law; for the neutral merchants, the taking of a risk which, in common parlance, is called a breach of neutrality. According to the theories of the Manchester school they were legitimate, for they were in furtherance of the sacred cause of commerce; according to the doctrinaire political economists, " so much the better " for all concerned.

In the discussions in Parliament two very grave mistakes are specially to be noticed.

The politicians drew a false conclusion from the confusion

[1] Bourrienne, *Mémoires sur Napoléon*, vol. vii. p. 292.

of trade which resulted during the Napoleonic Wars. Lord Granville pointed almost triumphantly to the fact that even those extreme measures, the Berlin and Milan Decrees, were powerless to prevent the Continent being flooded with English goods. When, from one cause and another, that trading came to an end and the merchants lost their mental balance, Brougham's perfervid oratory compelled people to believe that the fault lay with the Orders in Council. They argued that because a principle pushed to its extreme limit had produced such dire confusion, sound and unsound policy could no longer be distinguished. They themselves confused two distinct issues, the effect of war policy on the enemy, and its effect on the neutrals. They did not discern the difference between the "Licence System," [1] which was the butt of all their abuse, and the system of licences, which is an integral part of the common law. Mahan had not yet written his books to make the matter clear. The political economists argued from the particular to the general. If one merchant could obtain permission to trade with the enemy it was a privilege, of all things most hateful to their minds. What one could obtain by express grant, all should have as a right. And yet there were lights to lighten their darkness. Lord Kenyon, C.J., in *Potts* v. *Bell*,[2] had expressly approved Sir William Scott's *dictum* in the *Hoop*:[3] "All trading with the public enemy, unless with the permission of the Sovereign, is interdicted." Wheaton has explained the meaning of this power of exemption: "A material object of the control which the Government exercises over such a trade is, that it may judge of the fitness of the persons, and under what restrictions of time and place such an exemption from the ordinary laws of war may be extended." [4] Kent too had written that the limitation of time is important; "for what is proper at one time, may be very unfit and mischievous at another time." [5]

Instead of steadying themselves on these carefully considered expositions of the law, the Government plunged to the other extreme, which cannot be more graphically stated than it is by the editor of Wheaton: "During the Crimean War England and France and Russia all permitted their respective subjects to trade with the enemy, provided the trade was carried on though the medium of a neutral flag"! [6] Is it surprising that a few years later, when the subject was once more discussed,

[1] See "1855," Chapter III. [2] 8 T.R., 548. [3] 1 C. Rob., 196.
[4] Wheaton, *International Law*, 5th ed., p. 435.
[5] Kent's *Commentaries*, Abdy's edition, p. 382.
[6] Wheaton, *op. cit.*, p. 438.

John Bright put his finger on the illogic of the policy : Why this limitation to the neutral flag ? If you are right, you must go further still, and extend the privilege to the enemy flag.[1]

A sane, and, judged by the standard of discussion set up in Parliament, remarkable article appeared in the *Edinburgh Review* for July 1854, entitled " The Orders in Council on Trade during War," [2] in which a defence of the Government policy was undertaken. The facts of war and the principles of the law of war were frankly stated, and the issue involved in all war fairly faced—whether the loss inflicted on the intercourse of the enemy with this country is not commensurate to the loss inflicted on the interests which we might ourselves have engaged in his trade ? Whether we do most injury to the enemy or to ourselves ? Whether the advantages derived from the pressure we may put upon him are greater than the evils and inconveniences by which they are purchased ?

> The means of exchange were denied us—commercial intercourse was stopped ; in striking the producers of these articles abroad, we afflicted the consumer at home ; the cost of war was enormously enhanced by the increased prices to be paid for every article of consumption which fell under these restrictions, and when these articles consisted of raw material, the want of them might paralyse the industry of the country.

That is undoubtedly the consequence of war. The problem which is presented to every Government charged with the conduct of war must be how to minimise its effect on the people without minimising its effect on the enemy.

The writer's first proposition, if somewhat too weak in its statement, is incontestable.

> Starting, then, from this absolute prohibition of trade with the enemy, when not authorised by a special act of the Crown, it devolves upon the constitutional advisers of the Crown to limit the application of this principle ; and it is their duty strictly to confine it within such limits as appear to be necessary for the public service and conducive to the national interests. . . .

He contended that this duty had been performed by the issue of the Order in Council of the 15th April 1854,[3] which gave

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[1] See " 1860-1862," Chapter IV.

[2] I have been unable to trace the authorship of this article. In spite of what I believe to be its defects in argument, as a reasoned statement of the other side it is well worth reading.

[3] Document No. 9 (8).

to the intentions expressed in the Declaration to the neutrals "a more precise form and binding authority." The Declaration itself is described "as one of the most important and extensive concessions yet made to the liberal opinions and growing interests of this age," and "made by the two greatest maritime Powers of the world, at a moment when their union rendered them the absolute sovereigns of all seas—compelled to no surrender of their principles, but ready of their own free will to take those measures which they conceive to be most favourable to the cause of civilisation and humanity." They had adopted "the most liberal principles ever advanced by Catherine II. or the Baltic Confederacy."

Merely to assume that these principles are "liberal" does not answer the questions the learned author had propounded; it leaves unanswered the question whether they can be adopted consistently with the successful prosecution of the war. To preserve the supplies of raw material ordinarily obtained from the enemy may save the country from much inconvenience; but the question still remains unanswered, whether the convenience of getting them counter-balances the damage which would be caused to the enemy by stopping the trade. And to some persons "liberal" principles would not sanction the doctrine which the author approves, that the pressure we might have been able to inflict on all classes of society in the Russian Empire was one of the most powerful means we possessed of crippling the Russian Government by producing a reaction of interest and opinion against the head of it.

The critics who profess these liberal opinions assume a care for the national interests which for some reason they deny to the Government. The writer of this article is no exception. He says:—

> The true principle to mitigate the rigour of this part of the Law of Nations is a more dispassionate consideration of the rights of others, aided by a more enlightened perception of our own national interests; and we trust we may arrive at a time when it will be acknowledged and received as a maxim of State that the interest of the country is best secured, not by applying the rights of war in all their rigour to our own subjects and to neutrals, but, on the contrary, by circumscribing those rights within the narrowest limits which are consistent with the effective prosecution of hostilities.

A Government would be unworthy of its trust if it did not admit the truth of this opinion and universally act upon it. Acts of belligerency are in a constantly increasing order of

magnitude and severity. Rarely, if ever, is the full extent of belligerent power exerted at the outset; nor are the rights of war applied in all their rigour either to our own subjects or to neutrals till the occasion demands. The problem, ever present, is how to exert pressure on the enemy with the least disturbance of the national interests. As to subjects, the law recognises that even the extreme rigour of its principle, which makes trading with the enemy illegal, may be relaxed by the Sovereign. That is a question of policy in the settlement of which the magnitude of the war and the vital nature of the issues involved must enter. But the law is so framed that, when the safety of the State requires it, the sacrifice of the most valuable interests may be demanded of the people. So as to neutrals, the full belligerent right of stopping all their trade with the enemy may well be held in suspense till the intensity of the struggle compels its exercise. The national interest may require that our own export and import trade with the neutrals should be preserved: a condition of its preservation may be the tolerance of some latitude in their trading with the enemy. These questions can only be dealt with by means of agreements with the neutrals, the adoption of some system of rationing them, which have largely figured in the present war. The conduct of war involves something more than merely putting in force acts of belligerency: it cannot be reduced to so simple a statement. But the political economist of that day sought to control it by reducing it, so far as the neutrals are concerned, to a common formula—that in all circumstances free ships must make free goods; and, so far as subjects are concerned, to unrestricted trade with the enemy. He considered that the national interests are best served by the preservation of commerce at all risks; he ignored the greatest national interest of all—to win the war.

III

Licences to Trade with the Enemy.

The methods adopted by the Government in the Russian war seem to lay themselves open to criticism; the omniscience of the political economist is apt to irritate; yet the nature of the problem which had to be dealt with must not be ignored. The great virtue of the common law of England is that its principles are based on the working practical knowledge of the affairs of the world which those who framed and shaped it possessed;

and this is as true of that part of it which relates to war as to that which relates to peace. But the old principle which forbids trading with the enemy was directly challenged, and a strong case of impracticability made against it. The origin of the principle is variously described: it is said to be the ancient law of England: it is said equally to be a maxim of the international law of war, and the fathers of that law have had something to say on the subject.

It is, however, true that when nations entered into commercial treaties they endeavoured to mitigate the harshness of the rule for their mutual benefit; the alien merchant was not always required to withdraw, nor was justice always denied him while he remained and was of good behaviour. A space of time, varying from three months to two years, was always allowed to him within which to wind up his affairs: in one famous treaty he was not required to withdraw at all.[1] So too a large number of these commercial treaties broadly recognised free commerce with the enemy by the one party when the other was at war; thus each deliberately opened the door to indirect trade with the enemy by its own subjects by way of the neutral merchants of the other party.

But these were arrangements come to by agreement, and do not affect the principles of international law, which ought, if they are to be efficacious, to have practical wisdom behind them. The question involved in the adoption or rejection of such a principle as "free ships free goods" is essentially a practical one for all maritime nations, more so for an island nation than for any other. I have suggested that temperament enters largely into the discussion on merits: the fighting spirit cannot bring himself to believe that carrying goods for the enemy can be a legitimate occupation for neutrals; the peacefully inclined think otherwise, and in this year, 1855, the political economist sided with them. The question is one for the Admiralty: can the food supply of the country be maintained by the navy if this principle is adopted? Lord Clarendon's belief in the iniquity of our ancient sea practice may have been profoundly sincere: what is lacking to our slender knowledge of his case was—Had he consulted the naval advisers of the Crown? and what was their answer?[2] In the absence of that answer, those who opposed him were justified in maintaining that our forefathers had wisdom on their side when they

[1] The Jay Treaty, 1794, between Great Britain and the United States, Ap. 26 (De Martens, *Recueil*, iv. 338; 2nd ed., v. 642).

[2] It may be noted that the naval authorities were consulted as to the answer to Sweden in regard to the sheltering ports in the Baltic (see p. 16).

asserted that our ancient practice was essential to the safety of the State. If, however, the Admiralty had agreed to the change, the " barbarian " argument could have been avoided.

The political economists went to the other extreme ; they were not content to assert that free ships should make free goods ; and the commercialists, in their turn, were not content to declare that what they called " private property " should be immune from capture at sea. Both boldly decried the wisdom of the law of war : trading with the enemy should not be forbidden ; it should, on the contrary, be allowed. And so " free ships free goods " appealed to them, because it fostered this trade, and, when pressed to its logical conclusion, must include the freedom of enemy ships and enemy goods. They rested their case on the necessity of maintaining the nation's supply of raw material from the cheapest market : and the cheapest market in that war, for certain kinds of raw material, was the enemy's.

They ignored the fact that the old law of war recognised the possibility of this need arising, and had provided for it. By the constitution, just as the making of war resides in the Sovereign, so also does the right to mitigate its severity when the good of the State demands it. The Sovereign is empowered to grant licences to trade with the enemy. But, for some, licences did not go far enough; for others, they stood condemned by the excess to which they had been carried in former wars.

Licences, as " high acts of sovereignty," stand midway between the extreme rigour of the law which prohibits all trade with the enemy, and the extreme philosophy that believes commercial peace can be maintained in the midst of war. They are an integral part of the history of the subject ; a small space must, therefore, be devoted to the subject, which Mahan has handled in the broadest spirit.

A licence, he says, from its name, implies a prohibition which is intended to be removed in the particular case. The prohibition was against trading with the enemy ; the licence removed it. The licensing practice was adopted by both England and France during the Napoleonic Wars ; it was not so much a system, as an aggregation of individual permissions to carry on a traffic forbidden by the existing laws of the authority granting them. " It was generally admitted in Great Britain that the Board of Trade was actuated only by upright motives in its action, though the practice was vigorously attacked on many grounds—chiefly in order to impugn the Orders in Council, to which alone their origin was attributed ; but in

France the taint of Court corruption, or favouritism, in the issue of licences was clearly asserted."

The "Licence System" was a peculiar and extensive adaptation of the principle adopted by the British Government in 1808, immediately after the Orders in Council and the alliance of Russia with Napoleon. The numbers of licences granted rose from 2606 in 1807 to over 15,000 in 1809, and to over 18,000 in 1810.

"The true origin of the later licence trade is to be found in that supremacy and omnipresence of the British navy which made it impossible for vessels under an enemy's flag to keep the sea." Hostile owners transferred their vessels to a neutral ownership "by a fraudulent process which received the name of 'neutralisation.' A neutralised ship remained the property of the hostile merchant; but, for a stipulated price, a neutral firm, who made this their regular business, gave their name as the owner's and obtained from the authorities of the neutral country all the requisite papers and attestations by which the British cruisers, on searching, might be deceived." It was "a regular systematic business, fraudulent from beginning to end," which had its origin in the war of the American Revolution in 1780, when Holland became a party to the war, having a large mercantile tonnage, with very inadequate means of protecting it.

> In the year 1806 it was asserted that there were upwards of three thousand sail belonging to merchants of Holland, France, and Spain navigating under the Prussian flag; and the practice doubtless was not confined to Prussia. "It is notorious," wrote Lord Howick, the British Foreign Minister, that "the coasting trade of the enemy is carried on, not only by neutral ships, but by the shameful misconduct of neutral merchants, who lend their names for a small percentage, not only to cover the goods, but in numberless instances to mask the ships of the enemy." [1]
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> The fact becoming known, British cruisers, when meeting a valuable ship with Prussian papers, were apt to take the chance of her being condemned, and sent her in; but even in British ports and Admiralty courts the neutralising agent was prepared to cover his transaction. The captain and crew of the detained vessel were all carefully instructed and prepared to swear to the falsehoods, which were attested by equally false papers sworn to before Prussian judges. To this trade, it was alleged, France owed the power to obtain naval stores despite the British blockade of her arsenals.
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[1] Cobbett's *Parliamentary Debates*, vol. x. p. 406.

> The capture of vessels, the character of whose papers was suspected, served to swell the cry against Great Britain for violating neutral rights, induced greater severity in the British naval measures, and so directly contributed to the Berlin Decree and the Orders in Council.[1]

Further, in the development of his great onslaught on British commerce Bonaparte had developed his "Continental System," and the small States of Europe were coerced into concurrence with his policy of excluding British goods from the Continent. It was essential that Great Britain should take counter-measures. "She found ready to her hand the unprincipled system of neutralised vessels, and by means of them and of veritable neutrals she proposed to maintain her trade with the Continent." Every neutral vessel so employed was furnished with a protecting licence which acted as a safe-conduct when she was boarded by a British cruiser. "The vessel," it ran, "shall be allowed to proceed, notwithstanding all the documents which accompany the ship and cargo may represent the same to be destined to any neutral or hostile port, or to whomsoever such property may belong." "These broad provisions," adds Mahan, "were necessary, for the flags flown, except that of the United States, were those of nations which had willingly or under duress entered the Continental System; and the papers, having to undergo the scrutiny of hostile agents at the ports of arrival, had to be falsified, or, as it was euphoniously called, 'simulated,' to deceive the Customs officer, if zealous, or to give him, if lukewarm, fair ground for admitting the goods." Such was the Licence System, and it reduced our commerce, as Lord Lansdowne said, "to one mass of simulation and dissimulation."[2] It provided Mr Brougham with a weapon of attack against the Orders in Council, when he appeared for the petitioning merchants at the Bar of the House of Commons; but the alternatives, which he somewhat overlooked, were either that Bonaparte's

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[1] *The Influence of Sea Power on the French Revolution and Empire*, Admiral Mahan, vol. ii. pp. 309, 310.

[2] "Our traders crept along the shores of the enemy in darkness and silence, waiting for an opportunity of carrying into effect the simulative means, by which they sought to carry on their business. Such a system led to private violation of morality and honour of the most alarming description. . . . Instead of benefiting our commerce, manufactures, and resources, the Orders in Council [which were responsible for the licences] diminished our commerce, disturbed our manufactures, and lessened our resources."—(Lord Lansdowne, quoted in Leone Levi's *History of British Commerce*, p. 115.)

The immoral influence of the system on the nation was attacked in *Reflections on the Nature and Extent of the Licence Trade* (Budd, 1811), which was the subject of an article in the *Quarterly Review* for July 1811.

Continental System should prevail, or that it should fail; and in the end it failed,

But although the system which grew out of the normal grant of licences, when it is considered without reference to these alternatives, was open to criticism, the principle of licences remains an essential part of the machinery of war. The same principle lies at the root of the custom which allows vessels already at sea to pass to their destination in spite of a newly imposed blockade. It is the only method by which trade with the enemy, if it be necessary to continue it, can be legitimately maintained. Obviously, it must be for the Government, which is responsible for the conduct of the war, to decide whether it is necessary to maintain it, and to what extent.

"A licence," says Wheaton,[1] "is an act proceeding from the Sovereign Authority of the State, which alone is competent to decide on all the considerations of political and commercial expediency, by which such an exception from the ordinary consequences of war must be controlled."

This brief review of the system would be incomplete without some extracts from Sir William Scott's judgment in the *Goede Hoop* in 1809.[2]

> Licences owe their origin to the general prohibition, which declares it unlawful for the subjects of this country to trade with the enemies of the King without his permission; for a state of war is a state of interdiction of communication. That is a law which is not peculiar to this country, but one which obtained very generally among the States of Europe: in former wars this prohibition was attended with very little inconvenience, as the greater part of the countries in the neighbourhood remained neutral, and presented to the belligerents various channels of communication, through which they obtained from each other such commodities as they stood in need of. While the world, therefore, continued in that state, of course licences would be granted only in very special cases, where it appeared that there was a necessity to have a direct communication with the enemy; and being a matter of special indulgence, the application of them was *strictissimi juris*.
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> But it has happened that, in consequence of the extraordinary and unprecedented course of public events, these licences have, in a certain degree, changed their character, and are no longer to be considered exactly in the same light.

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[1] *International Law*, 5th ed., p. 435.

[2] Edw. 327.

It is notorious that the enemy has in this war directed his attacks more immediately against the commerce of this country than in former wars; and a circumstance of still greater weight is, that he has possessed himself of all those places that in former wars remained in a state of neutrality. To what part of the Continent can we now look for a country which is not either under the actual dominion of France, or in that state of subjection to it which operates with all the effect of dominion? It is a state of things in which it has become impossible for England to carry on its foreign commerce, without placing it on a very different footing from what its convenience required in former wars. To say that you shall have no trade with the enemy would be, in effect, to say that you shall not trade at all, because that commerce which is essential to the prosperity of the country cannot be carried on in those small and obscure nooks and corners of Europe, if any such can be found, which are still independent. The question then comes to this, How is the foreign commerce of the country to be maintained? It must be either by relaxing the ancient principle entirely, and permitting an unlimited intercourse with the ports of the enemy, and where the ports of other nations are put under blockade (as they are by the Orders in Council) for other reasons than those of a direct hostile character, they become liable to be considered and treated in like manner, so far as the purposes of blockade require; or it must be by giving a greater extension to the grant of licences. As to the relaxation of the general principle, by which an open and general intercourse with the enemy would be allowed, the consent of both parties is requisite to make that effectual; and even if the enemy permitted it, the legislature would probably not think it proper to proceed to that length, and for reasons, I presume, connected with the public safety. It has, therefore, tolerated a resort to the other mode of permitting a trade by licences, which, though they are so denominated, are likewise, in effect, expedients adopted by this country to support its trade, in defiance of all those obstacles which are interposed by the enemy. They are not mere matters of special and rare indulgence, but are granted with great liberality to all merchants of good character, and are expressed in very general terms, requiring, therefore, an enlarged and liberal interpretation.

. . . . . .

Looking to the intentions of the Government, not only to what they are, but to what I am led to suppose they must be; looking to the extreme difficulty of carrying on the commerce of the country in the struggle which it has to maintain, not only against the power but against the craft of the enemy; looking to the frequency and the sudden-

ness with which he lays on or takes off his embargoes, according to the exigency of the moment; looking to the various obstructions that present themselves in obtaining vessels, in consequence of the small remainder that there is of neutral navigation in Europe; looking, also, to this circumstance, that all this intercourse must be carried on by the subjects of the enemy, that it must be a confidential transaction to be conducted by an enemy shipper at great risk and hazard to himself; looking to the total change which has taken place in the nature and character of these licences, if that denomination is to be considered: I say, looking to all these considerations, where there is clearly an absence of all fraud, and of all discoverable inducements to fraud, I must go to the utmost length of protection that fair judicial discretion will warrant, though there may, under such circumstances, have been a considerable failure in the literal execution of the terms of the licence. There may be great inconvenience in the whole system of licences, as indeed it is scarce possible in the present state of the world that there should not be great practical inconvenience in any mode of conducting its commerce. That is a question of policy, with which this Court has nothing to do. It has only to enforce the just execution of legitimate orders, issued by legitimate authority.

. . . . . .

It is objected to the master that he did not produce his licence to the captors, and that, on his arrival at Plymouth he delivered certain papers and documents to his agents there. But it is impossible not to take into consideration the difficulties under which such persons labour; they are persons exposed to great harassments, both on the one side and on the other. They know that they are embarked in transactions of great confidence and mystery requiring the utmost care and circumspection, and they are to pick their way in fear and silence, walking, as it were, at every step over burning ploughshares.

While letting the world know something of the mysteries which were essential to carrying out the "simulation and dissimulation" of the licence system, Sir William Scott did not hesitate to justify it as necessary to counteract the attacks of the enemy on the national commerce. The question has even now something more than an historical interest, and it may be necessary to refer to it again in the general review of the whole subject. But for the moment, and in connection with the story of the Declaration of Paris, the points which stand out from this year of talk, 1855, are these: that the question of neutral rights was relegated to a subordinate position; that there was

no question of discussing the merits or demerits of "free ships free goods" as the principle of international law which could satisfy the demands of the neutrals; that the attack was directed against the old prohibition of trading with the enemy. "Free ships free goods" was distorted from its accepted meaning to foster a general relaxation of those old safeguards under the protection of which war can alone be safely and successfully carried on. I venture to think the position as it is described in the latest edition of Wheaton—that subjects may trade with the enemy as long as the trade is carried on in neutral ships—to be an impossible one.

IV

The Facts as described by Contemporary Writers.

It forms no part of the scheme of this book to lead my readers through the paths of the labyrinth of political economy. My intention is merely to state the facts, to indicate arguments used by the political economists of the day, and to point out very broadly how they were designed to upset the accepted principles of war, and in great measure succeeded. Certain other facts are material to the complete understanding of the question, as they throw light on two most important points: the effect of these new doctrines on the trade of Great Britain, and their effect on the trade and general situation of Russia.

The consequences of the Prussian action will be gathered from the vivid picture of the activities in Memel and Königsberg, drawn by the Rev. Thomas Milner in his book, *The Baltic: its Gates, Shores, and Cities*, quoted in Mr J. L. Ricardo's pamphlet, *The War Policy of Commerce*, and referred to by Mr Collier in the debate of the 20th February 1855. In this pamphlet Mr Ricardo expanded the theories which he had advanced in the House of Commons.

Two papers also appeared in the *Revue des Deux Mondes* dealing with the effect of the blockade on Russia. In the first M. Léon Faucher took a very adverse view of her internal condition. This was answered by M. L. Tegoborski, who controverted many of M. Faucher's facts. The former article was referred to by Lord Granville in support of his statement that the injury caused by the allied blockade to Russian trade, in spite of its ineffectiveness, had been great.

The facts related by these writers have a very material

bearing on the questions to be presently discussed at the Peace Conference.

From "The War Policy of Commerce," by J. L. Ricardo. [London, 1855.]

To blockade the coast of a country having such a frontier as Russia is a mere absurdity. Of what avail is it to seal up Reval and Riga, and leave open Memel, Dantzig, and Königsberg? To guard one door and throw open others? What possible object can be gained—not by preventing, but by diverting, the enemy's trade? The roads leading to Tilsit, Memel, and Königsberg are at this moment encumbered with interminable convoys, and the streets and squares of those towns are filled with Russian caravans, which, after a few days, return with merchandise for Russia. Hemp, flax, tallow, grain, and copper constitute principally what the Russians bring, and they take back coffee, sugar, cotton, various cloths, pewter, and, in particular, wine and olive oil. The trade in salt has also taken a very considerable development, and the importation of the article is estimated at not less than a million quintals, and the price of it is at present tripled in the market of Riga. In a single day, at the beginning of this month, at Tilsit, as many as 300 Russian vehicles, which had passed the night on the other side of the river owing to the want of room, were counted. Part of these convoys are at present proceeding towards Königsberg, but the greater part are towards Memel. The number of arrivals by water was not less considerable, but the frost, which had set in, had interrupted all expeditions by rivers. From Memel to Kowno, on the two principal water-courses, there are more than 300 different sorts of vessels, all with freight, and at least 130 rafts of building timber, loaded with corn, which have been caught in the ice.

"Prussia," says the Rev. Thomas Milner,[1] "neutral in the present war, is reaping a rich harvest from it at her eastern ports, Dantzig, Elbing, Königsberg, and Memel; especially at the latter, owing to the liberal concessions of the British and French Governments to neutral Powers. The effect of the blockade of the Russian ports has not been the stoppage of the foreign commerce of the country, but the transference of it to the adjoining State as the medium; except in the instance of the export of timber and the import of coals, which are far too heavy and cumbrous for overland transport. From St Petersburg and Riga to Memel and Königsberg a caravan system has been organised, and is carried on with considerable regularity. Goods for Russia, as cotton, sugar, wines, spices, and other colonial produce, are landed at the Prussian ports, and forwarded to their destination; the same waggons returning with Russian produce, as hemp, flax, tallow, bristles, linseed and grain, for export to Great Britain, France, Holland, or Belgium. Thus the Prussian merchants gain by the commission on this traffic; and the Government profits by the increase of the Customs' duties. One of the Custom-houses on the frontier has taken as much as 1000 thalers a day for import duties; and as many as 500 cart-loads of hemp and flax have frequently arrived per day at Memel. Throughout the summer the town has presented an extraordinary

[1] *The Baltic: its Gates, Shores, and Cities*, by the Rev. Thomas Milner.

spectacle. Every warehouse, coach-house, stable, and outhouse has been literally crammed with merchandise ; the streets and open spaces have been piled with it ; while upwards of 100 ships have been kept lying in the harbour, unable to discharge their cargoes, on account of all the landing places being occupied. Landlords have realised rents, taverns and shopkeepers have obtained prices, comparable to those which resulted from the rush of emigration to Melbourne."

It is estimated that the extra cost paid on Russian produce belonging to the British merchant for its transport by the Russian peasantry to Memel is no less than £2,500,000. This is exclusive of the goods carried to Archangel for shipment, and the loss from damage and destruction to them on the road, where insurance is impossible.

And while this active trade is driven on the land frontier, the combined fleets of England and France . . . are watching on the seaboard to destroy the commerce of Russia. . . .

The property of some few poor Finlanders has been destroyed, and some of our own, and the pretext is, that the damage to his commerce will put such pressure on the Emperor of Russia that he must consent to our own terms of peace. . . .

By adopting the course with respect to neutrals which we now follow, the commerce of Russia, as has been shown, is diverted but not stopped. We dam it up on one side, but it flows freely out at the other. . . .

It has been shown how futile was the attempt to blockade the trade of Russia on the shores of the Baltic while the land frontier was open and free.

The British merchant complains, and complains with reason, that he has been deceived ; that he has been told that the Russian ports were strictly blockaded, and that, having laid in a stock of the articles he required at a high price, he now finds that the blockade did not exist at all, and that a large amount of these articles are suddenly thrown on the market, brought in foreign vessels, to the exclusion of British ships. The neutral shipowner has found his vessels employed at high rates, whereas imports of the like articles from neutral countries, on which British ships *could have been engaged*, have been proportionably discouraged.

From "Les Finances de la Russie," in "Revue des Deux Mondes," par Léon Faucher [August 1854].

Le commerce russe, privé des avances importantes que lui faisait chaque année l'Angleterre, et qui ne montaient pas à moins de 5 million sterling, a perdu en outre ses meilleurs débouchés au dehors, depuis que les flottes combinées bloquent hermétiquement les ports de la Baltique et ceux de la Mer Noire. Le change a baissé de plus de 20 pour 100,[1] l'exportation de l'or est prohibée, les faillites se succèdent et s'accumulent sur toutes les places. Que la guerre se prolonge, et il ne restera bientôt plus un comptoir ouvert à Pétersbourg. Ainsi, après avoir ruiné le commerce et détruit le crédit, l'on accepte les propriétaires forciers en les depouillant de leurs instrumens de travail, en leur enlevant les paysans censitaires ou serfs qui font leur principale

[1] La valeur du rouble argent est tombée de 4 francs à 3 francs 8 centimes.

richesse ; mais si l'on appauvrit les propriétaires, si pour remplir les camps on dépeuple les campagnes, je demande qui paiera désormais l'impôt ?

Non seulement les ressources extraordinaires que le gouvernement russe a fait jaillir, depuis dix-huit mois, des facultés contributives du pays en les excédent, vont lui manquer dans les années qui suivront ; mais il verra et voit déjà diminuer ses ressources ordinaires. . . . Le Moniteur suppose que la guerre actuelle et le blocus des deux mers amèneront un déficit de 50 millions de roubles ou de 200 millions de francs, en calculant le rouble au pair, dans le produit de ces deux branches d'impôt.

Je ne saurais estimer le déficit à un chiffre aussi considérable. Il est vrai que la présence des flottes combinées dans la Mer Noire et dans la Baltique paralyse le commerce extérieur de la Russie, qui pour les seuls exportations par cette double voie, excédait 300 millions de francs ; mais on admettra bien qu'une partie de mouvement commercial se reportera de la frontière de mer sur la frontière de terre, et que le trésor récupérera ainsi une partie des recettes qui semblaient entièrement perdus pour lui. Le gouvernement Russe l'a tellement senti qu'il vient, pour attirer le commerce dans cette direction, de modérer les droits de douane. Ainsi la nécessité lui a suggéré une mesure tout à fait contraire à ses précédens, et qui est une bonne opération, si on l'envisage au point de vue de l'économie politique.

Reply by L. Tegoborski, in "Revue des Deux Mondes" [November 1854].

Que le commerce extérieur de la Russie soit en souffrance par suite de la guerre et du blocus, c'est incontestable ; mais les intérêts des autres états qui sont en communication maritime avec la Russie, à commencer par l'Angleterre elle-même, en souffrent également, et l'auteur s'exagère beaucoup la part des sacrifices qui tombent à la charge de la Russie. Le commerce de plusieurs ports russe a pris la voie de terre, et l'Angleterre elle-même profite de cette voie détournée, par laquelle elle reçoit différens produits russes nécessaires à son industrie, tel que suif, chanvre, lin, etc., avec la difference toute fois qu'elle supporte le surplus des frais de transport de terre, surplus qui tourne en grande partie au profit de nos charretiers. Encore faut il observer que jusqu'à présent, et contre toute attente, c'est plutôt le commerce d'importation que le commerce d'exportation qui a souffert du blocus des ports russes.

La valeur des exportations de la ville d'Odessa jusqu'à la fin de juin a dépassé d'environ 200,000 roubles celle des exportations, à la même date, de l'année 1853, qui a été une des plus brillantes pour les opérations commerciales de cette ville ; mais quand même le commerce extérieur de la Russie serait entièrement paralysé, ce qui n'est pas le cas jusqu'à present, cela n'aurait pas, tant s'en faut, des conséquences aussi désastreuses et aussi décisives pour son attitude, comme partie belligérante, que celles que l'auteur croit y trouver. . . . La foire de Nijni-Novgorod, dont les opérations commerciales s'élèvent jusqu'à la valeur de 60 millions de roubles [240 millions de francs], est le meilleur baromètre du mouvement de notre commerce à l'intérieur et en partie aussi de notre commerce extérieur. Or les résultats de cette foire, qui auraient été peut être sérieusement affectés par les circon-

stances actuelles, ont été, cette année, si satisfaisans qu'ils ont surpassé toute attente. Les affaires se sont faites rondement, tout a été payé au comptant, et les engagemens de l'année passée ont été exactement soldés.

To this M. Léon Faucher replied in the same month :—

" Suivant lui [Tegoborski] le commerce extérieur de la Russie a peu souffert du blocus, une bonne partie ayant pris la voie de terre, et en tout cas les charretiers russes y ont beaucoup gagné. Je ne voudrais pas troubler la satisfaction patriotique de M. de Tegoborski à l'endroit des charretiers, mais je lui ferait remarquer qu'il n'est nullement certain que les acheteurs étrangers aient fait les frais de cette depense."

1856

I

The Congress of Paris and the Treaty of Peace.

The Congress of Paris met on the 25th February 1856, to settle a general Treaty of Peace. At the nineteenth sitting, the 30th March, the Plenipotentiaries affixed their signatures and the seal of their arms to the Treaty, and its supplementary conventions. Count Beust, in his *Mémoires*, has described the Peace as "a masterly example of how to reverse the effects of a war, and obtain in the future the very opposite of what a treaty is intended to secure"; and Baron Bourqueney, second Plenipotentiary for France, remarked: "Quand vous lisez ce Traité, vous vous demandez quel est le vaincu, quel est le vainqueur?" In the House of Lords Lord Derby declared that he accepted the peace, as he believed the country accepted it, "without enthusiasm, but without opposition."

With the Treaty of Paris itself this study has no concern; yet there is one link between the Treaty and the Declaration appended to it, which may account for what took place at the final sittings of the Congress. The French were eager for peace, says Mr Evelyn Ashley in his *Life of Lord Palmerston*: "The Emperor himself was swayed by Count Walewski's many Russian affinities; he was horrified by the daily accounts of the privations endured by his army in the Crimea, and he was absorbed in a domestic event which had given him an heir, whom he was anxious to christen amid the rejoicings for peace. He was, therefore, only thinking of how to 'faire le généreux' towards the Czar, whom he would gladly have conciliated now that his position in Europe was secured."

"Faire le généreux" pervades the protocols of the Congress. Everybody seemed full of concern for Russia. It was inevitable that the same spirit should prevail to the end, when the British Plenipotentiary offered with wide-open arms what the nations

of Europe had for so long desired so ardently, but hardly dared hope ever to receive.

Speaking of the Declaration of Paris in 1857, Lord John Russell said: "We all supposed that the Earl of Clarendon went to Paris with a view to make peace with Russia. There was no notice given to the people of this country, or to either House of Parliament, that any such question would be discussed." "I believe," said Lord Derby, "if the country had known the terms you were about to conclude, and the Declaration you were about to sign, an indignant protest would have been made against the betrayal of the national interests."

Criticism at the time, and since, has been concentrated on the fact that the decision to accept the Declaration was come to secretly, and it has been generally assumed that Lord Clarendon acted on his own motion without the Cabinet. Mr Evelyn Ashley, in his vindication, writes that it is desirable to record the fact of the policy "having been deliberately adopted by the English Cabinet, for what they considered good and sufficient reasons . . . as many absurd tales have been from time to time current about it; as though the English Plenipotentiary had agreed to it without any authority from home or consultation with the rest of the Ministry."

The criticism carries, on the face of it, its own condemnation. In this matter Lord Clarendon needs no personal vindication, for the simple reason that Plenipotentiaries at Congresses do not act on their own initiative. What is deserving of criticism is the fact that there is no record extant of the "good and sufficient reasons" of which Mr Evelyn Ashley assumes the existence. No White or Blue Book has ever been issued containing the despatches which must have passed between the Cabinet and Her Majesty's Plenipotentiary at the Congress. The only reasons which have ever been given to the public are to be found in Lord Clarendon's speech when the Declaration was challenged in the House of Lords, soon after its signature. How far they were good, and justified the introduction of so great a change into the maritime practice of England without consulting Parliament; how far they were a sufficient excuse for surrendering permanently what had so far only been waived, must be judged by examining the justification given by Lord Clarendon. Their sincerity could not fail to be challenged in view of Mr Cardwell's reiteration in 1855, in regard to the Declaration to the neutrals, of the principle which Sir William Molesworth had asserted with much circumlocution in 1854, that "To waive is not to surrender."

II

The Declaration of the Congress.

Having settled the terms of the Treaty of Peace, the Congress at the twentieth sitting, on the 2nd April, discussed the technical question whether the blockades should be raised before the exchange of the ratifications. The precedents were in favour of extending the rigours of war even to its termination, continuing the blockade till treaties were formally completed; but the prevailing spirit of liberality which had already exercised such a happy influence on international relations must discard precedent. France and Great Britain had already shown their solicitude for commerce: they must not hesitate to grant commerce this new benefit. Thus the President, Count Walewski; and Lord Clarendon, acting on the suggestion, proposed an armistice at sea which would have the effect of raising existing blockades. The Russian plenipotentiaries, adopting these views with enthusiasm, declared that the proposition would certainly be accepted with extreme favour by their Government. But, while agreeing with the reason for the proposal, they felt bound nevertheless to reserve it for the approval of the Czar. The representatives of the other countries declared that the neutrals would receive the decision "avec un sentiment de vive reconnaissance." At the 21st sitting, on the 4th April, the Russian plenipotentiaries announced that the measures prohibiting the export of Russian produce from Russian ports would be cancelled, and the armistice was thereupon agreed to.[1] The allies promised that their troops would be withdrawn within six months, and Russia on her side that her troops would be withdrawn from Kars as promptly as possible: Austria also would withdraw from the Principalities: all these promises to be put in force on the exchange of the ratifications of the treaties.

At the 22nd meeting, on the 8th April, further details concerning the evacuation of territory were agreed to, and thus all questions relating to the Peace were satisfactorily settled.

But Count Walewski thought it was desirable that, before separating, the plenipotentiaries should exchange their views on certain outstanding subjects, the settlement of which might prevent new complications arising. Although they were assembled specially to settle the Eastern question, they might reproach themselves if they did not take advantage of the

[1] See Document No. 17

circumstance which had brought the representatives of the principal European Powers, " pour élucider certaines questions, poser certains principes, exprimer des intentions, faire enfin certaines déclarations," with the sole intention of assuring the peace of the world for the future—by dissipating, before they had become a menace, the clouds which were still looming on the political horizon. These questions were Greece—the troops of England and France being still in occupation of the Piræus : the Pontifical States—Rome being occupied by the French and Austrian troops at the request of the Holy See. Then, " following up the same order of ideas, Count Walewski asks himself " whether the state of certain Governments of the Italian Peninsula, especially that of the Two Sicilies, did not merit the attention of the Congress. Finally, Belgium, whose best relations with the rest of Europe were being jeopardised by the proceedings of " La Marianne," a society whose operations tended to disturb the repose and tranquillity of France.

All these matters were then formally put before the Congress and discussed, and, with regard to some of them, conclusions arrived at. But even yet the work of the Congress was not finished. Count Walewski proposed to the Congress " de terminer son œuvre par une déclaration qui constituerait un progrès notable dans le droit international, et qui serait accueillie par le monde entier avec un sentiment de vive reconnaissance." Since the Congress of Westphalia, liberty of conscience had become an article of faith ; since the Congress of Vienna, the abolition of the slave trade and the freedom of navigation of the rivers had been accepted : " il serait vraiment digne du Congrès de Paris de poser les bases d'un droit maritime uniforme en temps de guerre, en ce qui concerne les neutres. Les quatres principes suivants attendraient complétement ce but :—

" 1. Abolition de la course :

" 2. Le pavillon neutre couvre la marchandise ennemie, excepté la contrebande de guerre :

" 3. La marchandise neutre, excepté la contrebande de guerre, n'est pas saisissable même sous pavillon ennemi :

" 4. Les blocus ne sont obligatoires qu'autant qu'ils sont effectifs."

Whereupon the Earl of Clarendon reminded the Congress how, at the beginning of the war, England, as well as France, had sought by every means to mitigate its effect on the neutrals, and how each had renounced for their benefit principles which up to this war they had invariably maintained. Now England was prepared definitely to abandon her principle provided that

privateering were abolished: "la course n'est autre chose qu'une piraterie organisée et légale, et les corsaires sont un des plus grands fléaux de la guerre, et notre état de civilisation et l'humanité exigent qu'il soit mis fin à un système qui n'est plus de notre temps." It was, however, to be well understood that if the proposition of Count Walewski were accepted by the Congress it would only bind those Powers which had accepted it, and could not be invoked by those which had refused to associate themselves with it. Count Buol, on behalf of Austria, declared that he appreciated the spirit and the bearing of the proposal, but having no instructions on the matter, he could say no more than that he would ask his Sovereign for orders.

Baron Manteuffel declared that he was sufficiently acquainted with the intentions of the King, his august Master, not to hesitate to express his opinion without instructions. The maritime principles which had been proposed to the Congress had always been professed by Prussia, which had continually endeavoured to get them generally adopted. He considered himself authorised to join in a document having for its object their definite introduction into the public law of Europe. He was confident that the King of Prussia would not refuse his consent to what the Congress might approve.

The Russian plenipotentiaries promised to obtain instructions from their Government.

The President, Count Walewski, then summed up the discussion on the various matters he had submitted to the Congress. He was pleased there had been discussion, though he could have wished that some more definite conclusions had been reached. With regard to the maritime law proposals, he hoped that at their next meeting all the plenipotentiaries would have received instructions to sign a document which "en couronnant l'œuvre du Congrès de Paris, réaliserait un progrès digne de notre époque."

At the 23rd meeting, on the 14th April, Count Buol declared that Austria congratulated herself on being able to join in a declaration the salutary influence of which she recognised. Count Orloff, on behalf of Russia, expressed himself in the same sense; but his Court was not prepared to bind itself to maintain the principle of the abolition of privateering, and defend it against those Powers who would not accede to it. The representatives of Prussia, Sardinia, and Turkey having also given their assent, the Congress adopted the Declaration as drafted.

But the Earl of Clarendon thought that their meeting had

potentialities for good which were not yet exhausted, and had another proposition to make. Article VII. of the Treaty of Peace recommended the mediation of a friendly State in case of differences arising between the Porte and any of the signatory Powers. The calamities of war being still too present to every mind not to make it desirable to seek out every expedient calculated to prevent its return, he conceived that this happy innovation might receive a more general application, and thus become a barrier against conflicts which frequently only break forth because it is not always possible to enter into explanations and come to an understanding. Whereupon discussion followed, all admitting the wisdom of the proposal; and after a little passage of arms between Count Buol and Count Cavour about the occupation of the Roman Legations by Austrian troops, "MM. les plénipotentiaires n'hésitent pas à exprimer, au nom de leurs Gouvernements, le vœu que les Etats entre lesquels s'éléverait un dissentiment sérieux, avant d'en appeler aux armes, eussent recours, en tant que les circonstances l'admettraient, aux bons offices d'une Puissance amie." They further hoped that the Governments not represented at the Congress would associate themselves with the idea which had inspired the wish just recorded. The Declaration was annexed to the protocol :—

ANNEXE AU PROTOCOLE No. 23.

Déclaration.

"Les Plénipotentiaires qui ont signé le Traité de Paris du 30 Mars, 1856, réunis en conférence,—

"Considérant :

"Que le droit maritime, en temps de guerre, a été pendant longtemps l'objet de contestations regrettables :

"Que l'incertitude du droit et des devoirs en pareille matière, donne lieu, entre les neutres et les belligérants, à des divergences d'opinion qui peuvent faire naître des difficultés sérieuses et même des conflits :

"Qu'il y a avantage, par conséquent à établir une doctrine uniforme sur un point aussi important :

"Que les Plénipotentiaires assemblés au Congrès de Paris ne sauraient mieux répondre aux intentions dont leurs Gouvernements sont animés, qu'en cherchant à introduire dans les rapports internationaux des principes fixes à cet égard :

"Dûment autorisés, les susdits Plenipotentiaires sont convenus de se concerter sur les moyens d'atteindre ce

but : et étant tombés d'accord, ont arrêté la Déclaration solonnelle ci-après :—

" 1. La course est et demeure abolie :
" 2. Le pavillon neutre couvre la marchandise ennemie, à l'exception de la contrebande de guerre :
" 3. La marchandise neutre, à l'exception de la contrebande de guerre, n'est pas saisissable sous pavillon ennemi :
" 4. Les blocus, pour être obligatoires, doivent être effectifs, c'est à dire maintenus par une force suffisante pour interdire réellement l'accès du littoral de l'ennemi.

" Les Gouvernements des Plénipotentiaires soussignés s'engagent à porter cette Déclaration à la connaissance des Etats qui n'ont pas été appelés à participer au Congrès de Paris, et à les inviter à y accéder.

" Convaincus que les maximes qu'ils viennent de proclamer ne sauraient être accueillies qu'avec gratitude par le monde entier, les Plénipotentiaires soussignés ne doutent pas que les efforts de leurs Gouvernements pour en généraliser l'adoption ne soient courronnés d'un plein succès.

" La présente Déclaration n'est et ne sera obligatoire qu'entre les Puissances qui y ont ou qui auront accédé.

" Fait à Paris, le 16 Avril, 1856."

The signatures follow of the plenipotentiaries of Austria, France, Great Britain, Prussia, Russia, Sardinia, and Turkey.

The final meeting took place on the 16th April. The Protocol of the previous meeting having been read and approved, Count Orloff announced that he had instructions to adhere, on behalf of Russia, to the wish expressed at that meeting, that " States between which any serious misunderstanding may arise should, before appealing to arms, have recourse, as far as circumstances may allow, to the good offices of a friendly Power." The Declaration was then signed.

But the matter was not even yet finally disposed of.

On the proposition of Count Walewski, and recognising that it would be to the common interest to maintain the indivisibility of the four principles of the Declaration, the Plenipotentiaries agreed that Powers which have signed it, or may adhere to it, cannot in justice enter into any arrangement relating to the rights of neutrals in time of war which is not based on the four principles of the Declaration. This resolution, however, was not to have any retroactive effect nor to invalidate existing conventions.

A vote of thanks was thereupon proposed by Count Orloff, and seconded by the Earl of Clarendon, to Count Walewski for his able conduct of the Congress, and was suitably replied to by M. le Premier Plénipotentiaire de la France.

There is no other official record relating to the Declaration of Paris. The Treaty of Peace with its annexed conventions—(*a*) respecting the Straits of the Dardanelles and of the Bosphorus, (*b*) limiting the naval forces of Russia and Turkey in the Black Sea, (*c*) respecting the Aland Islands—were subsequently published in a White Paper, but the Declaration was not included. There is no official record of any instructions sent to the British Plenipotentiaries, nor of any references by them to the Cabinet. There does, however, exist in the Public Record Office a despatch from Lord Palmerston to Lord Clarendon, dated the 13th April, the day before the 23rd meeting of the Congress at which the Declaration was approved and signed, which was as follows :—

LORD PALMERSTON TO LORD CLARENDON.

Foreign Office,
13th April 1856.

MY LORD,

I have the honour to transmit to your Lordship a copy of the Draft of the Declaration respecting Maritime and Neutral Rights, which you forwarded to me on the 11th instant, and I have to state to Your Lordship that Her Majesty's Government concur in the substance of this proposed Declaration, provided that Amendments which are suggested in the Margin be made in it. Her Majesty's Government do not think it advisable to state in the Preamble, as strongly as it is stated in the proposed Draft, the assertion that the maintenance of those principles of Maritime Law for which in times past Great Britain has invariably contended, must be a permanent cause of disturbance in the relations between Neutrals and Belligerents, and the word "calamities" seems needlessly strong as applicable to the differences which opposite opinions in regard to these questions have in time past produced. It may no doubt be politic for Great Britain to give up for the future doctrines of Maritime Law which she has in times past contended for, but Her Majesty's Government should not in doing so cast any censure upon the former course of the British Government, nor admit that the course which they are prepared to take upon a balance of advantages and disadvantages is forced upon them by necessity.

Again, it would not be correct to say that a Declara-

tion of principles such as is now proposed could alter the Law of Nations. That Law rests upon foundations wider and deeper than the occasional Declaration of a few States, and it could not be altered except by some agreement much more general and much more formal than the proposed Declaration; and it would be dangerous for Great Britain to admit that such a Declaration issued by the representatives of a small number of States could alter the Law of Nations. An example thus set and a precedent thus established, by the consent and participation of Great Britain, might hereafter upon other occasions be used for the purpose of establishing Doctrines of International Law to which Great Britain might have the strongest possible objection and repugnance.

It is desirable not only that the Declaration should be communicated to other States, but that the States to which it shall be communicated shall be invited to accede to it, and it is highly important to record that the principles thus proclaimed shall not be applicable to the relations of the Declaring Powers with States which shall not have acceded to the Declaration.

This despatch gives us an insight into what the preamble to the Declaration as originally drafted contained, and we may appreciate the nature of the surrender which Lord Clarendon proposed to make. It must be conceded, however, that he was consistent. The adoption of the new principles, not as a politic concession, but in recognition of the neutral assertion of right, could not be based on any other ground than that the maintenance of the English principles of maritime law must be a " permanent cause of disturbance in the relations between neutrals and belligerents " ; that their adoption in our former wars had produced " calamities " which must be laid to the charge of the Governments of the day, and that necessity now forced England to abandon them.

It is clear, moreover, that Lord Palmerston did not contemplate any permanent alteration of the Law of Nations.

In connection with the dates of the meetings at which the Declaration was discussed at the Congress, some information was given in the House of Commons on the 3rd July 1898, in answer to a question put by Mr Gibson Bowles, which is difficult to follow. The Attorney-General stated that the draft was received in London on the 7th April 1856, was at once submitted to the Queen, and her approval signified to Lord Palmerston on the 8th. It was only on the 8th that Count Walewski made

his proposal to the Congress, and Lord Palmerston's despatch of the 13th appears to indicate that the draft it refers to was the first that had been received. The dates given in the answer of the Attorney-General must have been inadvertently inaccurate.

III

The Debate in the House of Lords.

Neither the Treaty of Peace nor the Declaration stirred the House of Commons; but in the House of Lords the Treaty was discussed on the 5th May, and on the 22nd Lord Colchester moved the following resolution in regard to the Declaration :—

> That the most eminent Jurists of all ages have accepted as a Principle of International Law that the Right of capturing an Enemy's goods on board of Neutral vessels is inherent in all belligerent Powers; that the Maintenance of this right is of essential Importance, and its Abandonment of serious Injury to a Power whose main reliance is on her Naval Superiority:
>
> That Great Britain consequently, although occasionally waiving the Exercise of the Right by Specific Treaties, has invariably refused to recognise the Abandonment of a Principle which successive Governments have concurred in considering identified with her national Greatness:
>
> That this House deeply regrets that a Principle so long and so strenuously maintained should in the recent conferences at Paris have been suddenly abandoned without the previous knowledge or sanction of Parliament by Plenipotentiaries assembled for the purpose of discussing the terms on which Peace with Russia might be concluded and the Affairs of the East satisfactorily adjusted.

The interest of the debate centres in two speeches, Lord Clarendon's defence and Lord Derby's reply. The only light thrown at the time on the reasons which prompted the action of the Government is to be found in the former; we should therefore be able to extract from it some idea of what were supposed to be the merits of the principles, especially "free ships free goods," embodied in the Declaration, and the reasons which had induced Lord Clarendon, as he confessed to Lord Shaftesbury, to wish permanently to modify the principles of the Law of Nations.

The constitutional principle involved must first be briefly referred to. The Foreign Secretary defended the action of the Government in not submitting the Declaration to Parliament: first, because it is the right of the Crown to conclude treaties without the previous knowledge and consent of Parliament: secondly, because it is the prerogative of the Crown to sanction a Declaration of this kind, and it does not require the ratification of Parliament. Lord Derby concurred, and declared that no one had asserted or maintained the contrary. Some people undoubtedly did so at the time, and the point has been raised on many occasions since. The question involved is exceedingly complicated, and it will be more convenient to postpone the consideration of it till the time comes to review all the legal questions involved in the Declaration. It is sufficient for the moment to say that the first principle laid down by the Foreign Secretary is inaccurate because it is incomplete, and gives an insufficient view of the scope of the treaty-making prerogatives of the Crown; and that the second does no more than beg the question raised by the criticism of the Government's action.

Of the speech itself it is difficult to speak in terms of restraint. First, there are some passages which, in relation to the subject with which they deal, become mere sequences of words. Thus in answer to the assertion that the right to seize enemy goods on neutral vessels is necessary to our safety as a great maritime Power, Lord Clarendon said:—

> But if you affirm this doctrine, you must do so in an absolute and unconditional sense—you must give it no limitation either as to place or time—you must accept it everywhere and for ever; and this I cannot but think would be a most unwise and injudicious proceeding where change is the visible law of society, and where everything is rapidly undergoing variation around us; more particularly would it be unwise and injudicious to take such a course with respect to a matter which the noble Lord himself admits has been repeatedly altered to meet the exigencies of the times, and against which all the great maritime Powers of the world have constantly and consistently protested.

The reply might have been given that Lord Clarendon was urging the House to affirm the doctrine that "free ships make free goods" in an absolute and unconditional sense, giving no limitation either as to place or time, accepting it everywhere and for ever. It might have been contended that this would be a most unwise and injudicious proceeding where everything is rapidly undergoing variation around us, especially in regard to naval armaments, more particularly with respect to a matter

against which the greatest maritime Power of the world had constantly and repeatedly protested.

Again, referring to the anxiety of the neutrals to know whether we intended to maintain our former practice, he said:—

> Almost daily inquiries were addressed to me by the representatives of the neutral Powers, and though I certainly cannot say that the maintenance of our former rule would have led to another "Armed Neutrality," it was quite plain that we should have stood alone in the world—we should have had every other maritime Power against us, and most properly so—because we should have been maintaining a law which was contrary to the public opinion of the world, which was hostile to commerce, and as unfavourable as possible to a mitigation of the evils of war. We should not only have stood alone in the world—but it was quite clear that we should have been at war not only with Russia, but with every other maritime Power in the world; or, if not actually at war, in a position of most unpleasant character with other nations, and especially with the United States.

Apart from the confusion of ideas which is reflected in the construction of the sentence, the question is inevitable: After the answer to the Scandinavian Powers in January, was there any such anxiety among the neutrals? Whatever fate had in store for British merchants, the neutrals at least were safe.

Secondly, there are curious inaccuracies, some verbal, as in the statement, "we have never been at war as anything but a principal"; and some wanting in grip of the true meaning of the right of seizure at sea, as in the statement, "If the neutral fulfils the obligation of neutrality, we have no claim to interfere with him. Were it otherwise, in the late war we should have been justified in sending an English fleet to Memel to demand all Russian property that might happen to be there; or the French in marching an army into Belgium to seize all Russian property at Antwerp."

Thirdly, there are many weak joints in the argument. That remarkable composition, the *Consolato del Mare*, which has so largely influenced all States in the settlement of their principles of maritime law, was passed over merely as "a treatise written in the Provençal tongue in the thirteenth century"; and Grotius himself was summarily dismissed as a jurist of no weight. His defence of the principle of seizing enemy goods on neutral ships must be set aside, because some jurists have defended the right

of belligerents to put women to death, to kill prisoners after surrender, and to torture captives before a besieged town in order to induce it to submit. When Lord Derby challenged this statement as futile, Lord Clarendon explained that what he meant to say was that Grotius "had recognised the right laid down in the *Consolato del Mare* without assigning his reasons for doing so"!

Fourthly, the central point of the speech was the analysis of the treaties in which England had agreed to "free ships free goods," which was evidently based on Sir William Molesworth's speech in 1854.[1] The fact that we had never gone further than conceding the right to the other party to the treaty, when we were at war, accepting the reciprocal right in return, was ignored. We were said to have been parties to thirty-two international engagements in which the principle was adopted. The point that in no treaty had we ever given to *all* neutrals the right to carry our enemies' goods free, and so adopted the principle, was ignored. Yet one such treaty, but only *such* a treaty, would have been a precedent for what had been agreed to at Paris. The same criticism applies to the remark, also borrowed from Sir William Molesworth, that "in the course of the last two centuries a hundred and thirty international engagements have been made between the principal Powers of the world, in all of which, with eleven exceptions, the rule 'free ships free goods' was contained." Not one was referred to in which the principle was adopted in its full significance; nor any of the many in which the old practice had been adhered to.

From this most superficial analysis of the subject Lord Clarendon's deduction was, "that in time of war, and in the heat and animosity of war, men lay aside this principle and resort to extreme and violent measures; but that when at peace, and under the influence of reason and judgment, they never hesitate to declare that that should be the rule of all civilised nations." Yet it may be remarked that the *Consolato del Mare* was framed "under the influence of reason and judgment," and the nations never hesitated to adopt it as the wisest rules of war, until the professional neutrals found the maxim paid them better and pressed it on the belligerent nations. But, assuming the facts to be accurate, if any inference is to be drawn from them, it is that nations at war know what war means, and ignore the ideas which the student and the philosopher conceive in peace to be those on which war *ought* to be conducted.

Everything in the past, however, which favoured the principle of seizure was brought within the ban as a relic of barbarous

[1] See p. 83.

times ; every argument which favoured the principle of freedom of enemies' goods was adduced as worthy of the great object of modern civilisation, to mitigate the miseries of war. Then, as he had done in his speech in 1854, he glided from the fact of seizure to the persons who were authorised to seize—"the buccaniers" : "We even give licences to buccaniers to seize the property of peaceful merchants on the ocean."

There was confusion of thought even on this most easy point of attack against existing practices. So long as privateering was kept distinct from the other matters dealt with by the Declaration the point was a good one. The time *had* arrived when privateering ought to be, and to remain, abolished ; the excesses of the privateers justified the action of abolishing it in the name of humanity.

So far as the neutrals and their contentions were concerned, Lord Clarendon disposed of the history of England during the last hundred years in one short sentence : "They have reason and justice on their side." As the speech reads, the neutral protests which Lord Clarendon applauded were against the violation of the neutral flag by privateers. He intended to refer to their protests against the seizure of enemy property on their ships, which was the real point of attack.

One conclusion only can be come to after this analysis of the speech : that Lord Clarendon was not a master of the details of his subject. The "good and sufficient reasons" which had induced the Cabinet to approve of the signature of the Declaration are but the thin and unsubstantial longings for something which stirred the minds of men who refused to face the realities of war, and in support of which, begging the question in issue, they invoked the name of humanity and the demands of civilisation.

Further, there were two notable omissions in the speech. First, Lord Palmerston's instructions of the 13th April were not only not referred to, but were almost deliberately ignored, for nothing that Lord Clarendon said had any relation to the points emphasised in the Prime Minister's despatch. Secondly, a close and impartial review of the working of the new principle during the war should have been made ; it was the only way in which the merits of the new principle could be tested. It was useless in 1856 talking about the commercial humanitarianism of a doctrine which allowed the neutrals to protect our enemies' goods from seizure, without seeing what the practical results of it had been during the years 1854 and 1855. The time had passed for vain imaginings ; realities stared the Government in the face. Unless debates pass into the air, and

Hansard is a sealed book, this fact must have been known—that the extremists had found a new merit in the principle: it allowed trading with the enemy in defiance of the ancient law. The real issue was shirked, and in the House of Commons no one took sufficient interest in the subject to raise debate.

But there is something stranger still in Lord Clarendon's speech. Having made it plain that at the commencement of the war the only wise and rational course was for each of the allies to abandon its extreme doctrines, he said: "And now, my Lords, let me ask, having once waived these rights, was it possible, or was it prudent, for us to restore them?" Yet when the Declaration to the neutrals in 1854 was challenged, a great parade was made of the fact that there had only been a waiver "for the present," and that this did not amount to a surrender! It had been, as we have seen, the Government case from the very beginning of the discussions. Mr Milner Gibson, on the 17th March 1854, had declared: "We make no surrender of principle; we do not deprive ourselves of the power of exercising these extreme rights whenever we think fit, by not allowing them to be exercised now." "To waive for the present a right," said Sir William Molesworth, on the 4th July 1854, "and to surrender it are two quite distinct things." "Not waiving any of those belligerent rights for which Great Britain had contended in former wars," said Mr Cardwell, on the 20th February 1855, "but suspending a part of them during the continuance of the present conflict on motives of policy." Lord Stanley of Alderley, on the 15th May 1855, referred to the Order in Council of the 15th April 1854 as a document "whereby we waived but did not abandon" the right of seizure.

Lord Clarendon's plea for what was done in 1856 is taken up by Mr Evelyn Ashley, the apologist: "It was evident that the principle of seizure once abandoned could never be revived; the concession to neutral rights once made could never be withdrawn."

But if it is "evident" that the permanent was bound to follow the temporary abandonment, the alternatives were very plain: either the position which resulted from the concession ought to have been foreseen when it was made in 1854, but was not; or it was foreseen, and the whole thing was deliberate. This question must be asked: Was there no one in the Queen's Councils in 1854, when the matter was being discussed, with sufficient foresight to put this question to the zealots for the new doctrine in the Cabinet, "Having once waived these

rights, will it be possible, or will it be prudent, for us to return to them ? "

Only one other sentence in Lord Clarendon's speech calls for brief comment : " I can tell your Lordships that it was not a very easy matter to accomplish." The protocols of the Conference scarcely seem to warrant this statement.

Many Lords spoke during the debate ; among them the Earl of Carnarvon, " with a degree of power and ability " which drew from Lord Derby well-merited compliment. He hit the manifest blot in Lord Clarendon's speech, the confusion of the question of privateering with the concessions to the neutrals. " They stood upon an entirely different footing, although it might be easy to confound them, and to represent an opposition to extravagant concessions to neutrals as a defence of privateering." The Lord Privy Seal, the Earl of Hardwicke, thought—so vague were the Ministers themselves as to what they had really assented to—that even in the Declaration of Paris we had only waived our belligerent right of seizure, not abandoned it. But the interest centres in Lord Derby's own speech, which stands as a beacon above the flood of two years of talk. Against the thin philosophy and the vague appeals to civilisation and humanity, against the inaccuracies of fact and inference, he set the stern necessities of war, and the facts of England's history. His text was that the adoption of the principles of the Declaration involved the abandonment of the naval superiority of the country, and that the terms of the agreement were not known before they were agreed to. The need for secrecy was imperative : " I should like to know what arguments were used by the noble Earl, and what conditions were made for the surrender of these rights ! " The protocols were fresh from the printers : there were no reasons, no arguments in them. Reasons, which gravely weighed the consequences, have never been given from that time to this. So far as the abolition of privateering was concerned, Lord Derby accepted it cordially and willingly as a concession to humanity ; but it was not a boon to England, or the equivalent for the abandonment of her principle of seizure. If it were resorted to by all, none would gain more or suffer less than England.

Dissecting Lord Clarendon's defence, Lord Derby pointed out that the claim that humanity demanded the freedom of enemy goods on neutral ships was answered by the well-known fact that the doctrine of right had not been heard of till Frederick the Great put it forward, in 1752, in defence of his refusal to pay the last instalment of the Silesian loan.

As to this, there are two sentences in the Law Officers'

Report in reply to the Prussian *Exposition des Motifs* which are pregnant with meaning :—

> Before the year 1746, the Prussians do not appear to have openly engaged in covering the Enemy's Property.
>
> From 1746 the Prussians engaged in the gainful Practice of Covering the Enemy's Goods; but were at a loss in what Shape, and upon what Pretence it might best be done.

This suggestion was not made without full consideration: the "Pretence" was that free ships, as a matter of right, and not merely as a matter of mutual agreement, make free goods.

Since then there had been many advocates of the novel doctrine; but, continued Lord Derby,

> when the noble Earl put the question on the score of humanity, I am tempted to ask, whether the noble Earl is not laughing at the credulity of his hearers? Was it the regard which Catherine of Russia felt for the principle of humanity, that induced her to raise the question? Was it humanity which induced the other continental States to follow her example? If it was humanity at all, it was humanity for themselves. Let us have no more of this talk about humanity. Let us look at the question as it really is, as a question of policy—a question which of our undoubted rights it is for our interest to maintain, and which we may safely abandon?

From this record of historical fact two alternative deductions were drawn: by Lord Clarendon and his supporters, that if we persisted in maintaining our principle of seizure we should be alone, facing and irritating the neutrals; by Lord Derby, that in times past "we have been alone, and yet maintained and upheld the doctrine against a confederacy of opponents, as the ægis of our power." That is the clear issue, and the Government case was only cumbered by confused notions of civilisation at last triumphant over the age of barbarism. The opposition of the neutrals was dwelt on as a sufficient reason for abandoning our ancient principle: the reason for that opposition, which is the lesson of a hundred years of history, was glozed over: the consequences of the abandonment were ignored. Pitt and the statesmen of that day knew what those consequences would be, and they were not afraid to stand alone against all the world in arms. The principles which Pitt maintained were reasserted by Canning in 1827, when he refused to ratify a treaty concluded with Brazil on the ground that it contained an article abandoning the right of seizure.

The question of policy Lord Derby put to a very practical test. England was a naval and not a military Power; omnipotent at sea, it is true, but, without allies, impotent on land. Where should we have been in a war with Russia, having abandoned the principle of seizing enemy goods on neutral ships, if we had not been assisted by the French military force? The only power we could have brought against Russia was naval power, and if that had been unsupported by military assistance, what impression should we have made upon Russia up to this moment? If we had not had the assistance of the greatest military Power on the earth, we would not have signed a peace for the next ten years, unless it had involved humiliating concessions. Or suppose—which God forbid!—that a war should arise between England and France, what means should we have of opposing France, except closing her up hermetically, and stopping her commerce? What should we do?

> You cannot blockade the whole coast of France; but you can practically prevent her from sending out one single bale of merchandise. Your new law permitting French goods to go with impunity on board neutral vessels comes into operation; you have no blockade; France gives up her whole commercial marine; she makes her vessels into vessels of war; she has seamen to man them; and, before your very face, she carries on her whole commerce under the Prussian or American flag. You are powerless. Your power is gone. Your right arm is cut off. Your only means of defence are abandoned, and abandoned at the suggestion of France. Was there ever a Minister so led by the nose? Was there ever a Minister who so deliberately walked into the trap set before his face, and so tamely and gratuitously surrendered the foundation of England's greatness?

In the case of war with the United States the position would have been even graver, for, though the United States was not a party to the Declaration, France would be entitled to the benefit of it, and could carry the goods of the enemy free.

This argument put the case in the smallest possible compass: we had adopted the principle of "free ships free goods" because, with a military Power as an ally, we might do so with safety in this war. Without such an ally, the case for the new principle vanished.

> France and England are the two greatest Powers of Europe, and God forbid that they should be separated. United, they may secure or they may imperil the peace of the world; but separated, they each have their peculiar

> means of offence and defence. The means of France is her army ; and the main resort of England must always be to her navy, whether it be to defend her own coasts from aggression, to which, thank God, she has hitherto been a stranger, or to enforce her rights upon foreign nations. By the navy you must do it, and the more you circumscribe the power of that navy, the more you weaken the strength and influence of the country.

These are hard, substantial facts, and amply justify the rhetoric of Lord Derby's denunciation of "the humiliating Clarendon Capitulation of Paris"—that it was "cutting off the right arm, as it were, of the country." "I look upon it," he said, "as depriving her of those natural advantages which her great maritime power has given her in war, and of the exercise of that superiority and those belligerent rights, without which she is nothing. If she remains not mistress of the seas, she falls immediately and naturally into the position of a third-rate Power." [1]

The right to seize enemy goods on neutral ships was accepted by all jurists of earlier days, was recognised by all jurists of modern times, and had been upheld by every statesman of importance in this country down to the latest, and it was reserved for the Party then in power to throw it away, "although Pitt and Grenville and Canning successively declared it to be the mainstay of the naval power of England."

In one brief sentence Lord Derby summed up the long story of England's attitude on the question of the neutrals through the stormy periods of the Armed Neutralities. She had not been afraid to stand alone against a world in arms.

That attitude inspired the glowing pen of Mallet du Pan to a longer tribute than Lord Derby's to the greatness of the manner in which she faced the hostile world. I have placed it on the first page of this series of books. It will bear quoting a second time.

> Des malheurs, des ressources, des dangers renaissants, une puissance ébranlée mais terrible encore au milieu de ses désastres, un courage opiniatre et l'apparence de toutes les vertus publiques au sein de la corruption politique ; tel est le tableau que continue d'offrir l'Angleterre. Tous les efforts possibles à un empire, l'or, les hommes, les vaisseaux, les intrigues, tout est employé pour succomber avec gloire ou pour triompher en se ruinant. L'histoire n'offre pas un

[1] To achieve this was the motive, expressed by De Vergennes' *Considérations,* for France aiding the United Colonies in the War of Independence ; see *Documentary History of the Armed Neutralities,* Document No. 4, C

premier exemple d'une nation de dix millions d'individus attaquée dans les quatre parties du globe par une ligue redoubtable et resolue à faire face partout, sans que les défaites, les dissipations, le vide d'hommes, le poids des subsides et celui des emprunts, fassent chanceler la constance de ses conseils. Cet étonnant spectacle est-il l'effet d'un entêtement d'orgueil ou celui d'une magnanimité encouragée par le souvenir de succès et par l'estime de soi-même ? . . . Surchargée de taxes, endettée de deux cents millions sterling, déchirée par l'esprit de parti, amollie par l'opulence, corrompue par la soif de l'argent, obligée de transporter l'élite de ses forces à deux milles lieues d'elle, comment donc l'Angleterre n'est-elle pas écrasée par l'effort de ses ennemis ? Comment, menacée ainsi que le fut Venise, par tous les prophètes politiques, d'une ruine inévitable, n'a-t-elle perdu depuis quatre ans que des établissements secondaires ? Je ne parle pas des colonies, elle ne lui appartenaient déjà plus lorsque la France leur a prêté son secours.

C'est que les véritables nerfs de sa puissance ont encore tout leur ressort. Sa marine est entière, son commerce préservé, l'illusion de son crédit subsistante, mais surtout ses ennemis sans concert. Au lieu de se consumer en promenades sans objets ou en tentatives aventurées, la flotte de la Manche a été tout l'été en mouvement pour veiller sur le retour des richesses du commerce. Elles attestent combien peu la guerre les a diminuées, et l'opulence de la nation au milieu des dissipations du trésor public. Dans l'espace de deux mois, nous avons vu cinq flottes marchandes verser dans les ports d'Angleterre les tribus de tout l'univers, et insulter, par leur rentrée à quatre puissances dont les forces n'ont pu leur fermer la route de la Tamise.—(*Annales Politiques,* t. iii, pp. 71, 72.)

Two curious points remain to be noticed.

In the circulars sent to the English and French diplomatic agents abroad instructing them to notify to the neutral Powers the Declaration of 1854, stress was specially laid on the necessity for their good behaviour. In his despatches to Count Walewski, M. Drouyn de Lhuys had pointed out that although the rights were suspended during the war, the allies would reserve to themselves the right of withdrawing this suspension if occasion arose. In his *Mémoire*, too, he gives the true meaning of the emphasis which was to be laid on the correlative neutral duty of preserving their subjects in strict neutrality. The benefits of the Declaration would remain " pourvu qu'aucune fraude n'appelât sur eux la sévérité des belligérants."

By the absolute statement of the new principles in the Declaration of 1856, this reservation of power to revert to the old practices was abandoned.

The acceptance of the Declaration of Paris was not mentioned in the Queen's speech proroguing Parliament, on the 29th July 1856.

IV

The Powers which Adhered to the Declaration.

The Powers which had not been represented at the Congress were invited, as arranged, to adhere to the Declaration, and it was accepted by a large number almost immediately, in June, July, and August 1856.[1]

Most of the adherences were conveyed to the French diplomatic representative in letters more or less ornate; a few—the Argentine Confederation, Ecuador, and Switzerland—at once took the constitutional steps necessary to make the Declaration operative. In the first case, a special law was passed authorising the President to adhere; in the two other cases, the legislature of the State itself adhered by a special decree. There seems to be no official information as to whether such steps were taken by the other States.[2]

The Government of Sweden was unable to resist the temptation to remark that the four principles " ayant de tout temps été reconnu et défendu par la Suède, qui, dans mainte occasion, s'est efforcée à les faire triompher," it could have no hesitation in recognising their justice and utility.

The Government of Brazil pointed out that the signatory Powers ought to complete their beneficent work by declaring that merchant vessels, without exception, should, under the protection of maritime law, be immune from the attacks of men-of-war. This declaration was made at the instance of the United States.

It is to be noted that the invitation to adhere was given to all Powers which had not been represented at the Congress, no distinction being made between maritime and non-maritime nations. In the same way, although the invitation to attend the deliberations of the Naval Conference in London, in 1908, was limited to the great maritime Powers—Germany, Spain, France, Italy, Russia, Japan, Austria, the United States, and

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[1] The terms in which the adherences of the different Powers were given will be found in Document No. 19.

[2] It appears from the correspondence relating to the Franco-Prussian War in 1870, that a law had been passed in Prussia giving effect to the Declaration. M. Delbrück, the President of the Federal Office, " stated that there was no occasion to repeat the recognition by Prussia of the principles agreed to under Protocol 23 of the Treaty of Paris, for they have been embodied and published as a law in Prussia, giving them thereby the validity of an act of legislation."—(*Extract from despatch of Lord A. Loftus to Earl Granville, Berlin, 23rd July* 1870.)

afterwards Holland—all other Powers were to be invited to adhere. On this certain questions of principle of considerable importance arise.

In paragraph 5 of the despatch of the 27th February 1908,[1] conveying the invitation to this Conference, a sentence occurred which is liable to misconstruction: "The rules by which appeals from national Prize Courts would be decided affect the rights of belligerents in a manner which is far more serious to the principal naval Powers than to others." Whether this was a formal recognition of the fact that the right of a belligerent State is higher in the scale of values than the right of the neutral merchant, or was intended to be no more than an indication that among naval Powers the rules, when formulated, would affect the greater naval Powers far more seriously than the smaller ones, need not be determined. The fact is that only naval Powers who might be described as potential belligerents took part in the discussions, and the potential neutrals, although, like Sweden and Denmark, some of them were maritime Powers, were not invited to the Conference, but were only to be asked to adhere. Looking at the question quite dispassionately, it is impossible to deny that it would have been better for such professional neutrals as the Scandinavian Powers to have joined in the discussion.

It is true that the Powers who were represented considered all the questions from the twofold point of view, as belligerents and as neutrals in future wars; but the impression left on the mind after reading this despatch is that the code of rules to be drawn up by the Conference would practically amount to a statement of the manner in which these nations, when belligerent, intended to deal with the neutrals during war. The motive underlying the calling of the Conference was to arrive at an agreement as to what are "the generally recognised principles of international law," or, in their absence, what are "the general principles of justice and equity" applicable in given circumstances; but the right to adhere to an elaborate series of complicated rules, upon many of which, as it turned out, the Powers represented at the Conference could not come to an agreement, was not a satisfactory substitute for taking a share in forming them. The result, if the question had gone further, might have been that certain rules of naval policy and practice agreed to by certain Powers, to be acted on by them as belligerents, might not have been accepted by other Powers not parties to the Declaration, when neutral.

[1] "Correspondence and Documents respecting the International Naval Conference held in London," Misc. No. 4, 1909.

In the absence of an unanimous statement of represented Powers, concurred in by all non-represented Powers, that a certain rule was a rule of international law, or was " in accordance with the general principles of justice and equity," the result of the Conference could only have been a convention to which many Powers were parties, but to which some Powers were not. It is difficult to see how, in these circumstances, the property of the subjects of a neutral non-adhering Power could have been legitimately affected.

It is constantly overlooked that all the rules of naval policy and belligerent practice are two-edged, affecting the neutral as well as the enemy; and therefore non-maritime Powers are entitled to a voice in their settlement, because, though they have no ships which may be searched or seized at sea, their subjects may have property on board ships of other nationalities which are liable to confiscation. The adherence of Switzerland and of all the Balkan States was as necessary to the Declaration of London as that of the Scandinavian Powers, or of France or England.

The fact is that there is no method by which the rules of " international law," as they are commonly understood, can be forced on non-adhering Powers. One State by standing out can wreck the aspiration of the mass. The criticism which, with great deference, I make of the proceedings of the London Conference is that, in spite of the reference to " the general principles of justice and equity " in the invitation, the application of these principles to secondary details was considered rather than the nature and quality of the principles themselves. There was no statement of, much less was there any attempt to enunciate, those " wide and deep foundations " of the Law of Nations of which Lord Palmerston wrote in his despatch to Lord Clarendon of 13th April 1856. Until these primary principles are determined, agreement as to secondary rules based on them is unlikely. It was difficult without concessions to get ten Powers to agree to such a simple rule as that " a vessel carrying contraband may be condemned if the contraband, as reckoned either by value, weight, volume, or freight, forms more than half the cargo " (Art. 40 of Declaration of London); there is little hope of forcing that rule on twenty others who have not taken part in the discussion. There is great hope that an agreement might be reached as to what are the fundamental principles on which much more complicated rules ought to be based.

This brief critical survey of the method adopted at the London Conference has an obvious bearing on the great ques-

tion of the moment—the settlement of principles, which all hope will be the ultimate settlement, to be presently undertaken at the coming Conference. I now revert to the question of the adherences to the Declaration of Paris.

Owing to the rigorous condition attached to adherence, that all the four principles must be accepted as one and indivisible, three States, it is commonly said—but in reality four—stood out: Spain, Mexico, and Venezuela,[1] each of which declined to accept the abolition of privateering; and the United States. Spain ultimately adhered on the 18th January 1908, and Mexico on the 13th February 1909. The United States has still not adhered; nor, it is believed, has Venezuela.

But, even with these reservations, Count Walewski was not justified in reporting to the Emperor[2] that "tous les Cabinets ont adhéré sans réserve," for the list of adherences which he gave, and which is, with some slight modifications, the same as that given in the *State Papers* and Hertslet's *Commercial Treaties*, does not include many of the South and Central American States. Nor are any of the countries included in which foreign jurisdiction is exercised, such as China and Persia. Japan adhered on the 30th October 1886,[3] as soon as she had recovered her independence.

Some of the American Republics adhered in an indirect manner later, by means of treaties with Italy, and some with France. These will be referred to presently.

A graver omission was the failure to provide for certain processes constantly in operation in the world's government—absorption and disintegration of old States, and the formation and recognition of new States. When Sweden and Norway separated, both Powers declared that henceforth they would hold themselves severally responsible for all conventions and obligations concluded prior to 1905.[4]

All the German States adhered, but there does not appear to be any record of the formal adherence of the Empire.[5]

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[1] Venezuela is not usually referred to as a non-adherent Power, but the statement in the text is made on the faith of the Table of Adherences in Sir Edward Hertslet's *Map of Europe by Treaty*, vol. ii. p. 1284. As Librarian of the Foreign Office he is not likely to have made a mistake in such a matter.

[2] Document No. 19.

[3] Document No. 19.

[4] *State Papers*, vol. xcviii. p. 834.

[5] In the diplomatic correspondence of 1870, already referred to (p. 135), there is another letter, from Count Bismarck to Lord A. Loftus, stating that the laws laid down in the Declaration "are legally valid throughout the whole of the States of the North German Confederation" (*State Papers*, vol. lx. p. 924).

So all the Italian States adhered, but there is no record in the *State Papers* of Italy's adherence.[1]

Among the new or newly recognised States there is no record of the adherence of any of the Balkan States subsequent to their independence. In regard to these, the question was neither difficult nor new. When in the extension of her Empire Great Britain undertakes the obligations of a new Protectorate, a common form has come to be adopted in the Order in Council applying to it certain standard Imperial statutes, which contain the necessary authority for this expeditious procedure—such are the Foreign Enlistment Act, 1870, the Fugitive Offenders Act, 1881, and many others. It is curious that in spite of the importance which has been attached to it as a document of international obligation, some such common form was not recommended for adherence to the Declaration of Paris in the constitutions of new States.

The point has also been overlooked in the British Protectorate Orders in Council ; and thus Zanzibar and other British Protectorates have not adhered. And yet, constitutionally, they are independent States, whose foreign relations are under the guidance of their Protecting Power, Great Britain: and the merchants of Zanzibar are as entitled to a voice, even though it be vicarious, in questions affecting, say, their consignments of ivory, as the merchants of Switzerland whose consignments of clocks are affected.

The adherences with which we have been dealing are usually assumed to have been to the Declaration as a whole—that is to say, to the four principles, together with the supplementary conditions,—that they are one and indivisible, and that no treaty which was not based on them in their entirety should be entered into by any adherent Power. Some of the letters in which adherence was notified contained express reference to these

[1] This statement is borne out, up to 1861, by correspondence which passed between Washington and Turin in that year, relating to a proposed convention between the United States and Italy for the suppression of privateering and the immunity of private property at sea. The Italian Minister pointed out that his Government had not yet become a party of the Convention of 1856. He had no objection to negotiations proceeding based on the American proposals, but he intimated that the final decision of the Italian Government would be influenced by that of England and France. Later in the year, in September, the American Minister was instructed to ascertain whether Italy would enter into negotiations for the accession of the United States to the Declaration of Paris, and, if so, he was to enter into a convention in the form of the original proposal. In November the matter was dropped in consequence of the refusal of the British and French Governments to accept the adherence.—(*State Papers*, vol. li. p. 107 *et seq.*)

supplementary conditions. But Lord Clarendon's mediation principle lay outside the Declaration, and an express adherence to it was necessary. Some States accepted it and some did not. I have availed myself of the list of States which adhered given by Sir Edward Hertslet in his *Map of Europe by Treaty*,[1] and have printed it among the Documents.[2]

Indirect Adherences to the Declaration.

(A) *By Treaty with Italy.*

Reference has been made to certain treaties concluded with Italy and France, which, although they were not technically adherences to the Declaration by the other Contracting Parties, would appear, by the adoption of the four principles, to have achieved the same result.

Taking those concluded with Italy first in order, in the treaties with *Honduras* (1868) and *Guatemala* (1868) the article dealing with the subject is stated to be "as a complement" to the Declaration: for this reason, that in addition to the four principles "which are accepted without reservation by the two Parties in their mutual relations," the immunity of private property is also accepted "in case of the misfortune of a war between them"; but it is subject to the maintenance of the right of preventing, "by a suitable manifesto," all trade and communication between any part of the shores of their own territory and merchant ships navigating under a hostile flag, and of confiscating ships transgressing the interdiction.

The treaty with *Siam* (1868) "recognised the principles" established by the Declaration, and followed the same lines as the previous treaties.

In the case of the *Sandwich Islands* (1863), the four principles are adopted simply as "enunciated in the Declaration." In the case of *Salvador* (1860), the principles are adopted in the mutual relations of the two Parties without special reference to the Declaration. They are only to be applied to the Powers which recognise them equally; this, of course, includes all the adherent Powers.

In the treaty with *Venezuela* (1861) and with *Costa Rica* (1863) a different form is adopted. "The two High Contracting Parties adopt in their mutual relations the principle that the flag covers the merchandise"; but it is limited in its application to enemy goods (and persons) on board neutral ships.

[1] Vol. ii. p. 1284.

[2] Document No. 19, at end.

XIV. The two High Contracting Parties adopt in their mutual relations the principle that the flag covers the merchandize. If one of the two Parties should remain neutral, while the other is at war with a third Power, the merchandize carried by the neutral flag shall be reputed neutral, even though belonging to the enemy. Nevertheless all articles reputed contraband of war are excepted.

It is likewise agreed between the Contracting Parties that the freedom of the flag secures the freedom of persons, and that individuals belonging to the hostile Power, found on board a neutral vessel, cannot be made prisoners, unless they be military in service of the enemy.

The same principle is adopted in the treaty with *Mexico* (1870).

The conclusion of these three treaties seems to be at variance with the stipulation made by the declaring Powers, that no treaties should be signed by any adhering Power "qui ne repose à la fois sur les quatre principes."

In the treaty between Italy and *Uruguay* (1866) the subject is not referred to; but Art. XI. recognises broadly the right of one party to continue its commerce and navigation with the enemies of the other party, except to blockaded ports.

(B) *By Treaty with France.*

Two of the South American Republics concluded treaties with France on similar lines to those with Italy above referred to.

In the case of *Salvador* (1858), the four principles are adopted simply, with an extension to persons, and, as in the case of the Sandwich Islands treaty with Italy, they are only to be applied to the Powers which recognise them equally, thus including all the adherent Powers.

In the case of *Peru*, the principles are adopted with express reference to the Declaration, but it is followed by an article explaining their application in detail.

In the case of the treaties with the *Dominican Republic* (1852), *Honduras* (1856), and *New Granada* (1856), the principle that the flag covers the merchandise is adopted to its full extent; that is to say, neutral property on enemy ships is to be treated as enemy.

The following is the article in the *New Granada* treaty :—

XX. Les deux Parties Contractantes adoptent, dans leurs rélations mutuelles, le principe que "le pavillon couvre la marchandise." Conséquemment si l'une des deux Parties reste neutre quand l'autre est en guerre avec une autre Puissance, les marchandises couvertes du pavillon neutre seront aussi reputées neutres, même quand elles appartiendraient aux ennemis de l'autre Partie Contractante. Il est également convenu que la liberté du pavillon assure aussi celle des personnes, et que les

individus appartenant à une Puissance ennemie, qui seraient trouvés à bord d'un bâtiment neutre, ne pourront pas être faits prisonniers, à moins qu'ils ne soient militaires et pour le moment engagés au service de l'ennemi. En conséquence du même principe sur l'assimilation du pavillon et de la marchandise, la propriété neutre trouvée à bord d'un bâtiment ennemi sera considérée comme ennemie, à moins qu'elle n'ait été embarquée sur ce navire avant la déclaration de guerre, ou avant qu'on en ait connaissance dans le port d'où le navire est parti.

Les deux Parties Contractantes n'appliqueront ce principe, en ce qui concerne les autres Puissances, qu'à celles qui le reconnaîtront également.

It is difficult to account for this article in the last two of the three treaties mentioned above, as they were ratified after the Declaration of Paris was signed. They not only infringe the stipulation that no treaty should be signed by an adhering Power which was not based on all four principles, but they also contain the "enemy ships enemy goods" principle, which was in direct opposition to the 3rd principle of the Declaration.

This article is to be found in many of the earlier treaties between France and the South American Republics:—*e.g. Ecuador* (1843), *Guatemala* (1848), *Costa Rica* (1848), *Venezuela* (1843).

V

The Refusal of the United States to Adhere.

The United States declined to adhere, answering the invitation in a long memorandum from Mr Marcy, the Secretary of State. This should be known as "the Second Marcy Note,"[1] in order not to confuse it with the First Note sent in 1854[2] on receipt of the Declaration to the neutrals at the beginning of the war.

It may be divided roughly into two parts: that in which it sets out very clearly and remorselessly all the weak points of the Declaration; and that which is devoted to the advocacy of privateering, and the immunity of private property at sea.

The Note sets out with a grievance, and it can hardly be denied that it was a very real grievance. The United States Government had, over two years previously, as indicated in the First Marcy Note, submitted the 2nd and 3rd principles —that the neutral flag covers enemy goods; that neutral goods

[1] Document No. 21. [2] Document No. 8 J.

are not seizable on enemy ships—to the maritime Powers in order to press their adoption as permanent principles of international law. Four Governments had accepted them, but others had preferred to wait till the termination of the war. But the action of the plenipotentiaries at Paris had annihilated these negotiations by making the four principles indivisible, and prohibiting the adhering Powers from entering into any convention on the subject of neutral rights which was not based on them.

Had the intentions of the Congress been more carefully drafted, it is probable that these two subordinate conditions, formulated in the 24th protocol,[1] would have been included as part of the Declaration. But the point taken by the United States was not sound, for the 24th protocol was as effective, or as ineffective, as the 23rd;[1] and, therefore, no nation was free to decide whether it would accede entirely or partially to the actual Declaration. But the result of the condition of indivisibility was that a nation was debarred from the right of accepting the two propositions proposed by the United States, establishing the freedom of the cargo irrespective of the fate of the ship, thereby assuring many advantages to neutral commerce which could only be obtained subject to too great a sacrifice—the abandonment of a right hitherto never contested, which might, so the United States contended, be regarded as essential to the freedom of the sea, privateering.

It was further pointed out that the 4th principle—that blockade to be recognised must be effective—hardly came within the class of questions with which the Congress was concerned, for this had not recently been regarded as uncertain or as being the cause of "deplorable conflicts." The disputes, it was insisted, which had arisen as to blockade were always as to the facts, not as to the law. What is meant by a force really sufficient to prevent access to the enemy's coasts had been frequently and vehemently discussed, and the Declaration, by simply repeating an uncontested principle, had not removed any of the embarrassment of determining what is a sufficient force to make a blockade effective. This question was, therefore, left as open after the Declaration as it was before. Nations which had resorted to "paper blockades" had rarely, if ever, attempted to justify them on principle; had generally admitted their illegality, and paid compensation to the injured parties.

Special stress was then laid on the importance of the right of privateering, which was as justified by usage as the right to use men-of-war, or as any other principle in the maritime code. Few nations had ever hesitated to avail themselves of

[1] Document No. 17.

it ; and in two treaties only had the contracting parties agreed to abstain from their use—in 1675, between Sweden and the United Provinces, though, when they were at war a short time afterwards, the provision was ignored ; and in 1785, between the United States and France : but the clause was omitted when the treaty was renewed in 1799. During the last fifty years no step had been taken to abolish the right ; and it was, the United States considered, much to be regretted that the Congress, in assuming to put an end to differences of opinion between neutrals and belligerents, should have destroyed a principle as to which there was no difference of opinion. The Congress should have foreseen that, while in regard to three of the principles there would have been no serious objection from any side, in regard to the fourth there would have been a vigorous opposition. The United States relied on Valin's justification of the right, published in 1681, and Pistoye and Duverdy's, published in Paris at the very time the Congress was sitting. Reasons should have been given for insisting on this principle and altering the law, though probably the Congress had adopted the common ones generally advanced, such as that the extension of Christianity had mitigated the severities of war ; that Governments wage war, and individuals have no right to take part in it unless authorised by their Government.

The dominating principle in land warfare, the Note continued, is that non-combatants and their property must be respected ; pillage is against the usages of to-day. It was presumed that the keen desire to improve the cruel customs of war by exempting individual property at sea from enemy seizure, as it is exempt on land, was the principal reason why the Congress had declared privateering abolished. On this point the President's views are expressed in his message to Congress of the 4th December 1854, when he dealt with the proposition which had been made to abolish privateering.[1] He pointed out that the proposition was based on the principle that the private property of non-combatants ought to be exempt from the ravages of war. But the abolition of privateering would carry us very little way towards the establishment of this principle, which would also exempt private property from molestation from men-of-war. If the principal Powers of Europe would agree to the immunity of private property at sea, the United States would agree to the abolition of privateering. Mr Marcy was authorised to assent *avec empressement* to the principle which exempts private property on sea as on land. But the proposition to abandon privateering at sea could no more be accepted than one oblig-

[1] Document No. 15.

ing a State to renounce volunteers on land. If private property might still be seized by warships, it was difficult to see why it might not be seized by privateers, which, after all, are only another branch of the public armed forces of the State. No sane principles of logic could justify the distinction; no one was capable of drawing the line between them. The abuses of privateering had been exaggerated; for no nation which authorised privateers would omit to take necessary steps to prevent abuses. If the distinction were established, it would rest with each nation to declare which vessels are war-vessels; the predominant maritime Powers would make this distinction to their own advantage, and weak nations should firmly resist the creation of such a power, and interpose barriers to encroachments of this nature. The United States considered the maintenance of large armed maritime forces as dangerous to the national prosperity, and a danger to civil liberty; their cost as a burden to the people, and a constant menace to peace. A considerable army always ready for war is a powerful temptation; the United States policy had always been against it, and it would not consent to a change in international law which would compel it to maintain in peace a powerful regular army or navy. If forced to maintain her rights by arms she would limit herself to relying on voluntary troops by land, and on the merchant marine for the protection of her commerce. In resisting the attempt to alter maritime law the United States laid its views before all those nations who did not look to become dominating maritime Powers, and whose interests were the same as those of the United States. The protection of commerce and the maintenance of peaceful international relations cried aloud to them as to her to resist the change proposed in the Law of Nations. For them the abandonment of privateering would be accompanied by disastrous consequences, without any corresponding advantages. It was not surprising, therefore, that powerful maritime nations desired to see it abolished; for that nation which had a decided naval superiority would be the absolute master of the ocean. Such a Power at war with a nation inferior at sea would not have to trouble itself to look after its commerce, but only to hunt the enemy's ships, which could easily be held in check by half its naval forces; the other half would sweep the ocean for its enemy's commerce. This would be worse if the superiority at sea were divided between three or four Powers. The fatal consequences of any great inequality in naval forces would be redressed by privateers. The ocean is the common property of all nations; and instead of lending its aid to a measure which would probably give to a few, or

perhaps one, a preponderance on the seas, every State should obstinately use all means in its power to defend its common heritage. A Power predominant on the ocean is even more dangerous than one predominant on land. The damage resulting from the abandonment of the command of the sea to one or more strong naval Powers would arise chiefly from the liability of private property at sea to seizure. The President, therefore, proposed to add to the proposition abolishing privateering the following, "and private property of the subjects of one belligerent Power shall not be seized by the vessels of the other, unless it be contraband." Thus amended, the proposition, as well as the three others, would be accepted. He adhered to the other three independently of the first, if the amendment were not accepted. He thought there could be no serious opposition to his proposal. If the amendment were not adopted, the signatory Powers should agree as to what treatment they would accord to privateers coming to their ports. The United States would claim that consideration which they accorded, and which was accorded by international law before the Congress tried to alter it.

Then followed a suggestion that the Plenipotentiaries should consider, as a kindred subject, the claims of the neutrals to a modification, if not to the abandonment, of the doctrine of contraband of war. Nations which preserve their peaceful relations ought not to be injured in their commercial relations by those who have chosen to go to war, so long as neutral citizens do not compromise their neutral character by direct intervention in military operations. The law as to sieges and blockades seemed sufficient to satisfy all the demands of belligerents. If this suggestion were adopted and really observed, the right of search, which had been the cause of so much inconvenience and damage to neutral commerce, would be limited to cases of reasonable suspicion of trading with besieged or blockaded places. Humanity and justice demanded that the calamities resulting from war should be strictly limited to the belligerents, and those who voluntarily participate in it; and, on the other hand, that neutrals who abstain in good faith from this participation should be left free to carry on their ordinary commerce with either belligerent, without restrictions in respect to the articles dealt with.

This document has a very definite relation to the discussion which shortly afterwards took place between the United States and the British Government when the question of the adherence of the United States to the Declaration of Paris was revived.

But, beyond this, it has an importance in what may be called the intellectual development of the subject. No one can deny that there is considerable force in the reasoning which supported privateering ; it is put forward with confident and characteristic assurance ; and it is worthy of note that belief in the system did not immediately die out in England with the doctrinaire statement of the Declaration that " privateering *is* abolished." In 1875, in the Preface to his edition of *Ward's Treatise on Maritime Law*, Lord Stanley of Alderley, a distinguished peer who took part in the debate of 1856, and President of the Board of Trade, regretted the decision of the Congress of Paris on this matter. But the United States Government overlooked the real reason which had compelled the decision of the Congress, and which could no longer be ignored : that, however logically defensible in theory, privateers had become the scourge of the world's wars. And as for its simple faith in punitive measures, no country was more willing to adopt them, or to acknowledge their failure, than England. Chatham had tried them during the Seven Years' War, when " the action of our privateers was outrageous beyond endurance," when " there was a swarm of smaller privateers in the Narrow Seas who were not to be distinguished from pirates." Nothing but the most strenuous exertions, penalties imposed by administrative action, penalties by Act of Parliament, cajolery by Government, pay in return for submission to naval discipline, restoration of prizes, enabled him to pacify the neutrals.[1]

Nor does this exhaust the importance of the document. It deals, but as subordinate to the main proposition, with the doctrines of immunity of private property at sea, and the assimilation of the principles of sea and land warfare ; and indicates the re-emergence from the Napoleonic past, in the language of the Napoleonic speeches, of these much more sweeping doctrines which, by their plausibleness, seemed specially suited to please the humanitarian mind. They thenceforward figured largely in all debates in Parliament.

So much emphasis is laid in this Marcy Note on the principle of immunity of private property at sea that it is important to discover when the United States first adopted it. We have a fairly certain guide in the treaties which had been concluded at this period on its own initiative.

There is no reference to it in the First Marcy Note. The United States was then concerned principally with the permanent

[1] See Sir Julian Corbett's *England in the Seven Years' War*, vol. ii. p. 6.

adoption of "free ships free goods," and expressed the hope that the provisional adoption of it by the Allies for the purposes of the war might lead to the much-desired result. To this end it had embarked on negotiations with the Powers, proposing that conventions should be entered into recognising the freedom both of enemy goods on neutral ships and of neutral goods on enemy ships. Four Governments had accepted, but others had preferred to wait till the termination of the war. Three of these consenting Powers must have been Russia, the Two Sicilies, and Peru, with which treaties were concluded on the 22nd of July 1854, 13th of January 1855, and 22nd of July 1856 respectively.[1] The fourth is uncertain, as no other treaty is mentioned in the *Collections* as having been concluded by the United States at this period. M. Drouyn de Lhuys refers in his *Mémoire* to the fact of negotiations being in progress in 1854, and threatened to revive them if an agreement were not reached with the British Government.[2] It was suggested by Lord John Russell, in a despatch in 1861,[3] that the proposal made by the United States to France included the adoption of immunity of private property. The treaty was not, however, concluded.

These three treaties are all on the same model. The two principles are laid down, and the parties agree to apply them—that is, when they are at war—to all Powers which adopt them "comme permamente et immuable." Further, they reserved to themselves the right to agree later (*ultérieurement*), according as circumstances may require, on the application and extension which should be given to these principles. Nevertheless they declared that they would adopt them as rules whenever the question of appreciating the rights of neutrality arose. It was further agreed that all nations which should agree to observe these principles by a formal declaration, should enjoy the rights resulting from this accession in the same manner as the Contracting Parties to the treaties. Steps would be taken to bring about the accession of other Powers.

The two principles are enunciated in these treaties in their simple form, and there is no suggestion of the larger principle of the general immunity of private property at sea. It would seem, therefore, that the doctrine was not advocated by the United States Government till the Second Marcy Note was presented to the Powers in 1856.

On 14th July 1857 a motion was made by Mr Lindsay for copies of Mr Marcy's letter to the French Government upon

[1] Document No. 16.
[2] See p. 66.
[3] Document No. 24 (1).

the subject of privateering, and of any other correspondence between the British Government and other Powers on the same subject. There was an obvious objection to laying on the table of the House correspondence which had passed between two foreign Powers, and on Lord Palmerston's suggestion the motion was withdrawn. In view of a certain speech which he had made at Liverpool the previous year, after the conclusion of peace—which was referred to in a debate which occurred some years afterwards, to be dealt with later—it is important to note his statement on this occasion, that the proposal to exempt private property at sea from capture required long and mature consideration. But it appeared that the new Government of the States had intimated that no answer to the Marcy Note was asked for, and therefore communications on the subject had been suspended. The reason for its withdrawal was not stated.

Lord Palmerston added, with regard to the other question raised by the Note, that it was difficult to apply the same rules to sea as to land warfare, more especially as the practice in land warfare varied in different countries.

1860–1862

I

The Report of the Horsfall Commission on Merchant Shipping, 1860.

The direct discussion in Parliament of the Declaration of Paris ceased for some time after 1857; but the interest of the shipping world in the question naturally persisted, and a Select Committee of the House of Commons was appointed to report generally on questions affecting merchant shipping, among them belligerent rights at sea. Mr Horsfall was appointed chairman. The Report was issued in 1860, and the section in which this question is examined [1] shows the trend of the commercial mind at that period, more especially in regard to the refusal of the United States to adhere to the Declaration. The Committee considered that the refusal was not surprising,

> for the United States has obtained a recognition of the rights of neutrals for which she contended throughout a former period of hostilities; and Great Britain has surrendered her rights without any equivalent from the United States. Our shipowners will thereby be placed at an immense disadvantage in the event of a war breaking out with any important European Power. In fact, should the Declaration of Paris remain in force, during a period of hostilities, the whole of our carrying trade would be inevitably transferred to American and other neutral bottoms.

This opinion was supported by reference to the fact that

> at a recent period, upon a mere rumour of war in Europe, in which it was apprehended that Great Britain might be involved, American and other neutral ships received a decided preference in being selected to carry produce from distant parts of the world to ports in Europe, whereby even in a period of peace British shipowners were seriously prejudiced.

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[1] Document No. 23.

The conclusion arrived at was that international law cannot remain in its present state ; for if England were involved in any great European war, the United States would almost certainly be neutral, " and then our great maritime rival would supplant us in the carrying trade."

A somewhat curious state of things was supposed to have come about. " International law " had been remodelled by the adoption of the principles of the Declaration, but the United States had stood out ! This would, the Committee thought, in the event of war, " produce complications highly disastrous to British interests."

An alternative remedy was proposed : either there must be complete immunity for all merchant ships and their cargoes during war, or

> we must revert to the maintenance of our ancient rights, whereby relying upon our maritime superiority, we may not merely hope to guard unmolested our merchant shipping in the prosecution of their business, but may capture enemies' goods in neutral ships, and thus prevent other nations from seizing the carrying trade of the kingdom during a state of hostilities.

The question needed further consideration ; but as matters stood the Committee were in favour of the first alternative, because they believed that " in the progress of civilisation and in the cause of humanity, the time had arrived when all private property, not contraband of war, should be exempt from capture at sea."

There seems to be a hiatus in an argument which found that British interests, the progress of civilisation, and the cause of humanity all depended on the same principle which Bonaparte adopted in his effort to destroy British commerce.

The Committee was largely composed of shipowners whose interests centred in the carrying trade ; but there seems to have been some misconception as to the meaning and effect of the Declaration, and as to the consequences of the United States standing out. Her position was a curious one. If she herself went to war she would not be expected to observe the principle " free ships free goods," though she had repeatedly expressed belief in it, and her willingness to act on it—as, indeed, she did during her war with Spain in 1898. But in the event of England going to war with another Power, the United States remaining neutral, the refusal to adhere would deprive her of the benefit of the principle.

According to the then current interpretation of the Declara-

tion (insisted on by Lord Palmerston in 1862), it "related entirely to the relations between belligerent and neutral," and not to the relation of belligerents to each other. If this were true, the position of the United States in such a war, even assuming the enemy to be an adherent to the Declaration, would be far from satisfactory. Her ships carrying enemy property would be liable to be seized by England; possibly also by the other belligerent. It is difficult, therefore, to follow the contention that she would obtain the carrying trade from other neutrals to the enemy. Taking, however, the true view of the Declaration, that it affects the relations of belligerent to belligerent as well as of neutral to belligerent, then the United States would obtain the privilege of free carriage of enemy goods, and the resultant carrying trade through the adherent enemy, although she herself had not adhered. But this destroys the intention of adherence, for the United States would get the benefit without it. It seems probable that the Committee took this view of the Declaration, though they did not express themselves very clearly. The value of their opinion, therefore, depends on the very questionable assumption that when we are at war it is possible for us to obtain some share of the carrying trade of the world, either of neutral to neutral, or of neutral to the enemy.

The shipowners deprecated the idea that they spoke only in their own interests, recognising that the interests of the whole community are involved in the prosperity and security of our merchant shipping. But the national interest in merchant shipping during war is a far larger question; so momentous are the decisions which must be taken in regard to it, that we now see that the supreme direction and control of it in all its parts, whether for the purpose of transport of troops and munitions, or for maintaining the national supply of necessaries of life, or for preserving our friendly relations with the neutrals, must be in the State. We now realise that the Merchant Service is but a branch of the Royal Navy. From this point of view the shipowner and the interests of his shareholders stand in no more favourable position than the proprietor of any other means of transport, or than the owner of the goods transported. On this larger question the Report of the Committee throws no light. War had not at that time assumed sufficiently gigantic proportions to make men realise its paramount importance.

II

Questions and Answers in Parliament, 1861.

On the 18th November 1861, Mr Horsfall asked the Government whether steps had been taken to carry out the recommendations of the Committee.[1] The answer was apparently in the negative, for Lord John Russell said that as the Treaty of Paris had been concluded the discussion with the United States, apparently on the Second Marcy Note, had not been continued. It had, in fact, been discontinued at the express request of the United States Government. But Lord John Russell took occasion to discuss the recommendations of the Committee, John Bright ineffectively raising the point that a discussion of such a nature was not in order in answering a question. Lord John said, when the matter was under discussion with the United States, that Lord Clarendon appeared to be unfavourable to the immunity of private property at sea. The United States seemed now to have gone a step further, contending that the blockade of commercial ports or the interruption of trade by blockade ought not to be permitted. In Lord John Russell's opinion this would compel the belligerent with the superior naval power to forego the advantages of her navy, and thus prolong the war, and lead to the employment of the enemy mercantile fleet for purposes of war. He recommended, therefore, the greatest caution in taking any final step with regard to the question.

Early in April 1861, the Civil War in America broke out. On the 15th, President Lincoln called out the militia in order to suppress the combination in the Southern States which had opposed the execution of the laws; on the 17th, Jefferson Davis issued a proclamation inviting applications for letters of marque and reprisal; and on the 19th, Lincoln proclaimed the blockade of the ports of the Southern States, "in pursuance of the laws of the United States and of the Law of Nations in such case provided."[2] On the 2nd and 6th May questions relating to the blockade were asked in the House of Commons. Lord John Russell said that this raised points in the Law of Nations so new that the opinion of the Law Officers had been asked for, and we were still in doubt as to what alterations were to be made in the Law of Nations in consequence of the

[1] Document No. 23.

[2] Mountague Bernard, *Neutrality of Great Britain during the American Civil War*, p. 80.

Declaration of Paris. On the 7th May, Mr Horsfall having given notice of a motion as to the action to be taken on the Report of his Committee, Mr Walpole suggested its withdrawal on the ground that the discussion at that time would not be in the public interest. Lord Palmerston agreed that a postponement was advisable. The Law Officers had advised that the Southern States should be treated as belligerents. He added that further questions arose out of that question, with respect to which the Government was still in doubt—repeating Lord John Russell's words—" as to what are the alterations which are to be made in the Law of Nations in consequence of the Declaration of Paris." Those questions were of a difficult and intricate nature, were still under the consideration of the Government, and would be further considered before any declaration was made to other Powers. Mr Horsfall thereupon agreed to postpone his motion.

III

The United States and the Declaration of Paris during the Civil War, 1861.

During the American Civil War of 1861, the parts which the different nations had been accustomed to play were reversed. The decision of the European Powers to recognise the Confederate States of the South as a belligerent made their position fundamentally different from that occupied by the non-belligerent States during the American Rebellion. So much turns on this that it will be well to made the point clear. Mr Hall [1] devotes an interesting chapter to the subject, and to an examination of the precedents, as also Sir William Harcourt in the first series of *Letters of Historicus*. The point which specially concerns us is that recognition of rebels as belligerents involves two important consequences: the acquisition by them of the rights and duties of a belligerent, and by the non-belligerents of the rights and duties of neutrals—and these consequences are made to depend on the decision of the non-belligerents. They may, and in fact do, ignore the wishes, it may be the rights, of the parent State, which may still call the seceding party " Rebels." The important fact is that with the recognition of them as belligerents their own status of " neutral " comes into existence. Otherwise there are no neutrals in a civil war.

It is obvious that a serious question is thus raised between

[1] *International Law*, 7th ed., pt. i., chap. i. pp. 39–43.

the parent State and the non-belligerent Powers. It led to great bitterness in the discussions between the Federal Government and the European Powers, represented by Great Britain and France. It might lead to war. The conclusion of treaties of alliance with rebels might be argued to be a legitimate form of recognition, might equally be a legitimate cause of war. It was, in fact, one of the reasons which led to the war between England and France at the time of the American Rebellion; it was the assigned cause for the English declaration of war against Holland. That was not, however, "a case of recognition" of the American Colonists as belligerents—a question which does not seem to have been raised; it was a recognition of their independence. The greater included the less. But whereas it seems to be agreed that the recognition of rebels as belligerents must be accepted by the parent State, which is bound to submit to the consequences, their recognition as an independent State need not be acquiesced in. Strictly speaking, it puts the recognising Powers *in pari delicto*, and would justify their being treated as enemies, to the ignoring of their pretension to be neutrals. This was the position assumed by Great Britain throughout the whole of the War of Independence; the North America Act [1] declared that the ships and cargoes of those who traded with the rebel Colonies would be treated as belonging to enemies.

In one of the despatches from Paris, to be presently referred to, the French Government asserted that Great Britain "although treating at the commecement of the American War letters of marque as piracy, had, after a time, recognised the belligerent rights of the States in rebellion against her." [2] This assertion was not replied to, but its accuracy may well be doubted.

To revert to the Civil War. With the recognition of the Confederate States as belligerents the European Powers became neutrals, and looked, on behalf of their merchants, to reap the benefit of the aspirations which had been expressed at the Congress of Paris. The point which specially concerns us is the attitude of the North, that is to say, of the United States Government, towards the Declaration of Paris.

The *Cambridge Modern History* states [3] that on the 20th April Mr Seward, the Secretary of State, instructed the American Minister in Europe to offer the adhesion of the United States to the Declaration, and that Great Britain and France agreed to accept it with the reservation that it should not affect the

[1] 16 Geo. III., c. 5.
[2] Document No. 24 (3).
[3] Vol. xii. p. 16.

existing war. It is further stated that the United States issued no letters of marque, and the Confederate States very few.

With deference, these facts need revision, for they do not tally with those recorded in the White Paper issued by the British Government. The statement that the United States took the initiative in offering its adhesion to the Declaration is not borne out. The heading to the series of published despatches is " Correspondence relative to the Overtures addressed to the Contending Parties in the United States, with a view to their adhesion to the Principles of Maritime Law as laid down by the Congress of Paris in 1856 " ; [1] and this will be found to be the accurate description of the negotiations. In considering these despatches, allowance must be made for the time occupied by the transit of the mails.

The first despatch, from Lord John Russell to Lord Cowley, British Ambassador at Paris, is dated the 6th May 1861 ; and it is evident from its terms that no proposal had at that time been received from the Federal Government. Its tenor was that no despatches had come from Lord Lyons, Minister at Washington, by the mail just arrived ; but that the accounts received from the Consuls were sufficient to show that a civil war had broken out. The British Government, looking at all the circumstances of the case, could not hesitate to admit that the Confederacy was entitled to be considered as a belligerent, and the attention of the French Government was to be called to the bearing which this unfortunate contest threatened to have on the rights and interests of the neutral nations. The circumstances referred to were President Lincoln's declaration of blockade of the Southern ports, and President Davis's declaration of his intention to issue letters of marque for cruisers to be employed against the commerce of the North. The maritime Powers, more especially France and England, should therefore consider whether they would not invite the contending parties to act upon the 2nd and 3rd principles of the Declaration of Paris, to which the United States had not acceded. In practice, however, they had, in their Conventions with other Powers, adopted the 2nd principle, although admitting that without some such Convention the rule was not one of universal application. By these principles enemy cargoes were to be free on board neutral ships, and neutral cargoes free on enemy ships.

> It seems to Her Majesty's Government to be deserving of consideration whether a joint endeavour should not now be made to obtain from each of the belligerents a formal

[1] A selection from this correspondence is set out as Document No. 24.

> recognition of both principles as laid down in the Declaration of Paris, so that such principles shall be admitted by both, as they have been admitted by the Powers who made or acceded to the Declaration of Paris, henceforth to form part of the general law of nations.

The French Government replied that as these two principles had always been advocated by the United States, and that as France and the United States were agreed on these maritime questions, it would be difficult for either party in America to refuse assent to the principles now invoked.

In a despatch of the 18th May to Lord Lyons, reference is made to a recent letter from Mr Seward intimating that foreign advice was not likely to be accepted—would, in fact, be resented; and also to the fact that negotiations in regard to the adherence to the Declaration of the United States had been broken off in 1857, and had not been renewed. It was, however, presumed that, in view of its previous attitude towards the principle, the United States would agree to adopt "free ships free goods." With regard to the abolition of privateering, which was the cause of the United States withholding its adherence to the Declaration, it was necessary to consider what is required by the general law of nations. The commander and crew of a ship bearing a letter of marque must carry on hostilities according to the established laws of war. The British Government must, therefore, hold any Government issuing such letters responsible for, and liable to make good, any losses sustained by British subjects in consequence of wrongful proceedings of vessels sailing with them. In this way the object of the Declaration of Paris might, to a certain extent, be attained without the adoption of any new principle. These points were to be urged upon Mr Seward.

The question was again referred to in another despatch of the same date. The British Government would gladly see the practice, which is calculated to lead to great irregularities, and to increase the calamities of war, renounced by both the contending parties in America, as it had been renounced by almost every other nation in the world; but

> you will clearly understand that Her Majesty's Government cannot accept the renunciation of privateering on the part of the Government of the United States if coupled with the condition that they should enforce its renunciation on the Confederate States, either by denying their right to issue letters of marque, or by interfering with the belligerent operations of vessels holding from them such letters of marque, so long as they carry on hostilities according to the recognised principles and under the admitted liabilities of the law of nations.

In a further despatch of the 21st May, Lord John Russell refers to a conversation he had had on the 18th with Mr Adams, United States Minister, who said he had powers to negotiate as to the adherence of his Government to the Declaration; but that as instructions had been sent to the French and English Ministers in Washington, he would leave the matter in the hands of the Secretary of State.

From this it appears that although instructions had been sent to Europe to offer adherence, the offer was not, in fact, made; and that the initiative was taken by England and France, who, as the most powerful maritime States, took the lead, presumably with the concurrence of the other Powers.

Cross-currents in diplomatic relations seem to have then set in, for on the 12th June Lord John Russell wrote to the Paris Embassy that he had been informed that the United States had proposed to France to accept the first principle of the Declaration, relating to the abolition of privateering, coupled with a provision protecting private property at sea from capture, but had stipulated that the Southern privateers should be considered as pirates. England had objected to both suggestions, and France also. With regard to the first, its effect would be greatly to reduce the power in time of war of all States having a military as well as a commercial marine; as to the second, its evident object was to lead the two Powers to take a decided part against the Southern Confederacy, and they had no intention of abandoning their neutral character.

This despatch gives us the keynote to the whole correspondence, and shows clearly the reasons for its failure to achieve anything—the intense irritation of the United States at the recognition of the Confederacy—the "Rebs"—as belligerents. Thenceforward in every step taken, and in every despatch written from Washington, may be traced the unalterable determination to destroy if possible the consequence of that recognition. As belligerents the South would have the right, so vehemently contended for in the "Second Marcy Note,"[1] to commission privateers. If they were not belligerents the privateers would be pirates, and, without any Declaration of Paris, the European Powers, under their own municipal laws, as well as under international law, would be bound to take their own measures for dealing with them.

On the 4th June Lord Lyons wrote that he had proposed to the United States that they should adhere to the two principles. He added that probably Mr Adams would have already offered the larger adherence, subject to the question of piracy,

[1] Document No. 21.

but suggested that it came too late. Had it been offered immediately on the appearance of the Southern notice to issue letters of marque, action might have been taken to induce the South to abandon the idea; but the privateers were now in full activity, and with considerable success. He doubted whether Congress would now ratify the abolition of privateering, and probably would not abide by the proposal made to France, when it found that it had nothing to gain by it.

On the 21st June Lord John Russell informed Lord Lyons that the United States Minister at Paris had proposed to France the adoption of the Declaration, basing himself on Mr Marcy's answer to the request of the Powers in 1856. France agreed with us that the proposal should be rejected. Lord John asked Mr Adams whether he had similar instructions with regard to Great Britain. He had answered, No. And on the 17th Lord Lyons reported that Mr Seward declined to receive communications founded on the recognition of the South as belligerents; and objected also to France and England acting in concert. He had pointed out that the United States had always admitted the 2nd and 3rd principles of the Declaration, and accepted responsibility for acts of privateers to whom it had issued letters of marque. Mr Seward considered that these principles were as applicable to operations against rebels as to regular war.

On the 17th June Lord Lyons reported a further step by Mr Seward. He thought he had reason to complain that the Governments of Europe had taken no notice of his offer, made long ago, to adhere to the Declaration without reserve; he preferred Mr Marcy's proposal, but if that were not acceptable he was ready to adhere as it stood, and Mr Adams was to be instructed to say that he was willing that negotiations should be carried on either in London or Washington without delay. It is not very clear to what offer "made long ago" Mr Seward referred. On the 11th July, apparently in consequence of these instructions, Mr Adams referred Lord John Russell to his conversation of the 18th May, when he had intimated that he was instructed to offer the adhesion of the State to the 2nd, 3rd, and 4th principles, but to drop the 1st (abolition of privateering). He was now instructed to offer and present a project of convention which included all four principles. Lord John pointed out that this would not amount to adherence, but he was content to waive the point if the convention was to be entered into with all States; and to avoid delay, he would be satisfied if the one with France were ready.

Meanwhile, during July and August, the Confederate States had been brought into line. They recognised the 2nd and 3rd

principles of the Declaration, and admitted responsibility for privateers. The question of blockade was of no practical importance in their case, as they had no fleet.

The discussion with the North proceeded on the lines of adherence to Mr Marcy's propositions; or, failing this, of adherence pure and simple. But Lord John Russell annexed to the Declaration an undertaking that it would have no bearing, direct or indirect, on the internal differences in the States. This obviously ran counter to the idea that by the adherence the Powers would be compelled to treat the Southern privateers as pirates. On the 23rd August Mr Adams sent a long despatch arguing the point; but Lord John would not withdraw his stipulation, and instructions were sent to Mr Adams to break off negotiations. In December Lord Lyons wrote that the object of the accession would have been defeated by the stipulation, and that refusal to consider the Southern privateers as pirates after adherence would have been treated as a cause of quarrel.

So ended the negotiations. There is, however, one point of interest which does not seem to have been discussed: whether, after the recognition of the Confederacy as belligerents, the acceptance of the adherence of the North would have been possible. Certainly the object which the North had in view would not have been achieved, for the Southern States could not have been both belligerents and pirates. This was probably the meaning of Lord John Russell's undertaking; but it might have been more clearly expressed, and the point definitely and directly answered. On the other hand, the recognition of the Southern States as belligerents was not a recognition of their independence, and therefore there could have been no question of their adherence. Thus the negotiations proved infructuous. But they were well conceived from the point of view of a Government which had accepted the principles of the Paris Declaration, being directed merely to the adherence of both belligerents to two of those principles. The idea of the North that it could adhere to the Declaration after war had been declared was ill-conceived, and was no more than an endeavour to escape the consequences of the recognition of the South as belligerents. Further, the idea that the cumbrous method of independent conventions could be effectively substituted for simple adherence was still more so. But the important point with which we are chiefly concerned is that at the close of the war the position of the reunited United States was precisely the same as it was before. In spite of an earnest belief in, and constant adoption of, two of its principles, the result of the provision that

adherence meant the definite acceptance of all four, was that the United States had not put itself into the position of an adherent, and therefore could not claim the benefits and privileges of the Declaration.

IV

The Debate of 1862.

There was one last debate before the question ceased to engage the attention of Parliament; an inevitable debate in view of the American Civil War, and the amount of contraband trade and blockade running which had sprung up. On the 11th March 1862, Mr Horsfall had been given to understand that nothing was to be done to carry out the recommendations of the Committee; he therefore brought on the motion which had gone into abeyance the year before: "That the present state of international maritime law as affecting the rights of belligerents and neutrals is ill-defined and unsatisfactory and calls for the early attention of His Majesty's Government." The motion was seconded by Mr Cobden. It was ingeniously drafted, because it allowed men of all shades of opinion to support it—those who thought the Declaration of Paris had gone too far, and those who thought it did not go far enough. There was a full-dress debate which lasted two nights, with the result that the motion was, by leave, withdrawn.

The extremists who followed Mr Horsfall advocated the immunity of private property at sea, as the Committee had done in their Report, "in the name of the commerce of the country, in the name of civilisation, humanity, and justice." But the motion, even if carried, would not have committed the House to the adoption of any concrete proposition; and it was doomed to failure, for no Government which had recently and definitely adopted a certain code of principles, which had still more recently pressed them on the belligerents in a war, could be expected to admit that the present state of the law was "ill-defined"; and the only "attention" which Her Majesty's Government could give to it would be the calling of another Conference—at the moment obviously out of the question. The only possible answer then to attacks on the Declaration by those who thought it went too far, was given by Lord John Russell, who himself shared that opinion—"We must abide by it." To have abandoned it at the first outbreak of war,

within five years of its signature, would clearly have been a signal breach of faith.[1]

It is easy to criticise many years after the event; but there appears to have been an obvious line of attack for those who believed that Pitt had not resisted in the teeth of Europe these "new-fangled doctrines" for nothing, who were convinced that the fortunes of the nation had been put in jeopardy by the Clarendon capitulation, and the prestige of its name tarnished. The case surely was not very difficult to deal with logically. Certain questions of maritime law had been, as it was thought, in the language of Count Walewski, elucidated, principles had been laid down, intentions had been expressed, *enfin*, certain declarations had been made, always and uniquely with the object of assuring, for the future, the repose of the world. That repose had been disturbed within a very short time; war had suddenly broken out in a quarter least expected. No one could be said to be satisfied with the practical results of the new principles. Neither belligerent would accept the first; the fourth had been deliberately set at naught, with the acquiescence of the European Powers, by Lincoln's blockade with quite ineffective forces; merchants were far from pleased with what they considered the high-handed measures taken by one of the belligerents, and the Foreign Office was besieged with complaints. The very thing which English Ministers of the time so feared, the risk of offending the neutral United States, had been deliberately run—the United States being at war, and England being the neutral. Even in March 1862, these things were already manifest; it was not likely that the tension all round would diminish as the war developed. Was it not possible to wait for the end, and then, in all seriousness, without any expressed desire to impose one theory or another upon the world, to move the Government to call a Congress to inquire whether the principles, and the intentions, and the declarations, had stood the rough test of war and fulfilled the expectations which

[1] Mr C. W. P. Bentinck suggested the abandonment of the Declaration, describing it as a "solemn farce," impossible to be carried out. Lord John Russell, who had been a member of the Aberdeen Ministry in 1854, expressed the deliberate opinion that in point of principle the Declaration ought to be altered, and that the consequences were so serious as to show that it was very imprudent. While agreeing that we could hardly do otherwise than carry on the war on the same principle as France, he, like Lord Derby, would like to have heard some statement of the grounds for entering into the convention at the end of the war, when we were not under the necessity of making any concession. The state of the question was to some very alarming; but he did not see that a breach of faith would at all mend our position, and he was afraid that we must be bound by it.

enthusiasts had formed of them ? Such a notion made at the proper time could not have been refused. As it was, the debate was nothing more than a confused babel of sound, signifying and achieving nothing. It is impossible to give a consecutive analysis of it, for speaker followed speaker, not answering him, but only throwing fresh words into the hotch-potch of talk. Principles were asserted without argument ; arguments advanced supporting no recognised principle ; and the result, except for one memorable speech, nothing. That speech was John Bright's. Many men spoke with varying degree of ability, and all the old arguments were repeated, some defending the Declaration, some attacking it. Sir Roundell Palmer, the Solicitor-General, stood judicially between the two parties, and expressed the opinion that even with the Declaration " round our necks " he placed as much faith as before " in the patriotism, the resources, and the elasticity of the country."

Sir George Cornewall Lewis started an unnecessary and extremely debateable point, which startled and annoyed men of both sides : that the Declaration being a treaty, would cease to be binding in the event of our going to war with one of the signatories. This point will be considered in the Second Part of this volume.

John Bright's speech was conspicuous for its statesmanship. It was a fair-minded expression of his extreme view. There were no strained appeals, only an occasional reference, to " humanity " and " civilisation." As a " friend of peace," glorying indeed at the jibe which had been thrown at him a thousand times, his constant demand was that, in the name of humanity, all wars should cease. But the impression that his speech leaves upon the mind is that, given the existence of war, he recognised that " humanity " had no special claim to be thrown into the balance against its being successfully waged. He frankly admitted that the principles he was advocating were in the teeth of all the ancient theories of war. But he did not denounce those theories as " relics of barbarism," nor the new theories as " more suited to the times in which we live." He wished his creed to be judged on its merits ; and his creed was, not " commerce at any price " and everything sacrificed to its interests, but that the beneficent influence of commercial intercourse would soften the asperities of men's political intercourse ; and, in spite of the Crimea, in spite of the American Civil War, he believed that war would become more difficult notwithstanding the enormous armaments, and continuous war more remote. " Our commerce," he declared, " is so extensive, and its force so mighty—I will say so omnipotent—that it is utterly im-

possible that the ancient theories and the ancient policy of war can any longer be maintained." He looked forward to the time when " the commercial interests of mankind will assert the superiority to which they have a right over those tendencies to war which in time past, and even now sometimes, act too strongly on the minds of statesmen and rulers. . . . I think we are looking from the darkness into the dawn."

In natural sequence to this line of thought he believed that to rob war of one of its most potent weapons—the right to destroy private property at sea—would tend necessarily to reduce its field of operations, and so its length. In his eyes indeed the " victories of peace had begun " by the acceptance of the Declaration of Paris. In his summary of it he stated its principles with brutal frankness; and he put the consequences of it, almost exultingly, before the House in a way in which its advocates never had the courage to do. The Declaration " declared that there should henceforth be no war made upon the trade of a belligerent with the exception of an actual blockade . . . that belligerents might trade in peace, not only with each other, but with all neutrals, if their trade was only carried on in the ships of neutrals." There was no question of " neutral rights " here, but only of belligerent concession to belligerent; and the position he thought might be put still more plainly thus: " if an enemy will keep his own ships at home we undertake, and all other nations undertake, to do no harm to his trade at sea." But, he continued, the Declaration, thus interpreted, was but a stepping-stone. You must be logical; and the logical consequence of what had been done was that more remained to be done, as Mr Thomas Baring had insisted: " You have freed the cargoes; you have freed the manufactures of a country in their transit across the sea . . . why not include the ships? If the trade of belligerents be permitted—and the object of the Declaration of Paris was to permit it, upon condition that it should be carried in neutral ships—why should it not go in the ships and come in the ships of belligerents? "

To him, then, it was clear that the Government had paved the way for the acceptance of that great principle, the immunity of private property from capture at sea. But further, the adoption of this principle was just; for, if he had rightly interpreted the effect of the Declaration, it would follow from this privilege given to neutral ships that the great bulk of our own ships during war would be kept in harbour. That was what the Liverpool Chamber of Commerce thought; and if they were right, the result would come to this, that we had agreed

to make war less burdensome to ourselves, and less burdensome to any enemy ; but we had done it in such a manner as to inflict special hardship, and to cause something like ruin and very grievous injury to a very large and important class of the population of the country—the shipowners. You have freed the cargoes, it follows that you must free the ships.

Having made his point, he turned and rent Lord Palmerston; for the Prime Minister, in the first flush of the peace, in 1856, had gone down to Liverpool and made a most indiscreet speech. He had, in fact, propounded what to the "rights of war" party was most damnable doctrine, but to the pacifists had been a word of good cheer : "We had with France made changes and relaxations in the doctrine of war which, without in any degree impairing the power of the belligerents against their opponents, maintained the course of hostilities, yet tended to mitigate the pressure which hostilities inevitably produce upon the commercial transactions of countries that are at war. I cannot help hoping that these relaxations of former doctrines which were established at the beginning of the war, practised during its continuance, and ratified by formal engagements, may perhaps be still further extended ; and in the course of time the principles of war which are applied to hostilities by land may be extended without exception to hostilities by sea, and that private property shall no longer be exposed to aggression on either side."

This was the full extent of the pacifists' hopeful creed, and was certainly not accepted by all the Government, notably Sir George Cornewall Lewis, who declared that there was no difference between the existing mode of conducting warfare on land and at sea. But some sceptical newspaper, probably the *Times*, had declared this to be a "crotchet," and that Lord Palmerston's real opinion was that the adoption of it would be tantamount to committing "political suicide." Bright produced the quotation with telling effect. The Prime Minister had appealed in glowing language to the shipowners and merchants of Liverpool to say that, while the Government were engaged in the great transactions of war, they had not neglected the great interests of the commerce of England. He would not say he had been "starring the provinces," and had not been very particular as to the mode by which he excited the enthusiasm of his audience. He was ready to believe that at the moment he was in earnest as to the possibility of carrying the principle of the Declaration further. Oblique sarcasm, which involved some particle of untruth, was foreign to John Bright ; but he did not refrain, when he found it necessary to show up

things in their true light, from using the very simplest words of scorn in the vocabulary. If the newspaper was right in its estimate of his true opinion, unless he had been talking "twaddle," the Prime Minister must explain how it was he differed so greatly from his colleague the Secretary of War, and from himself.

Palmerston could not but answer the challenge; for he must have known that "all kinds of twaddle" was the only way in which to describe his speech at Liverpool. He admitted having used the words ascribed to him; he must have known that Bright was right in saying, "I have a distinct recollection that these observations were accepted with great satisfaction in the seats of industry in the north of England, and I believe that these observations went far with many men to convince them of the justice of the course which our representative had taken at Paris and of the wisdom of proceeding still further." But "further reflection and deeper thinking" had made him alter his opinion with regard to one of the two doctrines he had referred to. He hoped that the Honourable Member would be kind enough to give weight to his second thoughts, "and also come round to those second thoughts, which are proverbially the best." He then proceeded to give the House the benefit of his second thoughts.

Bright's thoughts concerning this extraordinary statement have not been revealed. Probably they took some such shape as this: that the test of statesmanship when action is essential is the value of its first thoughts, because action taken cannot be undone.

The passage quoted from the Liverpool speech related to two matters: first, the exemption of private property at sea from capture; secondly, the assimilation of the principles of war at sea to the practice of war on land. It was in regard to the first that "further reflection and deeper thinking" had compelled Lord Palmerston to alter his opinion. This was his new and, therefore, deliberate opinion: "If you give up that power which you possess, and which all maritime States possess and have exercised, of taking the ships, the property, and the crews of the nation with whom you may happen to be at war, crippling the right arm of our strength, you would be inflicting a blow upon our naval power, and you would be guilty of an act of political suicide."

Lord Palmerston showed considerable moral courage in accepting the very words which the newspaper had attributed to him, "political suicide." There can be no doubt that that was his real opinion: it tallied with what he had written to

Lord Clarendon when he sanctioned the surrender at Paris in 1856; it was what he had said in effect in the House in 1857, that the suggestion of the United States as to the immunity of private property at sea "required long and matured consideration," and what he had hinted at in 1861. How he came to say what he did at Liverpool must ever remain a mystery; but this is clear, that attributing to him all good faith, as Bright was willing to do, he had already changed his mind the following year, and it is to be regretted that the public were kept in ignorance for so long a time.[1]

Yet he was not quite fair to himself. In 1857 he had also said that it was difficult to apply the same rules of warfare to the sea as prevailed on land; but now he was willing to admit the possibility, had suggested at Liverpool that they could be applied; indeed he thought that, so far as it was in the power of the Government by arrangement with other Powers, they had accomplished it by the abolition of privateering. Therefore to that doctrine he still adhered; but he rambled in his argument. He denied that the essential difference between sea and land warfare was that in the latter private property was respected, but that in the former it was seized. The only difference was really in favour of sea warfare, because at sea it was taken with more order and regularity, and was not declared to be prize until it had been adjudicated by a competent tribunal as a legal and proper capture. It was, however, a fact that at sea private property was taken by a different set of people, the privateers; and now that they had been abolished, the desired assimilation had been effected; the balance remained in favour of the sea. But this part of the speech was confused and anecdotal, and there are other signs in it that Bright's reference to his old backsliding at Liverpool had upset his equanimity; he was betrayed into other blunders.

He denied that the principle of immunity of private property at sea follows as a logical consequence from the acceptance of "free ships free goods," because "the Declaration of Paris related entirely to the relations between belligerents and neutrals"; and the immunity of private property doctrine "relates to the relation of belligerents to each other."

The point will be more fully considered in the Second Part of this volume, but it must be indicated at once. It is obvious that if a number of Powers agree by a single Declaration (as distinct from a series of separate agreements) to accept and

[1] Mr Sheldon Amos, in *Political and Legal Remedies for War*, gives the occasion of Lord Palmerston's recantation as the 3rd February 1860. I have been unable to trace any allusion to the subject on this date.

abide by the principle "free ships free goods," it must apply as between themselves when any of them are belligerents—and then as between belligerent and belligerent: and the remainder are neutral—and then as between belligerent and neutral.

The question whether the immunity of private property is a logical consequence from the maxim depends on the accuracy of John Bright's argument. I find it difficult to detect the flaw.

Again, Lord Palmerston was wrong in saying that the identity of sea and land warfare was achieved by abolishing privateers, as his own illustrations of the excesses committed during land warfare showed; and still more wrong in describing the privateers as not being a regularly organised force acting under the authority of a responsible Government. The complaints against the system were not that they acted without authority, but that they abused their authority, acting in excess of it.

Finally, he was wrong in his assumption that "free ships free goods" was justified by the theory that a merchant ship at sea is part of the national territory, and that, therefore, the boarding of a neutral ship at sea was equivalent to an invasion of neutral territory. The "floating island" theory has long been exploded.[1] He declared that we had maintained that theory in the affair of the *Trent*, even at risk of war; but Earl Russell's despatch to Lord Lyons, of the 23rd January 1862,[2] did not give currency to a very inaccurate theory, but rested the British case entirely on the respect due to the national flag, another and perfectly distinct doctrine. Whether that doctrine is a sufficient justification for "free ships free goods" is another matter. It is the point round which the whole controversy between England and the neutral nations turns.

Lord Palmerston's argument, therefore, was in reality a justification of the protest against the second principle of the Declaration of Paris. There can be little doubt that, but for his unfortunate speech at Liverpool, his real views, had he re-read his own despatch to Lord Clarendon of the 13th April 1856, would have been more coherently stated.

Then Disraeli rose and administered the *coup de grâce*. He was too imbued with the history of England at its greatest to speak on such a subject without weighty reflection. But it was already past midnight; and he must have felt that no amount of argument would achieve the recall of the Declaration of Paris.

[1] See judgment of Lindley, L.J., in the *Franconia* case, L.R., 2 Ex. D., at p. 93.

[2] *State Papers*, vol. lv. p. 650.

He therefore compressed his opinion into one short sentence: "We have given up the cardinal principle of our maritime code." The reason for the change in the views of the Government at the time of the Crimea from those acted on during the wars with France was patent: they feared that the assertion of our old principle might involve us in embarrassment with the United States. Had the night been younger we might have had from the past-master of sarcasm a comparison of the spirit of that day with that of old times when Chatham and, after Chatham, Chatham's son had faced the anger of the neutrals, and braved the threats of Armed Neutralities.

As for Lord Palmerston and his Liverpool speech, it was clear, Disraeli remarked, that when peace was proclaimed he had gone down to the country to receive the congratulations of his friends and stimulate the spirit of the Party, which was none too pleased with the Treaty of Paris. Disraeli protested against the maritime law of England being made the sport of Party, and against introducing the plea of "second thoughts" into so great a subject. The Prime Minister had now proclaimed to be "political suicide" the adoption of the very doctrine which he had supported in that speech. His influence would be shattered; and when, if ever, he again warned the country of the danger of any step contemplated by any Government, his words would fall on doubting ears, as those from the mouth of the man who had so often called "wolf" to the village when there was no wolf, that when the warning was needed it was ignored.

Lord Palmerston's Liverpool speech was once more referred to on 6th February 1908 in a debate on Mr F. E. Smith's amendment to the Address, that "we humbly express our regret that Your Majesty's plenipotentiaries at The Hague Conference were not authorised to forward the reduction of international armaments by assenting to the principle of the immunity of enemy merchant vessels, other than carriers of contraband, in time of war."

It is unnecessary to refer to the arguments which were used, as the war has raised the subject from the region of opinion into that of hard practical fact. The debate is interesting, however, as showing the vitality of the immunity of private property at sea doctrine. Sir Edward Grey drew attention to Lord Palmerston's recantation in 1862, and expressed the opinion that humanity had nothing to do with seizing enemy property on neutral ships.

PART II

COMMENTARY

THE MEANING AND EFFECT OF THE DECLARATION OF PARIS.

To the story of the Declaration of Paris, as it has been told from forgotten despatches and the columns of Hansard, must now be added a study of its meaning and effect. Its provisions have by the greater number of writers been taken at their face value, but they are so very crudely stated, the discussions in the Congress of Paris were so loose and unscientific, that their value is very small.

There is this much to be said for Catherine of Russia: having got a certain number of neutrals, and two of the belligerents, to accept her principles, she set her lawyers to work on a maritime code.[1] The best principles in the world need accurate statement. One would have imagined that the ideas which the plenipotentiaries intended should govern the relations of belligerents and neutrals in future wars would have been handed over to the official draftsmen to reduce into a concrete and workmanlike form. Even as principles intended as a guide to future legislation they leave much to be desired in the statement. As operative rules without such legislation, there is no good word to be found for them. Nor, taking them as a whole, can they lay any claim to be a code, for the point in greatest dispute is left untouched. There is no definition of the meaning of contraband of war.

On the very threshold of our study as to what are the meaning and effect of the Declaration we are confronted with a question which no one seems to have been at pains to ask, then or since: Do the four formulas represent political principles, which the adherent Governments engaged to observe when they went to war? or were they intended to be legal maxims for the guidance of the Prize Courts?

In this Second Part I propose to examine some of the questions which arise in connection with the interpretation of the Declaration.

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[1] A translation of this code is printed in vol i. of this series, *The Documentary History of the Armed Neutralities.*

I

The Nature of a Declaration: The Treaty-making Prerogative.

First, then, what is a Declaration? Treaties we know; Conventions we think we know; but Declarations! Is it a term of deeper or shallower meaning? Or is it one of that class of verbal changes which always mean the same thing?

Mr Oppenheim has thrown some light on the question. He says that the term "declaration" is used in three senses;[1] but with one of them only we need concern ourselves—when it is used as "the title of a body of stipulations of a law-making treaty according to which the Parties engage themselves to pursue in future a certain line of conduct."[1] He considers that there is no essential difference between declarations and treaties, and that their binding force upon the contracting parties is the same by whatever name they are called.

Continental jurists have busied themselves with the question, and have been at great pains to prove that the Declaration of Paris is a binding document. Some would seem to have endowed it with a very special force; these Mr Oppenheim very effectively disposes of:[2]—

> The attempt to distinguish fundamentally between a Declaration and a Convention by maintaining that whereas a "Convention creates rules of particular International Law between the contracting States only, a Declaration contains the recognition, on the part of the best qualified and most interested Powers, of rules of universal International Law" does not stand the test of scientific criticism.

This imaginary principle expresses no more than fear that England, having fallen into the pit which they digged for her, may possibly have some chance of getting out of it. But I would go much further than Mr Oppenheim; the suggestion is merely fantastic, and quite unworthy that the test of scientific criticism should be applied to it.

But while I agree that a declaration is not a higher sort of international document than a treaty, I cannot agree that there is no essential difference between them. We must assume from the fact of its use that the term does indicate a special form

[1] *International Law*, vol. i. pp. 537, 552. [2] *Ib.*, p. 551.

of agreement between States. This difference is indicated in Mr Oppenheim's definition that it is "a body of stipulations" (or, of course, "one stipulation") "according to which the parties engage themselves to pursue in future a certain line of conduct." But this is incomplete as it stands, and I think the distinction is more accurately stated thus: A treaty or a convention is an agreement as to present or future conduct requiring no further action on the part of the High Contracting Parties to complete its effectiveness. A declaration is used when it is necessary to indicate that the agreement arrived at requires some further action to be taken to make it operative, either immediately or when occasion arises. Yet even this is not sufficiently explicit to convey a meaning clear of all ambiguity; for some treaties require further action to make them operative, the most familiar instance being those dealing with extradition, which need an Order in Council to apply the Extradition Act, and so give them full effectiveness.

An examination of the question seems to point to this conclusion: that a declaration is used when the agreement is as to the acceptance of a principle which requires further action on the part of the High Contracting Parties to put it in force. The Declaration agreed to at the Congress of Vienna as to the abolition of the slave trade required further action on the part of the signatory Powers to put it in force in their own dominions, and may be taken as the classical example. The question is whether this precedent should not have been followed in the case of the Declaration of Paris.

The Declaration of Paris was not submitted to Parliament. Ministers were loud in their protest that it was unnecessary, being entirely within the prerogative. This has led some foreign critics off the track of their knowledge of our institutions, supposing this virtue of exemption from parliamentary control to be peculiar to a "declaration." But this point is clear: that as a constitutional document a declaration does not differ from a treaty, and—a declaration by Parliament as such being as unimaginable as a treaty entered into by Parliament—falls within and is subject to all the rules which govern the treaty-making prerogative.

Now, in the common statement of the first rule we come across a very grievous misuse of words. It is said that the treaty-making prerogative is "absolute." What is meant is that it is "unfettered," subject only to the condition imposed in a constitutional monarchy, that the King acts on the advice of his responsible Ministers. There are no fetters, either as to range or extent of this prerogative; but so far from being

"absolute" it is subject to one unshakeable rule, which, if infringed, will render the King's sign-manual of no effect; the Courts, even of lowest degree, must disregard it. The rule is that no treaty can alter the law, for the law is above all treaties; and the Courts above the King and his Ministers. Alteration of the law can only be accomplished by Parliament; that is, by the King with the advice and consent of the Lords and Commons in Parliament assembled.

Exception must be taken to Mr Oppenheim's term "law-making treaty"; for while it is perfectly true that treaties are part of the law of the land, and, as was laid down in *R.* v. *Wilson*,[1] will be enforced by the Courts, this term is too wide in its scope; and when applied to declarations assumes the very question which Lord Clarendon assumed, but which requires the closest study, whether the Declaration of Paris did effect what it professed to effect, a change in the maritime law enforced by English Prize Courts.

This point, though elementary, is of such importance to the subject in hand that I summarise what I have said in my book on *Extradition*, as it contains the clue to the real position of the Declaration of Paris.

It is fundamental that the making of treaties is part of the prerogative of the King. But there are two other principles equally fundamental: that the King cannot, in the exercise of any part of the prerogative, interfere with the rights of the subject; nor can he interfere with or alter matters which have been dealt with by Parliament.

The King requires no sanction to enable him to enter into a bilateral extradition treaty with a foreign Sovereign. But seeing that the surrender of a criminal, fugitive in England from a foreign State, involves his arrest, a deprivation of the fugitive's right to liberty in England, against whose laws he has committed no offence, the authority of Parliament is necessary in order to enable the King to carry out his treaty obligation. But in the case of a fugitive surrendered to England from a foreign country, the Extradition Act is silent; the treaty prerogative here requires no reinforcement by parliamentary authority. The Act does not profess to decide in what cases the King may agree to receive fugitives surrendered under the treaty who have committed offences in England. They are brought here in virtue of the treaty, they are tried here in virtue of the law.

This very plain principle must be applied to the Declaration.

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[1] L.R. 3, Q.B.D. 42.

The complaint that Parliament was not consulted contained something more than a protest that it was an affront not to consult it on so important a matter. The constitutional question involved in the treaty-making prerogative was in issue.

This prerogative has suffered grievously at the hands of Ministers. In 1890 the question was deliberately threshed out in Parliament in the debate on the Act authorising the cession of Heligoland to Germany, and all the light and learning then available was brought to bear on its solution : with no better conclusion than that in regard to cessions of territory the precedents showed it to be in a nebulous condition. And yet, seeing that a cession must affect the people's rights in the territory ceded, it was as simple an example of the fundamental principle as could well be imagined. Mr Gladstone did not carry matters any further by declaring that he would " wash his hands " of the whole matter, and by taking no further part in the debate. He approved the policy of the Conservative Government, which he might vigorously have attacked, but challenged their action in bringing the matter before the House. Though he enjoyed the reputation of being a past-master of constitutional lore, he enunciated the false doctrine that the treaty-making prerogative is absolutely and in all cases beyond the cognisance of Parliament.

Lord Clarendon, when his action was challenged in the House of Lords very soon after the Congress of Paris, took the same line ; and Lord Campbell, Lord Chief Justice of England, wrote a letter, which was read to the Lords, declaring that the Government action was right. There was at the time a vigorous outcry against the Government in certain quarters ; and even now the criticism is still heard among those who disbelieve in the merits of the Declaration, that it is inoperative because it was not submitted to Parliament. For the moment I am not prepared to say that the Government were not within their rights. No opinion can be given without a more minute examination of the questions involved in the inquiry whether the constitutional forms required by the law to accomplish the terms of the Declaration were complied with ; or, putting it another way, whether the Declaration is in itself an effective document ?

The point involved may be illustrated, and more completely understood, by briefly considering the annexe to the protocols of the Congress of Vienna dealing with the abolition of the slave trade, which was also in the form of a Declaration.

The plenipotentiaries, duly authorised thereto, declared in the face of Europe the universal abolition of the trade to be

" une mesure particulièrement digne de leur attention, conforme à l'esprit du siècle, et aux principes généreux de leurs Augustes Souverains," and proclaimed " le vœu de mettre un terme à un fléau qui a si longtemps desolé l'Afrique, dégradé l'Europe, et affligé l'humanité." They declared that they were " animés du désir sincère de concourir à l'exécution la plus prompte et la plus efficace de cette mesure, par tous les moyens à leur disposition, et d'agir dans l'emploi de ces moyens avec toute la persistance qu'ils doivent à une aussi grande et belle Cause." [1] But they recognised that no more could be done than that each signatory Power would engage to take, so soon as it might be convenient, all steps necessary to abolish the trade within its dominions—the further steps necessary to make that Declaration effective.

So far as England is concerned, even though the King should, in virtue of his prerogative, conclude treaties, or make declarations, with intent to abolish the slave or any other trade, yet they would remain abstractions unless and until Parliament passed the necessary legislation to give effect to them, for the simple reason that rights of individuals in the trade would be affected.

The abolition of the slave trade was a far more complicated business than the alteration of the maritime law, the rights involved more clearly apparent, the owners of them more vocable. But that does not excuse Ministers for the reticence they exhibited in not explaining the grounds of their opinion. The *ipse dixit* of the Lord Chief Justice was insufficient in so grave a matter. The customary reference to the Law Officers' opinions was omitted, though presumably they had been consulted. The question was a difficult one, and hinges on the negative spirit which pervades the Declaration of Paris, expressive of the great negative, at last achieved, that England would no longer act in war as she had been used to do; and while the necessity for Parliamentary action is obvious where the King's engagement is positive—to act; it may well be not quite so obvious where the engagement is negative—not to act. Yet the same rule holds, that the law cannot be altered by the King. If the law in any circumstances requires action, then no engagement of the King can effectively agree to inaction. So in the case of a principle which the Courts enforce, no engagement of the King can compel them to refrain from enforcing it.

[1] De Martens, *Nouveau Recueil*, ii. p. 432.

II

The Constitutional Aspect of the Principles of the Declaration Examined.

We must now examine the four principles of the Declaration in order to see whether, in accordance with the rule just discussed, they ought to have been submitted to Parliament.

As to principle 1—that "privateering is and remains abolished." The grant of letters of marque to privateers depends solely on the King's prerogative of granting commissions. The principle means, therefore, that the plenipotentiaries duly authorised undertook on behalf of the Queen and her successors never again to issue these commissions. This matter then rests entirely on the prerogative; the law was not involved, the rights of the individual were not affected, and therefore parliamentary concurrence was unnecessary.

As to principle 4—that "blockades, in order to be legally binding, must be effective."

The form in which the principle is stated suggests that it was intended as a direction to the Prize Court not to recognise blockades unless they are "effective." The principle implies that ineffective blockades had been resorted to in the past, and that the practice was now to cease. But the declaration of blockade is an act of war; it is a "high act of sovereignty."[1] The principle, therefore, also implies a submission of this act to a judicial test of effectiveness.

But in point of fact it did little more than state a rule which everybody admitted—that what are known as "paper blockades" will not be recognised. The actual words used and what underlay them will be considered in the next chapter. But whatever may have been the intention of the Congress, no change in the law having been effected in fact, the constitutional principle does not arise.

As to principle 3—that "neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag."

This principle affected France more than England. "Enemy ships enemy goods" did not form part of English general maritime law, though she had agreed to it in some treaties. The Courts, whether of Common Law or of Prize, would recognise these treaties, which were expressly preserved by one of the subsidiary conditions attached to the Declaration. The principle

[1] Sir W. Scott in the *Henrick and Maria*, 1 C. Rob. 146.

amounted to an undertaking that Parliament would never, without the consent of all the adherent Powers, alter this law—an undertaking contrary to the law and custom of Parliament.

In view of the further subsidiary condition that no treaties should be entered into in future which were not based on the four principles, there was a further undertaking that the Queen and her successors would comply with this condition. This undertaking would not require Parliamentary sanction.

As to principle 2—that " the neutral flag covers enemy's goods with the exception of contraband of war."

Lord Derby's criticism of this principle (in the debate of 1856) was that it was " dogmatic and dictatorial." Another verbal criticism is that by the use of the word " covers " it asserted what was not a fact with regard to English maritime law. But " covers " meant " shall in future cover " so far as England was concerned. Indeed, Lord Clarendon probably meant it to imply " ought in the past to have covered " !

This is the only one of the four principles as to which a doubt on the constitutional question arises; and there are three independent lines of argument by which the Government might have justified the refusal to submit the second principle to the approval of Parliament.

First: it is in the power of the Executive to modify or abandon the exercise of a belligerent right, whether the right be seizing enemy goods on neutral ships, or blockading enemy ports.

Therefore this principle may be construed as an undertaking by the plenipotentiaries on behalf of the Queen and her successors to do at the commencement of every war what had been done in 1854—issue an Order in Council[1] abandoning the right. From this point of view, the acceptance of the principle would be within the prerogative.

Or secondly: the King is a party to all proceedings in prize. Prize accrues to the King in his office of Admiralty. No one has a *right* to prize; it is awarded by the Court to the captors as Royal bounty,[2] in accordance with the terms of a Proclamation

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[1] Document No. 9 (8).

[2] "The King in his office of Admiralty is . . . the fountain of all prize . . . the King holds the office of Lord High Admiral in a capacity distinguishable from his regal character."—(Sir William Scott in the *Mercurius*, 1 C. Rob., 80.)

This was subsequently amplified in the *Elsabe* (4 C. Rob., 408):—

" It is admitted on the part of the captors that their claim rests wholly on the Order of Council, the Proclamation, and the Prize Act. It is not (as it cannot be) denied that, independent of those instruments, the whole subject-matter is in the hands of the Crown, as well in point of interest as in point of authority. Prize is altogether a creature of the Crown. No

issued at the commencement of each war. The adoption of "free ships free goods" as a permanent principle may be construed, therefore, to mean a perpetual modification voluntarily made by the Crown of its rights of prize. It is a waiver of a claim to prize in respect of a certain category of goods which the Crown would otherwise have been entitled to make good.

Prize, whether taken by ships in regular commission or under letters of marque, thus lying in grant from the King, the adoption of a principle which limits the amount of prize money, or the cases in which prizes may be taken and so prize money acquired, cannot prejudice any right in the grantees, but merely limits the grant. Therefore, from this point of view also the acceptance of the principle was within the prerogative, and no parliamentary sanction was necessary.

Or thirdly: assuming the constitutional principle to be, stated broadly, that the prerogative cannot alter the law of England, the argument would take this form—"Maritime law" depends on the Law of Nations; the Prize Courts enforce this law, with which Parliament has nothing to do. The "maritime law of England" is an inaccurate expression. If this is a sound view—and there is authority for it, more especially in the *Zamora* judgment[1]—then the Government would have been justified in saying that the adoption of the 2nd principle lay beyond the control of Parliament.

Thus, with regard to three of the principles the Government were on the right side of constitutional law, and certainly had two sound arguments to support them in regard to the other. Yet the fact remained that an alteration was effected in the law of prize administered by the English Courts, of Common Law as well as of Prize. The question how far such an alteration is withdrawn from the general rule that Parliament alone can alter the law must be postponed for the present. It must be

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man has, or can have, any interest but what he takes as the mere gift of the Crown. Beyond the extent of that gift he has nothing. This is the principle of law on the subject, and founded on the wisest reasons. The right of making war and peace is exclusively in the Crown. The acquisitions of war belong to the Crown; and the disposal of these acquisitions may be of the utmost importance for the purpose both of war and peace. . . .

"The Proclamation gives the whole property, but not till after adjudication; until that time, no beneficial interest attaches. So the Prize Act in like terms gives the whole interest or property in opposition to that proportional and partial interest given by former Acts, but not till adjudication. In adverting to these instruments, it is impossible not to remark the very guarded terms in which the benefit is conferred. The Proclamation gives to privateers 'after final adjudication, and not before'; not merely after adjudication, but superadding a negative pregnant, 'and not before.'"

[1] Lloyd's *Prize Cases*, iv. p. 62.

confessed, however, that the alternative, that such a change should be left entirely to the discretion of the Ministers of the day, is curious and dangerous. It certainly stretches the doctrine that Parliament has no control over war except the furnishing or withholding supplies to its extreme limit.

But putting technicalities on one side, there is the best of all reasons why such an alteration should be submitted to Parliament: it is a question in which the people of England are deeply concerned. And there was a precedent. The treaty with France of 1786 was brought before both Houses by motion; Pitt himself moved in the Commons.[1] In the Lords, Lord Lansdowne approved the procedure because "it has been an ancient custom of advising the Crown in matters of commerce."[2]

As a matter of fact, that treaty contained an article recognising "free ships free goods" as between the two countries. He expressed his concern at its introduction, and his hope that this principle would never again be introduced into any treaty without Parliament being consulted.[3]

It may be true that, in regard to maritime law, no such ancient custom of advising the Crown exists; but assuredly the concern of the people in it is as great as in their commercial relations with foreign countries. "Need not" is not always a sufficient justification for "will not." Unfortunately in 1856 it fitted in too well with the desire for secrecy.

The most curious point remains. It is more than doubtful whether all the talk about constitutional doctrine represented the actual opinion of the Government. The Declaration of Paris, at least in regard to the principle "free ships free goods," stood constitutionally on precisely the same plane as the Declaration to the neutrals in 1854, in which that principle had been first adopted. Great pains then were taken to decide what was the proper course to pursue in regard to so novel a document. Lord John Russell said that, when the policy had been decided on, there would probably be an Order in Council or a Declaration, and that the Government were not quite sure whether a Bill might not also be necessary. This was decided in the negative; but the Declaration was followed by an Order in Council—15th April 1854—"in furtherance" of the Declaration. What was true of one was true of the other, *when the need arose*. The constitutional question had therefore been decided, but in a manner very different from that stated by Lord Clarendon. The view of the Law Officers apparently was

[1] Hansard's *Parliamentary History*, vol. xxvi. pp. 346, 381.
[2] *Ib.*, p. 554.
[3] *Ib.*, p. 577.

that such a Declaration need not be submitted to Parliament; but that it was not in itself an operative document, and, in order to fulfil the Queen's obligations under it, an Order in Council would be necessary to put it in force whenever England went to war. The course adopted in 1854 was also followed in March 1860, when an Order in Council was issued "relative to the observance of the Rules of maritime war under the Declaration of Paris," in the event of war by France and Great Britain against China.[1]

The solution of the constitutional question naturally varies in each country according to the provisions of its constitution. The Declaration was promulgated in France,[2] and also, as we have seen, in the Argentine Republic, Switzerland, and Prussia.

III

The Form in which the Principles are Stated.

If the constitutional question was dealt with clumsily, the drafting of the principles was still worse. With regard to the 1st principle, the declaration that "privateering is and remains abolished," though untrue as long as there were any dissenting Powers, may pass as a convenient formula to indicate the undertaking of the adherent Powers that *they* would never issue commissions to privateers. Yet even then, it is by no means clear that there is not a reservation in favour of resorting to them in the event of a war with a non-adherent Power.

The 2nd—that "the neutral flag covers enemy's goods with the exception of contraband of war"—is incomplete even as a statement of principle. Just as it was necessary to declare that "free ships" could not make contraband of war "free," so it was necessary to declare that they did not make any goods "free" when they were on board a ship condemned for running a blockade.

Further, in the case of an embargo, "free ships" have no privileges at all in respect of any goods on board, and neutral owners of cargo may suffer great loss from the delay occasioned by enforced detention in port. The order for an "embargo or stop" to prevent vessels clearing out of our ports for enemy ports specially refers to and includes "all persons and effects" on board such vessels. These omissions bear witness to the

[1] Document No. 25. [2] Document No. 18.

unnecessary haste with which the principles were sketched out. It is the more surprising in the case of embargo, because special emphasis is always laid by the neutral on the delay occasioned by visit at sea, even if it is not followed by search. The delay caused by an embargo must be ten times as great.

Similar criticism is applicable to the 3rd principle—that "neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag." An enemy's ship caught running blockade is condemned because she is enemy property. Neutral goods on board are condemned because they are on board a ship running blockade. It was not intended to give to the enemy flag the privilege of "covering" neutral goods in such circumstances; the principle is, therefore, inaccurately stated.

The main defect of the statement of both the 2nd and 3rd principles, however, is that the question, What is contraband of war? is left in the air.

The settlement of a list of contraband goods was of course impossible at the closing meetings of a long Conference. The idea of a list—or rather three lists—of "absolute contraband," "conditional contraband," and "free" or non-contraband goods, prevailed till the present war. It was presumably intended to preserve this classification in 1856; and as the plenipotentiaries were not the persons best suited to frame such lists, their ultimate settlement should have been left to experts to be thereafter designated, as was done at Upsal in 1654.

From the point of view of other nations it was a dangerous omission; for it left open, and therefore England free to insist on, the opposite principle that a belligerent has a right to proclaim his own list of contraband, and to add to it as necessity arises, a necessity of which he is, and must be, the sole judge.

It could not have been assumed that there was any agreement on the subject unless the Armed Neutralities had been forgotten. The countries of the League contended that a list of contraband contained in a treaty between two Powers could be extended arbitrarily to a third Power not a party to it, could even be made applicable, at the will of one of the signatory Powers, to a Power with which there was no treaty dealing with the subject.

This is not the place to consider the subject of contraband at any length; but the question of "contraband by treaty" is sufficiently clear to warrant this brief statement, which is based on historical fact. The commercial relations between two countries may be such that when they are settling questions likely to arise in the event of one of them being at war, the

other remaining neutral, some questions may be dealt with specially in such a way as to reduce friction in the circumstances and preserve friendly relations. Contraband is such a question. It must always be the desire of a country likely to remain neutral in war to protect the trade in its staple industry. If the country with which a commercial treaty is in process of negotiation considers that, with due regard to its own safety, it can exempt the produce of that industry from the goods which it will seize on their way from that country to the enemy, it may well do so, taking care to obtain a *quid pro quo*. But this affords no reason why such goods going from another neutral country to the enemy should also be exempted. This is the simple inference to be drawn from the explanatory convention of 4th July 1780 between Great Britain and Denmark.[1] Both the 2nd and 3rd principles are, therefore, ineffective.

Even the cardinal principle of contraband, that goods are only liable to be seized as such when they have an enemy destination, was omitted. It is common knowledge that this is fundamental to the idea of contraband, but a very considerable difficulty has always existed in determining what is "enemy destination." It is true that it became acute in respect of broken voyages during the Civil War in 1865 over the *Nassau* and the *Matamoros* cases,[2] when what was looked upon, and is even now called, the American extension of the doctrine was adopted. But the controversy dates back to the cases of the *Essex* and the *William*,[3] in 1805, and the lawyers were perfectly familiar with it.

What, then, was the effect of the new declaration that "free ships make free goods" on the doctrine of "continuous voyage"? Apparently no one was at pains to inquire. It certainly is very difficult to answer the question. There seem to have been only two alternatives: either that the doctrine of "continuous voyage" should also be left in the air, the understanding being that the new maxim would be interpreted subject to that doctrine by the countries then for the first time adopting it; or, seeing that the maxim could not annihilate the doctrine altogether, that any extension of the maxim beyond the cases of the most palpable use of a neutral country for transport of contraband to the enemy was assumed to be impossible. I do not pretend to unravel the problem; my object is only to show at what a loose end the Declaration of Paris, hailed

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[1] De Martens, *Recueil*, ii. 102; (2nd ed.) iii. 177.

[2] See Mountague Bernard's *History of the Neutrality of Great Britain in the American Civil War*, pp. 299 *et seq.*

[3] 5 C. Rob., 385.

with such profound joy by the neutrals as putting an end to what they had to endure from England, left some of the most important details of the principles it enunciated.

The absence of accurate draftsmanship is specially noticeable in the statement of the 4th principle, that "blockades, in order to be legally binding, must be effective, that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy." It states nothing more than what was in normal circumstances considered to be the law, without explaining the meaning of the term "effective," nor what was the proper method of preventing access to the enemy's coast, which had always given rise to disputes. This serious criticism was forcibly put forward by the United States Government in the Second Marcy Note.[1]

> The fourth principle . . . can hardly be regarded as one falling within that class with which it was the object of the Congress to interfere; for this rule has not, for a long time, been regarded as uncertain, or the cause of any "deplorable disputes." If there have been any disputes in regard to blockades, the uncertainty was about the facts but not the law. Those nations which have resorted to what are properly denominated "paper blockades" have rarely, if ever, undertaken afterwards to justify their conduct upon principle, but have generally admitted the illegality of the practice, and indemnified the injured parties. What is to be judged "a force sufficient really to prevent access to the coast of the enemy," has often been a severely-contested question; and certainly the Declaration, which merely reiterates a general undisputed maxim of maritime law, does nothing towards relieving the subject of blockade from that embarrassment. What force is requisite to constitute an effective blockade remains as unsettled and as questionable as it was before the Congress at Paris adopted the Declaration.

The real question in dispute was whether the English principle of blockade fulfilled the condition of effectiveness. That principle was stated by Pitt in his speech of the 25th March 1801: "Ports ought to be considered in a state of blockade when it is unsafe for vessels to enter them, though the ports are not actually blocked up."[2] This was the principle accepted in the treaty with Russia in 1801[3]: "Que, pour déterminer ce qui caracterise un port bloqué, on n'accorde cette dénomi-

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[1] Document No. 21.
[2] Hansard's *Parliamentary History*, vol. xxxv. col. 1127.
[3] De Martens, *Sup.*, ii. 476; (2nd ed.) R. 2, vii. 260.

nation qu'à celui où il y a, par la disposition de la puissance qui l'attaque avec des vaisseaux arrêtés ou suffisamment proches, un danger évident d'entrer."

Assuming the question of "paper blockades" to have been actually under discussion, the 4th principle may certainly be said to have settled it. But although the absence of all record leaves us in the dark as to what was discussed, there is little doubt that the principle was directed against the English doctrine that blockades could be established by cruiser squadrons, and that Lord Clarendon intended to throw over Pitt's principle and the definition of the Russian treaty.

Sir William Harcourt in the Letter of *Historicus*, which deals with the Law and Practice of Blockade, pointed out the difference between this definition and the doctrine which the Armed Neutrality sought to establish. The blockading vessels were to be "arrêtés *et* suffisamment proches"; in the Russian treaty they were to be "arrêtés *ou* suffisamment proches."

The principle as drafted did not settle our difference of opinion with the continental jurists. The Courts could, therefore, still follow the precedents of the French wars in judging the effectiveness of our blockades.

The same remark applies to blockades of other nations, which in insurance cases may come before the ordinary Courts. So long as no new interpretation was given to the legal meaning of an "effective" blockade, the Common Law Courts would still follow the precedents of the Prize Court.

An even more serious defect in the statement of the principle was the application to blockade of the expression "legally binding." The misuse of criminal law terms is characteristic of every branch of the law applicable to belligerent and neutral merchant. If the declaration of an "effective blockade" were in itself effective; if it did in reality, and not in pretence, create an "offence" for the commission of which there were a *real* penalty of seizure, then the term would have some meaning. But as "the law" stands, it is just as if robbery were punishable only if the offender be caught in the act. The adventurous skipper may snap his fingers at the biggest squadron of cruisers if he can get through; and in a gale of wind the rules of "effectiveness" invite him to make the attempt, by allowing the cruisers to draw off, while the blockade still remains technically "effective." What we call "the law of blockade" is a mere tangle of words. It is not even, as it ought to be, based on the principle "catch as catch can," for it is fettered with this provision, that even though you catch you may only keep

if, in the opinion of a committee of experts, you could catch other ships should they give you the chance of trying.

If the words "legally binding" mean anything it must be this—that a declaration of blockade is a prohibition to neutral ships to pass that way to the relief of the enemy, disobedience being visited with the penalty of condemnation as for a real "offence." But were that so, then, if the ship were found in harbour when the port falls into the hands of the belligerents, she would still be liable to condemnation—but she is not. Success purges the "offence," and once in port at anchor, the risk of seizure is over. Or again, breach of blockade may be by getting out as well as by getting in. According to the English view of the law, the risk of seizure continues till the end of the outward voyage. If it were an "offence," and not a mere risk of getting caught, then the vessel would be liable to be captured on her next voyage. But it is clear that when the voyage is over "limitation" has set in.

That these and many other peculiarities in the "law" are capable of satisfactory explanation is another matter; but the discussion of it must be postponed for the present. The point emphasised now is that, granting it was advisable to proclaim the principle, and accepting Lord Clarendon's view that it was politically necessary to abandon Pitt's views of blockade, some attempt should have been made soon afterwards to turn the principle into agreed and coherent rules. But this important work was not attempted till the Congress of London sat in 1908; and no greater condemnation could have been pronounced on the inchoateness of the principle laid down by the Declaration of Paris than the statement in Sir Edward Grey's invitation to the Powers, that "the discussions which took place at The Hague during the recent Conference showed that on various questions connected with maritime war divergent views and practices prevailed among the nations of the world."[1] This was specially applicable to blockade, for the principles acted on by England and other countries in regard to it were widely divergent.

[1] Correspondence respecting the International Naval Conference in London, 1908–9; Misc. No. 61 (1909).

IV

The Effect of War on Treaties, and especially on this Declaration.

As a general proposition it is undisputed that treaties come to an end when war breaks out between the nations which have made them. The question was raised very inadvisedly in connection with the Declaration of Paris, in the debate of 1862, by Sir George Cornewall Lewis, Secretary of State for War, who seems to have asserted that it would not remain in force if war broke out between any two of the signatory Powers. "By international law," he said,

> you may make a valid engagement with respect to the principle that the neutral flag covers enemy's goods; but when you go to war with a nation, war puts an end to all treaties and engagements in the nature of a treaty. If we had a treaty with the United States recognising the principle that belligerents were to recognise one another's mercantile marine, the very act of war would have put an end to that treaty.
>
> As to the Declaration of Paris, I deny that it must be binding in the event of war. It is binding in respect of neutrals in time of war. No doubt we are bound in respect of France or Russia if we are at war with the United States; but it is an absurdity to suppose that if we were at war with France or Russia, it would have any binding effect upon us, except in regard to our honour. All I say is, it is not binding by international law.

This very obscure statement naturally aroused great indignation. Sir Stafford Northcote objected to a Minister of the Crown using such language. He cited Kent as an authority for the principle that treaties which are made in anticipation of war remain binding during hostilities.

> As a general rule, the obligations of treaties are dissipated by hostilities; but if a treaty contains any stipulations which contemplate a future state of war and make provision for such an exigency, those stipulations preserve their force and obligation when the rupture takes place. The obligation of keeping faith is so far from ceasing in time of war that its efficacy becomes increased, from the increased necessity for it.[1]

[1] *International Law*, Abdy's ed., p. 393.

He also mentioned familiar cases in which this principle must be true ; as where the time for belligerent subjects to quit the country, or questions as to exchange of prisoners of war, have been agreed to. Clearly war could not put an end to such provisions.

John Bright also cited authorities to uphold the morality of nations and the faith of treaties. From Wheaton—

> There might be treaties of such a nature as to their object and import as that war would necessarily put an end to them ; but where treaties contemplate a permanent arrangement of territory, or other national rights, or in their terms were meant to provide for the event of an intervening war, it would be against every principle of just interpretation to hold them extinguished by war.[1]

And from Sir Robert Phillimore—

> The general maxim that war abrogates treaties between belligerents must manifestly be subject to limitation in one case—namely, in the case of treaties which expressly provide for the contingency of the breaking out of war between the contracting parties.[2]

It may be unscientific, but it certainly has a moral weight of some practical value, when we say that to violate a treaty is a breach of the Law of Nations, in spite of the absence of some higher compelling force, something in the shape of a sanction. The international " law " as to the observance of treaties can be put on no more secure ground than that nations are *expected* to carry out their engagements in the same way as individuals are by law *compelled* to carry out theirs. The breach of a treaty engagement may lead to a rupture with the other contracting party, and rupture to war, if that other can put sufficient forces in the field, or ships upon the sea ; other States will not interfere unless they too are parties to the engagement. It is no concern of theirs ; but they will obviously be chary of entering into agreements with a State which has once made default in observing its treaties.[3]

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[1] *International Law* (Dana's edition), pp. 352, 353 *n.*

[2] *International Law*, iii. p. 662.

[3] The meaning of this paragraph may be illustrated by the case of Belgium. Germany's invasion in breach of her guarantee of Belgium's neutrality has generally been spoken of as a "breach of international law," as if the observance of a treaty were the subject of a rule like any other governing the intercourse of nations. But when we say that the violation of a treaty obligation is a breach of the Law of Nations, we mean to imply that that law in dealing with nations is based on the same principle as the law which deals with individuals, and that one of those principles is that it is wrong to break an obligation.

War does, as a fact, destroy all relations between the belligerents; obviously, therefore, any agreements on which their relations rest must cease to exist on the outbreak of hostilities, do require renovation on their cessation.[1] But seeing that the obligation to observe treaties can be put no higher than that it rests on the national honour (which, however, the majority of States deem the highest ground), it is clear that the case of those treaties which profess to regulate the conduct of the contracting States in the event of their falling out—" ce qu'à Dieu ne plaise "—is summed up accurately by Kent, if we attribute to the word " obligation " its exact international meaning, when he says: " The obligation of keeping faith is so far from ceasing in time of war, that its efficacy becomes increased, from the increased necessity for it."

If one State agrees with another State that in the event of war between them certain things shall not happen (as that their traders shall not be disturbed in their business for a certain period), it is a mere chaos of thought to say that when war does break out those things may happen, and, in that instance, the traders be disturbed.

It is the necessity for an honourable fulfilment of obligations as to conduct in war, increased tenfold by the fact of obligations undertaken mutually by many States, which is the only sanction for Hague Conventions.

Anything more injudicious can hardly be imagined than for Sir George Cornewall Lewis, in the course of a highly contentious debate as to whether the Government had been wise to adopt a maxim limiting belligerent action, to suggest vaguely that in the event of war the maxim would cease to bind us. Even if it were true it was quite unnecessary, and inevitably led some speakers into a side-track, confusing an already sufficiently confused issue.[2]

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[1] For an illustration, see " Déclarations d'adhésion des Etats allemands à la remise en vigueur des Traités antérieurs à la Guerre," January–February 1872 (*State Papers*, vol. lxii. p. 834).

[2] The idea that war abrogates all treaties, including those made in direct contemplation of war, has at times been really considered as dangerous. It is specially referred to, and steps taken to counteract it, in the treaty of 1871 between Italy and the United States (*State Papers*, vol. lxi. p. 88).

By Art. XXI. provision is made, *inter alia*, that in case of war between the High Contracting Parties (which may God avert), six months is to be allowed for subjects to return to their own country: " And it is declared that neither the pretence that war dissolves treaties, nor any other whatever, shall be considered as annulling or suspending this article; but, on the contrary, that the state of war is precisely that for which it is provided, and during which its provisions are to be sacredly observed as the most acknowledged obligations in the law of nations."

Sir George was reputed to be the "precisest of reasoners and the most logical of men"; but in answer to Mr Thomas Baring's criticism, he found no other explanation of his cryptic saying than the following:—

> This is so important a point that I should be sorry if any misunderstanding arose. What I meant to say, and what I believe I did say, was this: that I conceived the Declaration of Paris to be binding as between this country and neutrals during the existence of war, and to be equally binding with a treaty, though it was only a Declaration; but that if we were at war with any of the parties to that Declaration, then, like other treaties, it would cease to have a binding effect as regards the belligerent.

If words, carefully collated with the best authorities, could by any possible means avoid a pernicious doctrine without getting involved in it themselves, this article should have achieved it. But if all treaties, even those which contemplate a state of war and make provision for it, are annihilated by war, then this treaty would equally suffer that fate.

The curious point about this treaty is that this provision is not introduced into the other articles which contemplate a state of war arising between the two countries, and it might be contended, on the principle *inclusio unius exclusio alterius*, that the other provisions had been left to their fate when war should arise.

Thus by Art. XII. the High Contracting Parties agree "that, in the unfortunate event of war between them, the private property of their respective citizens and subjects, with the exception of contraband of war, shall be exempt from capture or seizure, on the high seas or elsewhere, by the armed vessels or by the military forces of either party," but no reference is made to "the pretence that war dissolves treaties"; nor is it mentioned in Art. XIII., which defines what "ought to constitute a legal blockade."

If, however, Sir George Cornewall Lewis did not mean to assert the doctrine broadly, that war does dissolve all treaties, but meant something quite different which he tried to explain, then it really was hardly worth while to try to avoid an imaginary doctrine by such an artificial set of words.

In connection with this treaty it is interesting, in reference to what I have said in the text as to the doubtful meaning of "adoption" of this maxim, to turn to Art. XVI., in which the contracting countries accepted it. There is this proviso:—

"Provided that the stipulations declaring that the flag shall cover the property shall be understood as applying to those Powers only who recognise this principle; but if either party shall be at war with a third, and the other neutral, the flag of the neutral shall cover the property of enemies whose Governments acknowledge this principle, and not of others."

What this means I do not know. Does it apply only to Governments which recognise the principle generally as part of their system of maritime law, or does it include those who have included it in their treaties with some countries but not with others? And to which form of "recognition" does it relate? To the reciprocal engagement when the parties are at war with one another; or to the more usual form, when one of the parties is at war and the other is neutral?

This does not clear up what he had said in his speech : " If we had a treaty with the United States recognising the principle that being belligerents we were to recognise one another's mercantile marine, the very act of war would put an end to that treaty."

He was referring to the principle, much advocated during the debate, of immunity of private property at sea, and what he said was that, if, accepting this principle, we entered into a treaty with the United States, in the event of war private property at sea would cease to be immune. I am under the impression that he was endeavouring to understand and explain Lord Palmerston's statement that " free ships make free goods " deals entirely with the relations between belligerents and neutrals, and that the relations of belligerents with one another are only affected by the " immunity of private property " principle. But having asserted that were *this* provision in a treaty it would not bind the parties if they were at war, Sir George Cornewall Lewis went boldly on and applied this very heretical doctrine to the Declaration of Paris : " If we were at war with any of the parties to the Declaration, then, like other treaties, it would cease to have a binding effect as regards that belligerent." Men so wide apart in their habits of thought as Sir Stafford Northcote and John Bright united in condemning such language in the mouth of a Minister of the Crown. Did he mean that in such an event both belligerents might commission privateers, might declare blockades which were not " effective," might seize neutral goods on enemy ships, and enemy goods on neutral ships ? Did he mean that the Declaration of Paris, in spite of all the applause which had been lavished upon it, in spite of all the gratitude with which it had been acclaimed by the neutrals, would be *nulle et non avenue* ? Clearly he did not mean this, because he " conceived that the Declaration would be binding as between this country and neutrals during the existence of a war " ; and three of its principles affect neutrals. But the abolition of privateering would, according to this view, not operate as regards the belligerent ; therefore his ships might be seized by our privateers.

In endeavouring to unravel the complicated idea that any principle of the Declaration should, in the event of our being at war, be binding on us in regard to the neutrals, and not binding as regards the other belligerent, I propose to confine my inquiry to the " free ships free goods " principle. What is true of that must also be true of the others.

One preliminary point must first be made clear. " Free ships free goods " when introduced into treaties may assume one

of two distinct forms: in the first and common form the right of free carriage for the enemy of one party would be granted to the other party remaining neutral; in the second form the right of free carriage by all neutrals was acquired by each party in the event of war.[1] The essential difference between the two forms is that in the first the right of free carriage was given to one potential neutral; whereas in the second the right would be given to one potential enemy. Complicated questions of construction arise in regard to the question whether the converse right enures to the enemy under the first form, and to all neutrals under the second; but they need not detain us for the present. Nor need we consider what the resultant rights to enemy and neutrals would be if several independent treaties, containing either of the forms, were entered into by each pair of a group of three or more States. This problem arises under the combined operation of the treaties of Utrecht between England and France, France and Holland, and the treaty of Westminster between England and Holland. It would have been raised in a still more acute form in the case of the independent conventions proposed in 1862 to be entered into by the United States with each of the adherent Powers to the Declaration of Paris.[2] These subsidiary questions do not arise under the Declaration, which was a multilateral agreement, governing the relations between every adherent State with every other adherent State. It is not debateable that it governed those relations, first, between each belligerent, secondly, between each belligerent and each neutral.

This may be tested in the concrete. States A, B, C, D agree that, as between themselves, the neutral flag shall cover enemy goods. This must mean that if A is at war with B, the flags of C and D shall cover A's goods as against B and B's goods as against A. So if B is at war with D, that the flags of A and C shall cover B's goods against D and D's goods as against B. Neither Lord Palmerston's *dictum* nor Sir George Lewis's explanation will stand the test of this most elementary analysis. But all the Powers did not adhere, and the question of the application as between adherent and non-adherent States is one of great complexity which requires special consideration.

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[1] I am doubtful whether any example of this form is to be found. It would be worded thus: "In the event of the contracting Parties being at war, then their goods shall be respectively free under neutral flags." This, however, would be the consequence of an adoption of "free ships free goods" generally. See pp. 83, 84.

[2] See p. 159.

V

The Effective Operation of the Declaration that "Free Ships make Free Goods."

We now come to the vital question involved in the Declaration of Paris—limiting the inquiry, as before, to the 2nd principle, What was its effective value as an international agreement? The States of the world came to be divided into adherents and non-adherents—sheep and sea-wolves. They did not all and all-at-once assume the sheep's clothing. There was on the part of the majority extreme haste to adhere; but some made excuses. An examination of the consequences of the Declaration while some States abstained is therefore necessary. It will enable us to test its practical value, to see whether the Congress really did achieve anything worthy of the congratulations which the plenipotentiaries poured out so lavishly upon their work: whether it was practical statesmanship.

The adherent Powers were of two categories: those whose *general law* allowed them to seize enemy goods on neutral ships, and those who, either by express provision of their law or by conventions with other States, recognised, or asserted that they recognised, the freedom of enemy goods on neutral ships. The fact that the first category included at the time only one State, England, makes the inquiry, as it affects the statesmanship of the English plenipotentiaries, all the more interesting and important. For simplicity's sake we may assume that the non-adherent Powers resembled the second category of the adherents in their recognition of the maxim.

Now the Declaration contained a provision that "it is not binding except as between those Powers who have adhered to it," or, more plainly, as Lord Palmerston put it in his despatch of the 13th April 1856, "it shall not be applicable to the relations of the Declaring Powers with States which shall not have acceded to the Declaration." The meaning of this provision must be—it was clearly Lord Palmerston's meaning—that those of the adherent Powers who did not recognise the maxim in their general law (in other words, England) would continue legitimately to enforce their old practice of seizing enemy property on neutral ships in their relations with any non-adherent Power. During war the relations of any adherent to any non-adherent may be those of belligerency or those of neutrality. Therefore the meaning of this provision in its application to England is, that whether a non-adherent Power be the enemy

at war with England, or be neuter when England is at war with another Power, the ancient maritime law of England remained in force in regard to it, with the express approval of the other adherent Powers.

This being so, it is obviously necessary to do now what ought to have been done ages ago: test the application of this principle to the various cases which might occur.

I assume England to be at war, because concrete cases are easier to handle: we ought thus to be able to reach the precise consequences of England's adherence to the Declaration.

Case A.—War between England and an Adherent Power.

i. *Where the Neutral is also an Adherent Power.*—The maxim here has full play, for both enemy and neutral come within the express scope of the Declaration.

ii. *Where the Neutral is a Non-adherent Power.*—Under the express terms of the Declaration, it is not binding as between England and such a neutral. Therefore that Power *ought* not to be entitled to the benefit of the maxim. But the adherent enemy is entitled to that benefit. If this neutral were allowed to carry this enemy's goods "free," the express right which England retained would be nullified, and the result would be to make nonsense of the condition of the Declaration.

The meaning of the limitation of its operation must therefore be, that an adherent belligerent is not entitled to the benefit of free carriage of his goods by a non-adherent neutral.

Case B.—War between England and a Non-adherent Power.

i. *Where the Neutral is also a Non-adherent Power.*—The maxim here disappears, for both enemy and neutral are outside the Declaration.

ii. *Where the Neutral is an Adherent Power.*—Under the express terms of the Declaration, it is not binding as between England and such a belligerent. Therefore the goods of that Power *ought* to be liable to seizure. But the adherent neutral is entitled to the benefit of the maxim. If this enemy were allowed to have his goods carried "free" by this neutral, again the express right which England retained would be nullified, and again the result would be to make nonsense of the condition of the Declaration.

The meaning of the limitation of its operation must therefore also be that an adherent neutral is not entitled to carry

"free" the goods of a non-adherent belligerent. But if this be so, then the Declaration has destroyed the historic contentions of the neutrals as to the meaning of the maxim.

But in this case the confusion is more extended: for *this* enemy is neither bound, nor expected, to observe the maxim in regard either to this neutral or to England. Therefore, unless this country's *general law*, as distinct from treaties, prevents him, he will not be concerned with the fact that both England and the neutral are adherent Powers, but he will seize, under the old maritime law, English goods on these neutral ships.

CASE C.—WAR BETWEEN TWO NON-ADHERENT POWERS; ENGLAND, AS WELL AS OTHER ADHERENTS, BEING NEUTRAL.

In this case adherent neutrals will take no benefit from their Declaration, for they have expressly excused both belligerents from observance of the maxim. If, therefore, they hope to carry goods for either belligerent, the other will probably seize them, and will certainly pay no regard to assertions of a "right" which he is expressly entitled to disregard. The neutrals' only course would be to form another Armed Neutrality, which, unless the belligerent's Government were affected with the same nervousness as many politicians confessed to in 1854, would probably suffer the same disregard as its predecessors, and the Declaration would result in nothing.

Judged thus by its practical results, the Declaration cannot be said to be satisfactory. Yet they could easily have been foreseen had someone taken the trouble to think out the not very complicated consequences resulting from twice ten or two dozen States entering into a reciprocal engagement to adopt this two-edged maxim. They are not to be avoided by declaring that it has only one edge.

VI

The Conditions attached to adherence to the Declaration: Indivisibility of the four Principles.

The Declaration was agreed to on the 16th April 1856. The statement of its principles was followed by an engagement on the part of the plenipotentiaries to bring it to the knowledge of the States which had not taken part in the Congress, and to invite them to accede to it, doubting not that the gratitude of

the whole world for the maxims they had proclaimed would lead to their general adoption. The efforts of the Governments would thus be crowned with full success.

It was then resolved as a necessary corollary that

> La précédente Déclaration n'est et ne sera obligatoire qu'entre les Puissances qu'y ont ou qui y auront accédé.

At the last sitting of the Congress, on the 16th April, a further resolution was taken, that the four principles were to be one and indivisible. Adherence was to be "all in all or not at all." This condition would result naturally from adherence to the Declaration. Partial adherence to such a document would be impossible without an express provision recognising it. But in order to assure this impossibility the principle of "indivisibility" was specially emphasised. The signatory Powers pledged themselves, and required adherents to pledge themselves, not to enter into any engagement on the subject of neutral rights which was not based on all four principles.

> Sur la proposition de M. le Comte Walewski et reconnaissant qu'il est de l'intérêt commun de maintenir l'indivisibilité des quatre principes mentionnés à la Déclaration signée en ce jour MM. les Plénipotentiaires conviennent que les Puissances qui l'auront signée ou qui y auront accédé, ne pourront entrer, à l'avenir, sur l'application du droit des neutres en temps de guerre, en aucun arrangement qui ne repose à la fois sur les quatre principes de la dite Déclaration.

The Plenipotentiaries thus deliberately interposed the condition of the indivisibility of the four principles, not merely before their aspiration to include them in the Law of Nations could be fulfilled, but before any one of them could be asserted to be a principle of that law. The United States Government, in its refusal to adhere, pointed out that the principle of "indivisibility" did not form part of the Declaration, which was perfectly true; but the claim based on it, that therefore the United States could adhere to some of the principles and not to all, could not be admitted in the absence of express permission.

The principle of "indivisibility" carries with it some curious, though latent, consequences. It disposes for good of the assertion that "free ships free goods," for example, is, or ever was, of itself and by itself, a "principle" of the Law of Nations. Specially, this could never be asserted by a non-adherent against an adherent Power. It is also conclusive evidence of the opinion of a large number of Powers against the validity of such a

contention made by one non-adherent Power against another non-adherent Power. It reduced the maxim from the lofty position in which it had been placed by Frederick the Great, by Catherine, by Paul, by Bonaparte, of a primitive *right* included in the code which Nature had devised for the government of nations, to a principle depending on express consent. Not only that, it was not a principle which could be consented to by itself, but only in connection with three other principles. The pretension that it was, or is, or ever could be again asserted to be a neutral "right," was once and for all destroyed.

So much of international thought and writing has centred round the Declaration, much of it of the loosest kind, some of it learned, some of it painfully ignorant, that it is worth while considering briefly the wisdom of this condition. For, assuming all the virtues with which each of the four principles has been endowed by enthusiasts, the connection between them, the suggestion that their interdependence was asserted for the "common interest," is not so obvious as not to require some explanation. Indeed it ignored the link of indivisibility, recognised by the common practice of nations in the early treaties, which connected "free ships free goods" with "enemy ships enemy goods." The Armed Neutralities had been so far logical. While they insisted on the freedom of enemy property under the neutral flag, they left untouched the French and Spanish practice of seizing neutral goods under the enemy flag. It is perfectly true that from the standpoint of the pretended inviolability of neutral commerce this practice was as bad as seizing enemy goods under the neutral flag. But the linking together of the two maxims under the principle of the flag was based on logic, and they are the only two principles which could be called scientifically "indivisible."

The opinion is certainly justified that zeal for the gradual development of international law, for the "progress" which M. Drouyn de Lhuys had in his mind, might well have been contented with the acceptance of one or two of the principles as a commencement of execution of the plan. Seeing that privateering was "un des plus grand fléaux de la guerre," something worthy of the gratitude of the whole world would have been achieved if its abolition had been accomplished. If Lord Clarendon was bent on sacrificing something, seeing that England was quite as bad an offender as any other country in this matter, if not the worst of all, he might have devoted his energies to that. But by tying it on to the acceptance of other doctrines, he ran the risk of jeopardising the complete carrying out of the scheme, as in fact he did.

So as to "free ships free goods," which was the favourite maxim of the United States. All that had passed in 1854 in regard to its adoption, and the rejection of "enemy ships enemy goods," showed that unanimity here was probable, and "progress" feasible. In the First Marcy Note,[1] acknowledging the Declaration to the neutrals in 1854, the United States Government had expressed the hope that "free ships free goods" might become a settled principle, so as "to prevent it from being called again in question from any quarter or under any circumstances." The United States had proposed to the Powers in 1854 that simple conventions should be entered into recognising the maxim, as well as the freedom of neutral property on enemy ships. Russia, Peru, and the Two Sicilies accepted the invitation.[2] In order to achieve the universal acceptance of these two principles, there was a stipulation in the Russian Treaty—

> que toutes les nations qui consentiront ou pourront consentir à accéder aux règles du premier article de cette convention, par une déclaration formelle stipulant qu'elles les observeront, jouiront des droits résultant de cette accession de la même manière qu'auront lieu la jouissance et l'observation par les deux puissances signataires de la présente convention.

France was on the point of signing.

The United States, in refusing to adhere to the Declaration of Paris, did not hesitate to show irritation that its own project should be superseded by one which made the acceptance of the two principles only possible if they were linked on to two others, one of which was unacceptable, and the other of questionable value. A reply to the Second Marcy Note would have been interesting, not only because it would have answered the objections raised to the abolition of privateering, but also have explained why the principle of "indivisibility" had been insisted on. The opportunity of explaining the reason for the condition passed away, and it has never since been attempted. The Swedish letter of adherence to the Declaration hardly furnishes a satisfactory explanation. If Lord Clarendon had suggested as a bargain that we should accept "free ships free goods," provided that the United States would abandon privateering, it would have been intelligible, resembling the mutual surrender of principle by England and France in 1854. But the strange part of his defence is that Lord Clarendon asserted that we had got the benefit of the abandonment of

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[1] Document No. 8 J. [2] Document No. 16.

privateering as a *quid pro quo* for our acceptance of the maxim, the real fact being that we had abandoned both privateering, and our principle of seizing enemy goods on neutral ships, in return for nothing at all.[1]

So as to blockade. No international issue was ever so clear-cut. England was again, in the eyes of "all Europe," the great offender. The French wars had shown the extent to which blockading could be carried. The English principle was well known: Pitt had declared it; the treaty with Russia in 1801 had accepted it. The Continental Powers, ever since the days of the Armed Neutralities, had insisted that more precision was required, and that ports should be closely blocked by stationary ships. The Council Board was set, full powers to discuss this question, then or at a later date, could have been obtained: here was a brilliant occasion "pour élucider" cette question, "poser certains principes, exprimer des intentions, faire enfin certaines déclarations" with regard to this thorny question. But Lord Clarendon would neither struggle to maintain the English principle of blockade, nor yet give it up unless he also gave up our principle of seizure. Yet this was essentially a matter capable of being argued on war principles, as distinct from doctrinaire ideas. The admirals of the Allied fleets had shown what sailors thought of the matter, for they agreed to blockade the Black Sea ports by stationing their squadrons at the entrance of the Bosphorus, to the dismay of the statesmen and lawyers at home. The occasion for sailors and lawyers to discuss and settle their long-standing dispute was at hand; but it was allowed to pass.

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[1] From a memorandum in a bundle of "Miscellaneous Papers" in the Public Record Office, discovered since the statement in the text was in type, it would appear that Lord Clarendon had had this idea in his mind for some time. Portugal had received the invitation from the United States to join in the treaty which had been proposed in 1854, and sought Lord Clarendon's advice through our Ambassador, Sir Richard Pakenham. Lord Clarendon wrote: "It must be for the Government in question to determine whether it should bind itself by a treaty engagement to recognise the principle that free ships make free goods, but I strongly advise that the adoption of such an engagement with the United States should be made conditional on the abandonment of the practice of issuing letters of marque. Any maritime Power at war with the United States would find an enormous advantage in the prohibition of a system so attractive to the adventurous spirit and buccaneering habits of American citizens, and to which they would resort with great success and in formidable numbers."

VII

The Courts and the Declaration.

There are certain documents of which the Courts take "judicial notice," that is to say, they interpret and apply them without formal proof of their existence. Their contents form part of the knowledge which reposes in the "judicial bosom." Thus the statutes of the realm may be cited in argument without proof that they have been passed. But treaties are not in this category. They are, it is true, part of the law of the land; but when they are relied on they must be "proved": brought formally to the notice of the Court. The method of proof has been simplified by Lord Brougham's Evidence Act (No. 2) of 1851; but they have not been raised to the dignity of "judicial notice." For some unexplained reason, treaties and other international documents are not communicated to the world at large—which includes the Bench of Judges. Their publication in the *Gazette* is not required; and Lord Brougham's Act does not go so far as to authorise the admission in evidence of King's printer's copies.

Our methods in such matters are slipshod. Even in the case of statutes, we have no formal "promulgation" such as obtains on the Continent. In France it is a fundamental principle that a law does not come into force until it is promulgated, that is, published in the official *Gazette*. But in England a statute is in force from the moment of the King's assent; it does not depend even on the issue of the King's printer's copy. The maxim that ignorance does not excuse breaches of the law applies from that moment to all its provisions, how many or various they may be, or intricate their meaning. In the case of a criminal statute, breach of its provisions five minutes after it is passed is an offence punishable by the extreme penalty provided the Judge thinks fit to impose it. This is an old-established rule of our constitution which might, if enforced to the letter, be productive of infinite hardship; but, as Sir George Jessel used to say, "Such is our law."

It is possible that the rule as to "judicial notice" may have sprung from the old struggle between Parliament and the King, for the shadow of a constitutional principle is discernible in the distinction which is made between statutes and treaties. The Judges take "notice" of an Act of Parliament, but not of an Act of the King. "King-made law," which includes treaties, proclamations, Orders in Council, and even treaties which by

statute require an Order in Council to bring them into effective operation, must be proved; though sometimes, as in the case of extradition treaties, they are ordered to be published in the *Gazette*.[1]

This brief outline of a highly technical subject has an important bearing on the question in hand—the recognition of the Declaration of Paris by the Courts. It is conceivable that a document of which the Court cannot take "judicial notice" may, by frequent reference, become so well known to the individual Judges that they would be justified in waiving formal proof. But this is "judicial familiarity," and not to be confused with "judicial knowledge." It is no disrespect to the Common Law Judges to say that they have not even judicial familiarity with the language in which the principles of the Declaration of Paris are expressed.

How then would it be proved, in order to establish the proposition, in an insurance case springing out of the war, that by English maritime law "free ships make free goods"? The only official document in which the Declaration is contained is the White Paper "presented to Parliament," in which the protocols of the Congress of Paris are printed in French, with an English translation. It has never officially been put into any other form, nor published independently. The spirit which kept it secret has prevailed to the end. The constitution does not make publication a condition to the efficacy of a treaty; but neither does the law authorise the Courts to accept the print of a protocol as judicial proof of an international agreement.

In the case of executive orders and rules made in virtue of statutes, it is customary to provide that they shall be laid on the tables of the Houses; and, unless the circumstances are exceptional and require immediate executive action, they become operative as part of the parent statute, as amended by motion, within a prescribed period, usually forty days. But this custom has not been extended to treaties or other acts done in virtue of the prerogative. The result is, therefore, that there has been no publication of the Declaration of Paris which is receivable in evidence.

These somewhat vague principles apply to the Prize Court, which is set up by the King to administer the Law of Nations.

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[1] Before the publication of the *Statutory Rules and Orders* chaos reigned in regard to obtaining authorised copies of Orders in Council, treaties, and other similar documents. Publication in the *Gazette*, though not required by law, was assumed to be all-sufficient notice to all whom they might concern, the idea being that it was the duty of all good citizens to be subscribers to that periodical.

It has been said that the Court itself sits under the authority of the Law of Nations, is, so to speak, a "Law of Nations Court." In England, the Court of Admiralty is invested with jurisdiction in prize, administering a law which lies outside the great body of the law of England, but, when occasion arises, also administering the municipal law of the country.

The Prize Court has gradually assumed to itself the functions of a Court of Law, and the Judge exercises his functions in accordance with the notions fundamental to the administration of justice in England. The principle of "judicial knowledge" probably therefore applies. The provisions of the Declaration of Paris have become, from frequent reference, familiar to the Judge; but it is doubtful whether there is so radical a difference between a Prize Court as now constituted and a Court of Law as to warrant any further departure from the strict rules of legal procedure.[1]

A reference to the French procedure adopted in the case of the Declaration of Paris will throw light on the peculiarity of our own practice. It was promulgated by Imperial decree.[2]

This decree fulfilled the legal forms required by the French constitution for making the Delaration operative; its principles thenceforward became the law of all the Courts, and it is the notice, required by French law, to all the world that France is an adherent Power. This fact might well be in question in a Common Law Court; it would be proved in the same way as any other question of foreign law.

The manner in which a State has adhered to the Declaration is therefore important, and is a question which the Courts might have to consider.

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[1] It is popularly supposed that the Prize Courts in all countries are judicial tribunals. There is not much information available on the subject, but it is certain that in some countries they are administrative Courts.

The Decree of Napoleon "portant institution d'un Conseil de Prises" (Document No. 6 B), issued before the Russian War, shows that the constitution of the French Prize Courts differs essentially from our own. It is a *Conseil*, not a *Cour de Prises*. It is not suggested that such a *Conseil* does not give its decisions in accordance with international law; the fact that *conclusions* are given shows that the *Procureur-Général*, or some other member of the *Parquet*, is appointed to the *Conseil*, and these would naturally be in accordance with international law. During the Russian War M. de Pourtalis, an eminent French lawyer, was the legal member of the *Conseil*.

An example of the form of the decision, in the name of the King, will be found in the *State Papers*, vol. viii. p. 423. It was given in December 1819, and terminated the long correspondence between the United States and France respecting the burning of two American vessels in 1811 by French frigates after the alleged revocation of the Berlin and Milan Decrees.

[2] Document No. 18.

In the case of Switzerland and a few other countries the adherence was by *arrêté*, a copy of which was included in the "act of adherence." The meaning of the correspondence between England and Germany in 1870, referred to in the chapter on "The Adherence of the Powers" is now clear. At the outbreak of war Lord Granville had asked for a formal notification from the belligerents that they would observe the principles of the Declaration. The Prussian answer was that a law had already been passed, and nothing further was therefore required.[1]

But what would happen in the case of a country which had only adhered by official letter, such as those which have been collected in the *State Papers*? There are certain occasions on which the Courts are authorised to apply to a Secretary of State for official information, as in the case of the existence of "foreign jurisdiction."[2] The authority of a statute making this information evidence is, I believe, requisite; it is doubtful whether there is any recognised principle.

Another old rule of procedure arising out of war must be noticed. An alien enemy has no *locus standi* in the Courts, even in prize proceedings in which he may have a considerable interest. Neutral captains were allowed to claim the immunity of enemy cargoes as well as of their own ships. "In the last war the master was general claimant for himself and everybody concerned" (*Jungfre Maria*).[3] This appears at first sight to be an evasion of the old practice rule; but it was probably no more than an application of a legal principle. The cargo was the property of an enemy subject in custody of the ship, and the ship's owner, or his legal representative, the master, was allowed to put the treaty before the Court, not on the enemy owner's behalf, but in his own right as legal custodian. The owner derived the benefit of it.

The Lords went even further in the *Yong Vrow Adriana*,[4] in 1760. The Vice-Admiralty Court of Gibraltar had restored the ship as belonging to neutrals, but had condemned part of the cargo as enemy property. The owners of the cargo appealed, and the appeal was prosecuted in the name of the master, the original claim having been in his name. The Lords declared "that the captain is not now at liberty to appeal, under privilege of the ship, but that the owners may use him on the appeal as a claimant of this property."

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[1] See p. 135.
[2] Foreign Jurisdiction Act, 1890, s. 4.
[3] Hay and Marriott's Rep., p. 283.
[4] Burrell, 178.

The question has now been put on a new and entirely satisfactory footing by the decision of the late President, Sir Samuel Evans, in the *Schooner Möwe*.[1] He recognised the injustice of not allowing an enemy subject to avail himself of a provision in a treaty containing "stipulations which contemplate a future state of war and make provision for such an emergency," and destroyed the old rule that an alien enemy is not *persona standi in judicio* where such a provision would enure to his benefit. He held that "whenever an alien enemy conceives that he is entitled to any protection, privilege, or relief under any of the Hague Conventions of 1907, he shall be entitled to appear as a claimant, and to argue his claim before the Court."

This principle applies to the Declaration of Paris; an enemy subject therefore may now argue his claim to the privilege of "free ships free goods." Any doubt as to the binding force of treaties of this kind during war, such as was raised in the House of Commons by Sir George Cornewall Lewis, has been set at rest, and the mists of an archaic prejudice have been dispelled by a common-sense rule, which was at the same time enlightened jurisprudence.

VIII

The Declaration and the Law of Nations.

It is generally assumed that the adherence of all nations to such a document as the Declaration would modify international law, and a short cut has been taken to the conclusion that such a modification has, in fact, been effected. Two assumptions are made to this end: first, that the United States is the only non-adherent Power; secondly, that the state of American maritime law is such that the condition of adherence has been satisfied. So many and such serious consequences follow, that it is necessary to examine these assumptions carefully.

M. Drouyn de Lhuys wrote exultingly in his *Mémoire* :—

> A cette déclaration ont accédé toutes les puissances, excepté l'Espagne, le Mexique, et les Etats-Unis de l'Amérique du Nord. Les deux premières ne firent des réserves que sur le droit d'armer des corsaires, mais elles donnérent leur

[1] Lloyd's *Prize Cases*, ii. p. 70.

adhésion aux autres articles. Quant aux Etats-Unis, ils auraient accepté la déclaration tout entière si l'on eût ajouté une clause rélative à l'inviolabilité de la propriété privée sur mer.

Sauf ces restrictions, les arrangements conclus en 1854 entre l'Angleterre et la France sont tombés dans le domaine public et placés désormais sous l'autorité du droit des gens.

Count Walewski, reporting the adherences of the Powers to the Emperor in 1856,[1] put the consequence on a lower level. He wrote that the principles of the Declaration " ainsi se trouve consacré dans le droit international de la presque totalité des Etats de l'Europe et de l'Amérique."

The late Sir Samuel Evans, in his judgment in the *Marie Gläser*[2] (September 1914), said that the position at the outbreak of the war was as follows :—

The Declaration has been adopted by practically all the civilised States of the world except the United States of America.

The United States refused to become a party to it, chiefly on the broad ground that they desired a complete exemption from capture at sea of all private property other than contraband. Nevertheless the United States announced at the beginning of the Civil War that they would give effect to its principles during those hostilities; and again, in 1898, during their war with Spain, the President issued a proclamation on April 26th, 1898,[3] declaring that the policy of the United States Government in the conduct of the war would be to adhere to the rules of the Declaration of Paris therein set forth, one of them being thus expressed : " Neutral goods not contraband of war are not liable to confiscation under the enemy's flag."

Spain also in the same year, while maintaining that she was not bound by the Declaration, gave orders[4] for the observation of the rules that (i) a neutral flag covers the enemy goods, except contraband of war; and (ii) neutral goods, except contraband of war, are not liable to confiscation under the enemy's flag.

Spain and Mexico, which had for half a century refrained from acceding to it, have recently formally acceded, the former State on January 18th, 1908, and the latter on February 13th, 1909.

Our own country, one of the original parties to it, has steadfastly adhered to it.

The Court accordingly ought to, and will, regard the

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[1] Document No. 19.
[2] Lloyd's *Prize Cases*, i. p. 56.
[3] Document No. 26 A.
[4] Document No. 26 B.

Declaration of Paris, not only in the light of rules binding in the conduct of war, but as a recognised and acknowledged part of the Law of Nations, which alone is the law which this Court has to administer.

I venture on criticism of recent decisions solely where it is necessary to the elucidation of the discussion. The supreme knowledge of maritime law comes only as a slow growth from continued study and experience. When the war broke out no one had studied it with that profoundness which its administration requires. There is hardly a principle of the books which has not needed overhauling. We had all been brought up under the influence of doctrines introduced in the middle of the nineteenth century for the purpose of modifying the stringency of maritime law as it had been understood by England; of introducing doctrines, pressed to their utmost limit in the Declaration of London, which, when we were face to face with the realities of a continental war, were found to sap the foundations of effective belligerency. Above all, the Declaration of Paris had passed into a kind of gospel; but it was forgotten that its principles had never been seriously examined. It was taken as accomplished fact. The learned President's statement, therefore, expresses an opinion which generally prevailed during the first few months of war.

The war has been a great disturber of pre-judgments, and I venture to discuss his statement; for there is a wide difference both in fact and intention between Sir Samuel Evans' opinion and both M. Drouyn de Lhuys' and Count Walewski's views. They do not rest on a common basis of principle.

Further, it is not quite clear what was the meaning of the statement made on the eve of the American Civil War, that the Law Officers had been instructed to advise "as to what are the alterations which are to be made in the Law of Nations in consequence of the Declaration of Paris."[1]

Now as to the two traditional assumptions underlying the *Marie Gläser* judgment.[2] Neither of them is warranted. First, as we have seen, there were, and are still, many non-adherent States. Secondly, in the absence of adherence, will conformity of law suffice?

The Declaration expressly excluded adherence subject to reservations. The reservation made by Spain, Mexico, and Venezuela was as to the abolition of privateering; that principle was not removed from the Declaration; the position of these countries in 1868 was, therefore, the same as if they had re-

[1] See p. 153.

[2] Lloyd's *Prize Cases*, i. p. 56.

fused to accept all the four indivisible principles. They were non-adherent Powers.

Again, an offer to adhere subject to a condition cannot become effective until the condition has been accepted by the other Powers. The United States offered complete adherence if the principle of the immunity of private property at sea were added. That principle was not added. Therefore in 1868 the United States was a non-adherent Power, and is so now. Further, the proposal actually made by the Government at Washington to Great Britain and France during the Civil War was that it should be by way of separate conventions.[1] Lord John Russell was willing to accept this for the purpose of simplifying matters during the Civil War. Serious complications would have resulted if his offer had been accepted; but he attached a condition which was rejected, and the negotiations came to an infructuous end.

Lastly, the acceptance of the principles, even of all four, merely by legislation of a country, cannot be the adherence required by the terms of the Declaration. For laws may be altered, and the pledge which adherence implies would still be wanting. A Power which "accepted" the principles in this way would not be in the same position as the adherent Powers.

With regard to M. Drouyn de Lhuys' statement, we must inquire what it was that had fallen "dans le domaine public."[2] "Domaine public" is a French term for which "public law" is the only, though not the precise, equivalent. He did not say that the principles of the Declaration have passed into the *droit des gens*, but "sont placés désormais sous l'autorité du droit des gens." He could not have intended to assert that principles which these States had refused to accept had become principles of the *droit des gens* in spite of them; this would have involved a contradiction in terms. The meaning probably is no more than that the *observance* of the principles by the adherent Powers had passed within the realm of international law. This does not carry us very far, for the observance of treaties is required by the Law of Nations.

Count Walewski's intimate relations with M. Drouyn de Lhuys make it probable that he was accurately expressing his view, that the principles had passed into the international law of the several States which had accepted them by adhering to the Declaration. By "international law" he must have meant "maritime law"; and his opinion, therefore, was that the

[1] See p. 159.

[2] The reference to the "arrangement of 1854" in the statement must have been intended to refer to the principles adopted in 1856.

maritime law enforced by each State is such as its legislature enacts it; that uniformity in the maritime laws of all States is desirable; and that when this is achieved, we reach the true *droit des gens* or international law.

With regard to Sir Samuel Evans' opinion, I venture to think that the condition of interdependence attached to the acceptance of the principles makes it impossible for the acceptance, even by all the non-adherent Powers, of one, or two, or even three of them, to have converted them into principles of international law.

But assuming the acceptance of the two principles—freedom of enemy property on neutral ships, and freedom of neutral property on enemy ships—by all nations to have satisfied the condition of their recognition as principles of international law—the non-adherent Powers by legislation; the adherent Powers by the fact of adherence—the Declaration of Paris would be reduced to the subordinate position of evidence in respect of the attitude of some of the Powers. This would altogether destroy the effect which has been ascribed to it by tradition. And yet if we give to the Declaration any larger warrant of authority, in face of the fact that some Powers have not adhered, we should be giving to a conventional agreement a wider scope than its terms imply; for rights and obligations enacted by a convention rest on nothing but consent.

The fallacy that States which are not parties to conventions can be compelled to observe them runs all through the history of the subject; the climax in fallacy being reached in the Duc de Bassano's report to Bonaparte in 1812, that the Treaty of Utrecht—that is to say, two of the commercial treaties signed at Utrecht in 1713—had established "a common law" of nations: "Les droits maritimes des neutres ont été réglés solennellement par le traité d'Utrecht, devenu la loi commune des nations."[1]

I do not here discuss the wider proposition, that if all States adhere to a convention its provisions are thereafter transmuted into principles of the Law of Nations. It is sufficient to refer once more to Lord Palmerston's despatch of the 13th April 1856, to show that he never contemplated or assented to any radical alteration of the Law of Nations:—

> It would not be correct to say that a declaration of principles such as is now contemplated could alter the Law of Nations. That law rests upon foundations wider

[1] *Rapport à l'Empereur Napoléon: Réponse par Phileleutherus:* Londres, 1812.

and deeper than the occasional declaration of a few States, and it could not be altered except by some agreement much more general and much more formal than the proposed Declaration; and it would be dangerous for Great Britain to admit that such a Declaration issued by the representatives of a small number of States could alter the Law of Nations. An example thus set and a precedent thus established, by the consent and participation of Great Britain, might hereafter upon other occasions be used for the purpose of establishing doctrines of international law to which Great Britain might have the strongest possible objection and repugnance.

It is desirable not only that the Declaration should be communicated to other States, but that the States to which it shall be communicated be invited to accede to it, and it is highly important to record that the principles thus proclaimed shall not be applicable to the relations of the declaring Powers with States which shall not have acceded to the Declaration.

The general tenor of this despatch has already been considered. It was highly critical of the draft sent over from Paris for approval of the Cabinet, and important alterations in the proposed preamble were indicated as essential to England's concurrence. These two paragraphs seem to be conceived in the same critical spirit. Lord Clarendon had intimated that, "If the whole Congress were to adopt the proposition of Count Walewski, it should be well understood that it would only be binding in regard to the Powers who may accede to it, and that it could not be appealed to by Governments who may refuse their accession."

Lord Palmerston thought that, having accepted the policy, it should be made as far-reaching in its operation as possible, and therefore proposed that States not represented at the Congress should be invited to join. But he must not be taken to have agreed that, even if all were to accept the invitation, the "much more general and much more formal" agreement would have been reached by which alone an alteration in the Law of Nations would have been effected; that the Declaration, even with all the States in the world as adherents, would become one of those wide and deep foundations on which the Law of Nations rests.

The despatch is suggestive of the large question which the Declaration had opened up; it does not profess to solve it.

It may be agreed that a multilateral convention to which all nations have adhered is more efficacious to bind than a series of independent conventions entered into between them all, two

and two; but the assumption that its principles thereby pass into the Law of Nations, even if it rested on a sounder basis than it does, is not a practical proposition.

But, these questions apart, we are faced with two difficulties. First, if adherence to a convention by all States does make its principles part of international law, it would shut out all progress in the rules of maritime law; for no alteration, however beneficial and obviously necessary, could be introduced except by way of another general convention; and, in the premises, the refusal of one State to adhere would prevent its adoption. Secondly, and more important, either a State can never withdraw its assent to such a convention, or, if it may and does, the rule must thereupon drop out of the code. The suggestion lends itself to endless discussion, which would not be very profitable. But one remark may be made. Debates on war principles in peace-time, in spite of Lord Clarendon's view[1] that only then can reason dictate the right way to wage war, can never be very satisfactory. The possibilities of war seem then so remote, so unreal, that the conditions inevitably are more favourable to the latent ulterior motive which plausible diplomatic phrases skilfully employed hide from the wit of even clever plenipotentiaries. But this is conceivable: that theoretical principles might be adopted which, put into war practice, might mean irretrievable disaster to some consenting Power. Does the doctrine that contracts are eternal and indefeasible, except by consent of all parties, hold then?

In conclusion, I pass from the region of theory and conjecture to the very practical solution of all difficulties which is suggested by Sir Samuel Evans' later decision in the *Schooner Möwe*.[2]

The result of that decision has been already dealt with. Its indirect consequences are, I think, wider than at first sight appear. An enemy subject may now claim the benefit of one of the principles of the Declaration, and argue his case before the Court, if his Government is an adherent Power, in the same way as the subject of an adherent neutral Power. A multilateral treaty differs in no respect from a simple treaty—the subjects of the Parties come within the application of the new rule of practice in both cases. But the subjects of a non-adherent Power could not claim the benefit of the rule.

This decision seems to me, with great respect, to do away with the necessity of an inquiry whether the Declaration has

[1] See p. 127.

[2] Lloyd's *Prize Cases*, ii. p. 70, see p. 206.

become part of the Law of Nations; for whether nineteen nations, or all nations, have adhered, in order to entitle the subject of an adherent Power to raise a direct issue under it, it is to the Declaration he must appeal. The position of such a claimant is not strengthened by the assertion that the Declaration has become part of the Law of Nations, and the position of subjects of a non-adherent Power is not altered.

CONCLUSION

MANY strange things conspired to the evolution of the Declaration of Paris, and it will be well, in conclusion, to gather together the threads of the story.

Having accepted the condition which the Scandinavian Powers attached to their neutrality, that their free ships should make enemy goods free, Lord Clarendon almost immediately informed British merchants that the old law of war against trading with the enemy would be enforced, and that their consignments from the enemy would not be free on neutral ships.

Being engaged with France as ally in a naval war, Lord Clarendon recognised that the action of the fleets must rest on identity of principle, and both Governments endeavoured to bring this about.

While the negotiations were being dragged out to the last minute before war was declared, and the patience of France was sorely tried, Lord Clarendon submitted the draft Declaration as a British project to the United States Minister in London, and was seeking his approval. Finality was promised at a time when nothing was further off than a final decision; and even then it was finality in the English Cabinet, not in the Allied councils.

France was not informed of the part which the United States Government was asked to play in the discussion, still less did she know that the differences of opinion in the Cabinet had disappeared under the pressure of the Minister's opinion.

Throughout these parallel discussions the "Rule of 1756" dances like a firefly. It is here, it is gone, it reappears; on the morning of the last day it is insisted on, to the imminent wrecking of the joint declaration; by the evening it is withdrawn, but not abandoned.

Faced with serious criticism in Parliament by those who feared that the policy adopted for this war might become a perpetual principle to be adopted in all wars, the Government spokesmen allayed those fears by what was tantamount to a pledge for the future—"To waive is not to surrender."

Behind this was the fixed intention of Lord Clarendon, confided to Lord Shaftesbury, to alter the ancient law, to abandon the ancient practice, permanently: and the confession to M. Drouyn de Lhuys that he dared not do it openly, in the face of the people.

Between the Government and the people there was built up a screen of false conclusions drawn from half-true statements; of theories as to how war ought to be waged; of political economists' predictions of what would happen if only those theories were adopted—by whom these doctrines were asserted: that trading with the enemy must be permitted; that the maxim "free ships free goods" sanctions it; that ships and cargoes upon the sea are not part of the national commerce, but private property, which should be immune from capture; that the Bonaparte theories were sound, and that we owed an apology to the world at large for having resisted and defeated them.

To the demonstration of these doctrines a year of theoretical talk was devoted, and the most glaring act of unneutral service that could well be devised, short of actual military assistance to the enemy, the scheme of Prussian land-transit to Memel, was but feebly protested against.

And afterwards the Declaration of Paris was hung "round our necks": and no better justification forthcoming than this: "And now, my Lords, let me ask, having once waived these rights, was it possible, or was it prudent, for us to return to them?"

So the full circle was complete: to waive *was* to surrender, as had always been intended. Thus Lord Clarendon achieved his purpose, and England, through his agency, did what the neutrals had in vain demanded for a hundred years, under more strenuous Ministers, that she should do.

Yet so little importance did Lord Clarendon attach to the Declaration, that when, a few months later, Parliament was prorogued, no mention was made of it in the Queen's speech.

But of the many strange things, none more strange than Lord Palmerston's varying moods. It is difficult to believe that the author of the despatch to Lord Clarendon on the eve of his signing the Declaration can have made the speeches he did: either in the autumn of 1856 to the electors of Liverpool, or in the House of Commons in 1862 embodying his "second thoughts." These speeches show one thing clearly, that the question is too intricate to be dealt with in the political manner. Theory cannot replace practical experience. The question to be solved is whether, if neutrals are allowed to carry enemy goods free,

and " private property " is immune upon the sea, England can successfully wage war ? Only the experts in naval and military matters can answer that question. But the civilian may assist by his researches into historical records. And history reveals three distinct policies hostile to England.

First, *that of the enemy,* who shapes his policy according to his needs for carrying on the war. Without " free ships free goods " France could not have got the assistance which the neutral gave her for building and repairing ships, and would not have been able to carry on the war in aid of the Americans.

When the alliance with the Colonists was completed and, after long secret preparation, war had been declared, M. de Sartine, French Secretary of State for the Marine, being informed that England was seizing cargoes of ships timber and naval stores on Dutch ships, wrote *fort ému* to M. de Vergennes : " Si les Anglais prennent les neutres, nos approvisionnements pour l'année prochaine seront interceptés ; vous jugez du mal que cela nous fera." [1]

Dr Fauchille's book on the Armed Neutrality of 1780 contains frequent allusions to this need of France if she was to carry on the war. In one pregnant passage he says : " C'était pour la France l'unique moyen d'assurer l'approvisionnement de ses ports et l'entretien de sa marine, conditions indispensables au soutien d'une guerre navale contre l'Angleterre. La France ne trouvait pas en elle-même les matériaux essentiels pour la navigation . . . seule, elle n'aurait pu importer toutes les choses nécessaires. . . . Il fallait donc recourir à l'étranger." [2]

Secondly, *that of the neutral merchant,* whose trade in his staple commodities, ships timber and naval stores, would be carried on without risk of seizure if only " free ships free goods " could be insisted on.

Mr Wroughton, British Minister at Stockholm, wrote in February 1780 : " I am constantly assured that we give too great an extent to the appellation of naval stores, which, being the natural and sole production of this country, such an impediment to their exportation cannot fail of being a great detriment to its trade and revenues." [3]

And Mr Morton Eden, British Minister at Copenhagen, reported about the same time a conversation with Count Bernstorff, with reference to the victualling trade, especially in salted provisions : " It was a point they [the Danes] never could give up, nor would ; it was nearly the only production of the country,

[1] De Sartine to de Vergennes, 22nd August 1778 (Fauchille, *La Ligue des Neutres,* p. 4).

[2] Fauchille, *ibid,* p. 16.

[3] F.O., 73, Sweden.

and the loss of this branch of commerce must be highly detrimental. Some of the Royal Family engaged in the trade." [1]

Thirdly, *that of the neutral shipowner*, the profits of whose carrying trade would be magnified past reckoning if "free ships free goods" were admitted as a universal rule.

Mallet du Pan records the answer to the Prince of Orange of a Dutch shipper who carried munitions to the Spaniard: "S'il y avait un commerce lucratif avec l'enfer, je me hasardais d'y bruler mes voiles." [2]

There is little difference in principle between this confession and the statement in the speech from the Dutch throne in September 1855: "Bien que la guerre n'ait pas été sans exercer une influence assez sensible sur le commerce et la navigation, ces deux branches d'industrie nationale se trouvent néanmoins dans une situation satisfaisante." [3]

The principle is to secure the profit from the commerce which is incident to war.

So it was always three to one: the interests of the three coinciding to reduce England's power of seizing enemy property to its lowest limits: supporting their claim by assertions that it found its warrant in the Law of Nations.

When it is said that in the past England was not afraid to stand alone, the meaning is, that she was undeterred by this combination, and fought at sea according to the principle which she believed to be the foundation of the law of war: to prevent neutral assistance from reaching the enemy. In spite of the bluster of Armed Neutralities she held her own.

The fear of offending the United States, working on the latent inclination to adopt humanitarian theories of war, produced the change in English maritime law which was finally embodied in the Declaration of Paris. Mr Marcy prevailed where Catherine had failed.

But neither fear of offending the neutrals, nor reckless disregard of them, is the principle on which wars can be fought and won. Each by its own way will lead to disaster: fear of offence paralyses the striking force of the country; reckless disregard destroys the commercial action and reaction on which our own relations with the neutrals depend. The path of safety lies between; and it is the way which, as I believe, the Law of Nations sanctions.

The old question, What is the Law of Nations?, is once more to be discussed; on the answer will depend the solution of all

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[1] F.O., 22, Denmark. [2] *Annales politiques*, t. i. p. 226.
[3] *State Papers*, vol. xlvi. p. 1040.

the disputes between belligerent and neutral merchant. It is to be found in Lord Palmerston's despatch to Lord Clarendon.

He modified certain statements in the preamble proposed to the Declaration which prejudiced the verdict of history on Britain's action in past wars, and he definitely established the meaning of the term which had been so greatly misused—the "Law of Nations." I know of no statement which so concisely renders all Lord Stowell's teaching—that that Law does not rest on principles which Congresses have endeavoured to formulate, but on wide and deep foundations, the search for which has for so long been abandoned. The despatch has lain hidden for many years. It will, I think, serve as an all-sufficient and inspiring guide in the momentous discussions which are now imminent.

PART III

DOCUMENTS

CHRONOLOGICAL TABLE OF CHIEF HISTORICAL EVENTS CONNECTED WITH THE RUSSIAN WAR, 1854–1856.

4th October 1853 . Manifesto of the Porte setting forth reasons for the declaration of war against Russia. (*N.R.G.*,[1] xv. p. 547.)

1st November 1853 . Manifesto of the Emperor of Russia against the declaration of war by the Porte. (*N.R.G.*, xv. p. 551.)

5th December 1853 . Conference at Vienna between Austria, Great Britain, France, and Prussia to smooth away the differences between Russia and the Porte. (*N.R.G.*, xv. p. 533.)

13th January 1854 . Protocol :—Consideration of the Turkish answer. (*N.R.G.*, xv. p. 535.)

2nd February 1854 . Protocol :—Consideration of the Russian propositions. (*N.R.G.*, xv. p. 538.)

9th February 1854 . Russian manifesto suspending diplomatic relations with Great Britain and France. (*State Papers*, xlvi. p. 363.)

5th March 1854 . Protocol :—Consideration of preliminaries of proposed Treaty between Russia and the Porte. (*N.R.G.*, xv. p. 540.)

12th March 1854 . Treaty of Alliance between Great Britain, France, and the Porte. (*N.R.G.*, xv. p. 565.)

21st March 1854 . Russia crosses the Danube and invades Turkey.

28th March 1854 . Declaration of causes of war by Great Britain. (*N.R.G.*, xv. p. 552.)

9th April 1854 . Protocol :—Russia having left unanswered the invitation of the Conference to evacuate the Principalities, it was decided that " L'état de guerre déjà declarée entre la Russie et la Sublime Porte existe également de fait entre la Russie d'une part, et la France et la Grande Bretagne de l'autre." (*N.R.G.*, xv. p. 543.)

10th April 1854 . Convention between Great Britain and France to determine the object of their alliance and the means to be employed in common. (*N.R.G.*, xv. p. 568.)

20th April 1854 . Treaty of offensive and defensive alliance between Austria and Prussia. (*N.R.G.*, xv. p. 572. German text. *State Papers*, xliv. p. 84.)

Additional article, 26th November, with accession of Germanic Confederation, 9th December 1854.

Treaty, Austria and Prussia, 20th April 1854 :—

i. Mutual guarantee of each other's territory.
ii. Mutual assistance in case of aggression.
iii. Military assistance to be ready in case of need.
iv. Invitation to all Governments of the Germanic Confederation to accede.
v. Neither party to conclude a separate alliance detrimental to this alliance.
vi. Ratifications to be exchanged without delay.

Additional article. Austria and Prussia regard the occupation of the Lower Danube by Russia as dangerous, but understand that her troops will be withdrawn in consequence of concessions now granted to Christian subjects by the Porte.

Single article. Austria to request Russia to stop her invasion of Turkish territory, and guarantee evacuation of Danubian Principalities. Prussia to support this. In the event of Russia's refusal, art. ii. of the Treaty to be put in force.

11th–23rd April 1854 Russian manifesto relating to the war. (*State Papers*, xlvi. p. 382.)

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[1] De Martens, *Nouveau Recueil Général*

23*rd May* 1854 . Protocol :—Communication of Convention concluded on the 20th April between France and England on one side and Austria and Prussia on the other. (*N.R.G.*, xv. p. 544.)

14*th June* 1854 . Military Convention between Austria and the Porte, Austria agreeing to take all necessary steps to secure the evacuation of the Principalities. (*N.R.G.*, xv. p. 594.)

24*th July* 1854 . Decree of the Diet of the German Confederation adhering to Treaty of Alliance between Austria and Prussia of 20th April 1854. (*N.R.G.*, xv. p. 579.)

8*th August* 1854 . Notes exchanged at Vienna between Austria, France, and Great Britain, fixing the basis for the establishment of a Peace between Russia and the Porte. (*N.R.G.*, xv. p. 544.)

September 1854 . The allied armies land in the Crimea.

20*th September* 1854 Battle of the Alma.

17*th October* 1854 . The Siege of Sebastopol begins.

25*th October* 1854 . Battle of Balaclava.

5*th November* 1854 . Battle of Inkerman.

2*nd December* 1854 . Treaty of Alliance between Great Britain, France, and Austria. (*N.R.G.*, xv. p. 600.)

28*th December* 1854 . Memorandum by Great Britain, France, and Austria to Russia. In order to prevent the revival of recent complications, Great Britain, France, and Austria declare that—

i. No former Treaties between Turkey and Russia concerning Moldavia, Walachia, and Serbia are to be revived.

ii. Free navigation of the Danube. A syndicate to have power to clear away the obstacles at the estuaries.

iii. Revision of Treaty of 13th July 1841, to re-establish the existence of the Ottoman Empire.

iv. Russia to renounce official protection of the Sultan's Christian subjects, and not to revive the Treaty of Koutchouk Kainardji, the misinterpretation of which was the cause of the war. (*N.R.G.*, xv. p. 632.)

January 1855 . Lord Aberdeen resigns.
Lord Palmerston becomes Prime Minister.

26*th January* 1855 . Supplementary Convention between Great Britain and France accepting the accession of Sardinia to the Convention of 10th April 1854. (*N.R.G.*, xv. p. 606.)

17*th February* 1855 . Circular of Count Nesselrode to Russian Ministers in neutral countries in regard to Sardinia's joining in the war (*N.R.G.*, xv. p. 555.)

4*th March* 1855 . Manifesto by Sardinia justifying her declaration of war against Russia. (*N.R.G.*, xv. p. 557.)

15*th March* 1855 . Protocols of second Conference at Vienna between Great Britain, France, Austria, Turkey, and Russia. (*N.R.G.*, xv. p. 633.)

15*th March* 1855 . Convention between Sardinia and the Porte, Sardinia adhering to the Alliance of Great Britain and France with the Porte of 12th March 1854. (*N.R.G.*, xv. p. 623.)

8*th September* 1855 . Fall and evacuation of Sebastopol.

21*st November* 1855 . Treaty between Great Britain, France, and Sweden guaranteeing territorial integrity of Sweden against Russia. (*N.R.G.*, xv. p. 628.)

27*th November* 1855. Capitulation of Kars.

25*th February* – 6*th April* 1856 . Congress of Paris between Great Britain, France, Sardinia, Turkey, Austria, Prussia, and Russia to determine conditions of Peace. (*State Papers*, xlvi. p. 63. *N.R.G.*, xv. p. 700.)

30*th March* 1856 . Signature of Treaty of Peace at Paris. (*State Papers*, xlvi. p. 8. *N.R.G.*, xv. p. 770.)
Signature of Declaration of Paris.

28*th April* 1856 . Queen's Proclamation of Peace. (*State Papers*, xlvi. p. 62.)

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Declarations of Neutrality, JANUARY 1854.

A.—SWEDEN TO THE BELLIGERENTS.

BARON REHAUSEN TO THE EARL OF CLARENDON.

Londres, le 2 Janvier, 1854.

Les complications politiques du moment, à la suite de la déclaration de guerre de la Porte Ottomane, et l'éventualité possible d'une guerre maritime, ont imposé au Gouvernement de Sa Majesté le Roi de Suède et de Norvège l'obligation de vouer une attention sérieuse aux effets qui pourraient en résulter. Son désir sincère est de conserver intactes les relations de bonne amitié et de parfaite intelligence qui règnent si heureusement entre les Royaumes Unis et tous les Gouvernements de l'Europe. N'ayant rien de plus à cœur que de maintenir et de cimenter ces relations, Sa Majesté le Roi de Suède et de Norvège regarde comme un devoir de ne point laissez ignorer aux Puissances amies et alliées la marche politique que, pour y parvenir, elle se propose de suivre dans l'éventualité ci-dessus mentionnée.

Guidée autant par la franche amitié qui règne entre les Souverains et les peuples des Royaumes Unis et du Danemarc, que par cette communauté d'intérêts et de principes politiques qui se soutient et se renforce réciproquement, Sa Majesté le Roi de Suède et de Norvège s'est vue appelée, en premier lieu, à se concerter avec son auguste ami, voisin et allié, Sa Majesté le Roi de Danemarc, sur les mesures à adopter éventuellement, afin d'établir une action commune, propre à faciliter par son identité l'application du système convenu. Ces ouvertures ayant trouvé l'accueil favorable, auquel on était en droit de s'attendre, c'est en conformité des résolutions arrêtées par les 2 Souverains, que le Soussigné, Envoyé Extraordinaire et Ministre Plénipotentiaire de Sa Majesté le Roi de Suède et de Norvège près Sa Majesté la Reine de la Grande Bretagne et

d'Irlande, a reçu l'ordre de son auguste Souverain de porter à la connaissance du Ministère de Sa Majesté Britannique les règles générales que Sa Majesté le Roi de Suède et de Norvège a cru devoir établir, afin de fixer la position de ses Etats pour le cas déplorable que des hostilités entre les Puissances amies et alliées du Roi vinssent à éclater.

Le système que Sa Majesté le Roi de Suède et Norvège entend suivre et appliquer invariablement est celui d'une stricte neutralité, fondée sur la loyauté, l'impartialité et un égal respect pour les droits de toutes les Puissances. Cette neutralité, selon les vues uniformes des 2 Cours, imposerait au Gouvernement de Sa Majesté le Roi de Suède et de Norvège les obligations et lui assurerait les avantages suivants :

1. De s'abstenir, pendant la lutte qui pourrait s'engager, de toute participation, directe ou indirecte, en faveur d'une des Parties Contendantes au détriment de l'autre ;

2. D'admettre dans les ports de Suède et de Norvège les bâtiments de guerre et de commerce des parties belligérantes ; le Gouvernement se réservant toutefois la faculté d'interdire aux premiers l'entrée des ports de guerre suivants, savoir : celui de Stockholm, en deça de la forteresse de Waxholm ; de Christiania, en deça du fort de Kaholm ; le bassin intérieur de la station militaire Norvégienne à Horten ; les ports de Carlsten et de Carlskrona, en deça des fortifications ; et le port de Slitö, dans l'Ile de Gottland, en deça des batteries élevées à Encholm.

Les réglements sanitaires et de police que les circonstances auraient rendu ou pourraient rendre nécessaires, devront naturellement être observés et respectés. Les corsaires ne seront pas admis dans les ports, ni tolérés sur les rades des Etats de Sa Majesté le Roi de Suède et de Norvège ;

3. D'accorder aux bâtiments des Puissances belligérantes la faculté de se pourvoir dans les ports des Royaumes Unis de toutes les denrées et marchandises, dont ils pourraient avoir besoin, à l'exception des articles réputés contrebande de guerre ;

4. D'exclure des ports de Suède et de Norvège l'entrée—les cas de détresse constatée exceptés—la condamnation et la vente de toute prise ; et enfin,

5. De jouir, dans les relations commerciales des Royaumes Unis avec les pays en guerre, de toute sûreté et de toutes les facilités pour les navires Suédois et Norvégiens, ainsi que pour leurs cargaisons, avec l'obligation toutefois pour ces navires de se conformer aux règles généralement établies et reconnues pour les cas spéciaux de blocus déclarés et effectifs.

Tels sont les principes généraux de la neutralité adoptée par Sa Majesté le Roi de Suède et de Norvège pour le cas qu'une

guerre en Europe viendrait à éclater. Le Roi se flatte qu'ils seront reconnus conformes aux droits des gens, et que leur loyale et fidèle observation mettra Sa Majesté en état de cultiver avec les Puissances amies et alliées ces relations que, pour le bien de ses peuples, il lui tient à cœur de préserver et toute interruption.

En priant Lord Clarendon de vouloir bien porter la présente communication à la connaissance du Gouvernement de Sa Majesté Britannique, le Soussigné, &c.

The Earl of Clarendon. REHAUSEN.

THE EARL OF CLARENDON TO THE HON. W. GREY.

Foreign Office, January 20, 1854.

SIR,

I have to inform you that the note which has been delivered to me by Baron Rehausen, containing the declaration of neutrality on the part of Sweden and Norway in the event of war, has received the best attention of Her Majesty's Government; and I am glad to express the satisfaction with which they have learned the neutral policy which it is the intention of the Swedish and Norwegian Government to pursue, and the measures adopted for giving effect to that policy.

Her Majesty's Government do not doubt that if war should unfortunately occur, the engagements now taken by the Swedish and Norwegian Government will be strictly and honourably fulfilled, and Her Majesty's Government will lend their best endeavours in support of the neutral position that Sweden and Norway propose to maintain.—I am, &c.

The Hon. W. Grey. CLARENDON.

B.—DENMARK TO THE BELLIGERENTS.

COUNT REVENTLOW CRIMINIL TO THE EARL OF CLARENDON.

Légation de Danemarc, le 2 *Janvier*, 1854.

Les complications politiques du moment, à la suite de la déclaration de guerre de la Porte Ottomane, et l'éventualité possible d'une guerre maritime, ont imposé au Gouvernement de Sa Majesté le Roi de Danemarc l'obligation de vouer une attention sérieuse aux effets qui pourraient en résulter. Son désir sincère est de conserver intactes les relations de bonne amitié et de parfaite intelligence qui règnent si heureusement entre

le Danemarc et tous les Gouvernements de l'Europe. N'ayant rien de plus à cœur que de maintenir et de cimenter ces relations, Sa Majesté le Roi de Danemarc regarde comme un devoir de ne pas laisser ignorer aux Puissances alliées et amies la marche politique que, pour y parvenir, elle se propose de suivre dans l'eventualité ci-dessus mentionnée.

Guidée autant par la franche amitié qui règne entre les Souverains et les peuples du Danemarc et des Royaumes Unis de Suède et de Norvège, que par cette communauté d'intérêts et de principes politiques qui se soutient et se renforce réciproquement, Sa Majesté le Roi de Danemarc s'est vue appelée, en premier lieu, à se concerter avec son auguste ami, voisin et allié, Sa Majesté le Roi de Suède et de Norvège, sur les mesures à adopter éventuellement, afin d'établir une action commune, propre à faciliter, par son identité, l'application du système convenu. Ces ouvertures ayant trouvé l'accueil favorable, auquel on était en droit de s'attendre, c'est en conformité des résolutions arrêtées par les 2 Souverains, que le Soussigné, Chargé d'Affaires de Sa Majesté le Roi de Danemarc près Sa Majesté la Reine de la Grande Bretagne et de l'Irlande, a reçu l'ordre de son auguste Souverain de porter à la connaissance du Ministère de Sa Majesté Britannique les règles générales que Sa Majesté le Roi de Danemarc a cru devoir établir, afin de fixer la position de ses Etats, pour le cas déplorable que des hostilités entre des Puissances amies et alliées du Roi vinssent à éclater.

Le système que Sa Majesté le Roi de Danemarc entend suivre et appliquer invariablement, est celui d'une stricte neutralité, fondée sur la loyauté, l'impartialité et un égal respect pour les droits de toutes les Puissances. Cette neutralité, selon les vues uniformes des 2 Cours, imposerait au Gouvernement de Sa Majesté le Roi de Danemarc les obligations et lui assurerait les avantages suivants :

1. De s'abstenir, pendant la lutte qui pourrait s'engager, de toute participation, directe ou indirecte, en faveur d'une des parties contendantes au détriment de l'autre ;

2. D'admettre dans les ports de la Monarchie les bâtiments de guerre et de commerce des parties belligérantes, le Gouvernement se réservant toutefois la faculté d'interdire aux premiers, ainsi qu'aux navires de transport appartenant aux flottes respectives des Puissances belligérantes, l'entrée du port de Christiansö.

Les réglements sanitaires et de police que les circonstances auraient rendu ou pourraient rendre nécessaires, devront naturellement être observés et respectés. Les corsaires ne seront pas admis dans les ports, ni tolérés sur les rades des Etats de Sa Majesté Danoise ;

3. D'accorder aux bâtiments des Puissances belligérantes la faculté de se pourvoir, dans les ports de la Monarchie, de toutes les denrées et marchandises dont ils pourraient avoir besoin, à l'exception des articles réputés contrebande de guerre ;

4. D'exclure des ports de la Monarchie l'entrée—les cas de détresse constatés exceptés—la condamnation et la vente de toute prise ; et enfin,

5. De jouir, dans les relations commerciales des Etats de Sa Majesté Danoise avec les pays en guerre, de toute sûreté et de toutes facilités pour les navires Danois, ainsi que pour leurs cargaisons, avec obligation toutefois pour ces navires de se conformer aux règles généralement établies et reconnues pour les cas spéciaux de blocus déclarés et effectifs.

Tels sont les principes généraux de la neutralité adoptée par Sa Majesté le Roi de Danemarc pour le cas qu'une guerre en Europe vint à éclater. Le Roi se flatte qu'ils seront reconnus conformes au droit des gens, et que leur loyale et fidèle observation mettra Sa Majesté en état de cultiver avec les Puissances amies et alliées ces relations que, pour le bien de ses peuples, il lui tient tant à cœur de préserver de toute interruption.

En priant son Excellence le Comte de Clarendon de vouloir bien porter la présente communication à la connaissance du Gouvernement de Sa Majesté Britannique, le Soussigné, &c.

Le Comte de Clarendon. A. Reventlow Criminil.

THE EARL OF CLARENDON TO MR BUCHANAN.

Foreign Office, January 20, 1854.

Sir,

I have to inform you that the note which has been delivered to me by Count Reventlow Criminil, containing the declaration of neutrality on the part of Denmark in the event of war, has received the best attention of Her Majesty's Government ; and I am glad to express the satisfaction with which they have learned the neutral policy which it is the intention of the Danish Government to pursue, and the measures adopted for giving effect to that policy.

Her Majesty's Government do not doubt that if war should unfortunately occur, the engagements now taken by the Danish Government will be strictly and honourably fulfilled, and Her Majesty's Government will lend their best endeavours in support of the neutral position that Denmark proposes to maintain.—I am, &c.

A. Buchanan, Esq. Clarendon.

C.—DENMARK TO THE UNITED STATES.

THE DANISH CHARGÉ D'AFFAIRES AT WASHINGTON TO THE UNITED STATES SECRETARY OF STATE.

Washington, January 20, 1854.

The present political complications consequent upon the declaration of war by the Ottoman Porte, and the possible contingency of a maritime war, have imposed upon the Government of His Majesty the King of Denmark the obligation of giving an earnest attention to the effects which may be the result. Its sincere desire is to preserve intact the relations of friendship and good understanding which so happily reign between Denmark and all the Governments of Europe. Having nothing more at heart than to maintain and cement those relations, His Majesty the King of Denmark regards it as a duty not to leave the allied and friendly Powers in ignorance of the line of policy which, for the attainment of said object, he proposes to follow in case of the above-mentioned event.

Guided as much by the frank friendship which reigns between the Sovereigns and people of Denmark and of the United Kingdoms of Sweden and Norway, as by that community of interests and political principles which reciprocally sustains and reinforces each other, His Majesty the King of Denmark has found himself called, in the first place, to concert himself with his august friend, neighbour, and ally, the King of Sweden and Norway, on the measures eventually to be adopted in order to establish a common action proper to facilitate, by its identity, the application of the system agreed upon. These overtures having met with that favourable reception one had a right to expect, it is in conformity with the resolutions taken by the two Sovereigns that the Undersigned, Chargé d'Affaires of His Majesty the King of Denmark, near the Government of the United States of America, has received the order of his august Sovereign to bring to the knowledge of the Government of the United States the general rules which His Majesty the King of Denmark has deemed it proper to establish in order to fix the position of his States in the deplorable event of hostilities breaking out between the friendly and allied Powers of the King.

[The remainder of the Note was substantially the same as the Danish Declaration to the Belligerents, No. 1, B.]

D.—SWEDISH DECLARATION TO THE UNITED STATES.

THE SWEDISH CHARGÉ D'AFFAIRES AT WASHINGTON TO THE UNITED STATES SECRETARY OF STATE

Washington, January 28, 1854.

The present political complications consequent upon the declaration of war by the Ottoman Porte, and the possible contingency of a maritime war, have imposed on the Government of His Majesty the King of Sweden and Norway the obligation of giving an earnest attention to the effects which may be their result. Its sincere desire is to preserve intact the relations of friendship and good understanding which so happily reign between Sweden and Norway and all the Governments of Europe. Having nothing more at heart than to maintain and cement those relations, His Majesty the King of Sweden and Norway regards it as a duty not to leave the allied and friendly Powers in ignorance of the line of policy which, for the attainment of the said object, he proposes to follow in case of the above-mentioned event.

Guided as much by the frank friendship which reigns between the Sovereigns and people of Sweden and Norway and of the Kingdom of Denmark, as by that community of interests and political principles which reciprocally sustain and reinforce each other, His Majesty the King of Sweden and Norway has found himself called, in the first place, to concert himself with his august friend, neighbour, and ally, the King of Denmark, on the measures eventually to be adopted in order to establish a common action proper to facilitate, by its identity, the application of the system agreed upon. These overtures having met with that favourable reception one had a right to expect, it is in conformity with the resolutions taken by the two Sovereigns, that the Undersigned, Chargé d'Affaires of His Majesty the King of Sweden and Norway, near the Government of the United States of America, has received the order of his august Sovereign to bring to the knowledge of the Government of the United States the general rules which His Majesty the King of Sweden and Norway has deemed it proper to establish in order to fix the position of his States in the deplorable event of hostilities breaking out between the friendly and allied Powers of the King.

[The remainder of the Note was substantially the same as the Swedish Declaration to the Belligerents, No. 1, A.]

E.—REPLY OF THE UNITED STATES TO DENMARK AND SWEDEN.

THE UNITED STATES SECRETARY OF STATE TO THE DANISH CHARGÉ D'AFFAIRES AT WASHINGTON.

Washington, February 14, 1854.

The Undersigned, Secretary of State of the United States, has the honour to acknowledge the receipt of the Note which the Chargé d'Affaires of His Majesty the King of Denmark addressed to this Department on the 28th ulto., bringing to the knowledge of this Government the general rules which it has been deemed proper by His Majesty the King of Denmark, in concert with His Majesty the King of Sweden and Norway, to establish, in order to fix and define the position of Denmark in the event of hostilities breaking out among the Powers of Europe, in consequence of the existing relations between Russia and the Ottoman Porte.

The Undersigned has the honour to inform Mr Torben Bille that, at his request, the views of his Government have been submitted to the President, and that they are regarded by him with all the interest which the occasion demands. Mr Bille may rest assured that the Government and people of this country feel deep solicitude in the events now transpiring in Europe, not only on account of the general anxiety they occasion to those Powers more nearly exposed to the menaced evils, but also as having a most important ulterior bearing upon the United States.

The Undersigned, etc.

T. Bille, Esq. W. L. Marcy.

[The reply to the Swedish Chargé d'Affaires was in identical terms.]

2

The Riga Despatch, 16th February 1854.

The Earl of Clarendon has had under his consideration your despatch requesting to be informed what respect would be paid by British cruisers, in the event of war, to *bona-fide* British property, the produce of Russia, if shipped on board neutral vessels. I am to acquaint you in reply that property of the

description in question, the produce of Russia, and exported therefrom, by and on account of a British merchant domiciled and trading there, although purchased before the war, and exported to England, would not be respected by Her Majesty's cruisers unless in pursuance of a licence, or of some special instructions from Her Majesty to the officers of the navy. By the law and practice of nations a belligerent has a right to consider as enemies all persons who reside in a hostile country, or who maintain commercial establishments therein, whether such persons be by birth neutrals, allies, enemies, or fellow-subjects; the property of such persons exported from such country is, therefore, *res hostium*, and, as such, lawful prize of war. Such property will be condemned as prize, although its owner may be a native-born subject of the captor's country, and although it may be *in transitu* to that country and its being laden on board a neutral ship will not protect the property. You will, therefore, inform those whom it may concern that in the event of war the property in question will not be protected by the consular certificate, or by any other document, but will be liable to capture and condemnation as prize.

To the British Consul at Riga,
February 16, 1854.

3

Instructions of the British and French Governments for the Mutual Protection of Subjects and Commerce, February 1854.

E. (1) CIRCULAR TO BRITISH DIPLOMATIC AND CONSULAR AGENTS.

Foreign Office, February 23, 1854.

Sir,

The communication which has recently been made to you of the correspondence on Eastern affairs which has been laid before both Houses of Parliament, will have shown you that there is every probability of an early commencement of hostilities between Great Britain and France on one side, and Russia on the other. That correspondence will also have shown you that the British and French Governments, throughout the difficult and complicated negotiations which have pre-

ceded the existing state of affairs, have earnestly and cordially acted together, with a view to avert the calamity of war, and that they are equally prepared to act with the same earnestness and cordiality for the preservation of the Ottoman Empire, if the Emperor of Russia should still be unwilling to negotiate for peace on fair and reasonable terms.

The time has now arrived when it is incumbent on the two Governments to prepare for all the contingencies of war; and among those contingencies it has been impossible for them to overlook the danger to which their subjects and their commerce on the high seas may be exposed by the machinations of their enemy, who, though unable from his own resources materially to injure either, may seek to derive means of offence from countries whose Governments take no part in the contest which he has provoked.

But it is a necessary consequence of the strict union and alliance which exists between Great Britain and France, that, in the event of war, their conjoint action should be felt by Russia in all parts of the world; that not only in the Baltic, and in the waters and territory of Turkey, their counsels, their armies, and their fleets, should be united either for offensive or defensive purposes against Russia, but that the same spirit of union should prevail in all quarters of the world, and that whether for offence or defence the civil and military and naval resources of the British and French Empires should be directed to the common objects of protecting the subjects and commerce of England and France from Russian aggression, and of depriving the Russian Government of the means of inflicting injury on either.

For these reasons Her Majesty's Government have agreed with that of His Majesty the Emperor of the French to instruct their civil and naval authorities in foreign parts to consider their respective subjects as having an equal claim to protection against Russian hostility; and for this purpose, either singly or in conjunction with each other, to act indifferently for the support and defence of British and French interests. It may be that, in a given locality, one only of the Powers is represented by a civil functionary, or by a naval force; but, in such a case, the influence and the power of that one must be exerted as zealously and efficiently for the protection of the subjects and interests of the other as if those subjects and interests were its own.

I have accordingly to instruct you, Sir, to act in conformity with this principle. You will consider it your duty to protect, as far as possible, against the consequence of the hostilities

in which England and France may shortly be engaged with Russia, the subjects and interests of France equally with those of England; and you will make known without reserve to the French civil and naval authorities with whom you may have means of communication, any dangers to which the interests of either country may be exposed, or any opportunities with which you may become acquainted of inflicting injury on the common enemy.

Instructions to the same effect will be sent by the Government of France to its civil and naval authorities in foreign parts, and Her Majesty's Government concur with that of France in anticipating the most favourable results from this decided manifestation of the intimate union which prevails between them, and which it is their earnest desire should influence their agents in all parts of the world at a moment when they are about to engage in a contest with the Empire of Russia for an object of such paramount interest to Europe as the maintenance of the Turkish Empire.—I am, &c.

(Signed) CLARENDON.

E. (2) INSTRUCTIONS TO BRITISH NAVAL OFFICERS.

By the Commissioners for executing the office of Lord High Admiral of the United Kingdom of Great Britain and Ireland.

The Earl of Clarendon, Her Majesty's Principal Secretary of State for Foreign Affairs, having informed us that Her Majesty's Government and that of France have agreed that their civil authorities and naval forces in all parts of the world should co-operate, or if necessary act singly, for the protection of the interests of the subjects and commerce of the two nations, whenever the same may stand in need of assistance, against the hostile machinations of Russia; and Lord Clarendon having further signified the Queen's commands that an instruction to that effect should be issued for the direction of Her Majesty's naval forces in all parts of the world; we transmit to you herewith a copy of Lord Clarendon's letter, together with a copy of a circular addressed by his Lordship to Her Majesty's Diplomatic and Consular Agents abroad; and we hereby require and direct you to conform yourself in all respects to the views and instructions of Her Majesty's Government as expressed in Lord Clarendon's letter, and in the circular in question.

We further acquaint you that a similar instruction has been

addressed by the French Government to the naval forces of France.

We further require and direct you to take the earliest opportunity, after receipt of this order, of communicating in the most friendly manner with the officer in command of the French naval forces on your station, with the view of giving the fullest and speediest effect to the intentions of Her Majesty's Government and that of France.

Given under our hands the 24th February 1854.

(Signed) J. R. G. Graham.
Hyde Parker.

F. (1) CIRCULAR TO FRENCH DIPLOMATIC AND CONSULAR AGENTS.

Paris, Février 1854.

Monsieur,

Forces d'admettre la possibilité d'hostilités entre eux et la Russie, le Gouvernement de Sa Majesté Impériale et celui de Sa Majesté Britannique ont pensé que l'alliance qu'ils ont contractée en vue d'un danger commun devait couvrir tous ceux de leurs intérêts que les conséquences de la guerre pourraient atteindre ou menacer. Quelle que soit l'étendue des ressources dont ils disposent, notamment sur mer, ils ont à tenir compte de l'imprévu. Il peut, si la guerre éclate, se produire, dans des parages où les forces navales de chacun d'eux ne seraient point constamment présentes, des conjonctures où leurs nationaux et leur pavillon de commerce n'auraient pas, au moment nécessaire, tout l'appui indispensable à leur sécurité.

Les deux Gouvernements n'avaient qu'à s'inspirer de la pensée qui préside à leurs rapports actuels pour trouver un moyen de pourvoir à ces éventualités, et ils l'ont vu dans l'adoption concertée d'un système de protection réciproque embrassant ces intérêts disséminés sous toutes les latitudes. Les Agents diplomatiques et commerciaux, ainsi que les commandants des forces navales, de chacun des deux pays, sur tous les points du globe, devront donc accorder leur appui aux sujets et au commerce de l'autre, dans toutes les hypothèses où ils seraient menacés par l'ennemi commun.

En conséquence, Monsieur, vous considérerez, en pareil cas, les bâtiments et les sujets Anglais, dans votre ressort, comme ayant le même droit que les bâtiments et les sujets Français à toute l'assistance que comportent vos attributions, et vous donnerez avis de cette préscription aux officiers de Marine de

Sa Majesté Impériale qui seraient en position de concourir aux mesures que les circonstances résultant de l'état de guerre vous paraîtraient commander. Les Agents et les officiers de mer de Sa Majesté Britannique recevront des instructions identiques, et ainsi les sujets et le commerce des deux nations seront autorisés à compter sur la protection réciproque des Consuls et de la Marine des deux Puissances.

Vous comprendrez, Monsieur, que je ne cherche point à déterminer à l'avance tous les cas qui pourront réclamer votre intervention. C'est à votre sagacité de vous diriger dans l'application du principe destiné à vous servir de règle de conduite.

Les deux Gouvernements ont tenu beaucoup moins à préciser les circonstances et les formes dans lesquelles cette protection devra s'exercer qu'à bien marquer le caractère qu'elle doit prendre. Mais, en donnant au monde ce nouveau témoignage de l'unité de leurs vues et de la sincérité de leur alliance, ils sont persuadés que, pour assurer à cette mesure commune toute l'efficacité désirable, leurs Agents n'ont besoin que de se bien pénétrer de l'esprit de solidarité qui en a inspiré aux deux Cabinets la pensée.—Recevez, &c.

(Signé) Drouyn de Lhuys.

F. (2) INSTRUCTIONS TO FRENCH NAVAL OFFICERS.

Paris, Février 1854.

Messieurs,

Ma dépêche du 18 Février a appelé spécialement votre attention sur les graves complications qu'à fait naître en Europe la question d'Orient. Les négociations entamées pour dénouer pacifiquement le différend qui s'est élevé entre la Russie et la Turquie sont demeurées sans résultat, et tout porte à croire que de nouveaux efforts demeureront impuissants.

L'Angleterre et la France ont résolu de protéger l'Empire Ottoman, et de s'opposer, même par la force, aux projets envahissans de la Russie. Ces deux grandes nations sont intimement unies dans leur politique et se sont mutuellement donné les gages les plus certains de leur alliance. Leurs escadres croisent de concert dans la Mer Noire ; elles se prêtent réciproquement le plus loyal concours ; les deux Gouvernements, après avoir adopté une politique commune, se sont mis également d'accord sur tous les moyens d'action.

Cette alliance de la France et d'Angleterre ne doit pas se révéler seulement dans les mers d'Europe. Le Gouvernement de Sa Majesté Impériale et celui de la Reine de la Grande

Bretagne désirent que la même union, le même accord, règnent sous toutes les latitudes.

Les forces navales de l'Angleterre et de la France doivent donc se prêter un mutuel concours dans toutes les régions même les plus lointaines.

Immédiatement après la réception de ces instructions, vous aurez soin de vous mettre en relation avec les commandants des stations ou des bâtiments de la Grande Bretagne. Vous devrez combiner, de concert avec eux, toutes les mesures qui auraient pour objet de protéger les intérêts, la puissance ou l'honneur du drapeau des deux nations amies. Vous vous prêterez dans ce but une mutuelle assistance, soit que vous deviez attaquer l'ennemi, quand les hostilités auront commencé ou quand la déclaration de guerre aura été faite, soit que vous vous trouviez, dès ce moment, dans l'obligation de vous défendre.

Vous devrez accorder votre protection aux bâtiments du commerce de la Grande Bretagne au même titre que les bâtiments de guerre de l'Angleterre prêteront aide et protection aux navires marchands de notre nation.

En un mot, les deux Gouvernements de France et d'Angleterre désirant que leurs forces navales armées agissent comme si elles appartenaient à une seule et même nation, je compte que, pour ce qui vous concerne, vous ne perdrez jamais de vue cette règle de conduite, et que vous saurez la pratiquer de manière à cimenter davantage encore, s'il se peut, l'intime union des deux pays.

Tant que les hostilités entre la France et l'Angleterre d'une part, et la Russie de l'autre, n'auront pas commencé ou que la déclaration de guerre n'aura pas été faite, vous vous dispenserez de prendre l'initiative des mesures agressives, et vous vous tiendrez sur la défensive. J'aurai soin, aussitôt que le moment sera venu, de vous transmettre toutes les instructions nécessaires pour l'attaque.—Recevez, &c.

(Signé) Ducos.

4

Correspondence between Messrs Martin, Levin & Adler and the Board of Trade, FEBRUARY–MARCH 1854.

1

To THE PRESIDENT OF THE BOARD OF TRADE.

13 *Trinity Square, Tower Hill,*
February 24, 1854.

RIGHT HONOURABLE SIR,

We shall feel greatly obliged by your informing us whether, in the event of a war between this country and Russia, Russian goods imported from neutral ports would be considered contraband, or would they be fairly admissible into England ?

Being much interested in this question, we solicit the favour of a reply,—And remain, with due respect, &c.

(Signed) *pro* MARTIN, LEVIN & ADLER,
J. H. HAMBLEN.

2

To THE RIGHT HONOURABLE THE PRESIDENT OF THE BOARD OF TRADE.

13 *Trinity Square, Tower Hill,*
March 9, 1854.

SIR,

On the 24th ultimo, we took the liberty of addressing you a letter, of which the following is a copy :—" We shall feel greatly obliged by your informing us whether, in the event of a war with Russia, Russian goods imported from neutral ports would be considered contraband, or would they be fairly admissible into England ? Being much interested in this question, we solicit the favour of your reply, and remain with due respect," &c.

To this letter we have received no answer of any kind, which makes us fear that ours did not reach its destination. May we respectfully, but urgently, solicit a reply to the present as early as possible ? The question is one of vital interest to us. We have now considerable quantities of Russian goods on the way from that country to England, partly by land *viâ* Germany ; this must be our apology for troubling you,

and as we cannot tell at what precise time they may arrive here, we do not know until favoured with your answer in what position we stand.—We remain, &c.

(Signed) MARTIN, LEVIN & ADLER.

3

Office of Committee of Privy Council for Trade,
Whitehall, March 10, 1854.

GENTLEMEN,

With reference to your letter of yesterday's date, in which you request a reply to the question contained in your letter of the 24th ultimo, as to the treatment of Russian produce in this country, in the event of a war with Russia, I am directed by the Lords of the Committee of Privy Council for Trade to inform you, that they are in communication with Her Majesty's Secretary of State for Foreign Affairs on the subject, and that a reply will be sent to your letter of the 24th ultimo so soon as the decision of Her Majesty's Government as to the course to be adopted in this matter shall enable them to do so.—I am, &c.

(Signed) J. EMERSON TENNENT.

Messrs Martin, Levin & Adler.

4

Office of Committee of Privy Council for Trade,
Whitehall, March 14, 1854.

GENTLEMEN,

In reply to your letter of the 24th February, requesting to be informed whether, in the event of war between this country and Russia, Russian goods imported from neutral ports would be considered contraband, or would be admissible into England ;

I am directed by the Lords of the Committee of the Privy Council for Trade to inform you, that in the event of war, every indirect attempt to carry on trade with the enemy's country will be illegal ; but, on the other hand, *bonâ-fide* trade not subject to the objection above stated, will not become illegal, merely because the articles which form the subject-matter of that trade were originally produced in an enemy's country.—I am, &c.

(Signed) J. EMERSON TENNENT.

Messrs Martin, Levin & Adler.

5

13 *Trinity Square, Tower Hill,*
March 15, 1854.

Sir,

We beg to acknowledge receipt of your favour of yesterday, in answer to our inquiry relative to Russian produce imported from neutral ports, in the event of war. You therein state, that " every indirect attempt to carry on trade with the enemy's country will be illegal; but, on the other hand, *bonâ-fide* trade not subject to the objection above stated, will not become illegal, merely because the articles which form the subject-matter of that trade were originally produced in an enemy's country."

We are very desirous to be informed where the line of distinction is to be drawn between " an indirect attempt to carry on trade," and a " *bonâ-fide* trade," as we cannot at present see how, in case of war, any Russian goods could be imported into this country, without such importation coming under the head of an indirect attempt to carry on trade with the enemy's country; unless the interpretation put upon your letter by several of the merchants with whom we have conferred upon it, be the true one, viz., that a British subject buying (by his agents) Russian produce in Russia, and importing the same, *viâ* Germany (a neutral country), will be acting illegally, and his goods would be seized on their arrival here; but that a neutral subject buying Russian goods and consigning them to this country from a neutral port, will be considered to be carrying on a *bonâ-fide* trade, and his merchandise will be admitted for consumption into England. This view of the case would give such a decided advantage to the neutral over the British subject, that we cannot believe such to be the intention of the Government. We therefore feel it necessary to put the present question, trusting we may be favoured with an explicit reply:

In the event of war being declared between this country and Russia, will it be allowable to import Russian produce (the property of British or neutral subjects) into this country from neutral ports?—We remain, &c.

(Signed) *pro* Martin, Levin & Adler,
J. H. Hamblen.

To the Secretary, Marine Department,
Board of Trade.

6

Office of Committee of Privy Council for Trade,
Whitehall, March 16, 1854.

GENTLEMEN,

In reply to the inquiry contained in your letter of the 15th instant, whether, in the event of war being declared between this country and Russia, it will be allowable to import Russian produce, the property of British or neutral subjects, from neutral ports, I am directed by the Lords of the Committee of Privy Council for Trade to refer you to the general principle laid down in my letter of the 14th, and to repeat, that in the case of articles originally produced in Russia, but since purchased from neutrals at a neutral port, and in the ordinary course of trade with such port by British merchants, the fact of their having been originally produced in Russia will be immaterial.—I am, &c.

(Signed) J. E. TENNENT.

Messrs Martin, Levin & Adler.

5

Declarations to the Neutrals, MARCH 1854.

A.—GREAT BRITAIN.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, having been compelled to take up Arms in support of an Ally, is desirous of rendering the War as little onerous as possible to the Powers with whom she remains at Peace.

To preserve the Commerce of Neutrals from all unnecessary Obstruction, Her Majesty is willing, for the present, to waive a Part of the belligerent Rights appertaining to Her by the Law of Nations.

It is impossible for Her Majesty to forego the Exercise of Her Right of seizing Articles contraband of War, and of preventing Neutrals from bearing the Enemy's Despatches, and She must maintain the Right of a Belligerent to prevent Neutrals from breaking any effective Blockade which may be established with an adequate Force against the Enemy's Forts, Harbours, or Coasts.

But Her Majesty will waive the Right of seizing Enemy's

Property laden on board a neutral Vessel, unless it be contraband of War.

It is not Her Majesty's Intention to claim the Confiscation of neutral Property, not being contraband of War, found on board Enemy's Ships ; and Her Majesty further declares, that being anxious to lessen as much as possible the Evils of War, and to restrict its Operations to the regularly organised Forces of the Country, it is not Her present Intention to issue Letters of Marque for the commissioning of Privateers.

Westminster, March 28, 1854.

B.—FRANCE.

Paris, le 29 mars 1854.

Sire,

A une époque où les relations maritimes et les intérêts commerciaux occupent une si large place dans l'existence des peuples, il est du devoir d'une nation qui se trouve contrainte à faire la guerre de prendre les mesures nécessaires pour en adoucir autant que possible les effets, en laissant au commerce des peuples neutres toutes les facilités compatibles avec cet état d'hostilité auquel ils cherchent à demeurer étrangers.

Mais il ne suffit pas que les belligérants aient la pensée intime de respecter toujours les droits des neutres ; ils doivent de plus s'efforcer de calmer, par avance, ces inquiétudes que le commerce est toujours si prompt à concevoir, et ne laissant planer aucun doute sur les principes qu'ils entendent appliquer.

Un règlement sur les devoirs des neutres pourrait paraître une sorte d'atteinte à la souveraineté des peuples qui veulent garder la neutralité ; une déclaration spontanée des principes auxquels un belligérant promet de conformer sa conduite semble, au contraire, le témoignage le plus formel qu'il puisse donner de son respect pour les droits des autres nations.

C'est dans cette pensée qu'après m'être concerté avec le Gouvernement de Sa Majesté Britannique, j'ai l'honneur de soumettre à la haute approbation de Votre Majesté la déclaration suivante.

Je suis avec respect, Sire, de Votre Majesté, le très-humble et très-obéissant serviteur et fidèle sujet.

Signé : Drouyn de Lhuys.

Approuvé :

Signé : Napoléon.

Déclaration relative aux neutres, aux lettres de marque, etc.

Sa Majesté l'empereur des Français, ayant été forcée de prendre les armes pour soutenir un allié, désire rendre la guerre aussi peu onéreuse que possible aux puissances avec lesquelles elle demeure en paix.

Afin de garantir le commerce des neutres de toute entrave inutile, Sa Majesté consent, pour le présent, à renoncer à une partie des droits qui lui appartiennent comme puissance belligérante, en vertu du droit des gens.

Il est impossible à Sa Majesté de renoncer à l'exercice de son droit de saisir les articles de contrebande de guerre et d'empêcher les neutres de transporter les dépêches de l'ennemi. Elle doit aussi maintenir intact son droit, comme puissance belligérante, d'empêcher les neutres de violer tout blocus effectif qui serait mis, à l'aide d'une force suffisante, devant les ports, les rades ou côtes de l'ennemi.

Mais les vaisseaux de Sa Majesté ne saisiront pas la propriété de l'ennemi chargée à bord d'un bâtiment neutre, à moins que cette propriété ne soit contrebande de guerre.

Sa Majesté ne compte pas revendiquer le droit de confisquer la propriété des neutres, autre que la contrebande de guerre, trouvée à bord des bâtiments ennemis.

Sa Majesté déclare en outre que, mue par le désir de diminuer autant que possible les maux de la guerre et d'en restreindre les opérations aux forces régulièrement organisées de l'État, elle n'a pas, pour le moment, l'intention de délivrer des lettres de marque pour autoriser les armements en course.

6

Creation of Prize Courts.

A.—ENGLAND.

(1) ORDER IN COUNCIL.

AT THE COURT AT BUCKINGHAM PALACE,
the 29th Day of March 1854.

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL.

HER MAJESTY having determined to afford active assistance to Her Ally, His Highness the Sultan of the Ottoman Empire, for the protection of His Dominions against the encroachments and unprovoked aggression of His Imperial Majesty, the Emperor of all the Russias, Her Majesty therefore is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, that General Reprisals be granted against the Ships, Vessels, and Goods of the Emperor of all the Russias, and of His Subjects, or others inhabiting within any of His Countries, Territories, or Dominions, so that Her Majesty's Fleets and Ships shall and may lawfully seize all Ships, Vessels, and Goods belonging to the Emperor of all the Russias, or his Subjects, or others, inhabiting within any of His Countries, Territories, or Dominions, and bring the same to Judgment in such Courts of Admiralty within Her Majesty's Dominions, Possessions or Colonies, as shall be duly commissionated to take cognizance thereof. And to that end Her Majesty's Advocate General, with the Advocate of Her Majesty in Her Office of Admiralty, are forthwith to prepare the Draught of a Commission, and present the same to Her Majesty at this Board, authorizing the Commissioners for executing the Office of Lord High Admiral to will and require the High Court of Admiralty of England, and the Lieutenant and Judge of the said Court, his Surrogate or Surrogates, as also the several Courts of Admiralty within Her Majesty's Dominions which shall be duly commissionated to take cognizance of and judicially proceed upon all and all manner of Captures, Seizures, Prizes and Reprisals, of all Ships, Vessels, and Goods that are or shall be taken, and to hear and determine

the same, and according to the course of Admiralty, and the Law of Nations, to adjudge and condemn all such Ships, Vessels, and Goods, as shall belong to the Emperor of all the Russias, or his Subjects, or to any others inhabiting within any of his Countries, Territories or Dominions; And they are likewise to prepare and lay before Her Majesty at this Board, a Draught of such Instructions, as may be proper to be sent to the said several Courts of Admiralty, in Her Majesty's Dominions, Possessions and Colonies, for their guidance herein.

From the Court at Buckingham Palace this Twenty-ninth day of March One thousand eight hundred and fifty-four.

Cranworth, C.	William Molesworth.
Granville, P.	Lansdowne.
Argyll, C. P. S.	J. Russell.
Breadalbane.	Abercorn.
Clarendon.	Mulgrave.
Newcastle.	Ernest Bruce.
Sidney Herbert.	Drumlanrig.
Stephen Lushington.	I. R. Graham.
W. E. Gladstone.	Aberdeen.

(2) ORDER IN COUNCIL APPROVING DRAFT COMMISSION.

Whereas there was this day read at the Board the annexed Draught of a Commission authorizing and enjoining the Commissioners for executing the Office of Lord High Admiral of Great Britain or any two or more of them to will and require the High Court of Admiralty of England and the Lieutenant and Judge of the said Court his Surrogate or Surrogates as also the several Courts of Admiralty within Her Majesty's Dominions Possessions or Colonies which shall be duly commissioned and thereby authorizing and requiring them to take cognizance of and judicially to proceed upon all and all manner of Captures Seizures Prizes and Reprisals, of all Ships and Goods that are or shall be taken and to hear and determine the same and according to the course of Admiralty and the laws of nations to adjudge and condemn all such ships and vessels and goods as shall belong to the Emperor of Russia or to his subjects or to any others inhabiting within any of his countries, territories or dominions unless licensed by Her Majesty or exempted by the operation and effect of an Order of Her Majesty made and dated this 29th day of March [1] for exempting from capture or detention Russian Vessels under Special circumstances or any future order in this behalf Her Majesty taking the same into Consideration was pleased

[1] Document No. 9 (4).

with the advice of Her Privy Council to approve thereof and to Order as it is hereby Ordered that the Rt. Hon-ble Visct Palmerston One of Her Majesty's Principal Secretaries of State do cause the said Commission to be prepared for Her Majesty's Royal Signature with a proper warrant for the immediate passing the same under the Great Seal of the United Kingdom of Great Britain and Ireland.

COMMISSION.

VICTORIA by the Grace of God of the United Kingdom of Great Britain and Ireland Queen Defender of the Faith and so forth to Our right trusty and wellbeloved Councillor Sir James Robert George Graham Baronet Our trusty and wellbeloved Hyde Parker Esquire Companion of Our Most Hon-ble Order of the Bath Vice Admiral of the Blue Squadron of Our Fleet; Maurice Frederick Fitzhardinge Berkeley Esq're Companion of Our Most Hon'ble Order of the Bath Rear Admiral of the White Squadron of Our Fleet Richard Saunders Dundas Esquire Companion of Our Most Hon'ble Order of the Bath Rear Admiral of the Blue Squadron of Our Fleet; Alexander Milne Esq're Captain in Our Navy and William Francis Cowper Esq're Our Commissioners for executing the Office of Lord High Admiral of Our United Kingdom of Great Britain and Ireland and the Dominions thereunto belonging and to Our Commissioners for executing that Office for the time being Greeting. Whereas We have determined to afford active assistance to Our Ally His Highness the Sultan of the Ottoman Empire for the protection of his Dominions against the encroachments and unprovoked aggression of His Imperial Majesty the Emperor of all the Russias: And whereas by and with the Advice of Our Privy Council we have ordered that General Reprisals be granted against the Ships Vessels and Goods of the Emperor of all the Russias and of his Subjects and others inhabiting within any of his Countries Territories or Dominions so that Our Fleets and Ships shall and may lawfully seize all Ships Vessels and Goods belonging to the Emperor of all the Russias or his Subjects or others inhabiting within any of his Countries Territories or Dominions and bring the same to Judgment in such Courts of Admiralty within Our Dominions Possessions or Colonies as shall be duly commissionated to take cognizance thereof These are therefore to authorize and We do hereby authorize and enjoin you Our said Commissioners now and for the time being or any two or more of you to will and require the High Court of Admiralty of England and the Lieutenant and Judge of the said Court and his Surrogate and Surrogates and also the several

Courts of Admiralty within Our Dominions Possessions or Colonies which shall be duly commissionated and they are hereby authorized and required to take cognizance of and Judicially to proceed upon all and all manner of Captures Seizures Prizes and Reprisals of all Ships Vessels and Goods already seized and taken and which hereafter shall be seized and taken and to hear and determine the same and according to the Course of Admiralty and Law of Nations to adjudge and condemn all such Ships Vessels and Goods as shall belong to the Emperor of All the Russias or to his Subjects or to any others inhabiting within any of his Countries Territories or Dominions. In witness whereof we have caused Our Great Seal of Our United Kingdom of Great Britain and Ireland to be put and affixed to these Presents. Given at Our Court at St James's the 3rd day of April in the year of Our Lord 1854, and in the 17th year of Our Reign.

(3) WARRANT OF THE LORDS COMMISSIONERS OF THE ADMIRALTY REQUIRING THE HIGH COURT OF ADMIRALTY TO PROCEED IN PRIZE CAUSES, &c.

By the Commissioners for executing the Office of Lord High Admiral of the United Kingdom of Great Britain and Ireland, &c.

Her Majesty having been pleased by the Commission under the Great Seal of the United Kingdom of Great Britain and Ireland bearing date the Third day of April One thousand eight hundred and fifty-four to authorize us to the effect following as by the Commission itself herewith sent you to remain of Record in the Registry of the High Court of Admiralty of England doth more at large appear. These are in Her Majesty's Name and Our's to will and require the High Court of Admiralty of England, and you the Lieutenant and Judge of the said Court, and your Surrogate and Surrogates, and you are hereby authorized and required to take cognizance of, and to judicially proceed upon all and all manner of Captures, Seizures, Prizes and Reprisals of all Ships Vessels and Goods that are or shall be taken, and to hear and determine the same, and according to the course of Admiralty, and the Law of Nations to adjudge and condemn all such Ships Vessels and Goods, as shall belong to the Emperor of all the Russias, or his Subjects, or to any others inhabiting within any of his Countries, Territories or Dominions, which shall be brought before you for Trial and Condemnation.

And for so doing this shall be your Warrant.

Given under our hands and the Seal of the Office of Admiralty this Fourth day of April One thousand eight hundred and fifty-four.

HYDE PARKER.
R. S. DUNDAS.

To The Right Honourable Stephen Lushington, D.C.L., Judge of the High Court of Admiralty of England.

By command of their Lordships.

W. A. B. HAMILTON.

B.—FRANCE.

DÉCRET PORTANT INSTITUTION D'UN CONSEIL DES PRISES.

NAPOLÉON, etc. etc.

Vu la déclaration faite par nos ordres au Sénat et au Corps législatif, le 27 mars dernier, relativement à l'état de guerre existant avec la Russie ;

Vu notre déclaration du 29 mars dernier, relative aux neutres, aux lettres de marque, etc. etc. ;

Vu la convention conclue le 10 mai dernier entre nous et Sa Majesté la reine du royaume uni de la Grande-Bretagne et d'Irlande, relativement au jugement et au partage des prises ;

Notre conseil d'État entendu,

Avons décrété et décrétons ce qui suit :

Art. 1er. Un conseil des prises est institué à Paris.

Art. 2. Ce conseil statue sur la validité de toutes les prises maritimes faites dans le cours de la présente guerre, et dont le jugement doit appartenir à l'autorité française. Il statue également sur les contestations relatives à la qualité des navires neutres ou ennemis, naufragés ou échoués, et sur les prises maritimes amenées dans les ports de nos colonies.

Art. 3. Ce conseil est composé : 1° d'un conseiller d'État, président ;—2° de six membres, dont deux pris parmi les maîtres de requêtes de notre conseil d'État ;—3° d'un commissaire du gouvernement qui donne ses conclusions sur chaque affaire.

Les membres du conseil des prises sont nommés par décret impérial, sur la présentation de nos ministres des affaires étrangères, de la marine et des colonies.

Leurs fonctions sont gratuites.

Un secrétaire-greffer est attaché au conseil.

Art. 4. Les séances du conseil des prises ne sont pas publiques. Ses décisions ne pourront être rendues que par cinq membres au moins. Le commissaire du gouvernement est, en cas d'absence ou d'empêchement, remplacé par l'un des membres du conseil.

Art. 5. Les décisions du conseil des prises ne sont exécutoires que huit jours après la communication officielle qui en est faite à nos ministres des affaires étrangères, de la marine et des colonies.

Art. 6. Les décisions rendues par le conseil des prises peuvent nous être déferées en notre conseil d'État, soit par le commissaire du gouvernement, soit par les parties intéressées. Le recours doit être exercé par le commissaire du gouvernement dans les trois mois de la décision, et par les parties intéressées dans le trois mois de la notification de cette décision. Ce recours n'a pas d'effet suspensif, si ce n'est pour la répartition définitive du produit des prises. Toutefois, le conseil des prises peut ordonner que l'exécution de sa décision n'aura lieu qu'à la charge de fournir caution. Dans tous les cas, il peut être ordonné en notre conseil d'État qu'il sera sursis à l'exécution de la décision contre laquelle un pourvoi est dirigé, ou qu'il sera fourni une caution avant cette exécution.

Art. 7. Les avocats à notre conseil d'État ont seuls le droit de signer les mémoires et requêtes qui sont présentés au conseil des prises.

Art. 8. Les équipages des bâtiments de Sa Majesté la reine du royaume uni de la Grande-Bretagne et d'Irlande sont représentés devant le conseil des prises par le consul de leur nation ou par tout autre agent que désigne le gouvernement britannique.

Art. 9. Les agents consulaires étrangers peuvent présenter au conseil des prises toutes les observations qu'ils jugent convenables dans l'intérêt de leurs nationaux, mais seulement par l'intermédiaire du commissaire du gouvernement.

Art. 10. Les frais de secrétariat et autres dépenses accessoires occasionnées par le service du conseil des prises forment un chapitre spécial au budget du ministère de la marine et des colonies.

Art. 11. Les dispositions de l'arrêté des consuls du 6 germinal an VIII. et des autres règlements non contraires à notre présent décret sont maintenues.

Sont néanmoins abrogés les articles 9, 10 et 11 de l'arrêté du 6 germinal an VIII.

Art. 12. Nos ministres secrétaires d'État au département des affaires étrangères et au département de la marine et des

colonies sont chargés, chacun en ce qui le concerne, de l'exécution du présent décret.

Fait au palais de Saint-Cloud, le 18 juillet 1854.

NAPOLÉON.

Par l'Empereur,

Le ministre secrétaire d'État au département des affaires étrangères.

Signé : DROUYN DE LHUYS.

Le ministre secrétaire d'État au département de la marine et des colonies.

Signé : TH. DUCOS.

7

Circular Despatches announcing the Declaration to the Neutral Powers, MARCH, APRIL, 1854.

A.—BRITISH CIRCULAR DESPATCH CONTAINING DRAFT OF NOTE TO BE ADDRESSED BY AGENTS ABROAD TO FOREIGN COURTS, ACCOMPANYING H.M.'S DECLARATION OF MARCH 28, 1854.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and His Majesty the Emperor of the French, being compelled to take up arms for the purpose of repelling the aggression of H.M. the Emperor of Russia upon the Ottoman Empire, and being desirous to lessen as much as possible the disastrous consequences to commerce resulting from a state of Warfare, their Majesties have resolved for the present not to authorise the issue of letters of marque.

In making this resolution known, they think it right to announce at the same time the principles upon which they will be guided during the course of this war with regard to the navigation and commerce of neutrals.

H.M. the Queen of the United Kingdom of Great Britain and Ireland has accordingly published the accompanying Declaration, which is identical with that published by H.M. the Emperor of the French.

In thus restricting within the narrowest limits the exercise of their rights as belligerents, the Allied Governments confidently trust that the Governments of countries which may remain neutral during this war will sincerely exert every effort to enforce upon their subjects/citizens the necessity of observing

the strictest neutrality. Her Britannic Majesty's Government entertains the confident hope that the . . . Government will receive with satisfaction the announcement of the resolutions thus taken in common by the two Allied Governments, and that it will, in the spirit of just reciprocity, give orders that no privateer under Russian colours shall be equipped or victualled or admitted with its prizes in the ports of . . . and also that the subjects/citizens of . . . shall rigorously abstain from taking part in armaments of this nature or in any other measure opposed to the duties of a strict neutrality.

B.—FRENCH CIRCULAR DESPATCH TO DIPLOMATIC AGENTS IN NEUTRAL COUNTRIES.

Paris, March 30, 1854.

MONSIEUR,

Le *Moniteur* de ce jour publie la déclaration du gouvernement français au sujet des neutres, ainsi que le rapport que j'ai présenté à l'Empereur en la soumettant à sa haute approbation. Vous trouverez ci-joint copie de ces deux documents.

Le gouvernement de Sa Majesté britannique a promulgué, de con côté, la même déclaration.

Au moment où les deux Etats prennent les armes pour la défense commune d'un allié, ils ne pouvaient donner une preuve plus éclatante de la parfaite conformité de leurs sentiments et de l'esprit de solidarité qui les unit, qu'en adoptant les mêmes résolutions dans une matière sur laquelle, jusqu'ici, leurs principes avaient été si différents.

Pénétré de cette solicitude que la France a toujours témoignée pour les neutres, le gouvernement de l'Empereur s'était dès longtemps préoccupé des questions graves que la neutralité soulève, pour en préparer la solution dans le sens le plus favorable aux intérêts des peuples avec lesquels il demeure en paix. Je m'empresse de reconnaître qu'il a trouvé le gouvernement de Sa Majesté britannique animé des mêmes désirs, et déjà pénétré de la pensée de laisser les neutres en possession de tous les avantages que les nécessités indispensables de la guerre ne feraient point un devoir absolu de restreindre.

C'est cette communauté de vues qui a dicté la déclaration adoptée par les deux gouvernements ; et, je n'hésite pas à le dire, jamais un document de cette nature n'a été conçu dans des termes aussi favorables.

L'intention de ne point délivrer de lettres de marque y est officiellement annoncée ;

La nécessité du blocus effectif est admise ;

Le pavillon neutre couvrira la marchandise, et pourtant la marchandise neutre restera libre sous pavillon ennemi :

Tels sont les avantages qui vont être assurés au commerce pendant la guerre ; et même, lorsqu'elle sera terminée, cette déclaration commune demeurera comme un précédent considérable acquis à l'histoire de la neutralité.

Mais si l'union intime de la France et de l'Angleterre a permis de consacrer un système aussi avantageux pour les nations neutres, il doit en résulter pour celles-ci une obligation plus stricte de respecter d'une manière complète les droits des belligérants. Nous avons donc raison d'espérer que les gouvernements neutres non-seulement ne feront aucun acte qui puisse présenter un caractère hostile, mais qu'ils s'empresseront de prendre toutes les mesures nécessaires pour que leurs sujets s'abstiennent de toute entreprise contraire aux devoirs d'une rigoureuse neutralité.

Je vous adresserai incessamment un projet de note dont la rédaction aura été concertée avec le gouvernement de Sa Majesté britannique, pour notifier la déclaration présente au gouvernement auprès duquel vous êtes accrédité.

C.—FURTHER FRENCH CIRCULAR DESPATCH TO DIPLOMATIC AGENTS IN NEUTRAL COUNTRIES.

Paris, April 5, 1854.

Monsieur,

J'ai l'honneur de vous transmettre le projet d'une note que vous voudrez bien adresser immédiatement au Gouvernement auprès duquel vous êtes accrédité, pour lui faire connaître les principes que la France et la Grande-Bretagne appliqueront aux neutres dans le cours de la guerre actuelle, ainsi que la résolution qu'ont prise les deux gouvernements de ne point délivrer, quant à présent, de lettres de marque.

Le représentant de Sa Majesté britannique recevra l'ordre d'adresser au gouvernement de . . . une communication analogue.

Vous voudrez bien me transmettre la réponse du gouvernement de . . . dès qu'elle vous sera parvenue, et faire les démarches nécessaires pour qu'elle soit conforme à la juste attente des deux gouvernements.

Projet de note.

Le soussigné a reçu l'ordre de son gouvernement d'adresser à S. Exc. M. . . . la communication suivante :

S.M. l'Empereur des Français et S.M. la Reine du Royaume-Uni de la Grande-Bretagne vont se trouver dans la nécessité

de recourir à la force des armes pour repousser les agressions dont l'empire ottoman est l'objet de la part du gouvernement de S.M. l'Empereur de Russie. Voulant, autant que possible, diminuer pour le commerce les conséquences funestes de l'état de guerre, Leurs Majestés ont résolu de ne point autoriser la course, quant à présent, par la délivrance de lettres de marque, et de faire connaitre, en même temps que cette résolution, les principes qu'elles entendent appliquer à la navigation et au commerce des neutres dans le cours de cette guerre. C'est dans ce but que S.M. l'Empereur des Français a fait publier la déclaration ci-jointe, identique à celle que S.M. la Reine du Royaume-Uni de la Grande-Bretagne et d'Irlande a fait publier de son côté.

En restreignant l'exercise de leurs droits de belligérants dans des limites aussi étroites, les gouvernements alliés se croient fondés à compter sur les efforts sincères des gouvernements qui demeureront neutres dans cette guerre, pour faire observer par leurs sujets (ou nationaux) les obligations de la neutralité la plus absolue. En conséquence, le gouvernement de S.M. l'Empereur des Français a la confiance que le gouvernement de . . . accueillera avec satisfaction l'annonce des résolutions prises en commun entre les deux gouvernements alliés, et voudra bien, par une juste réciprocité, donner des ordres pour qu'aucun corsaire sous pavillon russe ne puisse être armé ni ravitaillé, ni admis avec ses prises dans les ports de . . . et pour que les sujets . . . (ou citoyens) . . . s'abstiennent rigoureusement de prendre part à des armements de ce genre ou à toute autre mesure contraire aux devoirs d'une stricte neutralité.

8

United States Despatches relating to the Declaration to the Neutrals.[1]

A.—THE UNITED STATES MINISTER IN LONDON TO THE UNITED STATES SECRETARY OF STATE.

London, February 24, 1854.

(Extract)

I then inquired of his Lordship [Lord Clarendon] whether the British Government had yet determined upon the course they would pursue, during the impending war, in regard to neutrals; whether they would adhere to their old rule of captur-

[1] *State Papers*, vol. xlvi. pp. 821 *et seq.*

ing the goods of an enemy on board the vessel of a friend, or adopt the rule of " free ships free goods " ; observing that it was of great importance to my countrymen, engaged in commerce, that they should know the decision on this point as speedily as possible.

He said that the question was then under the consideration of the Cabinet, and had not yet been decided, but I should be the very first person to whom he would communicate the result. Intimating a desire to converse with me, informally and unofficially, upon the subject, I informed him that I had no instructions whatever from my own Government in relation to it, but, as an individual, I was willing frankly to express my opinions. From what passed between us, I should consider it a breach of confidence in me to report his private opinions, on a question still pending before the Cabinet Council, and on which its members are probably divided.

I can, however, have no objection to repeat to you the substance of my own observations.

I said that the Supreme Court of the United States had adopted, in common with their own Courts, the principle that a belligerent had a right, under the law of nations, to capture the goods of an enemy on board the vessel of a friend, and that he was bound to restore the goods of a friend captured on board the vessel of an enemy. That, from a very early period of our history, we had sought, in favour of neutral commerce, to change this rule by Treaties with different nations, and, instead thereof to adopt the principle that the flag should protect the property under it, with the exception of contraband of war. That the right of search was, at best, an odious right, and ought to be restricted as much as possible. There was always danger, from its exercise, of involving the neutral in serious difficulty with the belligerent. The captain of a British man-of-war or privateer would meet an American vessel upon the ocean and board her for the purpose of ascertaining whether she was the carrier of enemies' property. Such individuals, especially, as their own interest was deeply involved in the question, were not always the most competent persons to conduct an investigation of this character. They were too prone to feel might and forget right. On the other hand, the American captain of a vessel searched would necessarily be indignant at what he might believe to be the unjust and arbitrary conduct of the searching officer. Hence bad blood would be the result, and constant and dangerous reclamations would arise between the two nations.

I need not inform his Lordship that our past history had fully justified such apprehensions. On the other hand, if the

rule that "free ships shall make free goods" were established, the right of the boarding officer would be confined to the ascertainment of the simple facts, whether the flag was *bonâ-fide* American, and whether articles contraband of war were on board. He would have no investigation to make into the ownership of the cargo. If, superadded to this rule, the corresponding rule was adopted, that "enemy's ships shall make enemy's goods," the belligerent would gain nearly as much by the latter as he had lost by the former, and this would be no hardship to the neutral owner of such goods, because he would place them on board an enemy's vessel with his eyes open, and fully sensible of the risk of capture.

I observed that the Government of the United States had not, to my recollection, made any treaties recently on the principle of "free ships free goods," and the only reason, I presume, was, that until the strong maritime nations, such as Great Britain, France, and Russia, should consent to enter into such treaties, it would be of little avail to conclude them with the minor Powers.

This, I believe, is a fair summary of all I said, at different times, in the course of a somewhat protracted conversation, and I hope it may meet your approbation.

I shall not be astonished if the British Government should yield their long-cherished principle, and adopt the rule, that the flag shall protect the cargo. I know positively that Sweden and Norway, Denmark, the Netherlands and Prussia, are urging this upon them; but what I did not know until the day before yesterday was, that the Government of France was pursuing the same course.

In this connection, I think it to be my duty to say that the correspondence of Mr Schroeder, our Chargé d'Affaires at Stockholm, a gentleman with whom I am not personally acquainted, has furnished me the earliest and most accurate information of the proceedings of the northern Powers on questions which may affect the neutral interests of the United States.

Lord Clarendon referred to our neutrality law (of April 20th, 1818)[1] in terms of high commendation, and pronounced it

[1] The Act of Congress of the 20th April 1818 provided in sec. 2: "That if any person shall, within the territory or jurisdiction of the United States, enlist or enter himself, or hire or retain another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign Prince, State, colony, district, or people as a soldier, or as a marine or seaman, on board of any vessel of war, letter of marque, or privateer, every person so offending shall be deemed guilty of a high misdemeanour, and shall be fined not exceeding 1000 dollars, and be imprisoned not exceeding three years," etc.

superior to their own, especially in regard to privateers. They are evidently apprehensive that Russian privateers may be fitted out in the ports of the United States, to cruize against their commerce, though, in words, his Lordship expressed no such apprehension. Would it not be advisable, after the war shall have fairly commenced, for the President to issue his proclamation upon the proper official authorities to be vigilant in executing this law ? This could not fail to prove satisfactory to all the belligerents.

The Hon. W. L. Marcy. JAMES BUCHANAN.

B.—THE UNITED STATES MINISTER IN LONDON TO THE UNITED STATES SECRETARY OF STATE.

London, March 17, 1854.

(Extract)

Lord Clarendon sent for me yesterday, and, in compliance with his promise, read me the declaration which had been prepared for Her Majesty, specifying the course she had determined to pursue towards neutral commerce during the present war. It announces distinctly, not only that the neutral flag shall protect the cargo, except in cases of contraband, but that the goods of neutrals captured on board an enemy's vessel shall be restored to their owners. It fully adopts the principle that "free ships shall make free goods," and also secures from confiscation the property of a friend found on board the vessel of an enemy.

The declaration on the subject of blockades, so far as I could understand it, from the reading, is entirely unexceptionable and in conformity with the doctrines which have always been maintained by the Government of the United States.

Her Majesty also declared that she will issue no commissions to privateers, or letters of marque during the war.

His Lordship then asked me how I was pleased with it ; and I stated my approbation of it in strong terms.

I said that, in one particular, it was more liberal towards neutral commerce than I had ventured to hope, and this was in restoring the goods of a friend, though captured on the vessel of an enemy.

He remarked that they had encountered great difficulties in overcoming their practice for so long a period of years, and their unvarying judicial decisions ; but that modern civilisation required a relaxation in the former severe rules, and that war should be conducted with as little injury to neutrals as was

compatible with the interest and safety of belligerents. He also observed that he had repeated the conversation which he had with me on these subjects to the Cabinet Council, and this had much influence in inducing them to adopt their present liberal policy towards neutrals.

He then expressed the hope that their course would prove satisfactory to the Government of the United States; and I assured him that I had no doubt it would prove highly gratifying to them.

I asked him if I were at liberty, in anticipation of the publication of Her Majesty's declaration, to communicate its substance to yourself; and he replied, certainly, I was. It had not yet undergone the last revision of the Cabinet; but the principles stated in it had received their final approbation, and would not be changed.

If our shipping interest in the United States should feel as anxious upon this subject as American owners of vessels in this country, you may deem it advisable to publish a notice of the practice which will be observed by Great Britain and France towards neutrals during the continuance of the present war; and to this I can perceive no objection.

The Hon. W. L. Marcy. JAMES BUCHANAN.

C.—THE UNITED STATES MINISTER IN PARIS TO THE UNITED STATES SECRETARY OF STATE.

Paris, March 22, 1854.

(Extract)

The allies, too, find themselves under the necessity of providing for future contigencies of a most delicate nature, by instructions to their naval commanders, acting in concert, in respect to neutral rights pending the war. In the past history of the two countries, the principles of France on this subject have been, as you are aware, entirely at variance with those held by England. It is both delicate and difficult to produce harmony in their combined action. The deep interest of the European States, not engaged in this war, in the adoption by the allies, with their absolute naval supremacy over Russia, of measures which will give to the commerce of neutrals the most perfect security, added to the earnest desire of the allies to secure their co-operation, if to be had, and, if not, to avoid their active opposition, has given to the subject the deepest interest, and contributed to prepare the way for a fair and equitable adjustment. I have looked to this subject with deep anxiety,

and have endeavoured to guard against any possible violation of our rights as a neutral, by the measures of the belligerents, in the prosecution of the war. I have embraced every opportunity, since I have been in Paris, of impressing, by informal conversation, on the Minister, and with the representatives of foreign Powers here, that if those liberal principles which the United States have always maintained were not recognized, my Government could not be satisfied; that with her vast commercial marine, her enormous surplus products, her export and import trade, and her large investments in the fisheries in the Pacific and Atlantic Oceans, it was impossible that my country could submit to any practical exercise of the rights of war which would subject her citizens, their business, and their vessels to vexatious searches, captures, or detentions; that except in cases of contraband, her flag must protect the cargo which it covered, and the high seas must be what the God of nature intended it—a free highway for all nations. The point on which most apprehension is felt is the engagement of citizens and vessels of the United States in privateering under the Russian flag. I have urged, that, with every disposition to prevent such unlawful proceedings by our people, the Government would find much difficulty in enforcing its laws, unless sustained by public opinion in the United States, and aided by the people, as well as by officers of the Government; that with the vast extent of seacoast of the United States, the Government could not have information of the preparation of vessels for such enterprizes, in all cases, in time to suppress them, unless the people felt an anxious desire that the laws should be executed; that if the allies adopted just and liberal measures in regard to neutral rights, it would give profitable returns to a safe business, and the entire mercantile community of the United States would, from a sense of justice and of national duty, as well as of their own interest, be found ready to aid the Government in executing the laws; that, tempting as might be the offers to engage under the Russian flag to cruize against the commerce of the allies, the danger of the service, the difficulty of realizing their prizes by adjudication, and, above all, the actual profit of lawful trade, under equitable and fair rules in respect to neutral rights, and the public satisfaction at seeing just principles established among nations, would probably prevent citizens, however bold and adventurous, from taking part in the assaults on the commerce of the allies.

The combination of circumstances is most auspicious to the establishment of our cherished principles of neutral rights—the rights of the weaker Powers against the aggressive pretensions

of the strong; and the considerations of policy are too grave, in their favour, to believe that so sagacious a statesman as Mr Drouyn de Lhuys will fail to see them in all their force, nor is there any doubt that he will be sustained by the Emperor.

It is fortunate, too, that the present state of things will give to the British Cabinet a disposition to regard with favour the relaxation and liberalization of their ancient views on this subject.

The Hon. W. L. Marcy. J. Y. Mason.

D.—THE UNITED STATES MINISTER IN LONDON TO THE UNITED STATES SECRETARY OF STATE.

London, March 24, 1854.

(Extract)

In my last despatch, of the 17th instant, I omitted, for want of time, to refer to the conversation between Lord Clarendon and myself, on the general subject of privateering. He did not propose the conclusion of a Treaty between Great Britain and the United States for its suppression; but he expressed a strong opinion against it, as inconsistent with modern civilization, and liable to great abuses. He spoke in highly complimentary terms of the Treaties of the United States with different nations, stipulating that if one of the parties be neutral and the other belligerent, the subjects of the neutral accepting commissions as privateers to cruize against the other from the opposing belligerent, shall be punished as pirates.

These ideas were, doubtless, suggested to his mind by the apprehension felt here that Americans will, during the existing war, accept commissions from the Emperor of Russia, and that our sailors will be employed to cruize against British commerce.

In short, although his Lordship did not propose a Treaty between the 2 Governments for the total suppression of privateering, it was evident that this was his drift.

In answer, I admitted that the practice of privateering was subject to great abuses; but it did not seem to me possible, under existing circumstances, for the United States to agree to its suppression, unless the naval Powers would go one step further, and consent that war against private property should be abolished altogether upon the ocean as it had already been upon the land. There was nothing really different in principle or morality between the act of a regular cruizer and that of a privateer in robbing a merchant vessel upon the ocean, and confiscating the property of private individuals on board for the benefit of the captor.

But how would the suppression of privateering, without going further, operate upon the United States? Suppose, for example, we should again unfortunately be engaged in a war with Great Britain, which I earnestly hoped might never be the case; to what a situation must we be reduced if we should consent to abolish privateering.

The navy of Great Britain was vastly superior to that of the United States in the number of vessels-of-war. They could send cruizers into every sea to capture our merchant vessels, whilst the number of our cruizers was comparatively so small as to render anything like equality in this respect impossible. The only means which we would possess to counterbalance in some degree their far greater numerical strength, would be to convert our merchant vessels, cast out of employment by the war, into privateers, and endeavour, by their assistance, to inflict as much injury on British as they would be able to inflict on American commerce.

The genuine dictate of Christianity and civilization would be to abolish war against private property upon the ocean altogether, and only employ the navies of the world in public warfare against the enemy, as their armies were now employed; and to this principle thus extended, it was highly probable the Government of the United States would not object.

Here the conversation on this particular subject ended in a good-natured manner; and I am anxious to learn whether what I have said in relation to it meets your approbation.

The Hon. W. L. Marcy. JAMES BUCHANAN.

E.—THE UNITED STATES MINISTER IN PARIS TO THE UNITED STATES SECRETARY OF STATE.

Paris, March 30, 1854.

(Extract)

In the *Moniteur* of this morning appeared a report of the Minister of Foreign Affairs, and the declaration of the Emperor of France, on the subject of neutrals, letters of marque, etc., pending the war. I enclose slips of the *Moniteur* containing these several important documents. I think that you will observe in them satisfactory recognition of liberal principles in regard to the rights of neutrals.

The Hon. W. L. Marcy. J. Y. MASON.

F.—THE UNITED STATES MINISTER IN LONDON TO THE UNITED STATES SECRETARY OF STATE.

London, March 31, 1854.

(Extract)

You will perceive that Her Majesty's declaration concerning the commerce of neutrals is substantially the same as that which I informed you it would be in my despatch of the 17th instant. It has given great satisfaction to the diplomatic representatives of neutral nations in London, and to no one more than myself.

Indeed it is far more liberal than I had any reason to expect it would have been, judging from the judicial decisions and past history of the country.

The Hon. W. L. Marcy. JAMES BUCHANAN.

G.—THE UNITED STATES CHARGÉ D'AFFAIRES AT STOCKHOLM TO THE UNITED STATES SECRETARY OF STATE.

Stockholm, April 10, 1854.

SIR,

A Swedish Ordinance was published yesterday, defining the rights and obligations of such of the people as are engaged in commerce and navigation. The document is interesting as forming part of the history of the Northern neutrality. For this and other reasons I have translated it entire.[1] The marginal notes which I shall add, will enable you to refer to any clause that may chiefly interest you.

You will best know what reliance may be safely placed upon the equitable promises which have been held out to neutrals by the belligerent Powers; seemingly triumphs of the enlightened age over historic reminiscences of war. It would ill become me to offer an opinion of the realities to be looked for; but the forebodings of the more intelligent men of the country weigh upon this community; and, although unconfessed by Government, they are the real controlling influences in the Council of State.—I have, etc.,

The Hon. W. L. Marcy. F. SCHROEDER.

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[1] This Ordinance is printed in French among the Neutral Legislation issued during the war (Document No. 14 M).

H.—THE UNITED STATES SECRETARY OF STATE TO THE UNITED STATES MINISTER IN LONDON.

Washington, April 13, 1854.

(Extract)

The course indicated to you by Lord Clarendon as that which Great Britain had determined to pursue in the event of a European war in regard to neutral commerce is entirely satisfactory to this Government as to the 2 main points.

The proposition submitted to you—the same, I presume, which Mr Crampton has confidentially submitted to me—are, 1st. That free ships make free goods, except articles contraband of war; and 2nd. That neutral property, not contraband, found on board enemies' ships is not liable to confiscation. The United States have long favoured the doctrine that the neutral flag should protect the cargo, and endeavoured to have it regarded and acted on as a part of the law of nations. There is now, I believe, a fair prospect of getting this sound and salutary principle incorporated into the international code.

There can be, I presume, no doubt that France cheerfully concurs with Great Britain in adopting this principle as a rule of conduct in the pending war. I have just received a despatch from Mr Mason, in which he details conferences he had with the French Ministers on the subject of neutral rights; it does not appear from the accounts he has given of them that the French Government had intimated to him the course it intended to pursue in regard to neutral ships and neutral property on board enemy's ships. I have no doubt, however, that France has more readily acquiesced in the indicated policy than Great Britain.

Both Great Britain and France, as well as Russia, feel much concerned as to the course which our citizens will take in regard to privateering. The two former Powers would at this time most readily enter into conventions, stipulating that the subjects or citizens of the party, being a neutral, who shall accept commissions or letters of marque, and engage in the privateer service, the other party being the belligerent, may be treated as pirates. A stipulation to this effect is contained in several of our treaties, but I do not think the President would permit it to be inserted in any new one. His objection to it does not arise from a desire to have our citizens embark in foreign belligerent service, but, on the contrary, he would much regret to see them take such a course. Our laws go as far as those of any nation—I think further—in laying restraints upon them in regard to going into foreign privateer service. This Government is not

prepared to listen to any proposition for a total suppression of privateering. It would not enter into any convention whereby it would preclude itself from resorting to the merchant marine of the country, in case it should become a belligerent party.

The declaration which Her Britannic Majesty's Government proposes to issue is distinct in interdicting to neutrals the coasting and colonial trade with the belligerent, if not enjoyed by them previous to the war. In regard to this trade, you are aware that Great Britain asserted principles, in the wars resulting from the French Revolution, before she issued her obnoxious Orders in Council, which this country held to be in violation of the law of nations. Should she still adhere to those principles in the coming conflict in Europe, and have occasion to apply them to our commerce, they will be seriously controverted by the United States, and may disturb our friendly relations with her and her allied belligerents. The liberal spirit she has indicated in respect of the cargoes under a neutral flag, and neutral property which may be found on board of enemies' ships, gives an implied assurance that she will not attempt again to assert belligerent rights which are not well sustained by the well-settled principles of international law.

In some respects, I think the law of blockade is unreasonably rigorous towards neutrals, and they can fairly claim a relaxation of it. By the decisions of the English Courts of Admiralty—and ours have generally followed in their footsteps—a neutral vessel which happens to be in a blockaded port is not permitted to depart with a cargo, unless that cargo was on board at the time when the blockade commenced, or was first made known. Having visited the port in the common freedom of trade, a neutral vessel ought to be permitted to depart with a cargo, without regard to the time when it was received on board.

The right of search has heretofore been so freely used, and so freely abused, to the injury of our commerce, that it is regarded as an odious doctrine in this country, and, if exercised against us harshly in the approaching war, will excite deep and widespread indignation. Caution on the part of belligerents in exercising it towards us in cases where sanctioned by usage, would be a wise procedure. As the law has been declared by the decisions of Courts of Admiralty and elementary writers, it allows belligerents to search neutral vessels for articles contraband of war, and for enemies' goods. If the doctrine is so modified as to exempt from seizure and confiscation enemies' property under a neutral flag, still the right to seize articles contraband of war, on board of neutral vessels, implies the right

to ascertain the character of the cargo. If used for such a purpose and in a proper manner, it is not probable that serious collisions would occur between neutrals and belligerents.

A persistent resistance by a neutral vessel to submit to a search renders it confiscable, according to the settled determination of the English Admiralty. It would be much to be regretted if any of our vessels should be condemned for this cause, unless under circumstances which compromitted their neutrality.

J. Buchanan, Esq. W. L. Marcy.

I.—THE FRENCH MINISTER AT WASHINGTON TO THE UNITED STATES SECRETARY OF STATE.

Washington, April 28, 1854.

(Translation)

The Undersigned Envoy Extraordinary and Minister Plenipotentiary of France, has received orders from his Government to address the following communication to the Honourable Secretary of State.

His Majesty the Emperor of the French, and Her Majesty the Queen of the United Kingdom of Great Britain, are about to find themselves under the necessity of resorting to force of arms in order to repel the aggressions of which the Ottoman Empire is the object, on the part of His Majesty the Emperor of Russia. Being desirous to lessen as much as possible, in behalf of commerce, the fatal consequences of a state of war, their Majesties have determined not to authorise privateering, for the present, by issuing letters of marque, and to make known, at the same time, that this determination is communicated, the principles which they intend to apply to the navigation and the commerce of neutrals during this war.

It was with this view that His Majesty the Emperor of the French caused the accompanying declaration to be published; the same being identical with that which Her Majesty the Queen of the United Kingdom of Great Britain and Ireland has caused to be published on her side.

In confining the exercise of their rights of belligerents within such narrow bounds, the Allied Governments consider themselves justified in relying upon the sincere efforts of those Governments which shall remain neutral in this war, to cause their respective citizens and subjects to observe the obligations of strictest neutrality. Consequently, the Government of His Majesty the Emperor of the French, trusts that the Government of the United States will receive with satisfaction the announce-

ment of the determination taken in common between the two Allied Governments, and that it will, by way of just reciprocity, give orders so that no privateer under the Russian flag shall be allowed to be fitted out or victualled, nor admitted with its prizes, in the ports of the United States, and in order that United States citizens may rigorously abstain from taking part in equipments of this kind, or in any other measure contrary to the duties of a strict neutrality.—The Undersigned, etc.,

The Hon. W. L. Marcy. SARTIGES.

[A letter was written in similar terms by Mr Crampton, British Minister to the United States, forwarding the Queen's Declaration to the Secretary of State.]

J.—FIRST MARCY NOTE, APRIL 28, 1854.

United States of America,
Department of State.

The undersigned, Secretary of State of the United States, has had the honor to receive the note of Mr Crampton, Her Britannic Majesty's envoy extraordinary and minister plenipotentiary, of the 21st instant, accompanied by the declaration of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, in regard to the rule which will for the present be observed towards those Powers with which she is at peace, in the existing war with Russia.

The undersigned has submitted those communications to the President, and received his direction to express to Her Majesty's government his satisfaction that the principle that free ships make free goods, which the United States have so long and so strenuously contended for as a neutral right, and in which some of the leading Powers of Europe have concurred, is to have a qualified sanction by the practical observance of it in the present war by both Great Britain and France—two of the most powerful nations of Europe.

Notwithstanding the sincere gratification which Her Majesty's declaration has given to the President, it would have been enhanced if the rule alluded to had been announced as one which would be observed not only in the present, but in every future war in which Great Britain shall be a party. The unconditional sanction of this rule by the British and French governments, together with the practical observance of it in the present war, would cause it to be henceforth recognised throughout the civilised world as a general principle of international law. This government, from its very commencement,

has labored for its recognition as a neutral right. It has incorporated it in many of its treaties with foreign powers. France, Russia, Prussia, and other nations, have, in various ways, fully concurred with the United States in regarding it as a sound and salutary principle, in all respects proper to be incorporated into the law of nations.

The same consideration which has induced Her Britannic Majesty, in concurrence with the Emperor of the French, to present it as a concession in the present war, the desire "to preserve the commerce of neutrals from all unnecessary obstruction," will, it is presumed, have equal weight with the belligerents in any future war, and satisfy them that the claims of the principal maritime Powers, while neutral, to have it recognised as a rule of international law, are well founded, and should be no longer contested.

To settle the principle that free ships make free goods, except articles contraband of war, and to prevent it from being called again in question from any quarter or under any circumstances, the United States are desirous to unite with other Powers in a declaration that it shall be observed by each, hereafter, as a rule of international law.

The exemption of the property of neutrals, not contraband, from seizure and confiscation when laden on board an enemy's vessel, is a right now generally recognised by the law of nations. The President is pleased to perceive, from the declaration of Her Britannic Majesty, that the course to be pursued by her cruisers will not bring it into question in the present war.

The undersigned is directed by the President to State to Her Majesty's minister to this government that the United States, while claiming the full enjoyment of their rights as a neutral power, will observe the strictest neutrality towards each and all the belligerents. The laws of this country impose severe restrictions not only upon its own citizens, but upon all persons who may be resident within any of the territories of the United States, against equipping privateers, receiving commissions, or enlisting men therein, for the purpose of taking a part in any foreign war. It is not apprehended that there will be any attempt to violate the laws; but should the just expectation of the President be disappointed, he will not fail in his duty to use all the power with which he is invested to enforce obedience to them. Considerations of interest and the obligations of duty alike give assurance that the citizens of the United States will in no way compromit the neutrality of their country by participating in the contest in which the principal powers of Europe are now unhappily engaged.

The undersigned avails himself of this opportunity to renew to Mr Crampton the assurance of his distinguished consideration.

W. L. Marcy.

Washington, April 28, 1854.
John F. Crampton, Esq., etc., etc.

K.—MR MARCY'S NOTE TO FRANCE.[1]

(Extrait du *Moniteur* du 23 Mai 1854.)

Paris, 23 *Mai* 1854.

Le gouvernement des Etats-Unis de l'Amérique du Nord a répondu, le 28 Avril, à la communication qui lui avait été faite par le ministre de France de la déclaration des deux grandes puissances maritimes de l'Europe rélativement aux pavillons neutres durant la guerre actuelle. Dans cette réponse, M. L. Marcy exprime, au nom du président de l'Union, le vœu que les maximes adoptées de concert par la France et l'Angleterre deviennent pour l'avenir la règle de conduite de toutes les nations civilisées. Le secrétaire d'Etat déclare, en outre, que son gouvernement a la ferme volonté d'observer strictement et de faire observer de même les devoirs de la neutralité. Il rappelle que la législation du pays interdit sévèrement à tout citoyen américain, ainsi qu'à toute personne établie sur le territoire de l'Union, les équipements de corsaires, les commissions, les enrôlements d'hommes en vue de prendre part à la guerre étrangère. M. Marcy ajoute qu'il n'est pas à craindre que quelque tentative ait lieu pour enfreindre ces lois, mais que, dans le cas où l'attente du gouvernement de l'Union à ce sujet serait trompée, le Président croirait devoir user du pouvoir dont il est investi pour les faire respecter.

L.—THE UNITED STATES SECRETARY OF STATE TO THE UNITED STATES MINISTER AT ST PETERSBURGH.

Washington, May 9, 1854.

Sir,

You have probably seen the joint declaration of Great Britain and France, referred to in the enclosed copy of a Note to Mr Crampton, Her Britannic Majesty's Minister to this Government. This declaration was communicated to me by Ministers of France and England, accompanied by a Note, to which I replied. The Note to the French Minister is substantially the same as that sent to Mr Crampton.

[1] The text of the original Note was not available. The extract from the *Moniteur* is reprinted from Ortolan's *Diplomatie de la Mer*.

It is the settled purpose of this Government to pursue such a course, during the present war in Europe, as will give no cause to either belligerent party to complain, and it sincerely hopes neither will give this country any ground for dissatisfaction.

The danger of a misunderstanding is much less with Russia than with Great Britain and France. I believe, however, these latter Powers are desirous to pursue a fair and liberal course towards neutrals, and particularly towards the United States.

You will observe that there is a suggestion in the enclosed for a Convention among the principal maritime nations to unite in a declaration that free ships should make free goods, except articles contraband of war. This doctrine had heretofore the sanction of Russia, and no reluctance is apprehended on her part to becoming a party to such an arrangement. Great Britain is the only considerable Power which has heretofore made a sturdy opposition to it. Having yielded for the present in the existing war, she thereby recognises the justice and fairness of the principle and would hardly be consistent if she should withhold her consent to an agreement to have it hereafter regarded as a rule of international law. I have thrown out the suggestion to Great Britain and France to adopt this as a rule to be observed in all future wars. The President may instruct me to make the direct proposition to these and other Powers. Should Russia, Great Britain, and France concur with the United States in declaring this to be the doctrine of the law of nations, I do not doubt that the other nations of the world would at once give their consent and conform their practice to it. If a fair opportunity should occur, the President requests you to ascertain the views of His Majesty the Emperor of Russia on the subject.

The decisions of Admiralty Courts in this and other countries have frequently affirmed the doctrine that a belligerent may seize and confiscate enemy's property found on board of a neutral vessel; the general consent of nations, therefore, is necessary to change it. This seems to be a most favourable time for such a salutary change. From the earliest period of this Government, it has made strenuous efforts to have the rule that free ships make free goods, except contraband articles, adopted as a principle of international law; but Great Britain insisted on a different rule. These efforts, consequently, proved unavailing; and now it cannot be recognised, and a strict observance of it secured, without a conventional regulation among the maritime Powers. This Government is desirous to have all nations agree in a declaration that this rule shall hereafter be observed by them respectively, when they shall happen to be involved in any war, and that, as neutrals, they will insist upon it as a

neutral right. In this the United States are confident that they will have the cordial consent and co-operation of Russia.—I am, etc.,

T. H. Seymour, Esq. W. L. Marcy.

9

Proclamations and Orders in Council, March–April 1854.

(1) FEBRUARY 18.—PROCLAMATION PROHIBITING EXPORT OF ARMS, STORES, ETC.

By the Queen—A Proclamation.

Victoria R.

Whereas by the Customs Consolidation Act, 1853, Section 150, certain Goods may, by Proclamation or Order of Her Majesty in Council, be prohibited either to be exported or carried Coastwise: And whereas We, by and with the Advice of Our Privy Council, deem it expedient and necessary to prohibit the Goods herein-after mentioned either to be exported or carried Coastwise: We, by and with the Advice aforesaid, do hereby Order and Direct, that from and after the Date hereof, all Arms, Ammunition and Gunpowder, Military and Naval Stores, and the following Articles, being Articles which We have judged capable of being converted into, or made useful in increasing the Quantity of, Military or Naval Stores, that is to say, Marine Engines, Screw Propellers, Paddle Wheels, Cylinders, Cranks, Shafts, Boilers, Tubes for Boilers, Boiler Plates, Fire Bars, and every Article, or any other component Part of an Engine or Boiler, or any Article whatsoever, which is, can or may become applicable for the Manufacture of Marine Machinery, shall be and the same are hereby prohibited either to be exported from the United Kingdom or carried Coastwise.

Given at Our Court at Buckingham Palace, this Eighteenth Day of February, in the Year of Our Lord One thousand eight hundred and fifty-four, and in the Seventeenth Year of Our Reign.

God save the Queen.

(2) MARCH 9.—PROCLAMATION AGAINST FITTING OUT OR EQUIPPING VESSELS FOR WARLIKE PURPOSES.

BY THE QUEEN—A PROCLAMATION.

VICTORIA R.

Whereas by an Act of Parliament passed in the Fifty-ninth Year of the Reign of His late Majesty King George the Third, entitled "An Act to prevent the enlisting or Engagement of His Majesty's Subjects to serve in Foreign Service, and the fitting out or equipping in His Majesty's Dominions Vessels for Warlike Purposes, without His Majesty's Licence," it is amongst other things enacted [recital of s. 7 of Foreign Enlistment Act, 1819, 59 G. III. c. 69]. And whereas it has been represented to Us that Ships and Vessels are being built in several Places within the United Kingdom, and are being equipped, furnished, and fitted out especially with Steam Machinery, with Intent that they shall be employed as aforesaid, without Our Royal Leave or Licence for that Purpose first had or obtained or signified as aforesaid; We have therefore thought fit, by and with the Advice of Our Privy Council, to issue this Our Royal Proclamation, warning all Our Subjects against taking part in such Proceedings, which We are determined to prevent and repress, and which cannot fail to bring upon the Parties engaged in them the Punishments which attend the Violation of the Laws.

Given at Our Court at Buckingham Palace, this Ninth Day of March in the Year of our Lord One thousand eight hundred and fifty-four, and in the Seventeenth Year of Our Reign.

GOD SAVE THE QUEEN.

On the 28th March Her Majesty issued a Declaration of the causes of war; and on the same date her Declaration with reference to neutrals and letters of marque [No. 5, A].

On the 29th March, by an Order in Council, general reprisals were granted against Russia.

(3) MARCH 29.—EMBARGO ON RUSSIAN VESSELS.

AT THE COURT AT BUCKINGHAM PALACE,
the 29th Day of March 1854.

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL.

It is this Day ordered by Her Majesty, by and with the Advice of Her Privy Council, that no Ships or Vessels belonging to any

of Her Majesty's Subjects be permitted to enter and clear out for any of the Ports of Russia, until further Order; and Her Majesty is further pleased to order, that a general Embargo or Stop be made of all Russian Ships and Vessels whatsoever, now within or which shall hereafter come into any of the Ports, Harbours, or Roads within any of Her Majesty's Dominions, together with all Persons and Effects on board the said Ships or Vessels: Provided always, that nothing herein contained shall extend to any Ships or Vessels specified or comprised in a certain Order of Her Majesty in Council, dated this Twenty-ninth Day of March, for exempting from Capture or Detention Russian Vessels under special Circumstances; and Her Majesty is pleased further to order, and it is hereby ordered, that the utmost Care be taken for the Preservation of all and every Part of the Cargoes on board any of the said Ships or Vessels, so that no Damage or Embezzlement whatever be sustained.

And the Right Honourable the Lords Commissioners of Her Majesty's Treasury, the Lords Commissioners of the Admiralty, and the Lord Warden of the Cinque Ports are to give the necessary Directions herein as to them may respectively appertain.

C. C. Greville.

(4) MARCH 29.—EXEMPTING CERTAIN RUSSIAN VESSELS FROM CAPTURE.

At the Court at Buckingham Palace,
the 29th Day of March 1854.

PRESENT,
The Queen's Most Excellent Majesty in Council.

Her Majesty, being compelled to declare War against His Imperial Majesty the Emperor of All the Russias, and being desirous to lessen as much as possible the Evils thereof, is pleased, by and with the Advice of Her Privy Council, to order, and it is hereby ordered, that Russian Merchant Vessels, in any Ports or Places within Her Majesty's Dominions, shall be allowed until the Tenth Day of May next, Six Weeks from the Date hereof, for loading their Cargoes and departing from such Ports or Places; and that such Russian Merchant Vessels, if met at Sea by any of Her Majesty's Ships, shall be permitted to continue their Voyage, if on Examination of their Papers it shall appear that their Cargoes were taken on board before the Expiration of the above Term: Provided, that nothing herein

contained shall extend or be taken to extend to Russian Vessels having on board any Officer in the Military or Naval Service of the Enemy, or any Article prohibited or contraband of War, or any Despatch of or to the Russian Government.

And it is hereby further ordered by Her Majesty, by and with the Advice of Her Privy Council as aforesaid, that any Russian Merchant Vessel which, prior to the Date of this Order, shall have sailed from any Foreign Port bound for any Port or Place in Her Majesty's Dominions, shall be permitted to enter such Port or Place and to discharge her Cargo, and afterwards forthwith to depart without Molestation, and that any such Vessel, if met at Sea by any of Her Majesty's Ships, shall be permitted to continue her Voyage to any Port not blockaded.

And the Right Honourable the Lords Commissioners of Her Majesty's Treasury, the Lords Commissioners of the Admiralty, and the Lord Warden of the Cinque Ports, are to give the necessary Directions herein as to them may respectively appertain.

C. C. Greville.

(5) APRIL 7.—EXTENDING ORDER No. 4 TO INDIA AND THE COLONIES.

At the Court at Buckingham Palace,
the 7th Day of April 1854.

PRESENT,

The Queen's Most Excellent Majesty in Council.

Her Majesty being compelled to declare War against His Imperial Majesty the Emperor of All the Russias, and being desirous to lessen as much as possible the Evils thereof, is pleased, by and with the Advice of Her Privy Council, to order, and it is hereby ordered, that Russian Merchant Vessels which, at the Time of the Publication of this Order, shall be in any Ports or Places in Her Majesty's Indian Territories under the Government of the East India Company, or within any of Her Majesty's Foreign or Colonial Possessions, shall be allowed Thirty Days from the Time of the Publication of this Order in such Indian Territories, or Foreign or Colonial Possession, for loading their Cargoes and departing from such Ports or Places; and that such Russian Merchant Vessels, if met at Sea by any of Her Majesty's Ships, shall be permitted to continue their Voyage if, on Examination of their Papers, it shall appear that their Cargoes were taken on board before the Expiration of the above Term; provided that nothing herein contained shall extend, or be taken

to extend, to Russian Vessels having on board any Officer in the Military or Naval Service of the Enemy, or any Article prohibited or contraband of War, or any Despatch of or to the Russian Government.

And it is hereby further ordered by Her Majesty, by and with the Advice of Her Privy Council as aforesaid, that any Russian Merchant Vessel which, prior to the Twenty-ninth Day of March now last past, shall have sailed from any Foreign Port, bound for any Port or Place in any of Her Majesty's Indian Territories, or Foreign or Colonial Possessions, shall be permitted to enter such Port or Place, and to discharge her Cargo, and afterwards forthwith to depart without Molestation; and that any such Vessel, if met at Sea by any of Her Majesty's Ships, shall be permitted to continue her Voyage to any Port not blockaded.

And the Right Honourable the Lords Commissioners of Her Majesty's Treasury, the Lords Commissioners of the Admiralty, and Her Majesty's Principal Secretary of State for War and the Colonies, the Right Honourable the Commissioners for the Affairs of India, and all Governors, Officers, and Authorities whom it may concern, in Her Majesty's East Indian, Foreign, and Colonial Possessions, are to give the necessary Directions herein as to them may respectively appertain.

C. C. Greville.

(6) APRIL 7.—EMBARGO ON RUSSIAN VESSELS IN CHANNEL ISLANDS AND ISLE OF MAN.

At the Court at Buckingham Palace,
the 7th Day of April 1854.

PRESENT,
The Queen's Most Excellent Majesty in Council.

It is this Day ordered by Her Majesty, by and with the Advice of Her Privy Council, that no Ships or Vessels belonging to any of Her Majesty's Subjects be permitted to enter and clear out for any of the Ports of Russia until further Order; and Her Majesty is further pleased to order, that a general Embargo or Stop be made of all Russian Ships and Vessels whatsoever now within or which shall hereafter come into any of the Ports, Harbours, or Roads, within Her Majesty's Islands of Jersey, Guernsey, Alderney, and Sark, and the Isle of Man, together with all Persons and Effects on board the said Ships or Vessels: Provided always, that nothing herein contained shall extend

to any Ships or Vessels specified or comprised in a certain Order of Her Majesty in Council, dated the Twenty-ninth Day of March last, for exempting from Capture or Detention Russian Vessels under special Circumstances; and Her Majesty is pleased further to order, and it is hereby ordered, that the utmost Care be taken for the Preservation of all and every Part of the Cargoes on board any of the said Ships or Vessels, so that no Damage or Embezzlement whatever be sustained.

And the Lieutenant-Governors of Her Majesty's Islands of Jersey, Guernsey, Alderney, and Sark, and of the Isle of Man, for the Time being, are to give the necessary Directions herein as to them may respectively appertain, and to return an Account of their Proceedings to this Board.

C. C. Greville.

(7) APRIL 11.—PERMITTING EXPORT OF CERTAIN PROHIBITED ARTICLES.

At the Council Chamber, Whitehall,
the 11th Day of April 1854.

By the Lords of Her Majesty's Most Honourable Privy Council.

The Lords of the Council having taken into consideration certain Applications for Leave to export Arms, Ammunition, Military and Naval Stores, &c., being Articles of which the Exportation is prohibited by Her Majesty's Proclamation of February 18th, 1854: their Lordships are pleased to order, and it is hereby ordered, that Permission should be granted by the Lords Commissioners of Her Majesty's Treasury to export the Articles so prohibited, to be carried Coastwise to Ports in the United Kingdom, and likewise to all Places in North and South America, except the Russian Possessions in North America; to the Coast of Africa, West of the Straits of Gibraltar, and round the South and East Coast of Africa; to the whole Coast of Asia not within the Mediterranean Sea or the Persian Gulf, and not being Part of the Russian Territories; to the whole of Australia, and to all British Colonies within the Limits aforesaid, upon taking a Bond from the Persons exporting such prohibited Articles that they shall be landed and entered at the Port of Destination; and that all further Permission to export such Articles to other Parts of the World be only granted upon Application to the Lords of the Council at this Board.

C. C. Greville.

(8) APRIL 15.—IN FURTHERANCE OF THE DECLARATION TO THE NEUTRALS. [No. 5 A.]

AT THE COURT AT WINDSOR,
the 15th Day of April 1854.

PRESENT,
THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL.

Whereas Her Majesty was graciously pleased, on the Twenty-eighth Day of March last, to issue Her Royal Declaration in the following Terms :

> Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, having been compelled to take up Arms in support of an Ally, is desirous of rendering the War as little onerous as possible to the Powers with whom she remains at Peace.
>
> To preserve the Commerce of Neutrals from all unnecessary Obstruction, Her Majesty is willing, for the Present, to waive a Part of the Belligerent Rights appertaining to Her by the Law of Nations.
>
> It is impossible for Her Majesty to forego the Exercise of Her Right of seizing Articles Contraband of War, and of preventing Neutrals from bearing the Enemy's Despatches, and She must maintain the Right of a Belligerent to prevent Neutrals from breaking any effective Blockade which may be established with an adequate Force against the Enemy's Forts, Harbours, or Coasts.
>
> But Her Majesty will waive the Right of seizing Enemy's property laden on board a neutral Vessel unless it be Contraband of War.
>
> It is not Her Majesty's Intention to claim the Confiscation of neutral Property, not being Contraband of War, found on board Enemy's Ships ; and Her Majesty further declares, that being anxious to lessen as much as possible the Evils of War, and to restrict its Operations to the regularly organised Forces of the Country, it is not Her present Intention to issue Letters of Marque for the commissioning of Privateers.

Now it is this Day ordered, by and with the Advice of Her Privy Council, that all Vessels under a neutral or friendly Flag, being neutral or friendly Property, shall be permitted to import into any Port or Place in Her Majesty's Dominions all Goods and Merchandise whatsoever, to whomsoever the same may belong ; and to export from any Port or Place in Her Majesty's Dominions to any Port not blockaded any Cargo or Goods,

not being Contraband of War, or not requiring a special Permission, to whomsoever the same may belong.

And Her Majesty is further pleased, by and with the Advice of Her Privy Council, to order, and it is hereby further ordered, that, save and except only as aforesaid, all the Subjects of Her Majesty and the Subjects or Citizens of any neutral or friendly State shall and may, during and notwithstanding the present Hostilities with Russia, freely trade with all Ports and Places wheresoever situate which shall not be in a State of Blockade, save and except that no British Vessel shall under any Circumstances whatsoever, either under or by virtue of this Order or otherwise, be permitted or empowered to enter or communicate with any Port or Place which shall belong to or be in the Possession or Occupation of Her Majesty's Enemies.

And the Right Honourable the Lords Commissioners of Her Majesty's Treasury, the Lords Commissioners of the Admiralty, the Lord Warden of the Cinque Ports, and Her Majesty's Principal Secretary of State for War and the Colonies, are to give the necessary Directions herein as to them may respectively appertain.

C. C. Greville.

(9) APRIL 15.—EXTENDING ORDER NO. 4 TO THE 15TH MAY.

At the Court at Windsor,
the 15th Day of April 1854.

PRESENT,

The Queen's Most Excellent Majesty in Council.

Whereas by an Order of Her Majesty in Council of the Twenty-ninth of March last, it was amongst other things ordered, "that any Russian Merchant Vessel which prior to the Date of this Order shall have sailed from any Foreign Port, bound for any Port or Place in Her Majesty's Dominions, shall be permitted to enter such Port or Place and to discharge her Cargo, and afterwards forthwith to depart without Molestation, and that any such Vessel, if met at Sea by any of Her Majesty's Ships, shall be permitted to continue her Voyage to any Port not blockaded":

And whereas Her Majesty, by and with the Advice of Her said Council, is now pleased to alter and extend such Part of the said Order: It is hereby ordered, by and with such Advice as aforesaid, as follows; that is to say,—That any Russian Merchant Vessel which, prior to the Fifteenth Day of May One

thousand eight hundred and fifty-four, shall have sailed from any Port of Russia, situated either in or upon the Shores or Coasts of the Baltic Sea or of the White Sea, bound for any Port or Place in Her Majesty's Dominions, shall be permitted to enter such last-mentioned Port or Place, and to discharge her Cargo, and afterwards forthwith to depart without Molestation; and that any such Vessel, if met at Sea by any of Her Majesty's Ships, shall be permitted to continue her Voyage to any Port not blockaded.

And Her Majesty is pleased, by and with the Advice aforesaid, further to order, and it is hereby further ordered, that in all other respects Her Majesty's aforesaid Order in Council, of the Twenty-ninth Day of March last, shall be and remain in full Force, Effect, and Operation.

And the Right Honourable the Lords Commissioners of Her Majesty's Treasury, the Lords Commissioners of the Admiralty, and the Lord Warden of the Cinque Ports, are to give the necessary Directions herein as to them may respectively appertain.

C. C. Greville.

(10) APRIL 15.—PROHIBITING EXPORT OF ARMS FROM MALTA AND GIBRALTAR.

At the Court at Windsor,
the 15th Day of April 1854.

PRESENT,

The Queen's Most Excellent Majesty in Council.

Whereas it has appeared expedient and necessary to Her Majesty, by and with the Advice of Her Privy Council, by reason of the Hostilities now subsisting between Herself and His Imperial Majesty the Emperor of All the Russias, to prohibit the Goods herein-after mentioned to be exported from the Island of Malta and its Dependencies, except as herein-after provided:

Her Majesty is pleased, by and with the Advice of Her Privy Council aforesaid, to order, and it is hereby ordered, that from and after the Publication of this Order in the said Island, all Arms, Ammunition, and Gunpowder, Military and Naval Stores, and the following Articles, being Articles deemed capable of being converted into or made useful in increasing the Quantity of Military or Naval Stores; that is to say, Marine Engines, Screw Propellers, Paddle Wheels, Cylinders, Cranks, Shafts, Boilers, Tubes for Boilers, Boiler Plates, Fire-bars, and every Article,

or any other component Part of an Engine or Boiler, or any Article whatsoever which is, can, or may become applicable for the Manufacture of Marine Machinery, shall be and the same are hereby prohibited to be exported from the said Island of Malta and its Dependencies, except with the Licence of the Governor or other Officer administering the Government thereof for that Purpose first had and obtained.

And the Most Noble the Duke of Newcastle, One of Her Majesty's Principal Secretaries of State, is to give the necessary Directions herein accordingly.

C. C. Greville.

An Order similar to the above was also issued prohibiting the Exportation of Arms, &c., from the "Town and Garrison of Gibraltar."

(11) LIMITING PROCLAMATION OF 18TH FEBRUARY [NO. (1)] TO CERTAIN ARTICLES.

At the Council Chamber, Whitehall,
the 24th Day of April 1854.

By the Lords of Her Majesty's Most Honourable Privy Council.

The Lords of the Council, having taken into consideration certain Applications for Leave to export various Articles of which the Exportation is prohibited by Her Majesty's Proclamation of the 18th February 1854, are pleased to order, and it is hereby ordered, that the Officers of Her Majesty's Customs do not hereafter prevent the Export of any Articles, except only—

Gunpowder, Saltpetre, and Brimstone;

Arms and Ammunition;

Marine Engines and Boilers, and the component Parts thereof.

And that such last-named Articles be prohibited from Export only when destined to any Place in Europe North of Dunkirk or to any Place in the Mediterranean Sea East of Malta; and that the Officers of Her Majesty's Customs do permit the Export of the said enumerated Articles to any other Part of the World, upon taking, from the Persons exporting the same, a Bond that they shall be landed and entered at the Port of Destination.

Whereof the Lords Commissioners of Her Majesty's Treasury,

and Officers of Her Majesty's Customs, and all other Persons whom it may concern, are to take Notice, and govern themselves accordingly.

C. C. Greville.

(12) November 30, 1854.—Prohibiting the export of lead, nitrate of soda, blue lias, Portland cement, and any article used in the manufacture of marine cement.

(13) January 2, 1855.—Rescinding the Order of Nov. 30 prohibiting the export of blue lias, Portland cement, and any article used in marine cement.

(14) August 7, 1855.—Prohibiting the export of sulphate of potash, muriate of potash.

(15) August 7, 1855.—Prohibiting the export of rivet iron, angle iron, round bars, rivets, strips of iron, sheet plate iron, low moor plates.

(16) August 28, 1855.—Granting leave to export certain articles, hitherto prohibited, to places east of Malta, with the exception of gunpowder, saltpetre, brimstone, nitrate of soda, sulphate of potash, muriate of potash, arms and ammunition of every kind, including lead.

(17) August 30, 1855.—Amending in certain details Order No. 15 relative to the export of iron.

(18) August 30, 1855.—[Probably in lieu of No. 15 as amended.] Prohibiting the export of rivet iron, angle iron, rivets, strips of iron, low moor and bowling plates, sheet plate iron exceeding $\frac{1}{4}$ inch, round bars of from $\frac{5}{8}$- to $\frac{3}{4}$-inch diameter.

(19) September 20, 1855.—Rescinding Order No. 16, with the exception of gunpowder, saltpetre, brimstone, sulphate of potash, muriate of potash, arms and ammunition.

(20) September 20, 1855.—Prohibiting the export of chlorate of potash.

(21) November 1, 1855.—Prohibiting the export, to all foreign countries except British possessions, of saltpetre, nitrate of soda, sulphate of potash, muriate of potash, chlorate of potash.

(22) December 27, 1855.—Prohibiting the export to Her Majesty's colonies and plantations in North America, including the West Indian Islands and all foreign countries, of saltpetre, nitrate of soda, sulphate of potash, muriate of potash.

(23) December 28, 1855.—Rescinding the prohibition to export chlorate of potash.

(24) April 9, 1856.—Revoking Order No. 3.

(25) April 9, 1856.—Revoking Order No. 6.

(26) April 9, 1856.—Taking off all prohibitions on the exportation of arms, ammunition, etc.

(27 and 28) April 9, 1856.—Revoking Order No. 10 (Malta and Gibraltar).

(29) FEBRUARY 8, 1855.—PROCLAMATION DECLARING AS TRAITORS ALL BRITISH SUBJECTS WHO SHALL ASSIST HER MAJESTY'S ENEMIES.

BY THE QUEEN—A PROCLAMATION.

VICTORIA R.

Whereas information has been received that certain acts of a highly treasonable nature have been, or are about to be, done or attempted by certain British subjects adhering to the Queen's enemies, either within Her Majesty's dominions, or in parts beyond the seas; such as building, or aiding and assisting in building, or equipping, ships of war, providing stores, or tackling, arms, and ammunition, for such ships, or manufacturing or fitting, or aiding, or assisting in manufacturing or fitting, steam machinery, either for such ships or for other warlike purposes; or by entering into contracts, engagements, or agreements for some of the aforesaid purposes, or otherwise adhering to, aiding, assisting, or abetting, the Queen's enemies in parts beyond the seas, in levying or carrying on war against Her Majesty: now, Her Majesty, by this Her Royal Proclamation, doth warn all such persons engaging in any such treasonable designs or attempts as aforesaid, or otherwise adhering to, assisting, aiding, or abetting the Queen's enemies, that they will be liable to be apprehended and dealt with as traitors, and will be proceeded against with the utmost rigour of the law.

Given at our Court at Windsor, this eighth day of February, in the year of our Lord One thousand eight hundred and fifty-five, and in the eighteenth year of our reign.

GOD SAVE THE QUEEN.

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(30) April 28, 1856.—Proclamation of peace.

10

Instructions to the Fleets.

A.—ENGLISH.

INSTRUCTIONS FOR THE COMMANDERS OF H.M.'S SHIPS AND VESSELS OF WAR AS TO THE DISPOSAL OF CAPTURED VESSELS.

I. The Commanders of Her Majesty's Ships and Vessels of War shall send all Ships, Vessels, and Goods which they shall seize and take, into such Port within Her Majesty's Dominions as shall be most convenient for them, in order to have the same legally adjudged in the High Court of Admiralty of England, or in some other Admiralty Court lawfully authorised to take cognizance of matters of Prize.

II. After such Ships, Vessels, and Goods (save as to Ships of War) shall have been taken into any such Port, the Captor or one of his Chief Officers or some other person present at the capture, shall bring or send as soon as possibly may be, three or four of the principal persons belonging to the captured Ship or Vessel (two of whom shall always if possible be either the Master, Supercargo, Mate or Boatswain) before the Judge of the High Court of Admiralty of England, his Surrogate or the Judge of some other Admiralty Court within the British Dominions lawfully authorised, or others commissioned for that purpose as aforesaid, all such Books, Papers, Passes, Sea Briefs, Charter Parties, Bills of Lading, Cockets, Letters, and other Documents and Writings whatsoever as shall be delivered up, or found on board any such Ship or Vessel ; and the Captor or one of his Chief Officers or some other person who was present at the capture, and saw the said Papers and Writings delivered up, or otherwise found on board at the time of the Capture, shall make Oath that the said Papers and Writings are brought and delivered in as they were received and taken without any Fraud, Addition, Subduction, Alteration or Embezzlement whatever, or otherwise shall account for the same upon Oath to the satisfaction of the Court.

III. All Ships, Vessels, Goods, Wares, Merchandises and other Effects (save as to Ships of War) so captured as aforesaid shall immediately upon being brought into Port, be delivered over into the custody of the Marshall or other duly qualified Officer of the High Court of Admiralty of England, or other Court of

Admiralty commissioned as aforesaid, or in the absence of any such Officer into the custody of the Collector, Comptroller, or other principal Officer of the Customs or Navigation Laws, and such Ships, Vessels, Goods, Wares, Merchandise and Effects shall be kept and preserved, and no part thereof shall be sold, spoiled, wasted or diminished, and the bulk thereof shall not be broken (save only in case of urgent necessity or by Decree of the Court,) until final judgement shall have been given in the said Court of Admiralty touching and concerning the same.

IV. If any Ships or Vessels belonging to Her Majesty or Her Subjects or to any of Her Allies or their Subjects shall be found in distress by being in Flight, set upon, or Captured by the Enemy, or by reason of any other Accident, the Commanders of Her Majesty's Ships and Vessels of War shall use their best endeavours and give aid and succour, and to the utmost of their power labour to recapture and free the same from the Enemy or such other distress.

V. The Commanders of Her Majesty's Ships and Vessels of War shall not ransom or agree to ransom or quit or set at liberty any Ship or Vessel, Goods or Wares, Merchandises, or other Effects belonging to the Enemy, which shall have been seized and taken by them, save only in case of urgent necessity.

VI. The Commanders of Her Majesty's Ships and Vessels of War shall carry all persons taken on board of any captured Men of War or other Ships or Vessels to Ports at which there are or shall be established Depôts for the reception of Prisoners of War, and shall there deliver them over to such persons as shall be duly authorised to receive and take charge of them; and no such Commander or other Officer shall presume, upon any pretence whatever, to land, release, or deliver over any such persons at any other place to any other person or in any other manner than as aforesaid.

VII. The Commanders of Her Majesty's Ships and Vessels of War shall not until further orders capture, detain or molest any Ship or Vessel belonging to any subject or citizen of any State in amity with Her Majesty solely by reason of Enemy's Goods being laden on board her, nor shall they, until further orders, capture, detain or molest any Goods, Wares, Merchandises, and Effects laden on board the same solely by reason of their belonging to the Enemy.

VIII. The Commanders of Her Majesty's Ships and Vessels of War shall seize, detain, and Capture all Ships and Vessels laden wholly or in part with Arms, Ammunition, Naval or Military Stores, Officers, Troops, Seamen, and Despatches, or any other Contraband of War, which is destined for the use

of the Enemy, and shall send such Ships or Vessels, and contraband (except as hereinafter mentioned) into some Port within Her Majesty's Dominions for adjudication before the High Court of Admiralty of England, or some other Court of Admiralty duly authorised to take cognizance thereof; provided, that if any such Ships, Vessels, or Contraband be owned by the Subjects of France, the same shall be taken into some Port of France for adjudication.

IX. The Commanders of Her Majesty's Ships and Vessels of War shall seize all Ships and Vessels and the Goods, Merchandise, and Effects laden therein to whomseover belonging, that shall be found attempting to Violate any Blockade of the Ports, Harbours, or Coasts of the Enemy, and shall send them (except as hereinafter excepted) into some Port within Her Majesty's Dominions for adjudication before the High Court of Admiralty duly commissioned to take cognizance thereof; provided, that if such Ships or Vessels be owned by Subjects of France the same shall be taken into some Port of France for adjudication.

X. In case Her Majesty shall declare any Ports, Harbours, or coasts to be in a state of Blockade, the Commanders of Her Majesty's Ships and Vessels of War are hereby enjoined to stop all Neutral Vessels, which they shall meet at Sea, destined to the said Ports, Harbours, or coasts, and if they shall appear to be ignorant of the existence of the said Blockade, and have no Contraband of War on board, they shall turn them away, apprising them that the said Ports, Harbours, or Coasts are in a state of Blockade, and shall write a Notice to that effect upon one or more of the Principal Ship's Papers; and if any neutral Ship or Vessel, which shall appear to have been so warned, or to have been otherwise informed of the existence of the Blockade, or to have sailed from her last Port after it may reasonably be supposed that notification of the Blockade had been made public there, shall yet be found attempting or intending to violate such Blockade, such Vessel shall be seized, and sent into some Port within Her Majesty's Dominions, for legal adjudication before the High Court of Admiralty of England, or some other Court duly authorised to take cognizance thereof; provided, that if such Ship or Vessel be owned by Subjects of France, the same shall be taken into some Port of France for adjudication. And if any neutral Ship or Vessel be found coming out of any blockaded Port which she shall previously have entered in violation of such Blockade, or if she shall have any Goods or Merchandise on board laden after knowledge of the Blockade, such Ships or Vessel, and the Goods, Wares, Merchandises, and

other Effects on board the same shall in like manner be seized and sent in for adjudication; provided that, if such Ship or Vessel be owned by the Subjects of France, she shall be taken into some Port of France for adjudication. But any neutral Ship or Vessel coming out of any such blockaded Port, in ballast, or having only Goods or Merchandise on board laden before the knowledge of the Blockade, shall be suffered to pass except there be other grounds for detaining her, and a Notice and Warning shall be written upon one or more of the Principal Ship's Papers prohibiting such Vessel from again attempting to enter such Port during the existence of the blockade.

B.—FRENCH.

INSTRUCTIONS ADRESSÉES PAR SON EXCELLENCE LE MINISTRE SECRÉTAIRE D'ÉTAT AU DÉPARTEMENT DE LA MARINE ET DES COLONIES À MM. LES OFFICIERS GÉNÉRAUX, SUPÉRIEURS ET AUTRES, COMMANDANT LES ESCADRES ET LES BÂTIMENTS DE SA MAJESTÉ IMPÉRIALE.

Paris, le 31 *Mars* 1854.

MESSIEURS,

Par une circulaire en date du 28 de ce mois, je vous ai fait connaître que la Russie s'était constituée vis-à-vis de la France et de l'Angleterre dans un état de guerre dont la responsabilité lui appartient tout entière [No. 3 (F. 2)].

Vous trouverez ci-jointe la déclaration faite à ce sujet au Sénat et au Corps législatif par ordre de l'Empereur.

Je vous notifie aujourd'hui les intentions de Sa Majesté relativement aux devoirs nouveaux qui en découlent pour vous, indépendamment du concours que vous aurez à prêter aux opérations militaires proprement dites, suivant les instructions spéciales que je vous adresserai ou qui vous parviendront à ce sujet par la voie hiérarchique.

Voici donc la ligne de conduite que vous aurez à tenir par suite de cette déclaration :

1. Dès ce moment vous êtes requis de courir sus à tous les bâtiments de guerre de Sa Majesté l'empereur de Russie ou à tous corsaires armés sous son pavillon, et à vous en emparer par la force des armes; vous aurez également à courir sus et à capturer tous les bâtiments de commerce russes, ainsi que leurs cargaisons, que vous rencontrerez en mer ou dans les ports et rades de l'ennemi, sous les exceptions suivantes :

Un délai de six semaines, qui court du 27 de ce mois au 9 mai prochain inclusivement, ayant été accordé aux bâtiments de

commerce russes pour sortir des ports français, soit qu'ils s'y trouvent en ce moment ou qu'ils y entrent ultérieurement, vous n'arrêterez aucun de ces bâtiments pendant ledit délai, et vous laisserez également continuer leur navigation à ceux de ces bâtiments qui établiraient par leurs papiers de bord qu'étant partis dans les limites du délai accordé, ils se rendent directement à leur port de destination et qu'ils n'ont pu encore y parvenir. Les mêmes exceptions s'appliqueront aux navires russes sortis des ports de l'Angleterre ou qui seraient destinés pour ces ports.

2. Vous n'apporterez aucun obstacle à la pêche côtière, même sur les côtes de l'ennemi ; mais vous veillerez à ce que cette faveur, dictée par un intérêt d'humanité, n'entraîne aucun abus préjudiciable aux opérations militaires et maritimes. Si vous êtes employés dans les eaux de la mer Blanche, vous laisserez aussi subsister sans interruption, et sauf répression en cas d'abus, l'échange de poisson frais, de vivres, d'ustensiles et d'agrès de pêche qui se fait habituellement entre les paysans des côtes russes de la province d'Archangel et les pêcheurs des côtes du Finnmarken norvégien.

3. Vous n'arrêterez pas non plus les bâtiments russes pourvus d'un sauf-conduit ou licence, soit du gouvernement impérial, soit du gouvernement britannique, ou, enfin, du gouvernement ottoman. Vous trouverez ci-joint un modèle de la forme adoptée pour les licences ou sauf-conduits français. Je vous communiquerai ultérieurement un modèle des actes analogues des gouvernements anglais et ottoman.

Vous vous assurerez que les actes qui vous seront présentés sont sincères et que les conditions en ont été rigoureusement observées ; en cas de soupçons sur leur sincérité ou d'inexécution de leurs conditions, vous êtes autorisés à saisir le bâtiment qui en serait porteur.

4. Vous vous abstiendrez d'exercer aucun acte d'hostilité dans les ports ou dans les eaux territoriales des puissances neutres, et vous considérerez les eaux territoriales comme s'étendant à une portée de canon au delà de la laisse de basse mer ; vous vous abstiendrez également de toute capture ou poursuite hostile dans les ports et eaux territoriales des puissances alliées, à moins que vous n'en soyez requis ou que vous n'y soyez autorisés par l'officier de la puissance territoriale chargé du commandement le plus voisin.

5. L'état de guerre interrompant les relations de commerce entre les sujets des puissances belligérantes, vous aurez à arrêter non seulement les bâtiments marchands nationaux, mais encore les bâtiments marchands des puissances alliées, qui, sans une

permission ou licence spéciale, tenteraient d'enfreindre cette interdiction, ou qui, plus coupables encore, chercheraient à violer un blocus ou s'engageraient dans un transport de troupes, de dépêches officielles ou de contrebande de guerre pour le compte ou à destination de l'ennemi.

6. Les neutres étant autorisés par le droit des gens à continuer librement leur commerce avec les puissances belligérantes, vous n'arrêterez les bâtiments neutres que dans les cas suivants :

1° S'ils tentaient de violer un blocus ;

2° S'ils transportaient, pour le compte ou à destination de l'ennemi, des objets de contrebande de guerre, des dépêches officielles ou des troupes de terre ou de mer. Dans ces divers cas, le bâtiment et la cargaison sont confiscables, sauf lorsque la contrebande de guerre ne forme pas les trois quarts du chargement, auquel cas les objets de contrebande sont seuls sujets à confiscation.

7. Tout blocus, pour être respecté, devra être effectif, c'est-à-dire maintenu par des forces suffisantes pour qu'il y ait danger imminent de pénétrer dans les ports investis. La violation du blocus résulte aussi bien de la tentative de pénétrer dans le lieu bloqué que de la tentative d'en sortir après la déclaration du blocus, à moins, dans ce dernier cas, que ce ne soit sur lest ou avec un chargement pris avant le blocus ou dans le délai fixé par le commandant du blocus, délai qui devra toujours être suffisant pour protéger la navigation et le commerce de bonne foi.

Un blocus n'est d'ailleurs censé connu d'un bâtiment qui se dirige vers un port bloqué qu'après que la notification spéciale en a été inscrite sur ses registres ou papiers de bord par l'un des bâtiments de guerre formant le blocus ; et c'est une formalité que vous ne devrez point négliger de faire remplir toutes les fois que vous serez engagés dans une opération de ce genre.

8. La contrebande de guerre se compose des objets suivants, lorsqu'ils sont destinés à l'ennemi, savoir :

Bouches et armes à feu, armes blanches, projectiles, poudre, salpêtre, soufre, objets d'équipement, de campement et de harnachement militaires, et tous instruments quelconques fabriqués à l'usage de la guerre.

9. Sauf la vérification relative au commerce illicite dont je vous ai indiqué le caractère, vous n'avez point à examiner la propriété du chargement des navires neutres : le pavillon couvre la marchandise, et dès lors la propriété ennemie chargée à bord n'est point confiscable ; toutefois, je crois devoir vous informer que, par une faveur spéciale que Sa Majesté a entendu concéder aux neutres dans le cours de cette guerre, d'accord avec Sa Majesté la reine, son auguste alliée, les propriétés des sujets

alliés ou neutres trouvées à bord des navires ennemis seront exemptes de confiscation.

10. Pour l'application de ces principes, la nationalité des maisons de commerce doit se déterminer d'après le lieu où elles sont établies ; mais la nationalité des bâtiments ne dérive pas seulement de celle de leurs propriétaires, mais encore de leur droit légitime au pavillon qui les couvre.

11. En cas de détresse d'un bâtiment national ou allié ou en cas de capture par l'ennemi, vous devrez lui porter toute aide et assistance ou vous efforcer d'en opérer la recousse : l'intention de Sa Majesté est que ce sauvetage ou cette recousse ne donne lieu à aucun droit sur le bâtiment secouru ou recous. Dans le cas où vous reprendriez sur l'ennemi un bâtiment neutre, vous êtes autorisés à considérer ce bâtiment comme ennemi s'il est resté plus de vingt-quatre heures en la possession de l'ennemi, à moins de circonstances exceptionnelles dont Sa Majesté se réserve l'appréciation. Si le bâtiment n'est pas resté pendant vingt-quatre heures au pouvoir de l'ennemi, vous le relâcherez purement et simplement.

12. Si vous rencontrez un corsaire sous pavillon russe, vous le saisirez et le traiterez comme tout autre bâtiment marchand ennemi ; mais Sa Majesté ayant, d'accord avec ses augustes alliés, renoncé quant à présent à la délivrance de lettres de marque, est en droit d'attendre que l'armement et la conduite des corsaires ennemis soient renfermés strictement dans les limites les plus restreintes du droit des gens, et vous aurez à vérifier avec rigueur s'ils ne rentrent pas dans l'un des cas prévus par la loi du 10 avril 1825 sur la piraterie, dont vous trouverez ci-joint un extrait, afin que vous puissiez, le cas échéant, en faire l'application.

13. Pour remplir les devoirs résultant des indications qui précèdent, vous aurez à exercer le droit de visite. Bien que ce droit soit illimité en temps de guerre *quant aux parages*, je vous recommande cependant expressément de ne l'exercer que dans les parages et dans les circonstances où vous auriez des motifs fondés de supposer qu'il peut amener la saisie du bâtiment visité.

Quant à la forme, vous vous tiendrez, autant que possible, hors de la portée de canon. Vous enverrez à bord un canot dont l'officier montera sur le navire à visiter, accompagné de deux ou trois hommes seulement, et se bornera à vérifier, d'après les papiers de bord, la nationalité ainsi que la nature du bâtiment et du chargement, et à reconnaître si le bâtiment est engagé dans un commerce illicite.

L'examen des papiers de bord est d'autaut plus important

que, d'après notre législation, ces papiers peuvent seuls servir au jugement ultérieur sur la validité ou l'invalidité de la prise.

14. Vous ne visiterez point les bâtiments qui se trouveront sous le convoi d'un navire de guerre allié ou neutre, et vous vous bornerez à réclamer du commandant du convoi une liste des bâtiments placés sous sa protection avec la déclaration écrite qu'ils n'appartiennent pas à l'ennemi et ne sont engagés dans aucun commerce illicite. Si cependant vous aviez lieu de soupçonner que la religion du commandant du convoi a été surprise, vous communiqueriez vos soupçons à cet officier, qui procéderait seul à la visite des bâtiments suspectés.

15. Si la visite ne détermine pas la saisie du bâtiment, l'officier qui en aura été chargé devra seulement la constater sur les papiers du bord ; si au contraire elle détermine la saisie, l'officier visiteur devra :

1° S'emparer de tous les papiers de bord ;

2° Dresser un inventaire ;

3° Mettre à bord un équipage pour la conduite de la prise.

16. En cas de prise d'un corsaire ou d'un pirate, vous procéderez de la même manière ; mais dans le cas de capture d'un bâtiment de guerre, vous vous bornerez à la constater sur votre journal, et vous pourvoirez à la conduite de la manière la plus conforme à la sécurité des équipages auxquels vous la confierez.

Les lettres officielles et particulières trouvées à bord des bâtiments capturés devront m'être adressées sans délai.

17. Toute prise doit être jugée, et il ne vous est pas permis de consentir à un traité de rançon, et dans ce cas méme l'acte de rançon, rédigé conformément aux modèles joint aux présentes instructions, devra être soumis à la juridiction qui est ou sera chargée en France du jugement des prises.

18. Il a été convenu entre le Gouvernement de Sa Majesté Impériale et celui de Sa Majesté Britannique :

1° Que le produit net des prises faites en commun sera divisé en autant de parts qu'il y aura d'hommes embarqués sur les bâtiments engagés dans l'action, sans tenir compte des grades, et que la répartition des sommes revenant aux bâtiments respectifs sera faite par les soins de chaque gouvernement et d'après la loi du pays ;

2° Que, quant aux bâtiments en vue au moment de la capture, et dont la présence pourrait encourager le capteur et intimider l'ennemi, il leur serait accordé une part dans la prise.

Le mode du jugement des prises n'ayant pas encore été réglé définitivement entre Sa Majesté l'Empereur et son auguste alliée, je ne suis point en mesure de vous fixer aujourd'hui d'une manière positive sur la marche qui devra être suivie.

Cependant les dispositions ci-après me paraissent devoir être adoptées :

1° Par exception, le juge compétent sera le *juge du capturé* lorsqu'il s'agira de bâtiments français qui se seraient mis dans le cas d'être arrêtés par des croiseurs anglais, pour violation ou tentative de violation de blocus ou pour transport de contrebande de guerre, *et vice versâ* lorsqu'il s'agira de bâtiments anglais qui auraient été arrêtés par des croiseurs français ;

2° Pour les bâtiments capturés autres que ceux des marines française ou anglaise, la règle que le juge compétent de la prise est le *juge du capteur* reprendra son empire ;

3° Si la capture a lieu par suite d'une action commune et sous un commandement supérieur, le pavillon du commandant supérieur déterminera la nationalité du juge ;

4° Si la capture est faite par un croiseur de l'une des deux nations alliées en présence et avec l'appui matériel ou moral d'un croiseur de l'autre, le juge de la prise sera celui du capteur.

19. Lorsque le jugement devra appartenir à la juridiction française, vous conduirez la prise dans le port de France le plus rapproché, le plus accessible et le plus sûr, ou dans le port de la possession française la plus voisine ; mais si des circonstances de force majeure ne vous permettaient pas de conduire la prise en France ou dans une possession française, vous pourrez la conduire dans un port anglais ou ottoman où se trouverait un consul de Sa Majesté Impériale, avec lequel vous vous concerterez sur la destination ultérieure de la prise.

Lorsque, au contraire, vous serez dans le cas de remettre à la juridiction anglaise une prise faite ou amenée par vous, vous la conduirez dans le port anglais le plus proche, et vous vous entendrez, soit avec le consul de Sa Majesté Impériale, soit avec l'autorité locale, pour vous en dessaisir d'une manière régulière.

Ces diverses dispositions devront naturellement être observées par les officiers conducteurs de prises.

20. Vous ne devrez distraire du bord aucun des individus qui montent le bâtiment capturé, s'il s'agit d'un corsaire ou d'un bâtiment marchand ; mais les femmes, les enfants et toutes les personnes étrangères au métier des armes ou à la marine ne devront, en aucun cas, être traités comme prisonniers de guerre, et seront libres de débarquer dans le premier port où le bâtiment abordera. S'il s'agit d'un bâtiment de guerre, et sauf la même exception, vous pourrez, si vous le jugez utile, transborder une partie de l'équipage, et vous conduirez les prisonniers soit dans un port militaire de France, soit dans tout autre port qui pourra être ultérieurement désigné comme lieu de dépôt pour les prisonniers de guerre.

21. Je n'ai pas besoin de vous recommander, en terminant, de concerter votre action avec les bâtiments de Sa Majesté Britannique ou de la Porte Ottomane toutes les fois que vous en trouverez l'occasion. Je suis persuadé que vous ne perdrez jamais de vue l'accord complet qui existe entre les trois gouvernements, et que vous ne négligerez rien de ce qui pourrait le fortifier et resserrer les liens qui les unissent.

Indépendamment des documents auxquels se réfèrent les présentes instructions, vous trouverez ci-après divers actes dont les dispositions devront être observées, sauf, bien entendu, en ce qu'elles auraient de contraire aux règles qui précèdent.

Recevez, messieurs, l'assurance de ma considération très-distinguée.

Le ministre secrétaire d'État de la marine et des colonies,
THÉODORE DUCOS.

11

Convention between Great Britain and France relative to Joint Captures, with Instructions to the Fleets, MAY 10, 1854.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the Emperor of the French, being desirous to determine the jurisdiction to which the adjudication of joint captures which may be made during the course of the present war by the naval forces of the two nations shall belong, or of captures which may be made of merchant-vessels belonging to subjects of either of the two countries by the cruizers of the other, and being desirous to regulate at the same time the mode of distribution of the proceeds of joint captures,

Sa Majesté la Reine du Royaume Uni de la Grande Bretagne et d'Irlande, et Sa Majesté l'Empereur des Français, voulant déterminer la juridiction à laquelle devra appartenir le jugement des prises qui, dans le cours de la guerre actuelle, pourront être opérées en commun par les forces navales des deux nations, ou des prises qui pourront être faits sur des navires marchands appartenant aux sujets de l'un des deux pays par les croiseurs de l'autre, et voulant régler en même temps le mode de répartition des produits des prises effectuées en commun, ont

have named as their Plenipotentiaries for that purpose :

1. When a joint capture shall be made by the naval forces of the two countries, the adjudication thereof shall belong to the jurisdiction of the country whose flag shall have been borne by the officer having the superior command in the action.

2. When a capture shall be made by a cruizer of either of the two allied nations in the presence and in the sight of a cruizer of the other, such cruizer having thus contributed to the intimidation of the enemy and encouragement of the captor, the adjudication thereof shall belong to the jurisdiction of the actual captor.

3. In case of the capture of a merchant-vessel of one of the two countries, the adjudication of such capture shall always belong to the jurisdiction of the country of the captured vessel : the cargo shall be dealt with, as to the jurisdiction, in the same manner as the vessel.

4. In case of condemnation under the circumstances described in the preceding Articles :

(1) If the capture shall have been made by vessels of the two nations whilst acting in conjunction, the net proceeds of the prize, after deducting the necessary expenses, shall be divided into as many shares as there were men on board the capturing vessels, without reference to rank, and the

nommé pour leurs Plénipotentiaires à cet effet :

1. Lorsqu'une prise sera faite en commun par les forces navales des deux pays, le jugement en appartiendra à la juridiction du pays dont le pavillon aura été porté par l'officier qui aura eu le commandement supérieur dans l'action.

2. Lorsqu'une prise sera faite par un croiseur de l'une des deux nations alliées en présence et en vue d'un croiseur de l'autre, qui aura ainsi contribué à intimider l'ennemi et à encourager le capteur, le jugement en appartiendra à la juridiction du capteur effectif.

3. En cas de capture d'un bâtiment de la marine marchande de l'un des deux pays, le jugement en appartiendra toujours à la juridiction du pays du bâtiment capturé ; la cargaison suivra, quant à la juridiction, le sort du bâtiment.

4. En cas de condamnation dans les circonstances prévues par les Articles précédents :

(1) Si la capture a été faite par des bâtiments des deux nations agissant en commun, le produit net de la prise, déduction faite des dépenses nécessaires, sera divisé en autant de parts qu'il y aura d'hommes embarqués sur les bâtiments capteurs, sans tenir compte des grades, et les parts revenant

shares belonging to the men on board the vessels of the Ally shall be paid and delivered to such person as may be duly authorized on behalf of the allied Government to receive the same ; and the distribution of the amount belonging to each vessel shall be made by each Government according to the laws and regulations of the country.

(2) If the capture shall have been made by cruizers of either of the two allied nations in the presence and in sight of a cruizer of the other, the division, the payment, and the distribution of the net proceeds of the prize, after deducting the necessary expenses, shall likewise be made in the manner above mentioned.

(3) If a capture, made by a cruizer of one of the two countries, shall have been adjudicated by the Courts of the other, the net proceeds of the prize, after deducting the necessary expenses, shall be made over in the same manner to the Government of the captor, to be distributed according to its laws and regulations.

5. The commanders of the vessels of war of Their Majesties shall, with regard to the sending in and delivering up of prizes, conform to the Instructions annexed to the present Convention, and which the two Governments reserve to themselves to modify by common consent, if it should become necessary.

aux hommes embarqués sur les bâtiments de la nation alliée seront payées et délivrées à la personne qui sera dûment autorisée par le Gouvernement allié à les recevoir ; et la répartition des sommes revenant aux bâtiments respectifs sera faite par les soins de chaque Gouvernement suivant les lois et règlements du pays.

(2) Si la prise a été faite par les croiseurs de l'une des deux nations alliées en présence et en vue d'un croiseur de l'autre, le partage, le paiement, et la répartition du produit net de la prise, déduction faite des dépenses nécessaires, auront lieu également de la manière indiquée ci-dessus.

(3) Si la prise, faite par un croiseur de l'un des deux pays, a été jugée par les Tribunaux de l'autre, le produit net de la prise, déduction faite des dépenses nécessaires, sera remis de la même manière au Gouvernement du capteur, pour être distribué conformément à ses lois et règlements.

5. Les commandants des bâtiments de guerre de Leurs Majestés se conformeront, pour la conduite et la remise des prises, aux Instructions jointes à la présente Convention, et que les deux Gouvernements se réservent de modifier, s'il y a lieu, d'un commun accord.

6. When, in execution of the present Convention, the valuation of a captured vessel of war shall be in question, the calculation shall be according to the real value of the same; and the allied Government shall be entitled to delegate one or more competent officers to concur in the valuation. In case of disagreement, it shall be decided by lot which officer shall have the casting voice.

7. The crews of the captured vessels shall be dealt with according to the laws and regulations of the country to which the present Convention attributes the adjudication of the prize.

8. The present Convention shall be ratified, and the ratifications shall be exchanged at London within ten days from this date, or sooner if possible.

6. Lorsque, pour l'exécution de la présente Convention, il y aura lieu de procéder à l'estimation d'un bâtiment de guerre capturé, cette estimation portera sur sa valeur effective; et le Gouvernement allié aura la faculté de déléguer un ou plusieurs officiers compétents pour concourir à l'estimation. En cas de désaccord, le sort décidera quel officier devra avoir la voix prépondérante.

7. Les équipages des bâtiments capturés seront traités suivant les lois et règlements du pays auquel la présente Convention attribue le jugement de la capture.

8. La présente Convention sera ratifiée, et les ratifications en seront échangées à Londres dans le délai de dix jours, ou plus tôt si faire se peut.

ANNEX TO THE CONVENTION.

INSTRUCTIONS to the Commanders of Ships of War belonging to Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and to His Majesty the Emperor of the French.

You will find inclosed a copy of a Convention which was signed on the 10th instant between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and His Majesty the Emperor of the French, regulating the jurisdiction to which shall be-

ANNEXE À LA CONVENTION.

INSTRUCTIONS pour les Commandants des Bâtiments de Guerre de Sa Majesté la Reine du Royaume Uni de la Grande Bretagne et d'Irlande et de Sa Majesté l'Empereur des Français.

Vous trouverez ci-joint copie d'une Convention singée le 10 de ce mois entre Sa Majesté la Reine du Royaume Uni de la Grande Bretagne et d'Irlande et Sa Majesté l'Empereur des Français, pour régler la juridiction à laquelle devra appartenir le jugement des prises

long the adjudication of the joint captures made by the allied naval forces, or of the captures of merchant-vessels belonging to the subjects of either of the two countries which shall be made by the cruisers of the other, as likewise the mode of distribution of the proceeds of such joint captures.

In order to ensure the execution of this Convention, you will conform yourself to the following Instructions :

1. Whenever, in consequence of a joint action, you are required to draw up the report or *procès-verbal* of a capture, you will take care to specify exactly the names of the ships of war present during the action, as well as the names of their commanding officers, and, as far as possible, the number of men embarked on board those ships at the commencement of the action, without distinction of rank.

You will deliver a copy of that report or *procès-verbal* to the officer of the allied Power who shall have had the superior command during the action, and you will conform yourself to the instructions of that officer as far as relates to the measures to be taken for the conduct and the adjudication of the joint captures so made under his command.

If the action has been commanded by an officer of your nation, you will conform yourself to the regulations of your own country, and you will con-

opérées en commun par les forces navales alliées, ou faites sur des navires marchands appartenant aux sujets de l'un des deux états par les croiseurs de l'autre, ainsi que le mode de répartition du produit des prises effectuées en commun.

Pour assurer l'exécution de cette Convention, vous aurez à vous conformer aux Instructions suivantes :

1. Lorsque, par suite d'une action commune, vous serez dans le cas de rédiger le rapport ou le procès-verbal d'une capture, vous aurez soin d'indiquer avec exactitude les noms des bâtiments de guerre présents à l'action, ainsi que de leurs commandants, et, autant que possible, le nombre d'hommes embarqués à bord de ces bâtiments au commencement de l'action, sans distinction de grades.

Vous remettrez une copie de ce rapport ou procès-verbal à l'officier de la Puissance alliée qui aura eu le commandement supérieur dans l'action, et vous vous conformerez aux instructions de cet officier en ce qui concerne les mesures à prendre pour la conduite et le jugement des prises ainsi faites en commun sous son commandement.

Si l'action a été commandée par un officier de votre nation, vous vous conformerez aux règlements de votre propre pays, et vous vous bornerez à

fine yourself to handing over to the highest officer in rank of the allied Power who was present during the action a certified copy of the report or of the *procès-verbal* which you shall have drawn up.

2. When you shall have effected a capture in presence of, and in sight of, an allied ship of war, you will mention exactly, in the report which you will draw up when the capture is a ship of war, and in the report or *procès-verbal* of the capture when the prize is a merchant-vessel, the number of men on board your ship at the commencement of the action, without distinction of rank, as well as the name of the allied ship of war which happened to be in sight, and, if possible, the number of men embarked on board that ship, likewise without distinction of rank. You will deliver a certified copy of your report or *procès-verbal* to the commander of that ship.

3. Whenever, in the case of a violation of a blockade, of the transport of contraband articles, of land or sea troops of the enemy, or of official despatches from or for the enemy, you find yourself under the necessity of stopping and seizing a merchant-vessel of the allied nation, you will take care to :

(1) Draw up a report (or *procès-verbal*), stating the place, the date, and the motive of the arrest, the name of the vessel,

remettre à l'officier le plus élevé en grade de la Puissance alliée, présent à l'action, une copie certifiée du rapport ou du procès-verbal que vous aurez rédigé.

2. Lorsque vous aurez effectué une capture en présence et en vue d'un bâtiment de guerre allié, vous mentionnerez exactement dans le rapport que vous rédigerez, s'il s'agit d'un bâtiment de guerre, et dans le procès-verbal de capture, s'il s'agit d'un bâtiment de commerce, le nombre d'hommes que vous aviez à bord au commencement de l'action, sans distinction de grades, ainsi que le nom du bâtiment de guerre allié qui se trouvait en vue, et, s'il est possible, le nombre d'hommes embarqués à bord, également sans distinction de grades. Vous remettrez une copie certifiée de votre rapport ou procès-verbal au commandant de ce bâtiment.

3. Lorsqu'en cas de violation de blocus, de transport d'objets de contrebande, de troupes de terre ou de mer ennemies, ou de dépêches officielles de ou pour l'ennemi, vous serez dans le cas d'arrêter et saisir un bâtiment de la marine marchande du pays allié, vous devrez :

(1) Rédiger un procès-verbal, énonçant le lieu, la date, et le motif de l'arrestation, le nom du bâtiment, celui du capitaine,

that of the captain, the number of the crew; and containing besides an exact description of the state of the vessel, and of her cargo.

(2) Collect and place in a sealed packet, after having made an inventory of them, all the ship's papers, such as registers, passports, charter-parties, bills of lading, invoices, and other documents calculated to prove the nature and the ownership of the vessel and of her cargo.

(3) Place seals upon the hatches.

(4) Place on board an officer, with such number of men as you may deem advisable, to take charge of the vessel, and to ensure its safe conduct.

(5) Send the vessel to the nearest port belonging to the Power whose flag it carried.

(6) Deliver up the vessel to the authorities of the port to which you shall have taken her, together with a duplicate of the report (or *procès-verbal*), and of the inventory above-mentioned, and with the sealed packet containing the ship's papers.

4. The officer who conducts the captured vessel will procure a receipt proving his having delivered up the vessel, as well as his having delivered the sealed packet, and the duplicate of the report (or *procès-verbal*) and of the inventory above-mentioned.

5. In case of distress, if the captured vessel is not in a fit

le nombre des hommes de l'équipage; et contenant en outre la description exacte de l'état du navire, et de sa cargaison.

(2) Réunir en un paquet cacheté, après en avoir fait l'inventaire, tous les papiers de bord, tels que actes de nationalité ou de propriété, passeports, charte-parties, connaissements, factures, et autres documents propres à constater la nature et la propriété du bâtiment et de la cargaison.

(3) Mettre les scellés sur les écoutilles.

(4) Placer à bord un officier, avec tel nombre d'hommes que vous jugerez convenable, pour prendre le bâtiment en charge, et en assurer la conduite.

(5) Envoyer le bâtiment au port le plus voisin de la Puissance dont il portait le pavillon.

(6) Faire remettre le bâtiment aux autorités du port où vous l'aurez fait conduire, avec une expédition du procès-verbal et de l'inventaire ci-dessus mentionnés, et avec le paquet cacheté contenant les papiers de bord.

4. L'officier conducteur d'un bâtiment capturé se fera délivrer un reçu constatant la remise qu'il en aura faite, ainsi que la délivrance qu'il aura faite du paquet cacheté et de l'expédition du procès-verbal et de l'inventaire ci-dessus mentionnés.

5. En cas de détresse, si le bâtiment capturé est hors

state to continue its voyage, the officer charged to conduct to a port of the allied Power a prize made on the merchant service of that Power, may enter a port of his own country or a neutral port; and he will deliver his prize to the local authority, if he enters a port of his own country, and to the Consul of the allied nation if he enters a neutral port, without prejudice to the ulterior measures to be taken for the adjudication of the prize. He will take care, in that case, that the report or *procès-verbal*, and the inventory which he shall have drawn up, as well as the sealed packet containing the ship's papers, be sent exactly to the proper Court of adjudication.

6. You are not to consider as prisoners of war, and you will give free permission to land, to all women, children, and persons not belonging to the military or maritime profession who shall be found on board the captured vessels.

With this exception, and those which your own security may suggest, you will not permit any person to be removed from on board the vessel; and in all cases you will retain the master, supercargo, and others whose evidence may be essential to the adjudication of the prize.

You will treat as prisoners of war all persons whatever who may be found on board the enemy's vessels, with the

d'état de continuer sa route, l'officier chargé de conduire dans un port de la Puissance alliée une prise faite sur la marine marchande de cette Puissance, pourra entrer dans un port de son propre pays ou dans un port neutre; et il remettra sa prise à l'autorité locale, s'il entre dans un port de son pays, et au Consul de la nation alliée s'il entre dans un port neutre, sans préjudice des mesures ultérieures à prendre pour le jugement de la prise. Il veillera, dans ce cas, à ce que le rapport ou procès-verbal et l'inventaire qu'il aura rédigés, ainsi que le paquet cacheté contenant les papiers de bord, soient envoyés exactement à la juridiction chargée du jugement.

6. Vous ne considérerez point comme prisonniers, et vous laisserez librement débarquer, les femmes, les enfants, et les personnes étrangers au métier des armes ou à la marine, qui se trouveront à bord des bâtiments arrêtés.

Sauf cette exception et celles que vous suggérera le soin de votre sûreté, vous ne distrairez aucun individu du bord; dans tous les cas, vous conserverez à bord le capitaine, le subrécargue, et ceux dont le témoignage serait essentiel pour le jugement de la prise.

Vous traiterez comme prisonniers de guerre, sauf l'exception ci-dessus indiquée au § 1, tous les individus quelconques

exceptions above mentioned in § 1.

You will place no other restriction on the liberty of allied or neutral subjects found on board allied or neutral vessels, than such as may be necessary for the security of the vessel.

With respect to your own countrymen, you will treat them according to the general instructions you have received, and you will, in no case, deliver them up to a foreign jurisdiction.

The persons who may have been exceptionally removed from the captured vessels shall afterwards be sent back to their own country, if they belong to the allied nation; if they are neutrals or enemies, they shall be treated as if they had been found on board vessels captured by you separately.

trouvés à bord des bâtiments ennemis.

Vous n'imposerez à la liberté des sujets alliés ou neutres, trouvés sur les bâtiments alliés ou neutres, d'autre restriction que celle qui pourra être nécessaire pour la sécurité du bâtiment.

Quant à vos nationaux, vous les traiterez conformément aux instructions générales dont vous êtes muni, et vous n'aurez, en aucun cas, à les remettre à une juridiction étrangère.

Les hommes distraits exceptionnellement du bord des bâtiments capturés, devront être ultérieurement renvoyés dans leur pays, s'ils appartiennent à la nation alliée; et s'ils sont neutres ou ennemis, ils seront traités comme s'ils se fûssent trouvés sur des bâtiments capturés par vous isolément.

FRENCH DECREE PROMULGATING THE CONVENTION.

Napoléon, par la grâce de Dieu et la volonté nationale, Empereur des Français.

A tous présents et à venir, salut.

Sur le rapport de notre ministre secrétaire d'État au département des affaires étrangères,

Avons décrété et décrétons ce qui suit:

ARTICLE PREMIER.

Une convention, suivie d'une annexe, ayant été conclue le 10 mai de la présente année 1854, entre la France et le Royaume-Uni de la Grande-Bretagne et d'Irlande, pour régler le mode de jugement et de partage des prises faites dans le cours de la présente guerre; et les actes de ratification ayant été respectivement échangés le 20 du même mois, ladite convention, dont la teneur suit, recevra sa pleine et entière exécution.

[Here follows the Convention.]

12

British Notifications of Blockades.[1]

1854

(1) 12TH MAY 1854.

Letter from Senior Officer H.M.S. *Amphion*, Memel Roads, informing the British Vice Consul that Riga, Libau and Windau are strictly blockaded as from 15th May, sent as enclosure with Senior Officer's Report dated 14th June 1854 to Vice Admiral Sir Charles Napier.

Summary of Report.—In respect of neutral vessels captured in attempting to violate the Baltic blockade, and sent to England for adjudication, three points must be established before they can be condemned as lawful prize :—

1. Effective blockade. This has been continually maintained.

2. Intention to violate blockade. This has been ascertained by the course of the captured vessel in each case.

3. Knowledge of blockade.

Regarding the first point, I have the honour to inform you, that since May 9th, when I was first entrusted with the blockade of this coast (at which time I found H.M.S. *Conflict* and *Cruizer* on the Station, which vessels had been blockading since April 20th) 2 ships have been ordered to cruize off the entrance of the Gulf of Riga, a passage limited by the shoals to a breadth of 3 miles, this entrance has never been left without one vessel. . . . Under these orders 154 vessels have been warned off since April 20th, though nearly all had passed through the Sound, and only 4 had been detained for attempting to enter blockaded ports. Residents in such ports had been officially notified of the existing blockade through the British Vice Consul at Memel.

(2) 13TH JUNE 1854

Notifying despatch from Vice Admiral Dundas commanding H.M.'s naval forces in the Black Sea, dated 1st June, announcing blockade of the Danube by combined British and French naval forces.

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[1] *State Papers*, vols. xliv., xlv.

(3) 16TH JUNE 1854.

Notifying despatch from Vice Admiral Sir Charles Napier commanding H.M.'s naval forces in the Baltic, dated 28th May, announcing that Libau and Windau on the coast of Courland and other ports etc. from Lat. 55° 53′ N. to as far north as Cape Dager Ort, including Riga, Pernau and all other ports etc. in the Gulf of Riga " were then in a state of blockade by a competent force " :

that all ports etc. eastward from Cape Dager Ort as far as Helsingfors and Sveaborg on the coast of Finland : continuing westward, ports including the Aland archipelago : from thence northward, Tornea and all intermediate Russian ports etc. in the Gulf of Bothnia " are and were then in a state of strict blockade by a competent force."

(4) 12TH JULY 1854.

Notifying despatch from Sir Charles Napier commanding H.M.'s naval forces in the Baltic announcing that on and from 26th June " a strict and effective blockade was actually established by combined British and French naval forces of ports in the Gulf of Finland : that a complete blockade of Cronstadt and St Petersburg had been effected by the combined fleets from the same date : thence, passing westward, the line of blockade included the whole coast of Esthonia and adjacent islands to Ekholm Light."

(5) 11TH AUGUST 1854.

Notifying further particulars of blockades of Russian Baltic ports. " On being joined by the French squadron in the Gulf of Finland on the 13th June the duties of blockading in that Gulf and elsewhere were henceforward conjointly carried into effect."

(6) 28TH SEPTEMBER 1854.

Notifying strict blockade of all ports in the White Sea including specially Archangel and Onega by a competent force of the allied fleets.

(7) 3RD NOVEMBER 1854.

Notifying despatch from Sir Charles Napier announcing the raising of the blockade of ports in the Gulf of Bothnia.

1855

(8) 3RD MARCH 1855.

Notifying despatch from Rear Admiral Sir Edmund Lyons commanding H.M.'s naval forces in the Black Sea, dated 11th February, announcing that the ports in the Black Sea and in the Sea of Azov were strictly blockaded by a competent force of the allied fleets, and that certain ports in the Crimea would remain open and free from blockade.

(9) 10TH MARCH 1855.

Notifying despatch from Sir Edmund Lyons announcing raising of blockade of the Danube.

(10) 27TH APRIL 1855.

Notifying despatch from officer commanding H.M.'s squadron, dated 19th April, announcing that Libau on the coast of Courland was placed on that date in a state of strict blockade by a competent British force in the name of the allies; and that on the same day all Russian ports in the Baltic, including the entrance to the Gulf of Riga, were also placed in a state of strict blockade by a competent force.

(11) 16TH MAY 1855.

Notifying despatch from Rear Admiral Dundas commanding H.M.'s ships in the Baltic, of a strict blockade by an effective force of ports in the Gulf of Finland in the name of the allies.

(12) 21ST JUNE 1855.

Notifying despatch "with reference to the blockade of the Gulf of Finland already established on 28th April last," announcing ports in the Gulf of Finland, especially Cronstadt, were strictly blockaded by a competent force on the 27th May in the name of the allies.

(13) 29TH JUNE 1855.

Notifying despatch from French and British admirals commanding the allied naval forces announcing that all ports on the coast of Finland were on the 15th June placed in a state of strict blockade by a competent force of the allied fleets.

(14) 17TH JULY 1855.

Notifying despatch from Senior Officer of White Sea Squadron announcing a strict blockade in the name of the allies by a competent force of ports on the White Sea, especially Archangel and Onega.

(15) 27TH JULY 1855.

Notifying despatch from Rear-Admiral Dundas announcing joint notification of strict blockade of Baltic ports and all Russian ports in the Gulf of Bothnia, by a competent force of the allied fleets.

(16) 29TH NOVEMBER 1855.

Notifying despatch from Senior Officer White Sea Squadron raising blockade of the White Sea on 9th October.

1856

BRITISH NOTIFICATION OF THE RAISING OF THE BRITISH AND FRENCH BLOCKADES OF RUSSIAN PORTS, PENDING THE RATIFICATIONS OF THE TREATY OF PEACE.

Foreign Office, April 8, 1856.

Notice is hereby given, that pending the ratification of the Treaty of Peace, an armistice by sea, as well as by land, has been agreed upon between Great Britain and her Allies, on the one part, and Russia on the other; and that consequently, orders have been given for immediately raising the blockade of Russian ports.

13

Correspondence Relating to the Blockades.

A.—M. DROUYN DE LHUYS TO COUNT WALEWSKI.

Paris, le 19 *Avril,* 1854.

M. LE COMTE,

Le blocus devant naturellement être notifié en même temps pour les Gouvernements Français et Anglais je vous prie d'engager Lord Clarendon à me faire parvenir le plus promptement possible par l'intermédiare de Lord Cowley les avis

relatifs aux blocus effectués par les forces navales Britanniques, afin que la notification en puisse être insérée le même jour dans *le Moniteur* et dans *la Gazette de Londres.* De mon côté, j'aurai soin de transmettre à Lord Clarendon par votre intermédiare l'avis des blocus effectués par les forces navales Françaises.

Quelle que soit la marine qui établisse le blocus, je pense qu'il doit toujours être sensé avoir été effectué par les forces navales combinées au nom des deux Gouvernements alliés ; il me parait essentiel que les termes de la notification soient explicites à cet égard et pour prévenir les difficultés auxquelles pourraient donner lieu les blocus des golfes et des côtes je crois aussi convenable d'insérer dans toutes les notifications outre les noms des principaux ports ces termes : " et autres ports, rades, havres, ou criques du Golfe de —— ou de la côte de —— depuis le cap ou la pointe —— jusqu'au cap ou la pointe ——." Il ne peut échapper à Lord Clarendon qu'il y a toujours avantage à éviter une discussion de principes lorsque les doutes peuvent être prévenus par le simple choix des termes. J'ai soumis cette observation à Lord Cowley qui l'a trouvée d'autant plus fondée que d'après la jurisprudence Anglaise il ne lui paraissait pas certain qu'en cas de blocus du Golfe de Finland par exemple sans autre désignation, la navigation entre deux ports du golfe pût être considéré comme violant le blocus.

Il est dans nos usages de transmettre les notifications de blocus au corps diplomatique accrédité à Paris et je pense que cet usage existe aussi en Angleterre veuillez bien M. le Comte vous en assurer auprès de Lord Clarendon, et, s'il en est ainsi lui proposer d'adopter pour ces sortes de notifications le projet de circulaire ci-joint ou tout autre qu'il jugerait convenable d'y substituer pour que ces sortes de communications aient lieu de la part des deux Gouvernements dans les termes identiques.

Le Ministre d'Angleterre à Copenhague à notifié officiellement au Gouvernement Danois l'intention où se trouve l'Amiral Napier de bloquer le Golfe de Finlande. Je pense que cette notification ne saurait remplacer celle qui doit suivre l'insertion de l'avis du blocus dans les journaux officiels, et je me crois fondé à la considérer comme ayant été faite sans instructions. D'après une règle qui a prévalu dans le droit des gens moderne et que pour notre part nous avons observée scrupuleusement dans les mesures de répresailles que nous avons eu à employer contre le Mexique et Buénos-Ayres, il doit être laissé aux bâtiments neutres, en cas d'établissement de blocus un délai suffisant pour quitter le port sur lest ou avec leur chargements : cette règle a été rappelée aux commandants de nos bâtiments de guerre

par les instructions générales dont ils ont été munis. Je vous prie M. le Comte d'engager Lord Clarendon à faire donner aux commandants Anglais des ordres dans le même sens si les instructions générales qui ont dû leur être adressées ne sont pas déjà explicates sur ce point.

Je vous rappellerai à cette occasion M. le Comte le désir que je vous ai exprimé par ma dépêche du de ce mois, d'avoir communication des instructions générales des croiseurs Anglais et de connaître l'opinion du Cabinet Anglais sur les instructions adressés à nos croiseurs. Je reçois encore journellement de la part des Puissances neutres des demandes d'explications sur les principes adoptés par nous en matière de droit maritime et je ne puis y répondre convenablement qu'après être fixé sur les principes admis par le Gouvernement Anglais. Je vous prie M. le Comte de renouveler vos démarches auprès de Lord Clarendon pour être mis en mesure de me transmettre promptement que j'attend à cet égard.

B.—Memorandum by M. Drouyn de Lhuys—Views of the French Government on the Blockade of the Black Sea.

le 29 *Juin*, 1854.

MM. les Vice Amiraux Hamelin et Dundas pensent que le blocus des ports Russes de la Mer Noire ne peut-être rendu effectif que par l'adoption des deux mesures suivants.

La première que serait prise par le Gouvernement Ottoman aurait pour objet de défendre l'expédition (clear out) de tous les navires neutres de Constantinople pour les possessions Russes de la Mer Noire, et d'empêcher tous navires neutres destinés pour les possessions Russes de quitter le Bosphore au moyen de deux bâtiments de guerre Turcs et d'un ou plusiers bâtiments alliés stationés à l'entrée de la Mer Noire avec ordre d'inscrire sur les papiers de bord de ces navires la défense de se rendre dans les ports Russes. La seconde mesure consisterait à établir deux croisières de bâtiments-à-vapeur de deux escadres alliées, l'une devant le golfe occidental entre le Danube et le Cap Chersonèse et la seconde devant le golfe oriental entre le Cap Chersonèse et la Baie de Gelendjik. Les 19 vaisseaux de ligne des escadres combinées feraient, en outre, de fréquentes apparitions dans les golfes de manière à rendre le blocus aussi effectif que possible. Le Ministre des Affaires Etrangères qui avait été consulté sur la première partie de cette proposition par M. le Ministre de la Marine en conséquence d'une dépêche de M. le

Vice Amiral Hamelin à repondu le 26 Juin qu'elle ne lui paraissait pas admissible d'après les principes proclamés par les 2 Gouvernements alliés au commencement de la guerre, attendu qu'elle avait évidemment pour objet de remplacer un blocus effectif par une interdiction de commerce que la Porte elle-même ne pourrait prononcer sans violer ses engagements conventionnels avec les Puissance maritimes. Rapprochée de la 2me partie de la proposition, qui tend à l'établissement d'un blocus effectif, la première partie n'offre plus le caractère absolu qui semblait devoir la faire repousser sans réserve : elle a seulement pour l'objet d'ajouter à l'efficacité de blocus, et dans cette mesure elle peut être adoptée en partie.

En effet, si l'on regarde comme utile de bloquer tous les ports Russes de la Mer Noire, même ceux qui sont sans importance pour le commerce d'exportation et qui ne sont fréquentés que par des caboteurs, et si l'on admet que les croisières projetées peuvent constituer suivant les termes de nos déclarations une force suffisante pour qu'il y ait danger de pénétrer dans les ports déclarés en état de blocus, il est inutile de réclamer de la Porte aucune mesure d'interdiction commerciale ; mais il peut être avantageux, surtout au point de vue de la jurisprudence Anglaise, de poster des croiseurs Turcs ou alliés à l'entrée de la Mer Noire afin de notifier à tous les navires entrant l'existence du blocus effectif des ports Russes, au moyen d'une inscription sur les papiers de bord. Les bâtiments qui auront reçu ce 1r avertissement ne sauraient s'ils sont rencontrés aux environs des ports bloqués en réclamer un second et pourront évidemment être saisis comme ayant cherché à violer un blocus. Il va sans dire que MM. les Amiraux devront faire la notification du blocus dans les termes convenus entre les deux Gouvernements, c'est à dire en designant nominativement les ports ainsi que les points nautiques extrêmes des rades, havres, ou criques compris dans le blocus.

[For Lord Clarendon's reply to M. Drouyn de Lhuys' letter of 19th April, see *Addendum* on p. 440.]

14

Neutral Legislation as to Navigation during the War.

A.—BRAZIL.

DECREE OF H.M. THE EMPEROR OF BRAZIL CONCERNING PRIVATEERS.

Rio de Janeiro, 17 *May*, 1854.

I have the honour to inform Your Excellency that His Imperial Majesty, attentive to the commercial interests of his subjects, and desirous to observe a strict neutrality during the war which unhappily exists between Great Britain and France on the one side and Russia on the other, as far as possible to conform to the principles of international law and the Imperial legislation, has decided to adopt the following resolutions :—

1. That no privateer flying the flag of any belligerent Power may be armed, provisioned, or admitted with its prizes into the ports of our empire.

2. That no Brazilian subject shall take part in the arming of privateers nor take any action opposed to the duties of a strict neutrality.

I officially inform Your Excellency of the said resolutions and I have to request Your Excellency to send suitable instructions in order that they may be understood and executed by the authorities of the Empire and those that are subordinate to you.

Permit me to take the opportunity of repeating to Your Excellency the assurances of my perfect esteem and distinguished consideration.

Antonio Paulino Limpo de Abreu.

To H.E. o Sr. José Maria da Silva Paranihos.

B.—BREMEN.

ORDINANCE OF THE SENATE OF BREMEN, DECLARING THE NEUTRALITY OF BREMEN IN THE WAR BETWEEN CERTAIN EUROPEAN POWERS; AND PROHIBITING THE EXPORTATION OF ARTICLES CONTRABAND OF WAR.—BREMEN, APRIL 12, 1854.

As a state of war now exists between several of the Great European Powers, and the commencement of hostilities by sea and land has been declared, the Senate, in order, under existing

circumstances, to secure Bremen property from loss and damage as much as possible, and to maintain the neutral position of Bremen against all infringement, sees itself called upon to require the attention of all, but particularly of those engaged in commerce, and also of shipowners, so that they, in their commercial transactions to and from places belonging to a belligerent State, be it in a state of blockade or not, in order to avoid their own loss, do abstain from all and every violation of those obligations imposed on them in time of war by the general law of nations and by Bremen State Treaties.

Notwithstanding that the Senate feels assured that the reference to their duties towards friendly Powers and their own State will be sufficient to deter the citizens of Bremen in future, as it has done hitherto, from every undertaking opposed to the principles of public law, yet it hereby at the same time, without prejudice to any other measures that may become necessary for the maintenance of the neutrality of the State of Bremen, enjoins the following regulations for general observation :—

1. The exportation is prohibited of all articles deemed contraband of war by the law of nations, or by the existing Bremen State Treaties ; and particularly of munitions of war, gunpowder, musket and cannon balls, percussion caps, sulphur, and saltpetre, ordnance and arms of every description, and generally of all articles immediately serving for purposes of war, to the territory of any of the belligerent Powers by land or water, and whether under Bremen or foreign flag.

The transgression of this prohibition will be followed, in addition to the confiscation of the articles in question, by fine or imprisonment according to circumstances.

2. On all shipments of goods to the belligerent States the articles are to be correctly specified ; the term " merchandize " or any general designation is inadmissible.

3. No Bremen vessel shall be allowed to carry double sets of ship's papers, or to sail under a foreign flag.

4. The legal obligation previously imposed on the sworn shipbrokers that they shall give notice of the shipment of articles considered as contraband of war, as also in regard to the genuineness of the ship's documents and ship's papers, remain unaltered in validity, and the observance thereof is hereby again expressly enjoined on them.

ORDINANCE OF THE SENATE OF BREMEN, PROHIBITING THE ADMISSION, FITTING-OUT, AND PROVISIONING OF PRIVATEERS IN THE PORTS OF BREMEN, DURING WAR BETWEEN CERTAIN EUROPEAN POWERS.—BREMEN, APRIL 28, 1854.

The Governments of Great Britain and France having officially announced to the Senate that they have agreed to make no use, until further notice, of the right possessed by them as belligerent Powers to grant letters of marque during the continuance of the war carried on by them, therefore, the Senate, considering the obligations imposed on neutral States by a just reciprocity, finds itself called upon hereby to ordain, for general observance, as follows :—

1. All citizens of the State of Bremen are forbidden, under peril of heavy punishment, in anywise to engage in privateering, either by fitting out privateers themselves, or by affording them indirect aid.

2. The proper authorities are directed not to allow, under any circumstances, the fitting out and provisioning of privateers, be they under whatever flag or letters of marque they may, in any port belonging to the State of Bremen, and not to permit any such privateers, and any prizes which they may have with them, to enter a Bremen port, unless in cases of clearly-proved distress at sea.

Resolved in the Assembly of the Senate, Bremen, the 28th of April, and published on the 29th of April, 1854.

C.—DENMARK.

NOTICE OF THE DANISH GOVERNMENT RELATIVE TO THE RENEWED APPLICATION OF THE ORDINANCE OF MAY 4, 1803, AS TO HOW TRADERS AND SEAMEN ARE TO CONDUCT THEMSELVES IN CASE OF A WAR BETWEEN FOREIGN MARITIME POWERS, ETC.

Copenhagen, April 20, 1854.

On the 11th inst. His Majesty the King graciously appointed the Undersigned Ministers to remind His Majesty's subjects of the laws contained in the Ordinance of the 4th of May 1803 relating to the conduct to be observed by traders and navigators in case of a war between foreign naval Powers ; and likewise to announce that, on account of the impending war, the said Ordinance will come again into operation in all and every part of His Majesty's realm from the day on which this notice is there made known.

As it has also been deemed necessary to particularize more especially several regulations in that Ordinance, His Majesty has been pleased to give his subjects some interim instructions to enable them conscientiously to perform their duties; to observe as well the general conditions of the Treaty, which in the event of the threatened war come into force, as also the Declaration of Neutrality communicated by order of His Majesty to several foreign Powers, especially the belligerents in the annexed translated circular, in the same manner as it will be by His Majesty and his Government.

The Undersigned Ministry have, therefore, to announce and enforce the following by Royal Authority:

Section 1. In regard to Article I. of the Ordinance of 4th May 1803, it is hereby determined that the Royal Latin sea-passes ordered therein must be procured for all voyages, excepting the inland navigation in the Baltic, Cattegat, and the German Ocean, or between Danish or neutral ports in the Baltic and Cattegat.

Although the Royal Latin sea-pass is only valid for one voyage, to wit, from the time of the departure of the vessel for her home port after receipt thereof, until her return (Ordinance, 4th May 1803, Article XII.), it may, nevertheless, be presumed that it will be renewed by indorsement, according to circumstances.

Under the designations of Colleges (Boards) made use of in the Ordinance of 4th May 1803, Article IX., the respective Ministries are now to be understood; so that when Article XIV. names the General Land Economy and Commercial Board, the Ministry for Foreign Affairs is meant; in like manner, the Finance Ministry is to be understood by the West Indian Guinea Revenue and General Board of Customs alluded to in the same paragraph.

For the present the Royal Latin sea-pass is furnished by the Minister of Foreign Affairs gratis.

Section 2. In addition to the articles specified in the Ordinance of 4th May 1803, all manufactured articles which may be directly converted into articles of warfare, are now deemed contraband of war.

Should any change or addition, with respect to contraband of war, be necessary in consequence of any special stipulations between His Majesty the King and foreign Powers, the Ministry for Foreign Affairs reserves to itself the right of giving further particulars after having received His Majesty's instructions.

Section 3. In consequence of the conditions of the existing Treaties (Treaty with Great Britain, of 11th July 1670, Art. III.,

and explanatory Article of July, $\frac{4}{21}$ 1780, and agreeable to the contents of the Royal Declaration of Neutrality (Article I.)), it is illegal for His Majesty's subjects to take any kind of service whatever, either by land or in any of the Government ships belonging to the eventual belligerent Powers; and especially to pilot the vessels of war or transports of those Powers beyond the pilots' districts of the Danish Kingdom.

The above is made known for the instruction and guidance of all whom it may or doth concern.

BLUHME.

ORDINANCE OF THE KING OF DENMARK, RELATING TO THE CONDUCT OF TRADERS AND MARINERS WHEN WAR BREAKS OUT BETWEEN FOREIGN MARITIME POWERS.

Copenhagen, May 4, 1803.

We, Christian the Seventh, by the Grace of God, King of Denmark and Norway, the Vandals and Goths, Duke of Schleswig-Holstein, Stormarn, Ditmarsh, and Oldenburg.

Make known, that although by sundry orders, before published, we have established the laws and regulations to be observed by our trading and maritime subjects, when war takes place between foreign naval Powers, we, nevertheless, deem it necessary, under existing circumstances, to compile under one Ordinance, and to particularise the details of the above-named orders, which are to serve as a guide to all whom they may concern, in order that, on the one hand, the basis thereof may be generally understood, by which it is at all times our intention to maintain the rights of our trading and maritime subjects; on the other hand, that no one may be able to exculpate himself on the ground of ignorance of the duties devolving on him as a Danish subject, in the aforesaid case. It is, therefore, our most gracious will that the following Regulations only and alone shall in future be observed and strictly followed by all and every one desirous of participating in the privileges to which the neutrality of our flag entitles them in times of war, in their legal tradings and navigation; for this purpose we have hereby rescinded and annulled all former regulations made for the guidance of our subjects in this respect; therefore we direct and command as follows:—

Art. I. Those of our trading and maritime subjects who are desirous of despatching any ship belonging to them across the seas to any of the foreign places to which, according to the circumstances, the effects of the war may extend, are bound,

under due observance of all the instructions and rules, hereinafter appointed, to furnish themselves with a royal Latin sea-pass, also the necessary papers and documents for a lawful despatch of the vessel. For this purpose, on the outbreak of hostilities between foreign Powers, it will be further determined and made public for what places it will be deemed necessary for ships to be furnished with our Latin sea-passes.

II. The pass cannot be obtained before the owner of the vessel for which it is required has procured the necessary ship's certificate, as evidence of his legal right to the ship.

III. No one may obtain a ship's certificate who is not our subject, either born in our kingdom and possessions, or before the commencement of hostilities between any of the Naval Powers of Europe, has been in possession of all the rights of citizenship, either in our own or other neutral States. In all cases the owner of the vessel for which the certificate is required shall be resident in some part of our kingdom or possession.

IV. Anyone who, according to the preceding article, is entitled to obtain a ship's certificate, shall, in order to procure the same, present himself before the magistrate or other authority of the place to which the ship belongs, or where the greater part of the owners are resident, and there either the whole, or at least the chief owner, shall make oath, or by a written and signed affidavit, swear that the ship belongs to him or them (all being our subjects), and that the vessel for which the ship's certificate is required has on board no contraband of war destined to any of the belligerent Powers or their subjects.

V. No one may, on the breaking out of war, be allowed to command any ship furnished with our royal sea-pass, who shall have been born in the country of any of the Powers which are at war, without he has obtained his rights of citizenship in our kingdom and possession prior to the breaking out of hostilities.

VI. Every captain commanding a vessel furnished with our royal sea-pass, must have obtained his citizenship in some part of our kingdom or dominions. He is bound at all times to have his bugerbrief (certificate of citizenship) with him on board. As a surety that he will undertake nothing contrary to the tenor of these, our regulations, he is bound, before his departure from the port where he receives the pass, to make oath that, with his consent, nothing shall be done whereby the pass and documents rendered to him might be misused. This affidavit shall be delivered by the owner with his application for the pass; but should this, owing to the absence of the captain, not be practicable, it must be announced by the owner, and our Consul or Commercial Agent at the district where the captain then is

shall be responsible that the captain makes such affidavit on receipt of the pass:

VII. No supercargo, factor, clerk, or other ship's officer, being a subject of the belligerent Powers, shall be on board of such ships as shall be furnished with a royal Latin sea-pass.

VIII. Of the crew, including the mate, the half shall at all times consist of seamen of our realm. Should it happen that the crew at a foreign port should become incomplete, by desertion, death, or sickness, in such a manner that the captain is rendered incapable of fulfilling the commands contained in this Article, it shall be lawful for him to ship as many foreigners, but preferably the subjects of neutral Powers, as may be necessary for the continuation of the voyage; but in no case shall the number of the subjects of the belligerent Powers on board the ship be more than the third of the entire crew. Every change in the crew, and the reasons thereof, shall be noted by the master on his crew-list, and in every case be attested in writing by our respective Consuls and Commissioners of Commerce, or their representatives, at the port into which the ship enters; such endorsement serving the master as justification in all cases that may arise.

IX. In addition to the ship's documents, which are always to be kept on board, the following also belong, exclusive of the ship's certificate alluded to in Article II., viz., the ship's "biel or bygnings brev" (builder's certificate); and in case he who had the vessel built has since had her transferred to another owner, then also "kiobebrevet or skiodet" (the purchase certificate or transfer). These documents are to be sent in to the colleges or authorities by the owner on applying for the pass, together with the certificate to prove the ship's lawful right to the possession of the pass:

The royal Latin sea-pass, with the requisite translations.

The maale-brev (measure-brief).

Equipagerullen or folkelisten (crew-list), duly attested by the proper authorities.

Charter-parties and bills of lading of the cargo; and, lastly,

Told and clarerings seddelen (Customs' clearance) from the port where the cargo is shipped.

X. The maale-brev (measure-brief) shall be issued by the authorities empowered to measure vessels in our kingdom. Should any of our subjects purchase a vessel in a foreign port, our Consul or Commercial Agent at that place shall be authorized to effect the ship's measurement, and furnish the master with an interim measure-brief, which shall be deemed valid until the ship arrives at any port of our kingdom, where she shall be

properly measured and branded, and a formal measure-brief prepared, which shall afterwards always remain on board the ship.

XI. All and every one is prohibited, owners as well as captains, to procure or have on board duplicate ship's papers, or to carry a foreign flag, so long as they shall sail with the papers and documents graciously furnished to them by us.

XII. Our royal Latin sea-pass is valid only for one voyage; to wit, from the time the ship, after the reception thereof, leaves the home port, to the time of her arrival back again, provided she shall not have come into the possession of any other person by lawful sale, in which case the new owner shall obtain the necessary passes and papers in his own name.

XIII. As according to the generally acknowledged principles, the subjects of neutral Powers are not permitted to have goods on board which may be deemed contraband of war, when destined to the belligerent Powers or to their subjects, or which may already belong to them, we hereby distinctly determine what is to be understood as contraband of war, to prevent our flag being misused for covering the carriage of such prohibited goods, and in order that no one may be enabled to exculpate himself on the plea of ignorance. The following articles, therefore, shall be looked upon and deemed by our subjects to be contraband of war; to wit, cannon, mortars, all sorts of weapons, pistols, bombs, grenades, ball, guns, flints, matches, gunpowder, saltpetre, brimstone, cuirasses, pikes, swords, belts, cartridge boxes, saddles, and bridles, excepting such a quantity of these articles as may be necessary for the defence of such vessel and crew. Moreover, the positive obligations respecting the conveyance of prohibited goods and property in ships or vessels belonging to our subjects, entered into by special stipulations with foreign Powers, are to remain in full force in all their parts, for which purpose owners shall be furnished with particular instructions to regulate their actions on this head on receipt of the pass.

XIV. Should any ship or vessel destined to a neutral port take on board such goods which, if intended for any port belonging to the belligerent Powers, would be regarded as contraband of war, every such shipper and master shall then, in addition to the oath they have respectively to make as owner and captain, before the proper magistrate or other authorities be compelled to make a special declaration, apart from the usual required Customs' clearance, setting forth the description, quantity and value of such goods, in conformity with the invoices and bills of lading, which declaration, signed by the shipper and master, shall be certified by the proper collector or inspector of Customs at the places where the clearance is

effected. Such attested declaration shall, after clearance of the ship, be forwarded without delay by our Custom-House officers to our West Indian Guinea Revenue and General Board of Customs, to serve for the control of the goods therein mentioned on due arrival at the proper port of destination, unless it can be shown by authenticated proof that they were prevented by cases of distress or violent detention. The control thereof shall be conducted in the following manner: the shipper of such goods shall procure a certificate from our Consul or Commercial Agent at the place to which the ship is destined, or, if no Consul or Commercial Agent, or their representative, reside there, then of the proper functionaries or other persons appointed by public authorities at the place, duly qualified to issue such certificate, which certificate aforesaid shall legally certify the arrival of such ship and discharge of such goods, in conformity with the given declaration. This certificate must be procured, and forwarded to our General Land Economy and Commercial College, as soon as the vessel arrives at her port of destination, or has returned to an inland harbour. Should such certificate not be forthcoming within a proper time necessary for the completion of the voyage, our General Land Economy and Commercial College shall demand of the shipper a declaration, such as he may conscientiously affirm on oath, that he has received no intelligence of the ship and goods in question. Should no proof, however, be obtainable of the arrival of the ship and the discharge of the goods in question at a neutral port, or the prevention thereof be shown to have been occasioned by accident or forcible detention, the shipper shall pay to the Sea Pass Exchequer of our General Land Economy and Commercial College a fine of 20 Rbthlr. for every commerce last of the ship's burthen, and in such cases of transgression the owners and captain shall be liable to prosecution according to law.

XV. No captain shall sail to any port blockaded by sea by any of the belligerent Powers, and he shall guide himself in this respect carefully, according to the warnings made known to him by the proper authorities respecting the blockade of any ports. In case that on sailing into any port, of the blockade of which he was before ignorant, he meet any ship, under a man-of-war's flag, belonging to the belligerent Powers, and it then be announced to him by the commander thereof that the port is really under blockade, he shall without delay put back, and in nowise seek to creep in by surreptitious means, so long as such port shall be in state of blockade.

XVI. None or our subjects shall serve on board privateers, much less fit out, or have any interest in fitting out of such

vessels; neither shall any owner or master allow his ship to be used for the transport of troops, weapons, or ammunition of war, of what kind or nature soever. In case a master should not be able to prevent his ship, by means of irresistible force, being made use of for the aforesaid purpose, it shall be his duty, fervently, and by a formal deed, to protest against such violent treatment, which it was not in his power to prevent.

XVII. Should a merchant vessel, not sailing under an armed protection, be boarded at sea by any ship belonging to the belligerent Powers entitled to examine her ship's papers, the captain shall make no resistance against such search, when undertaken by the commanding officer of the aforesaid armed ship; but he shall, on the contrary, be bound to produce faithfully and without reserve all papers and documents relating to ship and cargo. It is, moreover, most stringently prohibited for the captain, his officers, or any of his crew to throw overboard or any manner destroy or conceal any document or paper on board belonging to the ship or cargo, be it either before or during the search. When merchant vessels are allowed the armed protection of our man-of-war flag, every master is compelled to show his ship's papers to the superior officer of the convoy, before he can be received under such convoy, and in all cases implicitly to follow his orders.

XVIII. Should any master or owner dare to transgress or otherwise to oppose this our Ordinance, he shall have forfeited his citizenship, and his further right to fit out vessels, and also be subjected to be prosecuted by law, and punished, according to the circumstances, as perjurers, or as wilful transgressors of our royal mandate. On the other hand we will, with parental care, maintain and protect the interest of our beloved subjects' lawful commerce and navigation, when they conduct themselves obediently in accordance to the above rules and instructions; for which purpose we have instructed and commanded our Ministers, Consuls, and other proper authorities abroad, to prevent to the utmost of their power, any annoyance or molestation to our subjects, and in case of such occurring, to protect the sufferer, and endeavour to obtain justice for him and compensation for damages. We shall likewise, at all times, graciously support every well-grounded claim that any of our subjects may at any time humbly lay before us.

Given under our hand and seal, at our royal residence, in the city of Copenhagen, the 4th May 1803.

Schimmelmann Schestedt. (L.S.) Christian R.
C. Winther.

D.—HAITI.

DECLARATION OF THE EMPEROR OF HAITI, RELATIVE TO THE NEUTRALITY OF HAITI IN THE WAR BETWEEN THE ALLIED POWERS AND RUSSIA; THE NON-ADMISSION OF PRIVATEERS INTO HAITIAN PORTS; THE NON-VIOLATION OF BLOCKADES; AND THE TRADE OF NEUTRALS.—NOVEMBER 18, 1854.

Sa Majesté l'Empereur, voulant conserver la neutralité dans la guerre qui se poursuit en Europe entre les Puissances alliées et la Russie, a daigné arrêter ce qui suit :

Les navires armés en course ne seront point admis dans les ports et rades de l'Empire et en pourront par conséquent s'y procurer ni munitions ni instruments quelconques dont ils pourraient avoir besoin.

Ne seront pas admis pareillement dans ces ports, les armateurs avec leurs prises à moins d'un cas de péril évident.

Il ne sera pas permis de leur acheter des objets qu'ils pourraient avoir à vendre quels qu'ils soient.

Défense est faite aux sujets de l'Empire de prendre du service à bord des bâtiments des armateurs étrangers, et aux bâtiments sous pavillon haïtien de transporter pour aucune des Puissances belligérantes, des objets de contrebande de guerre.

Les dits bâtiments pourront toutefois faire le transport du commerce dans les ports et rades des Puissances belligérantes, et prendre chargements, dans leur qualité de neutres, de marchandises appartenant aux sujets des dites Puissances, excepté la contrebande de guerre. Les bâtiments sous pavillon haïtien s'abstiendront d'entrer dans les ports qui seront bloqués réellement et effectivement; c'est-à-dire, lorsque ce blocus est maintenu par des forces suffisantes et lorsqu'il y a déclaration formelle du commandant des forces navales.

Le Gouvernement de l'Empire se conforme aux principes proclamés par les Puissances belligérantes relativement au commerce des neutres, à savoir : le pavillon couvre la marchandise; la propriété des neutres, même sur les navires ennemis, est inviolable (excepté, dans le cas de contrebande de guerre et de blocus effectif); et enfin on déclare que des lettres de marque ne seront pas délivrées.

Le présent avis est publié pour que le commerce haïtien s'y conforme.

E.—HAMBURGH.

PROCLAMATION OF THE SENATE OF HAMBURGH, PROHIBITING THE EXPORTATION OF ARTICLES CONTRABAND OF WAR, AND THE VIOLATION OF BLOCKADES, DURING HOSTILITIES BETWEEN CERTAIN EUROPEAN POWERS.—HAMBURGH, APRIL 10, 1854.

During the present state of war between several of the Great European Powers the Senate feels itself called upon to issue the following regulations :—

The exportation of all contraband of war, considered as such according to the law of nations or Hamburgh State Conventions, viz. :—

Ammunition, guns, gunpowder, saltpetre, sulphur, balls, caps, all kinds of arms, and, generally speaking, all objects which may be used in warfare, is hereby prohibited to the States of the belligerent Powers, whether under Hamburgh or under foreign colours, or by land.

Whosoever, as owner or master of a vessel or shipper of such articles, acts in contravention of this ordinance is not only liable to the confiscation of such articles, but will likewise be heavily fined and punished by imprisonment.

In order to exercise a proper control over goods to be shipped to belligerent States, those goods are to be distinctly named, and the expression " merchandize," or any other general denomination, is inadmissible.

No captain or master of a ship under Hamburgh colours is permitted to break a blockade, or, after having been informed thereof, to pass through it clandestinely, nor is he permitted to have double ship's papers, or to carry a foreign flag, as long as he is furnished with a Hamburgh ship's pass.

Those who may wish to ascertain further particulars respecting the orders and instructions of the belligerent Powers, relating to the navigation and commercial intercourse of neutrals, are to apply to the Board of Trade.

PROCLAMATION OF THE SENATE OF HAMBURGH, WARNING HAMBURGH CITIZENS AGAINST PRIVATEERING; AND PROHIBITING THE ADMISSION OF PRIVATEERS INTO PORTS OF HAMBURGH, DURING WAR.—HAMBURGH, APRIL 26, 1854.

The Senate, in again most urgently drawing attention to the fact that the duty of every individual citizen of the State of Hamburgh requires him to avoid all that might impair the

neutral position of the Hamburgh State and its flag, hereby warns all citizens of Hamburgh, under threat of heavy punishment, from being in any manner concerned, during the present war, in privateering, or in taking any interest therein, either by fitting out privateers themselves or by indirectly aiding them.

At the same time the Senate makes publicly known that no privateer, let it be under whatever flag, or provided with whatever letters of marque it may, shall, either with or without prizes, be admitted into the ports and roads of Hamburgh, except in cases of clearly-proved distress at sea, and that the proper orders have been given to turn away immediately such privateers and their prizes under any circumstances.

PROCLAMATION OF THE SENATE OF HAMBURGH RESPECTING THE EXPORTATION TO NEUTRAL PORTS OF ARTICLES CONTRABAND OF WAR.—HAMBURGH, MAY 22, 1854.

It appearing advisable, in order to obviate abuses and inconveniences on the exportation to neutral ports of articles which, by the Ordinance of the 10th April,[1] are to be considered as contraband of war, to adopt proper measures in order to prevent such articles being conveyed to other ports than those they are declared for by the shippers, the Senate, with respect to the export of articles contraband of war to neutral ports, the prohibition of such articles to the countries of the belligerent Powers remaining in force, has come to the following resolution :—

Every shipper for neutral ports of articles which, according to the notification of the 10th April, are to be considered as contraband of war, is to engage, on declaring the name of the consignee and their place of destination on his oath, to be bound, under forfeiture of the value of the articles so shipped, to produce to the Custom-House authorities here a certificate from the Hamburgh Consul, or, if there is none, from the competent authority at the place of destination, declaring that the articles have been actually landed and delivered to the declared consignee. The time within which such certificate is to be produced shall be fixed according to the distance of the port of destination.

The shippers are liable under this bond until the production of the certificate, and in case they fail to produce it within the time appointed for delivering it in, they shall pay the full value of the articles so exported, unless they can substantiate on oath, on being required so to do, that, owing to accidents on the voyage,

[1] See p. 316.

or the seizure of the vessel at sea, they have received no account respecting the ship and cargo.

The above-named declarations on oath and the bonds are to be handed in to the Custom-House authorities here by the ship-broker previous to his clearing out the vessel, and the ship-brokers must note the same on the manifest of the vessel, on pain of being deprived of their privileges ; they, as ship-brokers, must further be responsible that, to the best of their knowledge and belief, no articles contraband of war are exported in any vessel to neutral ports without delivering in the prescribed declaration.

If required, the Custom-House authorities will grant a certificate of the delivery to them of such declarations on oath and forms of obligation for a fee of two marks currency.

F.—HANOVER.

LAW OF HANOVER, RELATIVE TO THE NEUTRALITY OF HANOVER IN THE WAR BETWEEN GREAT BRITAIN, FRANCE, AND TURKEY ON THE ONE PART, AND RUSSIA ON THE OTHER PART; PROHIBITING PRIVATEERING; OR THE EXPORT OF ARTICLES CONTRABAND OF WAR. HANOVER, MAY 5, 1854.

George V., by the grace of God King of Hanover, Royal Prince of Great Britain and Ireland, Duke of Cumberland, Duke of Brunswick and Lüneburg, etc.

On account of the war which has broken out between England, France, and Turkey on the one side, and Russia on the other side, and of the resolutions adopted by the two first-mentioned States for the purpose of preventing, as much as possible, injury to the commerce and shipping of the neutral Powers, We, with the constitutional assent of the General Assembly of the States, issue the following orders, which are to have the force of law until further directions :—

Art. I. Our subjects are prohibited from accepting or using letters of marque under any form or flag whatever, as well as from every kind of participation in the fitting-out, manning, or management of privateers, and especially from serving on board them.

Anyone who acts contrary to this prohibition must not only expect no protection from our Government if he be treated by other States as a pirate, but he shall moreover be tried by the tribunals of this country, according to Article CXXX., No. 2, of the Criminal Code, and the other provisions thereof applicable to the case.

II. No privateer shall be allowed to enter Hanoverian harbours except in case of distress at sea, and then the vessel must be watched, and forced to leave again as soon as possible.

In such cases, moreover, no supply of provisions, except victuals, if necessary, for immediate use, no making up of stores, of arms, or ammunition, must take place from this country on pain of punishment, according to Article I.

III. The transport to and from the belligerent States of their troops, arms, or ammunition, as well as other articles serving for hostile purposes, and regarded by the general law of nations as contraband of war, is prohibited in Hanoverian ships.

Anyone who transgresses this prohibition must expect no protection from our Government in case of seizure and confiscation by the belligerent States, besides which he will be liable to have his Hanoverian sea-pass taken away, and to be refused a new one during the continuance of the war, to be fined to the amount of 500 dollars, or to be imprisoned for six months.

IV. The transport of despatches and couriers for the belligerent States shall be visited by the same punishment.

V. The exportation of the materials mentioned in Article III. from our Kingdom to any one of the belligerent States is forbidden, no matter under what flag it may be intended to take place.

Our authorities shall prevent such exportation, with military aid if necessary; but should any take place notwithstanding, the ship and such part of the cargo as consists of the said articles shall be confiscated, and the delinquent shall moreover be punished, according to the provisions of Article III.

VI. Using a foreign flag before the actual change of the nationality of a ship, or carrying double ship's papers for the purpose of evading the above orders, will, in the cases mentioned in Articles III. to V., be punished moreover as fraud, according to § 217 of the Penal Police Law of 25th May 1847.

VII. The sentences of fine and imprisonment incurred under this law will be passed by the criminal departments of the Superior Tribunals.

VIII. The present law may be wholly or partially repealed by further ordinances.

IX. Our Ministries, each in its own department, are charged with the execution of this law, and our Ministry of Finance and Commerce especially is authorized to issue, by way of proclamation, more particular instructions regarding articles that are to come under the designation of contraband of war.

G.—HAWAIIAN ISLANDS.

PROCLAMATION OF THE KING OF THE HAWAIIAN ISLANDS, OF NEUTRALITY IN THE WAR BETWEEN GREAT BRITAIN, FRANCE, TURKEY AND RUSSIA.—HONOLULU, MAY 16, 1854.

Be it known to all whom it may concern that We, Kamehameha III., King of the Hawaiian Islands, hereby proclaim our entire neutrality in the war now pending between the great maritime Powers of Europe; that our neutrality is to be respected by all belligerents to the full extent of our jurisdiction, which by our fundamental laws is to the distance of one marine league surrounding each of our islands of Hawaii, Maui, Kahoolawe, Lanai, Molokai, Oahu, Kauai, and Niihau, commencing at low-water mark on each of the respective coasts of the said islands, and includes all the channels passing between and dividing the said islands from island to island; that all captures and seizures made within our said jurisdiction are unlawful; and that the protection and hospitality of our ports, harbours, and roads shall be equally extended to all the belligerents, so long as they respect our neutrality.

And be it further known, to all whom it may concern, that we hereby strictly prohibit all our subjects, and all who reside within our jurisdiction, from engaging either directly or indirectly in privateering against the shipping or commerce of any of the belligerents, under the penalty of being treated and punished as pirates.

Done at our Palace of Honolulu, this 16th day of May 1854.

Keoni Ana. KAMEHAMEHA.

H.—LÜBECK.

ORDINANCE OF THE SENATE OF LÜBECK, PROHIBITING THE EXPORT OF ARTICLES CONTRABAND OF WAR, DURING HOSTILITIES BETWEEN GREAT BRITAIN, FRANCE, AND TURKEY AGAINST RUSSIA.—LÜBECK, APRIL 10, 1854.

In consequence of the state of war existing between Turkey, France, and Great Britain on the one part, and Russia on the other part, the Senate, in order to protect the trade and navigation of Lübeck, hereby ordains and brings to the general knowledge of the public that:

1. The exportation of articles contraband of war for the belligerent Powers or their subjects is prohibited.

2. Articles contraband of war are arms, ordnance, firearms, and munitions of war of every description, but particularly

gunpowder, musket and cannon balls, rockets, percussion caps, and all other articles serving for war purposes, as also saltpetre, sulphur, and lead.

3. The transgression of the present ordinance will be followed by the confiscation of the articles contraband of war, and all those who are guilty thereof, or accomplices therein, shall be severely punished.

PROCLAMATION OF THE SENATE OF LUBECK, ANNOUNCING THE NEUTRALITY OF LUBECK IN THE WAR BETWEEN CERTAIN EUROPEAN POWERS; AND PROHIBITING THE VIOLATION OF BLOCKADES, OR THE OUTFIT OF PRIVATEERS FROM, OR THEIR ADMISSION INTO, PORTS OF LUBECK.—LUBECK, APRIL 24, 1854.

With reference to the official announcement made to us of a blockade of the whole of the Russian Baltic ports to be effected by the British fleet, and in order, in the present war, to maintain the neutral position of Lubeck unimpaired, and also to avert loss and injury from the citizens of this State, the Senate has resolved to make the following regulations for general observance:

1. No master of a Lubeck vessel shall break a blockade, or, after having been informed thereof, endeavour clandestinely to evade it. He must not carry two sets of ship's papers, nor sail under a foreign flag.

2. Privateers shall neither be fitted out nor provisioned in the Free State of Lubeck. The citizens of Lubeck must wholly refrain from participation in such undertakings, which are inconsistent with the principles of a strict neutrality.

3. Privateers, with or without prizes, shall not be admitted into the harbours of Lubeck, except in cases of proved distress at sea. In such a case, however, the privateer and any prizes she may have shall be placed under surveillance, and shall leave the harbour again as soon as may be.

I.—MECKLENBURGH-SCHWERIN.

ORDINANCE OF THE GRAND DUKE OF MECKLENBURGH-SCHWERIN, PROHIBITING THE OUTFIT OF PRIVATEERS FROM PORTS OF MECKLENBURGH-SCHWERIN, OR THEIR ENTRANCE INTO THE SAME, DURING WAR BETWEEN CERTAIN EUROPEAN POWERS.—SCHWERIN, APRIL 26, 1854.

We, Frederick Francis, by the grace of God, Grand Duke of Mecklenburgh-Schwerin, in pursuance of our Ordinance of

the 15th instant, for the purpose of preserving our neutral position in the present war, ordain as follows :

1. Privateers, with or without prizes, are not to be admitted into the harbours of our dominions.

If, therefore, an armed privateer should appear before any of our ports, either for the purpose of bringing its prizes into safety, or to seek shelter, or to be supplied with provisions, or to be repaired, or under any other pretext whatever, its entry and remaining in the port is altogether prohibited : it is to be sent away and a notification to be made here immediately.

2. As privateers are neither permitted to be fitted out nor provisioned in our dominions, our subjects are also entirely to abstain, under heavy penalties, from every participation in undertakings so incompatible with the principles of a strict neutrality.

J.—NAPLES.

ORDONNANCE DE S. M. LE ROI DE NAPLES CONCERNANT LES CORSAIRES ET LE COMMERCE NAPOLITAIN PENDANT LA GUERRE, 12 APRIL 1854.

His Majesty the King of Naples wishing on the one hand to preserve to its fullest extent the neutrality adopted in the present war, and on the other hand to conform to the political principles manifested by the belligerent Powers concerning neutral commerce, has resolved the following :—

That no ships armed as privateers shall be admitted to the ports of this kingdom, nor provided with arms, military stores, or anything serving thereunto.

That no privateer may bring prizes into the ports of this Kingdom except in cases of imminent peril, nor may they remove anything whatsoever out of the said prizes.

That the subjects of this Kingdom shall not be allowed to take service on board a privateer of any foreign nation.

That no vessels of this Kingdom shall convey any articles whatsoever recognised as contraband of war to any belligerent Power.

That the ships of this Kingdom may freely carry on their commerce in the ports and in the harbours of belligerent Powers, and in the capacity of neutrals they may also carry merchandise belonging to the subjects of the said Powers except contraband of war.

Finally, that ships of this Kingdom are prohibited from entering into any blockaded port provided that the blockade

is effective and maintained by a sufficient force, and when it has been formally notified by the Commanding Officer.

The rules which the belligerent Powers will follow (*seguiranno*) concerning neutral commerce are as follows :—

That the flag covers the merchandise except contraband of war ; that the property of neutrals on enemy ships shall be immune from capture except in the case of contraband of war ; that a blockade in order to be effective must be maintained by a sufficient force and duly announced ; and that, lastly, letters of marque will not be issued.

K.—PORTUGAL.

DECREE OF THE KING-REGENT OF PORTUGAL, DECLARING THE NEUTRALITY OF PORTUGAL IN THE WAR BETWEEN TURKEY, ETC., AND RUSSIA, AND PROHIBITING THE OUTFIT OF PRIVATEERS FROM PORTUGUESE DOMINIONS. —LISBON, MAY 5, 1854.

Home Department, May 5, 1854.

SIRE,

War being declared between Powers with whom we are in ancient alliance, which alliance it behoves us to keep intact, and the Crown of Portugal being bound to take all measures in order on its part to preserve the strictest neutrality during the present contest, so that one of the belligerent parties shall not be treated with more or less favour than the other, and keeping in view what has always, under similar circumstances, been practised by the Sovereigns and Governments of these realms, your Majesty's Ministers have agreed upon submitting to your Majesty the following Decree, from the adoption of which will follow, on the part of the Portuguese Government, the observance of the rules of the law of nations, which Neutral Powers are bound to keep and uphold.

DUQUE DE SALDANHA.

Taking into consideration the Report of the Ministers and Secretaries of State of all the several departments, I am pleased to decree, in the name of the King, as follows :—

Art. I. The relations of peace, of good friendship, and cordial understanding which subsist between Portugal and all the Governments of Europe ought, on our part, to be preserved intact, and to continue to be religiously observed, by preserving the most strict and absolute neutrality with regard to the Powers which are at present in a state of war.

II. In the ports of this kingdom, and in its possessions in any part of the world, it is prohibited to Portuguese subjects, and to foreigners residing in Portugal, to construct or arm vessels to be employed as privateers during the present war; and letters of marque will be denied to either of the above-mentioned parties.

III. The entrance of privateers, and of prizes made by them, or by any vessels of war of the belligerent Powers, into the ports mentioned in the preceding Article, is also prohibited.

§ An exception shall be made to this rule in cases of distress in which, according to the law of nations, it is indispensable to show hospitality, the sale or unloading of prizes thus arriving at the ports of these realms being, however, in no way permitted, neither may such vessels entering there remain any longer time than is necessary for receiving the succour of humanity which, in accordance with the said law of nations and with the provisions of the Decrees of the 30th of August 1780, and the 3rd of June 1803, are due to them.

The Ministers and Secretaries of State of the several departments shall thus understand, and cause the same to be carried out.

KING-REGENT.

L.—SPAIN.

DECREE OF THE QUEEN OF SPAIN, PROHIBITING THE OUTFIT OF PRIVATEERS IN THE SPANISH DOMINIONS DURING WAR BETWEEN TURKEY, ETC., AND RUSSIA.—MADRID, APRIL 12, 1854.

Ministry of Marine, Madrid,
April 12, 1854.

MADAM,

The war which has unfortunately broken out in the East, might do harm to our navigation and commerce, the prosperity of which so warmly interests your Majesty.

Fortunately Great Britain and France, well worthy of the advanced post which they occupy amongst civilized nations, have strenuously endeavoured to diminish the evils which the present struggle must cause to the world, by renouncing for the present the issuing of letters of marque, and by making conjointly other declarations which are highly favourable to neutral Powers.

It behoves the commercial interests of Spain to take advantage of a course of policy so highly humane, and to satisfy at the same time your Majesty's feelings towards the nations which are the friends and allies of Spain.

Therefore, the undersigned Minister, in conformity with the opinion of the Council of Ministers, has the honour to propose to your Majesty the subjoined project of Decree.

Madam, at the Royal feet of your Majesty,

El Marques de Molins.

DÉCRET DE SA MAJESTÉ LA REINE D'ESPAGNE CONCERNANT LES CORSAIRES ET LE COMMERCE ESPAGNOL PENDANT LA GUERRE.

In consideration of the proposals I have received from my Minister of Marine, the following articles are decreed with the approval and consent of the Council of Ministers :—

1. The equipment, the maintenance, and admission of privateers flying the Russian flag is prohibited in all Spanish ports.

2. It is equally prohibited to owners, masters, and captains of Spanish mercantile ships to accept letters of marque from any Power, or to assist any vessels having the character of privateers, except in virtue of the claims of humanity in the case of fire and shipwerck.

3. The Spanish flag covers the transportation of all articles of commerce except warlike stores, papers, or despatches, but not commerce with ports blockaded by the belligerents. By means of this present decree Her Majesty's Government will not be responsible for any damage which may be incurred by persons trading in violation of this article.

M.—SWEDEN.

ORDONNANCE DE S. M. LE ROI DE SUÈDE CONCERNANT LA NAVIGATION DE SES SUJETS PENDANT LA GUERRE, 8 APRIL 1854.

Nous, Oscar, par la grâce de Dieu, roi de Suède et de Norvège, des Goths et des Vandales, savoir faisons : Qu'ayant reconnu la nécessité, en vue des collisions qui menacent d'éclater entre des puissances maritimes étrangères, que ceux de nos fidèles sujets qui exercent le commerce et la navigation observent rigoureusement les obligations et précautions requises pour assurer au pavillon suédois tous les droits et privilèges qui lui reviennent en qualité de pavillon neutre, et pour éviter également tout ce qui pourrait en quelque manière le rendre suspect aux puissances belligérantes et l'exposer à des insultes ; nous avons jugé à propos, en rapportant ce qui a été statué pré-

cédemment à cet égard, d'ordonner que les règles suivantes devront dorénavant être généralement observées.

1er. Pour être admis à jouir des droits et privilèges revenant au pavillon suédois en sa qualité de neutre, tout bâtiment suédois devra être muni des documents qui, d'après les ordonnances existantes,[1] sont requis pour constater sa nationalité, et ces documents devront toujours se trouver à bord du bâtiment, pendant ses voyages.

2. Il est sévèrement défendu aux capitaines d'avoir des papiers de bord et des connaissements doubles ou faux, ainsi que de hisser pavillon étranger en quelque occasion ou sous quelque prétexte que ce soit.

3. S'il arrivait que, pendant le séjour d'un bâtiment suédois à l'étranger, l'équipage, soit par désertion, mort, maladie ou autres causes, se trouvât diminué au point de n'être plus suffisant pour la manœuvre du navire, et qu'ainsi des matelots étrangers dussent être engagés, ils devront être choisis de préférence parmi les sujets des puissances neutres ; mais dans aucun cas le nombre des sujets des puissances belligérantes qui se trouveront à bord du navire ne pourra excéder un tiers du total de l'équipage. Tout changement de cette nature dans le personnel du navire, avec les causes qui y ont donné lieu, devra être marqué par le capitaine sur le rôle de l'équipage, et la fidélité de cette annotation devra être certifiée par le consul ou vice-consul suédois compétent, ou bien, en cas qu'il ne s'en trouvât point sur les lieux, par la municipalité, le notaire public ou quelque autre personne de la même autorité, suivant les usages des pays respectifs.

4. Les bâtiments suédois, en qualité de neutres, pourront naviguer librement vers les ports et sur les côtes des nations en guerre ; toutefois les capitaines devront s'abstenir de toute tentative d'entrer dans un port bloqué dès qu'ils auront été formellement prévenus de l'état de ce port par l'officier qui commande le blocus.

Par un port bloqué, on entend celui qui est tellement fermé, par un ou plusieurs vaisseaux de guerre ennemis stationnés et suffisamment proches, qu'on ne puisse y entrer sans danger évident.

5. Toutes marchandises, même propriété des sujets des puissances belligérantes, pourront être librement menées à bord des bâtiments suédois, en leur qualité de neutres, à la réserve des articles de contrebande de guerre. Par contrebande de guerre il faut entendre les articles suivants : canons, mortiers,

[1] Ordonnances royales du 1er mars 1841 et 15 août 1851.

armes de toute espèce, bombes, grenades, boulets, pierres à feu, mèches, poudre, salpêtre, soufre, cuirasses, piques, ceinturons, gibernes, selles et brides, ainsi que toutes fabrications pouvant servir directement à l'usage de la guerre,—en exceptant toutefois la quantité de ces objets qui peut être nécessaire pour la défense du navire et de l'équipage.

Pour le cas qu'à l'égard de la définition des objets de contrebande de guerre, des changements ou additions devraient être introduits par suite de conventions avec les puissances étrangères, il en sera ultérieurement statué.[1]

6. Il est interdit à tout capitaine suédois de se laisser employer avec le bâtiment qu'il conduit à transporter pour aucune des puissances belligérantes des dépêches, des troupes ou des munitions de guerre, sans y être contraint par une force réelle ; auquel cas il devra protester formellement contre un tel emploi de la force.

7. Les bâtiments des puissances belligérantes pourront importer dans les ports suédois et en exporter toutes denrées et marchandises, pourvu que, d'après le tarif général des douanes, elles soient permises à l'importation ou à l'exportation, et à la réserve des articles réputés contrebande de guerre.

8. Il est défendu à tout sujet suédois d'armer ou d'équiper des navires pour être employés en course contre quelqu'une des puissances belligérantes, leurs sujets et propriétés ; ou de prendre part à l'équipement de navires ayant une pareille destination. Il lui est également défendu de prendre service à bord de corsaires étrangers.

9. Il ne sera permis à aucun corsaire étranger d'entrer dans un port suédois et de séjourner sur nos rades. Des prises ne pourront non plus être introduites dans les ports suédois, autrement que dans les cas de détresse constatée. Il est également interdit à nos sujets d'acheter des corsaires étrangers des effets capturés de quelque espèce que ce soit.

10. Lorsqu'un capitaine faisant voile sans escorte est rencontré en pleine mer par quelque vaisseau de guerre de l'une des puissances belligérantes ayant droit de contrôler ses papiers de bord, il ne doit ne se refuser ni chercher à se soustraire à cette visite ; mais il est tenu de produire ses papiers loyalement et sans détour, ainsi qu'à surveiller que ni depuis que son navire a été hélé, ni pendant la visite, aucun des documents concernant le navire ou son chargement ne soit soustrait ou jeté à la mer.

11. Lorsque les bâtiments marchands font voile sous escorte

[1] Par une ordonnance postérieure du roi de Suède (13 septembre 1851), le plomb en saumons ou sous toute autre forme doit aussi être traité comme contrebande de guerre.

de vaisseaux de guerre, les capitaines devront se régler sur ce qui est prescrit par l'ordonnance royale du 10 juin 1812.

12. Le capitaine qui observe scrupuleusement tout ce qui lui est prescrit ci-dessus doit jouir, d'après les traités et le droit des gens, d'une navigation libre et sans gêne ; et si, nonobstant, il est molesté, il a droit de s'attendre à l'appui le plus énergique de la part de nos ministres et consuls à l'étranger, dans toutes les justes réclamations qu'il pourra faire pour obtenir réparation et dédommagement ; au lieu que le capitaine qui omet et néglige d'observer ce qui vient de lui être prescrit pour sa route ne devra s'en prendre qu'à luimême des désagréments qui pourront résulter d'une pareille négligence, sans avoir à espérer notre appui et protection.

13. Dans le cas qu'un navire suédois fût saisi, le capitaine doit remettre au consul ou vice-consul suédois, s'il s'en trouve dans le port où son bâtiment est amené, mais à son défaut, au consul ou vice-consul suédois le plus voisin, un rapport fidèle et dûment certifié des circonstances de cette prise avec tous ses détails.

Mandons et ordonnons à tous ceux à qui il appartiendra de se conformer exactement à ce que dessus. En foi de quoi nous avons signé la présente de notre main, et y avons fait apposer notre sceau royal.

The following memorandum relating to the above Ordinance was added to the letter of the United States Chargé d'Affaires at Stockholm to the Secretary of State, dated 10th April 1854 [Document No. 8 G] :—

" I have examined the above-cited Ordinance, in hopes to find in it the claim that neutral merchant-vessels under convoy are exempt from actual visit of belligerents, and that an assurance by the commander of the convoying man-of-war in relation to the vessels under his protection must suffice. These things do not appear in the Ordinance referred to, nor in that at present translated ; but I have been officially informed that the Swedish Government claim these principles as international rights, and as expressed in Article XII. of our Treaty with Sweden of 1783, revived in the existing Treaty, Article XVII.

" The Swedish Ordinance of 1812, cited above, contains sailing directions for convoys, and national regulations for the commanders thereof. F. Schroeder."

15

Extracts from President Pierce's Message to Congress, 4th December 1854.

Long experience has shown that, in general, when the principal Powers of Europe are engaged in war, the rights of neutral nations are endangered. This consideration led in the progress of our War of Independence to the formation of the celebrated confederacy of the Armed Neutrality, a primary object of which was to assert the doctrine that Free Ships make Free Goods, except in the case of articles contraband of War, a doctrine which from the very commencement of our national being has been a cherished idea of the Statesmen of this country. At one period or another every maritime Power has by some solemn Treaty stipulation recognised that principle, and it might have been hoped that it would come to be universally received and respected as a rule of international law. But the refusal of one Power prevented this in the next great war which ensued, that of the French Revolution, and it failed to be respected among the belligerent States of Europe. Notwithstanding this, the principle is generally admitted to be a sound and salutary one; so much so that at the commencement of the existing war in Europe, Great Britain and France announced their purpose to observe it for the present, not however as a recognised international right, but as a mere concession for the time being. The coöperation, however, of these two powerful maritime nations in the interest of neutral rights appeared to me to afford an occasion justifying and inviting on the part of the United States a renewed effort to make the doctrine in question a principle of International Law by means of special conventions between the several Powers of Europe and America. Accordingly a proposition embracing not only the rule that free ships make free goods, except contraband articles, but also the less contested one that neutral property other than contraband though on board enemy's ships shall be exempt from confiscation, has been submitted by this Government to those of Europe and America.

Russia acted promptly in this matter: a convention was concluded between that country and the United States providing for the observance of the principles announced not only as between themselves but also as between them and all other nations which shall enter into the like stipulation. None of

the other Powers have as yet taken final action on the subject. I am not aware, however, that any objection to the proposed stipulations has been made, but on the contrary they are acknowledged to be essential to the security of neutral commerce, and the only apparent obstacle to their general adoption is in the possibility that it may be encumbered by inadmissible conditions.

The King of the Two Sicilies has expressed to our Minister at Naples his readiness to concur in our proposition relative to neutral rights, and to enter into a convention on that subject.

The King of Prussia entirely approves of a project to the same effect submitted to him, but proposes an additional article providing for the renunciation of privateering. Such an article for most obvious reasons is much desired by nations having naval establishments large in proportion to their foreign commerce. If it were adopted as an international rule, the commerce of a nation having comparatively a small naval force would be very much at the mercy of its enemy in case of war with a Power of decided naval authority. The bare statement of the condition in which the United States would be placed after having surrendered the right to resort to privateers in the event of war with a belligerent of naval supremacy will show that this Government could never listen to such a proposition. The navy of the first maritime power in Europe is at least 10 times as large as that of the United States, without resort on our part to our mercantile marine: the means of an enemy to inflict injury upon our commerce would be tenfold greater than ours to retaliate. We could not extricate our country from this unequal condition with such an enemy unless we at once departed from our present peaceful policy and became a great naval power. Nor would this country be better situated in a war with one of the secondary naval Powers. Though the naval disparity would be less, the greater extent and more exposed condition of our widespread commerce would give any of them a like advantage over us.

The proposition to enter into engagements to forego resort to privateers in case this country should be forced into war with a great naval Power is not entitled to more favourable consideration than would be a proposition to agree not to accept the services of volunteers on land. When the honour or the rights of our country require it to assume a hostile attitude it confidently relies on the patriotism of its citizens, not ordinarily devoted to the military profession, to augment the army and navy so as to make them fully adequate to the emergency which calls them into action. The proposal to surrender the right

to employ privateers is professedly founded upon the principle that private property of unoffending non-combatants, though enemies, should be exempt from the ravages of war; but the proposed surrender goes but little way in carrying out that principle, which equally requires that such private property should not be seized or molested by national ships of war. Should the leading Powers of Europe concur in proposing as a rule of international Law to exempt private property upon the ocean from seizure by public armed cruisers as well as by privateers, the United States will readily meet them upon that broad ground.—[From *The Times*, 18th December 1854.]

16

Conventions between the United States and other Countries as to Neutrals.

A.—Russia.[1] 22 July 1854.

Les Etats-Unis d'Amérique et sa Majesté l'Empereur de toutes les Russies animés d'un égal désir de maintenir et de préserver de toute atteinte les rapports de bonne intelligence qui ont de tout temps si heureusement subsisté entre eux-mêmes, comme entre les habitants de leurs Etats respectifs, ont résolu d'un commun accord de consacrer, par une convention formelle, les principes du droit des neutres sur mer qu'ils reconnaissent pour conditions indispensables de toute liberté de navigation et de commerce maritime. . . .

1. Les deux hautes parties contractantes reconnaissent comme permanent et immuable le principe qui suit, savoir :

(1) Que le pavillon couvre la marchandise (that free ships make free goods), c'est à dire, que les effets ou marchandises qui sont la propriété des sujets ou citoyens d'une Puissance ou Etat en guerre, sont exempts de capture ou confiscation sur les vaisseaux neutres, à l'exception des objets contrebande de guerre.

(2) Que la propriété neutre, à bord d'un navire ennemi, n'est pas sujette à confiscation, à moins qu'elle ne soit contrebande de guerre.

Elles s'engagent à appliquer ces principes au commerce et

[1] De Martens, *N.R.G.*, xvi. pt. i. p. 571.

à la navigation de toutes Puissances et Etats qui voudront les adopter de leur côté comme permanents et immuables.

2. Les deux hautes parties contractantes se réservent de s'entendre ultérieurement selon que les circonstances pourront l'exiger sur l'application et l'extension à donner, s'il y à lieu, aux principes convenus à l'article 1. Mais elles déclarent dès à présent qu'elles prendront les stipulations que renferme le dit article 1, pour règle, toutes les fois qu'il s'agira d'aprécier les droits de neutralité.

3. Il est convenu entre les hautes parties contractantes que toutes les nations qui voudraient consentir à accéder aux règles contenues dans l'article 1 de cette convention par une déclaration formelle stipulant qu'elles s'engagent à les observer, jouiront des droits résultant de cette accession comme les deux Puissances signataires de cette convention jouiront de ces droits et les observeront. Elles se communiqueront réciproquement le resultat des démarches qui seront faites à ce sujet.

4. La présente convention sera approuvée et ratifiée par le Président des Etats-Unis d'Amérique, par et avec l'avis et le consentement du Sénat des dits Etats, et par sa Majesté l'Empereur de toutes les Russies, et les ratifications en seront échangées à Washington dans l'espace de dix mois, à compter de ce jour, ou plus tôt, si faire se peut.

B.—Two Sicilies.[1] 13 January 1855.

The United States of America and his Majesty the King of the kingdom of the Two Sicilies, equally animated with a desire to maintain and preserve from all harm the relations of good understanding which have at all times so happily subsisted between themselves, as also between the inhabitants of their respective States, have mutually agreed to perpetuate, by means of a formal convention, the principles of the right of neutrals at sea, which they recognize as indispensable conditions of all freedom of navigation and maritime trade. . . .

1. The two High Contracting Parties recognize as permanent and immutable the following principles, to wit: 1st. That free ships make free goods; that is to say, that the effects or goods belonging to subjects or citizens of a Power or State at war are free from capture and confiscation when found on board of neutral vessels, with the exception of articles of contraband of war. 2nd. That the property of neutrals on board an enemy's vessel is not subject to confiscation unless the same

[1] De Martens, *N.R.G.*, xvi. pt. i. p. 569.

be contraband of war. They engage to apply these principles to the commerce and navigation of all such Powers and States as shall consent to adopt them on their part as permanent and immutable.

2. The two High Contracting Parties reserve themselves to come to an ulterior understanding as circumstances may require with regard to the application and extension to be given, if there be any cause for it, to the principles laid down in the first article. But they declare from this time that they will take the stipulations contained in the said 1st article as a rule, whenever it shall become a question to judge of the rights of neutrality.

3. It is agreed by the High Contracting Parties that all nations which shall or may consent to accede to the rules of the first article of this convention, by a formal declaration stipulating to observe them, shall enjoy the rights resulting from such accession as they shall be enjoyed and observed by the two Powers signing this convention. They shall mutually communicate to each other the results of the steps which may be taken on the subject.

4. The present convention shall be approved and ratified by the President of the United States of America, by and with the advice and consent of the Senate of the said States, and by his Majesty the King of the kingdom of the Two Sicilies; and the ratifications of the same shall be exchanged at Washington within the period of twelve months, counting from this day, or sooner if possible.

C.—Peru.[1] 22 July 1856.

The United States of America and the Republic of Peru, in order to render still more intimate their relations of friendship and good understanding, and desiring, for the benefit of their respective commerce and that of other nations, to establish an uniform system of maritime legislation in time of war, in accordance with the present state of civilization, have resolved to declare, by means of a formal convention, the principles which the two republics acknowledge as the basis of the rights of neutrals at sea, and which they recognize and profess as permanent and immutable, considering them as the true and indispensable conditions of all freedom of navigation and maritime commerce and trade. . . .

1. The two High Contracting Parties recognize as permanent and immutable the following principles:—

1st. That free ships makes free goods—that is to say, that

[1] De Martens, *N.R.G.*, xvii. pt. i. p. 191.

the effects or merchandize belonging to a power or nation at war, or to its citizens or subjects, are free from capture and confiscation when found on board of neutral vessels, with the exception of articles contraband of war.

2nd. That the property of neutrals on board of an enemy's vessel is not subject to detention or confiscation, unless the same be contraband of war; it being also understood that, as far as regards the two contracting parties, warlike articles, destined for the use of either of them, shall not be considered as contraband of war.

The two High Contracting Parties engage to apply these principles to the commerce and navigation of all Powers and States as shall consent to adopt them as permanent and immutable.

2. It is hereby agreed between the two High Contracting Parties, that the provisions contained in article 22 of the treaty concluded between them at Lima, on the 26th day of July, 1851, are hereby annulled and revoked, in so far as they militate against, or are contrary to, the stipulations contained in this convention; but nothing in the present convention shall, in any manner, affect, or invalidate the stipulations contained in the other articles of the said treaty of the 26th day of July, 1851, which shall remain in their full force and effect.

3. The two High Contracting Parties reserve to themselves to come to an ulterior understanding, as circumstances may require, with regard to the application and extension to be given, if there be any cause for it, to the principles laid down in the first article. But they declare, from this time, that they will take the stipulations contained in the said article as a rule, whenever it shall become a question to judge of the rights of neutrality.

4. It is agreed between the two High Contracting Parties that all nations which shall consent to accede to the rules of the first article of this convention by a formal declaration, stipulating to observe them, shall enjoy the rights resulting from such accession as they shall be enjoyed and observed by the two parties signing this convention; they shall communicate to each other the result of the steps which may be taken on the subject.

5. The present convention shall be approved and ratified by the President of the United States of America, by and with the advice and consent of the Senate of said States, and by the President of the republic of Peru, with the authorization of the legislative body of Peru, and the ratifications shall be exchanged at Washington within 18 months from the date of the signature hereof, or sooner, if possible.

17

Protocols of the Congress of Paris, 1856.

PROTOCOLE NO. 20.—SÉANCE DU 2 AVRIL 1856.

Ainsi qu'il l'avait décidé, le Congrès s'occupe de la question de savoir si les blocus peuvent être levés avant l'échange des ratifications du Traité de Paix.

M. le Comte Walewski expose que les précédents établissent que, généralement, les blocus n'ont été levés qu'au moment de l'échange des ratifications, en vertu du principe que la guerre n'est terminée qu'au moment où les stipulations qui doivent y mettre fin, ont reçu la consécration des Souverains ; que l'esprit de libéralité qui exerce, de nos jours, une si heureuse influence sur le droit international et sur les relations que les diverses Puissances entretiennent entre elles, permet néanmoins de déroger à cette règle ; que la France et la Grande Bretagne, qui ont mis les blocus existants, se sont entendues pour donner, dans cette circonstance, une marque de leur sollicitude pour le commerce en général, et qu'il ne reste plus, dès lors, qu'à se concerter sur les moyens propres à assurer à l'Europe ce nouveau bienfait.

D'accord avec M. le premier Plénipotentiaire de la France, M. le Comte de Clarendon propose de conclure une armistice sur mer. Cette mesure, dans son opinion, aurait pour effet la levée immédiate des blocus existants.

M. le Comte Walewski ajoute que cette combinaison permettrait de considérer les prises, faites postérieurement à la signature de la Paix, comme non avenues, et de restituer les navires et les chargements capturés ; que le commerce se trouverait ainsi autorisé à reprendre, sans plus de retard, toutes ses transactions, si la Russie, de son côté, levait, dès à présent, les mesures exceptionnelles qu'elle a prises, durant la guerre, pour interdire, dans ses ports, les opérations commerciales qui se faisaient pendant la paix.

Adoptant avec empressement les vœux exposés par MM. les Plénipotentiaires de la France et de la Grande Bretagne, MM. les Plénipotentiaires de la Russie répondent que la proposition soumise au Congrès sera vraisemblablement acceptée avec une extrême faveur par leur Gouvernement ; qu'ils s'empressent, par conséquent, d'y adhérer par les mêmes motifs qui l'ont suggérée aux Plénipotentiaires qui en ont pris l'initiative ;

mais qu'ils se trouvent dans l'obligation de réserver l'approbation de leur Cour.

MM. les Plénipotentiaires des autres Puissances déclarent que cette mesure sera accueillie avec un sentiment de vive reconnaissance par les Etats neutres.

Il est, en conséquence, décidé que si, dans la prochaine séance, ainsi qu'ils le présument, MM. les Plénipotentiaires de la Russie sont autorisés à faire savoir que leur Gouvernement a levé les prohibitions imposées, pendant la guerre, au commerce d'importation et d'exportation dans les ports et sur les frontières de l'Empire Russe il sera conclu entre la France, la Grande Bretagne, la Sardaigne, et la Turquie, d'une part, et la Russie, de l'autre part, une armistice sur mer qui comptera à dater de la signature de la Paix, et qui aura pour effet de lever tous les blocus. Par conséquent, les prises faites postérieurement à la date du 30 Mars passé, seront restituées.

Les actes Consulaires et formalités requises des navigateurs et des commerçants seront remplis provisoirement par les Agents des Puissances qui ont consenti, pendant la guerre, à prendre soin officieusement des intérêts des sujets des Etats belligérants.

(Suivent les signatures.)

PROTOCOLE No. 21.—SÉANCE DU 4 AVRIL 1856.

Le Protocole de la précédente séance est lu et approuvé.

MM. les Plénipotentiaires de la Russie annoncent qu'ils sont autorisés à déclarer que les mesures prohibitives prises pendant la guerre pour fermer les ports Russes au commerce d'exportation, vont être levées.

Par suite de cette déclaration, et conformément à la résolution qu'il a prise dans sa précédente réunion, le Congrès arrête qu'il est conclu un armistice maritime entre la France, la Grande Bretagne, la Sardaigne, et la Turquie, d'une part, et la Russie, de l'autre parte, et que les prises faites postérieurement à la signature de la Paix seront restituées.

Il est convenu, en conséquence, que des ordres seront donnés pour la levée immédiate des blocus existants, et que les mesures prises en Russie, pendant la guerre, contre l'exportation des produits Russes, et notamment celles des céréales, seront également rapportées sans retard.

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PROTOCOLE No. 22.—SÉANCE DU 8 AVRIL 1856.

Le Protocole de la précédente séance est lu et approuvé.

M. le Comte de Clarendon rappelle que, dans la dernière réunion, et attendu que tous les Plénipotentiaires n'étaient pas encore en mesure d'accéder à d'autres propositions, le Congrès s'est borné à convenir de la levée des blocus. Il annonce que les Plénipotentiaires de la Grande Bretagne sont aujourd'hui autorisés à faire savoir que les décisions restrictives imposées, à l'occasion de la guerre, au commerce et à la navigation, sont à la veille d'être rapportées.

MM. les Plénipotentiaires de la Russie ayant renouvelé la déclaration analogue qu'ils ont faite dans la séance du 4 Avril, et tous les autres Plénipotentiaires ayant émis un avis favorable, le Congrès arrête que toutes les mesures, sans distinction, prises à l'origine ou en vue de la guerre, et ayant pour objet de suspendre le commerce et la navigation avec l'Etat ennemi, sont abrogées, et qu'en tout ce qui concerne soit les transactions commerciales, sans en excepter la contrebande de guerre, soit les expéditions de marchandises et le traitement des bâtiments de commerce, les choses sont rétablies partout à dater de ce jour, sur le pied où elles se trouvaient avant la guerre.

. . . . . .

M. le premier Plénipotentiaire de la France dit ensuite qu'il doit appeler l'attention du Congrès sur un sujet qui, bien que concernant plus particulièrement la France, n'en est pas moins d'un grand intérêt pour toutes les Puissances Européennes ; il croit superflu de dire qu'on imprime chaque jour en Belgique les publications les plus injurieuses, les plus hostiles, contre la France et son Gouvernement ; qu'on y prêche ouvertement la révolte et l'assassinat ; il rappelle que, recemment encore, des journaux Belges ont osé préconiser la société dire " La Marianne," dont on sait les tendances et l'objet ; que toutes ces publications sont autant de machines de guerre dirigées contre le repos et la tranquillité de la France par les ennemis de l'ordre social, qui, forts de l'impunité qu'ils trouvent à l'abri de la législation Belge, conservent l'espoir de parvenir enfin à réaliser leurs coupables desseins.

. . . . . .

M. le Comte Walewski propose au Congrès de terminer son œuvre par une déclaration qui constituerait un progrès notable dans le droit international, et qui serait accueillie par le monde entier avec un sentiment de vive reconnaissance.

Le Congrès de Westphalie, ajout-t-il, a consacré la liberté

de conscience, le Congrès de Vienne l'abolition de la traite des noirs et la liberté de la navigation des fleuves.

Il serait vraiment digne du Congrès de Paris de poser les bases d'un droit maritime uniforme en temps de guerre, en ce qui concerne les neutres. Les quatre principes suivants attendraient complétement ce but :—

1. Abolition de la course ;
2. Le pavillon neutre couvre la marchandise ennemie, excepté la contrebande de guerre ;
3. La marchandise neutre, excepté la contrebande de guerre, n'est pas saisissable même sous pavillon ennemi ;
4. Les blocus ne sont obligatoires qu'autant qu'ils sont effectifs.

Ce serait certes là un beau résultat auquel aucun de nous ne saurait être indifférent.

. . . . . .

Quant aux observations présenteés par M. le Comte Walewski sur les excès de la presse Belge, et les dangers qui en résultent pour les pays limitrophes, les Plénipotentiaires de l'Angleterre en reconnaissent l'importance ; mais, représentants d'un pays où une presse libre et indépendante est, pour ainsi dire, une des institutions fondamentales, ils ne sauraient s'associer à des mesures de coërcition contre la presse d'un autre Etat. M. le premier Plénipotentiaire de la Grande Bretagne, en déplorant la violence à laquelle se livrent certains organes de la presse Belge, n'hésite pas à déclarer que les auteurs des exécrables doctrines auxquelles faisait allusion M. le Comte Walewski, que les hommes qui prêchent l'assassinat comme moyen d'atteindre un but politique, sont indignes de la protection qui garantit à la presse sa liberté et son indépendance.

En terminant, M. le Comte de Clarendon rappelle qu'ainsi que la France, l'Angleterre, au commencement de la guerre, a cherché, par tous les moyens, à en atténuer les effets, et que, dans ce but, elle a renoncé, au profit des neutres, durant la lutte qui vient de cesser, à des principes qu'elle avait jusque là invariablement maintenus. Il ajoute que l'Angleterre est disposée à y renoncer définitivement, pourvu que la course soit également abolie pour toujours ; que la course n'est autre chose qu'une piraterie organisée et légale, et que les corsaires sont un des plus grands fléaux de la guerre, et que notre état de civilisation et l'humanité exigent qu'il soit mis fin à un système qui n'est plus de notre temps. Si le Congrès tout entier se ralliait à la proposition de M. le Comte Walewski, il serait bien entendu qu'elle n'engagerait qu'à l'égard des Puissances qui y auraient

accédé, et qu'elle ne pourrait être invoquée par les Gouvernements qui auraient refusé de s'y associer.

M. le Comte Orloff fait observer que les pouvoirs dont il a été muni, ayant pour objet unique le rétablissement de la paix, il ne se croit pas autorisé à prendre part à une discussion que ses instructions n'ont pas pu prévoir.

M. le Comte de Buol se félicite de voir les Gouvernements de France et d'Angleterre disposés à mettre fin aussi promptement que possible à l'occupation de la Grèce. L'Autriche, assure-t-il, forme les vœux les plus sincères pour la prospérité de ce Royaume, et elle désire également, comme la France, que tous les pays de l'Europe jouissent, sous la protection du droit public, de leur indépendance politique et d'une complète prospérité. Il ne doute pas qu'une des condition essentielles d'un état de choses aussi désirable ne réside dans la sagesse d'une législation combinée de manière à prévenir ou à réprimer les excès de la presse, que M. le Comte Walewski a blâmés avec tant de raison en parlant d'un Etat voisin, et dont la répression doit être considérée comme un besoin Européen. Il espère que dans tous les Etats continentaux où la presse offre les mêmes dangers, les Gouvernements sauront trouver, dans leur législation, les moyens de la contenir dans de justes limites, et qu'ils parviendront ainsi à mettre la paix à l'abri de nouvelles complications internationales.

En ce qui concerne les principes de droit maritime dont M. le premier Plénipotentiaire de la France a proposé l'adoption, M. le Comte de Buol déclare qu'il en apprécie l'esprit et la portée, mais que n'étant pas autorisé par ses instructions à donner un avis sur une matière aussi importante, il doit se borner, pour le moment, à annoncer au Congrès qu'il est prêt à solliciter les ordres de son Souverain.

Mais ici, dit-il, sa tâche doit finir. Il lui serait impossible, en effet, de s'entretenir de la situation intérieure d'Etats indépendants qui ne se trouvent pas représentés au Congrès. Les Plénipotentiaires n'ont reçu d'autre mission que celle de s'occuper des affaires du Levant, et n'ont pas été convoqués pour faire connaître à des Souverains indépendants des vœux relatifs à l'organisation intérieure de leurs pays : les pleins-pouvoirs déposés aux Actes du Congrès en font foi. . . .

. . . . . .

M. le Baron de Manteuffel déclare connaître assez les intentions du Roi son auguste Maître, pour ne pas hésiter à exprimer son opinion, quoiqu'il n'ait pas d'instructions à ce sujet, sur les questions dont le Congrès a été saisi.

Les principes maritimes, dit M. le premier Plénipotentiaire

de la Prusse, que le Congrès est invité à s'approprier, ont toujours été professés par la Prusse, qui s'est constamment appliquée à les faire prévaloir ; et il se considère comme autorisé à prendre part à la signature de tout Acte ayant pour objet de les faire admettre définitivement dans le droit public Européen. Il exprime la conviction que son Souverain ne refuserait pas son approbation à l'accord qui s'établirait dans ce sens entre les Plénipotentiaires.

. . . . . .

MM. les Plénipotentiaires de la Russie ajoutent qu'ils prendront les ordres de la Cour sur la proposition soumise au Congrès relativement au droit maritime.

M. le Comte Walewski se félicite d'avoir engagé les Plénipotentiaires à échanger leurs idées sur les questions qui ont été discutées. Il avait pensé qu'on aurait pu, utilement peut-être, se prononcer d'une manière plus complète sur quelques-uns des sujets qui ont fixé l'attention du Congrès. "Mais, tel quel," dit-il, "l'échange d'idées qui a eu lieu n'est pas sans utilité."

M. le premier Plénipotentiaire de la France établit qu'il en ressort, en effet :

1. Que personne n'a contesté la nécessité de se préoccuper mûrement d'améliorer la situation de la Grèce, et que les trois Cours Protectrices ont reconnu l'importance de s'entendre entre elles à cet égard.

2. Que les Plénipotentiaires de l'Autriche se sont associés au vœu exprimé par les Plénipotentiaires de la France de voir les Etats Pontificaux évacués par les troupes Françaises et Autrichiennes aussitôt que faire se pourra sans inconvénient pour la tranquillité du pays et pour la consolidation de l'autorité du Saint Siége.

3. Que la plupart des Plénipotentiaires n'ont pas contesté l'efficacité qu'auraient des mesures de clémence prises d'une manière opportune par les Gouvernements de la Péninsule Italienne, et surtout par celui des Deux Siciles.

4. Que tous les Plénipotentiaires, et même ceux qui ont cru devoir réserver le principe de la liberté de la presse, n'ont pas hésité à flétrir hautement les excès auxquels les journaux Belges se livrent impunément, en reconnaissant la nécessité de remédier aux inconvénients réels qui résultent de la licence éffrénée dont il est fait un si grand abus en Belgique.

Qu'enfin l'accueil fait, par tous les Plénipotentiaires, à l'idée de clore leurs travaux par une déclaration de principes en matière de droit maritime, doit faire espérer qu'à la prochaine séance, ils auront reçu de leurs Gouvernements respectifs l'autorisation

d'adhérer à un Acte qui, en couronnant l'œuvre du Congrès de Paris, réaliserait un progrès digne de notre époque.

(Suivent les signatures.)

PROTOCOLE No. 23.—SÉANCE DU 14 AVRIL 1856.

Le Protocole de la séance précédente et son Annexe sont lus et approuvés.

M. le Comte Walewski rappelle qu'il reste au Congrès à se prononcer sur le projet de Déclaration dont il a indiqué les bases dans la dernière réunion, et demande aux Plénipotentiaires qui s'étaient réservé de prendre les ordres de leurs Cours respectives, à cet égard, s'ils sont autorisés à y donner leur assentiment.

M. le Comte de Buol déclare que l'Autriche se félicite de pouvoir concourir à un Acte dont elle reconnaît la salutaire influence, et qu'il a été muni des pouvoirs nécessaires pour y adhérer.

M. le Comte Orloff s'exprime dans le même sens ; il ajoute, toutefois, qu'en adoptant la proposition faite par M. le premier Plénipotentiaire de la France, sa Cour ne saurait s'engager à maintenir le principe de l'abolition de la course et à le défendre, contre des Puissances qui ne croiraient pas devoir y accéder.

MM. les Plénipotentiaires de la Prusse, de la Sardaigne, et de la Turquie, ayant également donné leur assentiment, le Congrès adopte le projet de rédaction annexé au présent Protocole, et en renvoie la signature à la prochaine réunion.

M. le Comte de Clarendon, ayant demandé la permission de présenter au Congrès une proposition qui lui semble devoir être favorablement accueillie, dit que les calamités de la guerre sont encore trop présentes à tous les esprits pour qu'il n'y ait pas lieu de rechercher tous les moyens qui seraient de nature à en prévenir le retour ; qu'il a été inséré à l'Article VII du Traité de Paix une stipulation qui recommande de recourir à l'action médiatrice d'un Etat ami avant d'en appeler à la force, en cas de dissentiment entre la Porte et l'une ou plusieurs des autres Puissances signataires.

M. le premier Plénipotentiaire de la Grande Bretagne pense que cette heureuse innovation pourrait recevoir une application plus générale et devenir ainsi une barrière opposée à des conflits qui, souvent, n'éclatent que parcequ'il n'est pas toujours possible de s'expliquer et de s'entendre.

Il propose donc de se concerter sur une résolution propre à assurer, dans l'avenir, au maintien de la paix cette chance de

durée, sans, toutefois, porter atteinte à l'indépendance des Gouvernements.

M. le Comte Walewski se déclare autorisé à appuyer l'idée émise par M. le premier Plénipotentiaire de la Grande Bretagne ; il assure que les Plénipotentiaires de la France sont tout disposés à s'associer à l'insertion au Protocole d'un vœu qui, en répondant pleinement aux tendances de notre époque, n'entraverait, d'aucune façon, la liberté d'action des Gouvernements.

M. le Comte de Buol n'hésiterait pas à se joindre à l'avis des Plénipotentiaires de la Grande Bretagne et de la France, si la résolution du Congrès doit avoir la forme indiquée par M. le Comte Walewski ; mais il ne saurait prendre, au nom de sa Cour, un engagement absolu et de nature à limiter l'indépendance du Cabinet Autrichien.

M. le Comte de Clarendon répond que chaque Puissance est et sera seule juge des exigences de son honneur et de ses intérêts ; qu'il n'entend nullement circonscrire l'autorité des Gouvernements, mais seulement leur fournir l'occasion de ne pas recourir aux armes, toutes les fois que les dissentiments pourront être aplanis par d'autres voies.

M. le Baron de Manteuffel assure que le Roi, son auguste Maître, partage complétement les idées exposées par M. le Comte de Clarendon ; qu'il se croit donc autorisé à y adhérer et à leur donner tout le développement qu'elles comportent.

M. le Comte Orloff, tout en reconnaissant la sagesse de la proposition faite au Congrès, croit devoir en référer à sa Cour avant d'exprimer l'opinion des Plénipotentiaires de la Russie.

M. le Comte de Cavour désire savoir, avant de donner son opinion, si dans l'intention de l'auteur de la proposition, le vœu qui serait exprimé par le Congrès s'étendrait aux interventions militaires dirigées contre des Gouvernements de fait, et cite, comme exemple, l'intervention de l'Autriche dans le Royaume de Naples en 1821.

Lord Clarendon répond que le vœu du Congrès devrait admettre l'application la plus générale ; il fait remarquer que, si les bons offices d'une autre Puissance avaient déterminé le Gouvernement Grec à respecter les lois de la neutralité, la France et l'Angleterre se seraient très probablement abstenues de faire occuper le Pirée par leurs troupes. Il rappelle les efforts faits par le Cabinet de la Grande Bretagne, en 1823, pour prévenir l'intervention armée qui eut lieu, à cette époque, en Espagne.

M. le Comte Walewski ajoute qu'il ne s'agit ni de stipuler un droit, ni de prendre un engagement ; que le vœu exprimé par le Congrès ne saurait, en aucun cas, opposer des limites à la liberté d'appréciation qu'aucune Puissance ne peut aliéner

dans les questions qui touchent à sa dignité ; qu'il n'y a donc aucun inconvénient à généraliser l'idée dont s'est inspiré M. le Comte de Clarendon, et à lui donner la portée la plus étendue.

M. le Comte de Buol dit que M. le Comte de Cavour, en parlant, dans une autre séance, de l'occupation des Légations par des troupes Autrichiennes, a oublié que d'autres troupes étrangères ont été appelées sur le sol des Etats Romains. Aujourd'hui, en parlant de l'occupation par l'Autriche du Royaume de Naples en 1821, il oublie que cette occupation a été le résultat d'une entente entre les Cinq Grandes Puissances réunies au Congrès de Laybach. Dans les deux cas, il attribue à l'Autriche la mérite d'une initiative et d'une spontanéité que les Plénipotentiaires Autrichiens sont loin de revendiquer pour elle.

L'intervention, rappelée par le Plénipotentiaire de la Sardaigne, a eu lieu, ajoute-t-il, à la suite des pourparlers du Congrès de Laybach ; elle rentre donc dans l'ordre d'idées énoncé par Lord Clarendon. Des cas semblables pourraient encore se reproduire, et M. le Comte de Buol n'admet pas qu'une intervention effectuée par suite d'un accord établi entre les Cinq Grandes Puissances, puisse devenir l'objet des réclamations d'un Etat de second ordre.

M. le Comte de Buol applaudit à la proposition, telle que Lord Clarendon l'a présentée, dans un but d'humanité ; mais il ne pourrait y adhérer, si on voulait lui donner une trop grande étendue, ou en déduire des conséquences favorables aux Gouvernements de fait, et à des doctrines qu'il ne saurait admettre.

Il désire, au reste, que le Congrès, au moment même de terminer ses travaux, ne se voie pas obligé de traiter des questions irritantes et de nature à troubler la parfaite harmonie qui n'a cessé de régner parmi les Plénipotentiaires.

M. le Comte de Cavour déclare qu'il est pleinement satisfait des explications qu'il a provoquées, et qu'il donne son adhésion à la proposition soumise au Congrès.

Après quoi MM. les Plénipotentiaires n'hésitent pas à exprimer, au nom de leurs Gouvernements, le vœu que les Etats entre lesquels s'éleverait un dissentiment sérieux, avant d'en appeler aux armes, eussent recours, en tant que les circonstances l'admettraient, aux bons offices d'une Puissance amie.

MM. les Plénipotentiaires espèrent que les Gouvernements non représentés au Congrès s'associeront à la pensée qui a inspiré le vœu consigné au présent Protocole.

(Suivent les signatures.)

ANNEXE AU PROTOCOLE No. 23.

DECLARATION.

Les Plénipotentiaires qui ont signé le Traité de Paris du trente Mars, mil huit cent cinquante-six, réunis en Conférence,—

Considérant :

Que le droit maritime, en temps de guerre, a été pendant longtemps l'objet de contestations regrettables ;

Que l'incertitude du droit et des devoirs en pareille matière, donne lieu, entre les neutres et les belligérants, à des divergences d'opinion qui peuvent faire naître des difficultés sérieuses et même des conflits ;

Qu'il y a avantage, par conséquent, à établir une doctrine uniforme sur un point aussi important ;

Que les Plénipotentiaires assemblés au Congrès de Paris ne sauraient mieux répondre aux intentions dont leurs Gouvernements sont animés, qu'en cherchant à introduire dans les rapports internationaux des principes fixes à cet égard ;

Dûment autorisés, les susdits Plénipotentiaires sont convenus de se concerter sur les moyens d'atteindre ce but ; et étant tombés d'accord ont arrêté la Déclaration solennelle ci-après :—

1. La course est et demeure abolie ;

2. Le pavillon neutre couvre la marchandise ennemie, à l'exception de la contrebande de guerre ;

3. La marchandise neutre, à l'exception de la contrebande de guerre, n'est pas saisissable sous pavillon ennemi ;

4. Les blocus, pour être obligatoires, doivent être effectifs, c'est-à-dire, maintenus par une force suffisante pour interdire réellement l'accès du littoral de l'ennemi.

Les Gouvernements des Plénipotentiaires soussignés s'engagent à porter cette Déclaration à la connaissance des Etats qui n'ont pas été appelés à participer au Congrès de Paris, et à les inviter à y accéder.

Convaincus que les maximes qu'ils viennent de proclamer ne sauraient être accueillies qu'avec gratitude par le monde entier, les Plénipotentiaires soussignés ne doutent pas que les efforts de leurs Gouvernements pour en généraliser l'adoption ne soient couronnés d'un plein succès.

La présente Déclaration n'est et ne sera obligatoire qu'entre les Puissances qui y ont ou qui y auront accédé.

Fait à Paris, le seize Avril, mil huit cent cinquante-six.

(Suivent les signatures.)

PROTOCOLE No. 24.—SÉANCE DU 16 AVRIL 1856.

Le Protocole de la précédente séance est lu et approuvé.

M. le Comte Orloff annonce qu'il est en mesure, en vertu des instructions de sa Cour, d'adhérer définitivement au vœu consigné à l'avant dernier paragraphe du Protocole No. 23.

Il est donné lecture du projet de Déclaration annexé au Protocole de la dernière réunion, après quoi, et ainsi qu'ils l'avaient décidé, MM. les Plénipotentiaires procèdent à la signature de cet Acte.

Sur la proposition de M. le Comte Walewski, et reconnaissant qu'il est de l'intérêt commun de maintenir l'indivisibilité des quatre principes mentionnés à la Déclaration signée en ce jour, MM. les Plénipotentiaires conviennent que les Puissances qui l'auront signée ou qui y auront accédé, ne pourront entrer, à l'avenir, sur l'application du droit des neutres en temps de guerre, en aucun arrangement qui ne repose à la fois sur les quatre principes objet de la dite Déclaration.

Sur une observation faite par MM. les Plénipotentiaires de la Russie, le Congrès reconnaît que la présente résolution, ne pouvant avoir d'effet retroactif, ne saurait invalider les Conventions antérieures.

M. le Comte Orloff propose à MM. les Plénipotentiaires d'offrir, avant de se séparer, à M. le Comte Walewski tous les remerciements du Congrès pour la manière dont il a conduit ses travaux: "M. le Comte Walewski formait," dit-il, "à l'ouverture de notre première réunion, le vœu de voir nos délibérations aboutir à une heureuse issue; ce vœu se trouve réalisé, et assurément l'esprit de conciliation avec lequel notre Président a dirigé nos discussions, a exercé une influence que nous ne saurions trop reconnaître, et je suis convaincu de répondre aux sentiments de tous les Plénipotentiaires en priant M. le Comte Walewski d'agréer l'expression de la gratitude du Congrès."

M. le Comte de Clarendon appuie cette proposition, qui est accueillie avec un empressement unanime par tous les Plénipotentiaires, lesquels décident d'en faire une mention spéciale au Protocole.

M. le Comte Walewski répond qu'il est extrêmement sensible au témoignage bienveillant dont il vient d'être l'objet; et de son côté, il s'empresse d'exprimer à MM. les Plénipotentiaires sa reconnaissance pour l'indulgence dont il n'a cessé de recueillir les preuves pendant la durée des Conférences. Il se félicite avec eux d'avoir si heureusement et si complétement atteint le but proposé à leurs efforts.

Le présent Protocole est lu et approuvé.

(Suivent les signatures.)

18

French Promulgation of the Declaration of Paris, 1856.

DÉCRET IMPÉRIAL PORTANT PROMULGATION DE LA DÉCLARATION DU 16 AVRIL 1856, QUI RÈGLE DIVERS POINTS DE DROIT MARITIME.

NAPOLÉON,

Par la grâce de Dieu et la volonté nationale, Empereur des Français,

A tous présents et à venir, salut :

Ayant vu et examiné la déclaration conclue, le seize avril mil huit cent cinquante-six, par les plénipotentiaires qui ont signé le traité de paix de Paris du trente mars de la même année,

Déclaration dont la teneur suit :

DECLARATION.

Les plénipotentiaires qui ont signé le traité de Paris du trente mars mil huit cent cinquante-six, réunis en conférence,

Considérant :

Que le droit maritime, en temps de guerre, a été pendant longtemps l'objet de contestations regrettables ;

Que l'incertitude du droit et des devoirs en pareille matière donne lieu, entre les neutres et les belligérants, à des divergences d'opinion qui peuvent faire naître des difficultés sérieuses et même des conflits ;

Qu'il y a avantage, par conséquent, à établir une doctrine uniforme sur un point aussi important ;

Que les plénipotentiaires assemblés au congrès de Paris ne sauraient mieux répondre aux intentions dont leurs gouvernements sont animés, qu'en cherchant à introduire dans les rapports internationaux des principes fixes à cet égard ;

Dûment autorisés, les susdits plénipotentiaires sont convenus de se concerter sur les moyens d'atteindre ce but, et, étant tombés d'accord, ont arrêté la déclaration solennelle ci-après :

1°. La course est et demeure abolie ;

2°. Le pavillon neutre couvre la marchandise ennemie, à l'exception de la contrebande de guerre ;

3°. La marchandise neutre, à l'exception de la contrebande de guerre, n'est pas saisissable sous pavillon ennemi ;

4°. Les blocus, pour être obligatoires, doivent être effectifs,

c'est-à-dire, maintenus par une force suffisante pour interdire réellement l'accès du littoral de l'ennemi.

Les gouvernements des plénipotentiaires soussignés s'engagent à porter cette déclaration à la connaissance des États qui n'ont pas été appelés à participer au congrès de Paris, et à les inviter à y accéder.

Convaincus que les maximes qu'ils viennent de proclamer ne sauraient être accueillies qu'avec gratitude par le monde entier, les plénipotentiaires soussignés ne doutent pas que les efforts de leurs gouvernements pour en généraliser l'adoption ne soient couronnés d'un plein succès.

La présente déclaration n'est et ne sera obligatoire qu'entre les puissances qui y ont ou qui y auront accédé.

Fait à Paris, le seize avril mil huit cent cinquante-six.

(Suivent les signatures.)

Sur le rapport de notre ministre et secrétaire d'État au département des affaires étrangères,

Nous avons décrété et décrétons ce qui suit :

Art. 1er. La susdite déclaration est approuvée et recevra sa pleine et entière exécution.

Art. 2. Notre ministre et secrétaire d'État au département des affaires étrangères est chargé de l'exécution du présent décret.

Fait à Paris, le vingt-huit avril mil huit cent cinquante-six.

NAPOLÉON.

19

Adherences to the Declaration of Paris.

RAPPORT À L'EMPEREUR DES FRANÇAIS SUR LA PUBLICATION DES NOTES OFFICIELLES PORTANT ACCESSION À LA DÉCLARATION DU CONGRÈS DE PARIS, DU 16 AVRIL 1856, RELATIVE AU DROIT MARITIME EN TEMPS DE GUERRE. PARIS, LE 12 JUIN 1856.

Département des Affaires Etrangères.

SIRE,

Votre Majesté daignera se rappeler que les Puissances signataires de la Déclaration du 16 Avril 1856, s'étaient engagées à faire des démarches pour en généraliser l'adoption. Je me suis

empressé en conséquence de communiquer cette Déclaration à tous les Gouvernements qui n'étaient pas représentés au Congrès de Paris en les invitant à y accéder et je viens rendre compte à l'Empereur de l'accueil favorable que cette communication a reçu de la plupart de ceux auxquels elle a été transmise.

Adoptée et consacrée par les Plénipotentiaires de l'Autriche, de la France, de la Grande Bretagne, de la Prusse, de la Russie, de la Sardaigne, et de la Turquie, la Déclaration du 16 Avril a obtenu l'entière adhésion des Etats donc les noms suivent savoir :

Bade, La Bavière, la Belgique, Brême, le Brésil, le Duché de Brunswick, le Chili, la Confédération Argentine, la Confédération Germanique, le Danemark, les Deux-Siciles, la République de l'Equateur, les Etats-Romains, Francfort, la Grèce, Guatemala, Haïti, Hambourg, le Hanovre, les deux Hesses, Lubeck, Mecklembourg-Schwérin, Mecklembourg-Strélitz, Nassau, Oldenbourg, Parme, les Pays-Bas, le Pérou, le Portugal, la Saxe, Saxe-Altenbourg, Saxe-Cobourg-Gotha, Saxe-Meiningen, Saxe-Weimar, la Suède et la Norvège, la Toscane, le Wurtemberg.[1]

Les Etats reconnaissent donc avec la France et les autres Puissances signataires du Traité de Paris,

1°. Que la course est et demeure abolie,

2°. Que le pavillon neutre couvre la marchandise ennemie à l'exception de la contrebande de guerre.

3°. Que la marchandise neutre, à l'exception de la contrebande de guerre, n'est pas saisissable sous pavillon ennemi ;

4°. Enfin, que les blocus, pour être obligatoires, doivent être effectifs, c'est-à-dire, maintenus par une force suffisante pour interdire réellement l'accès du littoral de l'ennemi.

Le Gouvernement de l'*Uruguay* à donné également son entier assentiment à ces quatres principes sauf ratification du pouvoir législatif.

L'Espagne, sans accéder à la Déclaration du 16 Avril, à cause du 1° point, qui concerne l'abolition de la course a répondu qu'elle s'appropriait les trois autres. Le Mexique a fait la même réponse. Les Etats-Unis seraient prêts de leur côté à accorder leur adhésion, s'il était ajouté à l'énoncé de l'abolition de la course que la propriété privée des sujets ou citoyens des nations belligérents serait exempte de saisie sur mer de la part des marines militaires respectives. Sauf ces exceptions, tous les cabinets ont adhéré sans réserve aux quatre principes qui

[1] The adherences now printed have been, as far as possible, brought up to date.

constituent la Déclaration du Congrès de Paris, et ainsi se trouve consacré dans le droit international de la presque totalité des Etats de l'Europe et de l'Amérique un progrès auquel le Gouvernement de Votre Majesté continuant l'une des plus honorables traditions de la politique Française peut se féliciter d'avoir puissamment contribué. Afin de constater ces adhésions je propose à l'Empereur d'autoriser l'insertion au Bulletin des lois des notes officielles dans lesquelles elles se trouvent consignées et si votre Majesté agrée cette proposition, je ferai publier de la même manière les accessions qui pourront me parvenir ultérieurement.—Je suis, &c.

A. Walewski.

ARGENTINE CONFEDERATION.

DÉCLARATION DU PRÉSIDENT DE LA CONFÉDÉRATION ARGENTINE.

Parana, le 1 *Octobre*, 1856.

(Traduction)

Nous Justo-José de Urquiza, Président Constitutionnel de la Confédération Argentine ;

Considérant que leurs Excellences MM. les Ministres Plénipotentiaires de Sa Majesté l'Empereur des Français et de Sa Majesté Britannique, au nom de leurs Gouvernements respectifs, ont invité séparément le Gouvernement National de la Confédération Argentine à adhérer aux principes sur le droit maritime arrêtés dans le Congrès de Paris, le 16 Avril de la présente année, dont la teneur suit :

1°. La course est et demeure abolie ;

2°. Le pavillon neutre couvre la marchandise ennemie, à l'exception de la contrebande de guerre ;

3°. La marchandise neutre, à l'exception de la contrebande de guerre, n'est pas saisissable sous pavillon ennemi ;

4°. Les blocus, pour être obligatoires, doivent être effectifs, c'est-à-dire, maintenus par une force suffisante pour interdire réellement l'accès du littoral de l'ennemi ;

La présente Déclaration n'est et ne sera obligatoire qu'entre les Puissances qui y ont ou qui y auront accédé.

En conséquence, et faisant usage de l'autorisation du Congrès Souverain par la loi en date du 15 Septembre dernier,

Déclarons :

Que le Gouvernement National Argentin adhère aux principes ci-dessus exprimés, se considérant comme obligé à régler, d'après eux, ses rapports avec les Gouvernements qui les ont ou qui les

auront acceptés. Le Ministre des relations extérieures communiquera et fera circuler la présente Déclaration, qui sera inscrite au registre national.

Donné dans la maison du Gouvernement dans la ville de Parana, capitale provisoire de la Confédération Argentine, le 1er Octobre de l'an 1856.

JUSTO-JOSÉ DE URQUIZA.

BADEN.

LE MINISTRE DE BADE À PARIS AU MINSTRE DES AFFAIRES ÉTRANGÈRES DE L'EMPEREUR.

Paris, le 30 *Juillet,* 1856.

M. LE MINISTRE,

Le Cabinet de Paris, ainsi que ceux de Vienne, de Londres, de Berlin et de Saint-Pétersbourg, ont bien voulu communiquer dans le temps au Gouvernement Badois la Déclaration que les Plénipotentiaires réunis au Congrès de Paris ont signée et annexée au Protocole du 16 Avril dernier, No. 24, dans le but d'établir une législation uniforme du droit maritime des neutres en temps de guerre.

Afin d'atteindre pleinement l'objet qu'il s'était proposé, le Congrès a jugé convenable que sa Déclaration fût portée à la connaissance des Gouvernements qui n'avaient pas pris part à ses travaux et pour les engager à y adhérer, invitation qui a été également adressée au Gouvernement de Son Altesse Royale le Prince-Régent, mon auguste Souverain.

En conséquence, le Soussigné, Envoyé Extraordinaire et Ministre Plénipotentiaire de Bade, conformément aux ordres qu'il a reçus, a l'honneur de faire à son Excellence M. le Ministre des Affaires Etrangères de Sa Majesté l'Empereur des Français la communication suivante :

Le Gouvernement Badois ne saurait méconnaître les grands bienfaits résultant de l'Acte en question pour le bien-être et la sécurité du commerce universel. L'on devra au principe consacré par ladite déclaration, en ce qui touche l'abolition de l'armement en course, d'avoir rassuré des intérêts dont le développement prend chaque jour de plus grandes proportions, et d'avoir posé une législation sur le droit des neutres propre à rendre désormais impossibles les complications et les conflits regrettables, amenés tant de fois dans le passé par l'incertitude des interprétations en pareille matière. Bien que les Etats maritimes soient plus spécialement intéressés dans la question, ce ne sont pas eux seuls qui recueilleront les heureux effets

des quatre points convenus au Congrès de Paris ; les fruits en riviendront à tous les pays que l'industrie et le commerce, ces liens puissants des nations, rattachent étroitement entre eux.

Le Gouvernement Badois n'hésite donc pas à se rendre à l'appel qui lui a été fait ; c'est avec une vive satisfaction qu'il donne sa pleine adhésion à des principes si conformes à l'esprit et à la civilisation de notre siècle.

En informant Son Excellence M. le Ministre des Affaires Etrangères que le Gouvernement de Son Altesse Royale le Prince-Régent de Bade adhère sans restriction à la Déclaration signée à Paris, le 16 Avril dernier, le Soussigné a l'honneur de prier son Excellence de vouloir bien lui accuser réception de la présente.—Il saisit, &c.

BARON DE SCHWEIZER.

BAVARIA.

LE MINISTRE DES AFFAIRES ÉTRANGÈRES DE BAVIÈRE AU CHARGÉ D'AFFAIRES DE BAVIÈRE À PARIS.

Munich, le 4 Juillet, 1856.

M. LE COMTE,

M. le Comte de Massignac, Chargé d'Affaires de France près cette Cour, m'a communiqué, en vertu des ordres de son Gouvernement et en invitant le Gouvernement Bavarois à y adhérer, une Déclaration signée le 16 Avril dernier, par MM. les Plénipotentiaires des Puissances représentées au Congrès de Paris et dans laquelle sont posés, en matière de droit maritime, les principes suivants :

1°. La course est et demeure abolie ;

2°. Le pavillon neutre couvre la marchandise ennemie, à l'exception de la contrebande de guerre ;

3°. La marchandise neutre, à l'exception de la contrebande de guerre, n'est pas saisissable sous pavillon ennemi ;

4°. Les blocus, pour être obligatoires, doivent être effectifs, c'est-à-dire, maintenus par une force suffisante pour interdire réellement l'accès du littoral de l'ennemi.

Le Gouvernement du Roi, M. le Comte, constate avec une vive satisfaction, due à l'initiative du Gouvernement de Sa Majesté l'Empereur des Français, le grand progrès qui vient de s'accomplir dans cette branche importante du droit international. La nouvelle doctrine, en effet, est fondée sur les principes de l'équité la plus évidente ; elle est, en outre, en tous points conforme à l'esprit pacifique et civilisateur dont se glorifie à juste titre l'époque actuelle, et elle mettra heureusement fin à

des divergences d'opinion qui souvent ont été la source de difficultés sérieuses et de conflits.

Ce document ayant été placé sous les yeux du Roi, notre auguste Souverain, qui en a reconnu la haute importance en payant en même temps un juste tribut de reconnaissance aux Hautes Puissances représentées au Congrès de Paris, je viens d'être autorisé à porter à votre connaissance, M. le Comte, que le Gouvernement Bavarois adhère pleinement et avec empressement aux principes de droit maritime proclamés dans la séance du 16 Avril, qu'il les accepte et entend les appliquer dans leur ensemble, et qu'il s'engage à n'entrer à l'avenir dans aucun engagement sur l'application du droit maritime en temps de guerre sans stipuler l'observation des quatre points susénoncés.

Vous voudrez bien, M. le Comte, donner lecture et laisser copie de la présente dépêche à M. le Comte Walewski.—Recevez, &c.

VON DER PFORDTEN.

BELGIUM.

LE MINISTRE DES AFFAIRES ÉTRANGÈRES DE BELGIQUE AU MINISTRE PLÉNIPOTENTIAIRE DE FRANCE À BRUXELLES.

Bruxelles, le 6 *Juin,* 1856.

M. LE MINISTRE,

Votre Excellence a été chargée d'inviter le Gouvernement du Roi à accéder à la Déclaration souscrite, le 16 Avril dernier, par les Puissances qui ont participé au Congrès de Paris, déclaration qui a pour objet de consacrer les principes de droit maritime, savoir :

1°. La course est et demeure abolie ;

2°. Le pavillon neutre couvre la marchandise ennemie, à l'exception de la contrebande de guerre ;

3°. La marchandise neutre, à l'exception de la contrebande de guerre, n'est pas saisissable sous pavillon ennemi ;

4°. Les blocus, pour être obligatoires, doivent être effectifs, c'est-à-dire, maintenus par une force suffisante pour interdire réellement l'accès du littoral de l'ennemi.

Après avoir pris les ordres du Roi, mon auguste Souverain, j'ai l'honneur de donner acte à votre Excellence de la pleine et entière adhésion de la Belgique à la Déclaration susmentionnée et aux principes qu'elle renferme. J'ajouterai, M. le Ministre, que Sa Majesté en a hautement apprécié le caractère élevé : elle se félicite de l'influence salutaire que cette nouvelle base

du droit public maritime doit exercer dans l'avenir, et m'a chargé d'être ici l'interprête de ses sentiments de satisfaction.

VICOMTE VILAIN XIIII.

BRAZIL.

LE MINISTRE DES AFFAIRES ÉTRANGÈRES DU BRÉSIL AU MINISTRE DE FRANCE.

Rio Janeiro, le 18 *Mars*, 1858.

(Traduction)

Le Soussigné du Conseil de Sa Majesté l'Empereur, Ministre Secrétaire d'Etat des Affaires Etrangères, a porté à la connaissance du Gouvernement Impérial l'invitation qui lui a été faite par M. le Chevalier de Saint-Georges, Envoyé Extraordinaire et Ministre Plénipotentiaire, au nom de Sa Majesté l'Empereur des Français, relativement aux principes généraux de droit international proclamés par le Congrès de Paris.

Le Gouvernement de Sa Majesté l'Empereur ne pouvait que faire le plus bienveillant accueil à la Déclaration par laquelle les Plénipotentiaires du Traité Européen du 30 Mars, 1856, ont terminé leur glorieuse mission. Le droit conventionnel de l'Empire, comme ne l'ignore pas M. de Saint-Georges, a toujours été inspiré par les mêmes sentiments libéraux et pacifiques qui consacrent la doctrine la plus généralement suivie jusqu'à ce jour.

Ces dispositions amicales du Gouvernement Impérial n'ont été que confirmeés par l'examen réfléchi de l'important objet auquel se réfère l'invitation du Gouvernement de Sa Majesté l'Empereur des Français, et le soussigné a la satisfaction, d'après les ordres de l'Empereur, son auguste Souverain, de faire savoir à M. de Saint-Georges que le Gouvernement Impérial adhère entièrement aux principes de droit maritime établis par les Conférences de Paris, à savoir :

1°. La course est et demeure abolie ;

2°. Le pavillon neutre couvre la marchandise ennemie, à l'exception de la contrebande de guerre ;

3°. La marchandise neutre, à l'exception de la contrebande de guerre, n'est pas saisissable sous pavillon ennemi ;

4°. Les blocus, pour être obligatoires, doivent être effectifs, c'est-à-dire maintenus par une force suffisante pour interdire réellement l'accès du littoral de l'ennemi.

Le Gouvernement Impérial, en s'associant dans cette forme, quant à l'adoption de maximes si modérées et si justes, aux Gouvernements qui en ont pris l'initiative, espère que la politique

sage et généreuse qui les a inspirées en réglera également la vraie pratique, évitant, autant qu'il sera possible, les désaccords et les conflits qui, de tout temps, ont apporté des restrictions aux principes énoncés aux paragraphes 2 et 3 à l'égard du droit de visite et de la qualification de marchandise hostile, et aussi quant au principe énoncé au paragraphe 4, en ce qui déterminera sa condition essentielle et les cas de violation effective de la part des neutres.

L'humanité et la justice doivent certainement au Congrès de Paris une grande amélioration apportée à la loi commune des nations ; mais, au nom des mêmes principes, on peut encore demander aux Puissances signataires du Traité du 30 Mars, 1856, comme complément de son œuvre de justice et de civilisation, la conséquence salutaire que renferment les maximes qu'elles ont proclamées. Cette conséquence est que, toute propriété particulière inoffensive, sans exception, des navires marchands, doit être placée sous la protection du droit maritime à l'abri des attaques des croiseurs de guerre.

Le Gouvernement Impérial adhère en cela à l'invitation des Etats-Unis d'Amérique et, dans l'espoir que la modification proposée par cette Puissance au premier des principes proclamés par le Congrès de Paris se réalisera, se déclare dès à présent disposé à l'admettre comme la complète expression de la nouvelle juridiction internationale.

Le Soussigné, en adressant à M. de Saint-Georges cette agréable communication, saisit cette occasion pour lui renouveler les expressions de sa parfaite estime et de sa considération distinguée.

J. M. da Silva Paranhas.

BREMEN.

LE SYNDIC CHARGÉ DES AFFAIRES ÉTRANGÈRES DE LA VILLE DE BRÊME AU MINISTRE RÉSIDENT DES VILLES LIBRES À PARIS.

Brême, le 11 *Juin*, 1856.

M. le Ministre,

M. l'Envoyé de France s'est acquitté auprès de moi de la communication dont il avait été chargé par le Gouvernement de Sa Majesté Impériale, au sujet de la Déclaration du Congrès de Paris concernant les principes de droit maritime en temps de guerre. Cette communication a été accueillie par le Sénat avec la satisfaction que devait lui faire éprouver l'adoption de principes si favorables aux intérêts des neutres et si conformes aux progrès de notre temps. Le Sénat ne saurait donc, Monsieur,

que s'empresser d'adhérer à la Déclaration signée par les membres du Congrès de Paris, le 16 Avril dernier, convaincu que l'adhésion à donner à l'acte dont il s'agit ne devra produire tout l'effet désirable qu'autant qu'elle embrassera dans son ensemble les quatre principes posés par les Puissances signataires. C'est dans cette mesure qu'il n'hésite pas à la formuler, en considérant comme étant liés d'une manière indivisible les quatre points résolus par la Déclaration précitée.

Je vous invite, en conséquence, Monsieur, à porter cette adhésion pleine et sans réserve à la connaissance de M. le Comte Walewski, à qui vous voudrez bien laisser copie de la présente dépêche. Je ne doute pas qu'elle ne réponde complètement aux vœux du Gouvernement de l'Empereur et au but de la communication que M. Edouard Cintrat avait été chargé de nous faire.

Vous profiterez en même temps de cette occasion, Monsieur, pour réitérer à M. le Ministre des Affaires Etrangères l'expression de la sincère reconnaissance du Sénat pour tous les généreux principes de droit public qui, sur l'initiative de l'Empereur, inspiré de la politique traditionnelle de la France, ont été consacrés par le Congrès, dans le noble but d'empêcher, dorénavant, autant que cela est possible, les guerres, ou d'en diminuer les tristes conséquences.—Recevez, &c.

SMIDT.

BRUNSWICK.

LE MINISTRE D'ÉTAT DU DUC DE BRUNSWICK AU CHARGÉ D'AFFAIRES DE FRANCE.

Brunswick, le 7 Décembre, 1857.

M. de Chargé d'Affaires, le Soussigné Ministre d'Etat Ducal a eu l'honneur de recevoir la copie d'une dépêche de M. le Comte Walewski, avec la copie y jointe de la Déclaration des Plénipotentiaires au Congrès de Paris, relatives aux nouveaux principes du droit maritime arrêtés dans la séance du 16 Avril, 1856, lesquelles pièces vous avez bien voulu lui transmettre par votre note du 4 courant, et il se hâte, M. le Chargé d'Affaires, de vous en présenter l'expression de toutes ses obligations. Le Gouvernement de Son Altesse le Duc sait parfaitement apprécier le progrès sur le domaine du droit des gens, se manifestant dans les principes de cette déclaration, ainsi que les bienfaits pour le commerce et les rapports internationaux, qui ne tarderont pas à en découler, et il ne saurait que s'en féliciter.

Comme la Diète Fédérale a, dans sa séance du 10 Juillet dernier, unanimement déclaré son adhèsion aux principes en

question, et que les représentants de la France, de la Grande-Bretagne et de la Russie à Francfort ont été informés de cette conclusion, il sera permis au Soussigné Ministre d'Etat de s'y référer.—Le Soussigné, &c.

GEYSO.

CHILI.

LE MINISTRE DES RÉLATIONS EXTÉRIEURES DU CHILI AU CHARGÉ D'AFFAIRES DE FRANCE.

(Traduction) *Santiago, le* 13 *Août*, 1856.

MONSIEUR,

J'ai eu l'honneur de recevoir votre note en date du 24 du mois dernier, par laquelle vous invitez mon Gouvernement, au nom de celui de Sa Majesté l'Empereur, à s'associer à la Déclaration signée par les Plénipotentiaires du Congrès de Paris, le 16 Avril dernier, et ayant pour objet de fixer des bases uniformes de droit maritime à l'égard des neutres. J'ai reçu en même temps une copie de la note que M. le Ministre des Affaires Etrangères de France vous a adressée à ce sujet, et de la Déclaration susmentionnée du 16 Avril.

Les quatre principes sanctionnés et promulgués dans cette déclaration ont déjà été en partie l'objet de stipulations formelles dans les Traités que la République a conclus avec des Puissances de l'Europe et de l'Amérique.

Les règles proclamées sur cette matière par le Congrès de Paris sont donc en tout conformes à la politique de mon Gouvernement, et aucune difficulté ne s'oppose à la signature d'engagements propres à les sanctionner et à les y généraliser.

Si votre Gouvernement est animé du même désir, le mien sera heureux de concourir, pour sa part, à la généralisation de principes aussi conformes aux intérêts généraux du commerce du monde et qui sont en harmonie si parfaite avec la civilisation de notre époque.—Je saisis, &c.

A. VARGAS.

DENMARK.

LE MINISTRE DES AFFAIRES ÉTRANGÈRES DE DANEMARC AU MINISTRE DE FRANCE.

Copenhague, le 25 *Juin*, 1856.

Le Soussigné, Ministre des Affaires Etrangères de Sa Majesté le Roi de Danemark, a eu l'honneur de recevoir la note que M. Dotézac, Envoyé Extraordinaire et Ministre Plénipotentiaire de Sa Majesté l'Empereur des Français, a bien voulu lui adresser, en date du 2 du courant, en lui remettant, par ordre de son

Gouvernement, la Déclaration que le Congrès de Paris a, sur la proposition du premier Plénipotentiaire de Sa Majesté l'Empereur Napoléon, adoptée dans la séance du 16 Avril dernier, touchant certains principes du droit maritime en temps de guerre, dont les Puissances signataires du Traité de Paix du 30 Mars de la présente année sont convenues de faire entre elles la règle invariable de leur conduite.

A cette note était également jointe une dépêche de Son Excellence M. le Comte Walewski, Ministre des Affaires Etrangères de Sa Majesté l'Empereur des Français, en date du 15 Mai, par laquelle M. Dotézac a été chargé d'inviter le Gouvernement de Sa Majesté le Roi de Danemark à accéder à la Déclaration susmentionnée.

Le Soussigné s'est fait un devoir de remettre cette Déclaration au Roi, son auguste Souverain, en portant l'attention de Sa Majesté sur les considérations qui en ont motivé la signature et qui justifient pour l'avenir, sans restriction et dans leur ensemble, les principes qui en font l'objet.

La Déclaration porte :

1°. Que la course est et demeure abolie ;

2°. Que le pavillon neutre couvre la marchandise ennemie, à l'exception de la contrebande de guerre ;

3°. Que la marchandise neutre, à l'exception de la contrebande de guerre, n'est pas saisissable sous pavillon ennemi ;

4°. Que les blocus, pour être obligatoires, doivent être effectifs, c'est-à-dire maintenus par une force suffisante pour interdire réellement l'accès du littoral ennemi.

Enfin il est stipulé dans la Déclaration qu'elle n'est et ne sera obligatoire qu'entre les Puissances qui y ont ou qui y auront accédé.

La justice des principes énoncés est si évidente et les principes mêmes sont si conformes à l'esprit de la législation Danoise en matière de droit maritime, que l'invitation qui vient d'être ainsi adressée au Gouvernement du Roi a été doublement agréable à Sa Majesté.

En conséquence, le Soussigné se trouve autorisé à déclarer, par la présente, que le Gouvernement de Sa Majesté le Roi de Danemark accède à la Déclaration signée, le 16 Avril de l'année courante, par les Plénipotentiaires réunis au Congrès de Paris, et qu'il adopte, sans restriction et dans leur ensemble, les principes consacrés par cet acte, en en reconnaissant l'indivisibilité pour l'avenir.

En priant M. Dotézac de vouloir bien porter la présente note à la connaissance du Gouvernement Impérial, le Soussigné, &c. De Scheele.

ECUADOR.

DÉCRET DU SÉNAT ET DE LA CHAMBRE DES REPRÉSENTANTS DE L'EQUATEUR RÉUNIS EN CONGRÈS.

Quito, le 6 Décembre, 1856.

(Traduction)

Le Sénat et la Chambre des représentants de l'Equateur, réunis en Congrès,

Considérant que la Déclaration adoptée au Congrès de Paris, en date du 16 Avril de la présente année 1856, par les Plénipotentiaires de plusieurs Etats de l'Europe, est conforme aux principes que la République a professés jusqu'à ce jour et stipulés avec plusieurs nations de l'Amérique,

DÉCRÉTENT :

Art. 1. La République de l'Equateur adhère à la Déclaration signée à Paris, le 16 Avril de la présente année, par les Plénipotentiaires de l'Europe, déclaration qui comprend les résolutions suivantes :

1°. La course est abolie ;

2°. Le pavillon neutre couvre la marchandise ennemie, à l'exception de la contrebande de guerre ;

3°. La marchandise neutre, à l'exception de la contrebande de guerre, n'est pas saisissable sous pavillon ennemi ;

4°. Le blocus, pour être obligatoire, doit être effectif, c'est-à-dire doit être maintenu par une force suffisante pour interdire l'accès du littoral de l'ennemi.

2. A l'égard des Etats qui ont adhéré ou qui adhéreront, la République de l'Equateur s'engage, en conséquence, à observer tous et chacun des points exprimés dans l'Article précédent.

Soit communiqué au Pouvoir Exécutif pour être publié et mis en vigueur.

Donné à Quito, capitale de la République, le 29 Novembre, 1856, l'an XII de la Liberté.

Le Président du Sénat,
MANUEL BUSTAMENTE.

Le Président de la Chambre des Représentants,
PAUL GUEVARA.

Le Secrétaire du Sénat,
MODESTE ESPINOSA.

Le Secrétaire de la Chambre des Représentants,
PAUL BUSTAMENTE.

Palais du Gouvernement, à Quito, le 6 Décembre, 1856, an XII de la Liberté.

Pour être mis à exécution.

MARCOS SPRIEL.
ANTONIO MATA.

FRANKFORT.

LE PREMIER BOURGMESTRE DE FRANCFORT AU MINISTRE DE FRANCE.

Francfort-sur-le-Mein, le 17 *Juin*, 1856.

Le soussigné, Premier Bourgmestre de la Ville Libre de Francfort, s'est empressé de porter à la connaissance du haut Sénat la communication officielle que M. le Comte de Monttessuy, Ministre Plénipotentiaire de Sa Majesté l'Empereur des Français, a bien voulu lui faire au sujet de la Déclaration à l'égard du droit maritime arrêtée à Paris, le 16 Avril, 1856, au nom de leurs Gouvernements respectifs, par les Plénipotentiaires qui ont signé le Traité de Paris du 30 Mars, 1856.

Le Senat, appréciant dans toute leur éténdue la haute portée des dispositions de la Déclaration en question, disposition qui règlent le droit maritime en temps de guerre d'une manière analogue aux intérêts du commerce et de la civilisation, et propres à prévenir et à résoudre les difficultés et les conflits dus à l'incertitude de la loi internationale en pareille matière, à chargé le soussigné de répondre à la communication qui lui a été faite par la déclaration officielle :

Que le Sénat de cette Ville Libre accède sans restriction au contenu de la Déclaration sur le droit maritime du 16 Avril, 1856, ainsi qu'à l'engagement de n'entrer, à l'avenir, dans aucun arrangement sur l'application du droit maritime en temps de guerre sans stipuler la stricte observation des 4 points résolus par la Déclaration.

Le Sénat ne doute pas que tous les Etats qui n'ont pas été appelés à participer au Congrès de Paris répondront avec gratitude à l'invitation d'accéder à un Acte qui, à juste titre, est considéré comme un des progrès qui font la gloire de notre temps et comme le véritable couronnement de l'œuvre de pacification conclue à Paris.

Le soussigné a l'honneur de prier M. le Comte de Monttessuy de vouloir bien porter la déclaration du Sénat à la connaissance du Gouvernement de Sa Majesté l'Empereur, et saisit, &c.

Dr NEUBURG.

GERMANIC CONFEDERATION.

LE PRÉSIDENT DE LA DIÈTE GERMANIQUE AU MINISTRE DE FRANCE.

Francfort, le 10 *Juillet*, 1856

(Traduction)

Le Soussigné a l'honneur de prévenir son Excellence M. le Comte de Monttessuy, Envoyé Extraordinaire et Ministre Plénipotentiaire de Sa Majesté l'Empereur des Français, que la Haute-Diète a pris connaissance avec le plus vif intérêt de la communication que son Excellence a bien voulu lui faire relativement à la Déclaration signée à Paris, le 16 Avril dernier, concernant l'interprétation et l'application du droit maritime en temps de guerre.

Conformément à l'invitation qui y est exprimée ainsi qu'aux propositions faites conjointement par les Gouvernements de Sa Majesté l'Empereur d'Autriche et de Sa Majesté le Roi de Prusse, et aux communications faites de la part des légations de Sa Majesté Britannique et de Sa Majesté l'Empereur de Russie, la Haute-Diète a pris, dans sa séance d'aujourd'hui, la décision dont le Soussigné a l'honneur de transmettre ci-jointe une copie.—Il saisit, &c.

RECHBERG.

RÉSOLUTION DE LA DIÈTE GERMANIQUE, DU 10 JUILLET, 1856.

(Traduction)

La Diète Germanique a décidé :

En appréciant et en reconnaissant pleinement le contenu et les fins de la Déclaration concernant l'interprétation et l'application du droit maritime en temps de guerre, que les Plénipotentiaires réunis au Congrès de paix de Paris ont signée comme annexe du Protocol XXIV des Conférences, et par laquelle a été arrêté ce qui suit :

1°. La course est et demeure abolie ;

2°. Le pavillon neutre couvre la marchandise ennemie, à l'exception de la contrebande de guerre ;

3°. La marchandise neutre, à l'exception de la contrebande de guerre, n'est pas saisissable sous pavillon ennemi ;

4°. Les blocus, pour être obligatoires, doivent être effectifs, c'est-à-dire maintenus par une force suffisante pour interdire réellement l'accès du littoral de l'ennemi.

De se rendre à l'invitation qui lui a été faite de la part de l'Autriche et de la Prusse, ainsi que des Cours de France, de la

Grande-Bretagne et de Russie, d'adhérer à cette Déclaration et par conséquent d'y accéder au nom de la Confédération Germanique.

GREECE.

LE MINISTRE DES AFFAIRES ÉTRANGÈRES DE GRÈCE AU MINISTRE DE FRANCE.

Athènes, le $\frac{8}{20}$ *Juin*, 1856.

Le Soussigné, Ministre de la Maison Royale et des Rélations Extérieures de Sa Majesté Hellénique, a l'honneur d'accuser réception à M. l'Envoyé Extraordinaire et Ministre Plénipotentiaire de Sa Majesté l'Empereur des Français, de la note, en date du 6 Juin, par laquelle il a bien voulu lui communiquer la Déclaration sur les droits des neutres en temps de guerre maritime, signée à Paris le $\frac{4}{16}$ Avril, 1856, et dont la teneur suit :

Déclaration.

Les Plénipotentiaires qui ont signé le Traité de Paris du 30 Mars, 1856, réunis en Conférence,

Considérant :

Que le droit maritime, en temps de guerre, a été, pendant longtemps, l'objet de contestations regrettables ;

Que l'incertitude du droit et des devoirs, en pareille matière, donne lieu, entre les neutres et les belligérants, à des divergences d'opinion qui peuvent faire naître des difficultés sérieuses et même des conflits ;

Qu'il y a avantage, par conséquent, à établir une doctrine uniforme sur un point aussi important ;

Que les Plénipotentiaires assemblés au Congrès de Paris ne sauraient mieux répondre aux intentions dont leurs Gouvernements sont animés, qu'en cherchant à introduire dans les rapports internationaux des principes fixes à cet égard ;

Dûment autorisés, les Plénipotentiaires sont convenus de se concerter sur les moyens d'atteindre ce but, et, étant tombés d'accord, ont arrêté la Déclaration solennelle ci-après :

1°. La course est et demeure abolie ;

2°. Le pavillon neutre couvre la marchandise ennemie, à l'exception de la contrebande de guerre ;

3°. La marchandise neutre, à l'exception de la contrebande de guerre n'est pas saisissable sous pavillon ennemi ;

4°. Les blocus, pour être obligatoires, doivent être effectifs, c'est-à-dire maintenus par une force suffisante pour interdire réellement l'accès du littoral de l'ennemi.

Les Gouvernements des Plénipotentiaires soussignés s'engagent à porter cette Déclaration à la connaissance des Etats qui n'ont pas été appelés à participer au Congrès de Paris, et à les inviter à y accéder.

Convaincus que les maximes qu'ils viennent de proclamer ne sauraient être accueillies qu'avec gratitude par le monde entier, les Plénipotentiaires soussignés ne doutent pas que les efforts de leurs Gouvernements, pour en généraliser l'adoption, ne soient couronnés d'un plein succès.

La présente Déclaration n'est et ne sera obligatoire qu'entre les Puissances qui y ont ou qui y auront accédé.

Fait à Paris, le 16 Avril, 1856.

Buol Schauenstein.	Hubner.
A. Walewski.	Bourqueney.
Clarendon.	Cowley.
Manteuffel.	Hatzfeldt.
Orloff.	Brunow.
C. Cavour.	De Villamarina.
Aali.	Mehemmed Djemil.

Le Gouvernement de Sa Majesté se félicite sincèrement d'avoir à donner son accession à un acte qui est une véritable conquête de la justice et de la science du droit sur des maximes différemment conçues et plus différemment encore appliquées jusqu'à présent par les diverses nations. Les grandes Puissances signataires du Traité de Paix de Paris peuvent se glorifier à juste titre d'avoir ajouté à leur grande œuvre de pacification un bienfait aussi important que celui dont elles viennent de doter le monde entier.

Le Soussigné, après avoir pris les ordres du Roi, son auguste Souverain, s'empresse donc de déclarer à M. l'Envoyé Extraordinaire et Ministre Plénipotentiaire de France, que le Gouvernement Grec adhère à toutes et à chacune des quatre clauses contenues dans la susdite Déclaration, et promet de s'y conformer exactement, le cas échéant.

Toutefois, comme la Déclaration n'est et ne sera obligatoire qu'entre les Puissances qui y ont ou qui y auront accédé, le Soussigné prie M. Mercier de faire prendre à son Gouvernement les dispositions convenables pour informer le Gouvernement Grec quelles sont les Puissances qui ont déjà exprimé ou exprimeront, dans la suite, leur adhésion à la Déclaration.

A. R. Rangabe.

GUATEMALA.

LE MINISTRE DES RÉLATIONS EXTÉRIEURES DE GUATEMALA AU CHARGÉ D'AFFAIRES DE FRANCE.

(Traduction) *Guatemala, le* 30 *Août*, 1856.

M. LE VICOMTE,

J'ai eu l'honneur de recevoir, avec la note que vous avez bien voulu m'adresser le 18 de ce mois, une copie de la dépêche de son Excellence M. le Comte Walewski, par laquelle ce Ministre vous charge d'engager le Gouvernement de Guatemala à adhérer aux principes de droit maritime adoptés par les Plénipotentiaires réunis dernièrement à Paris, et qui sont constatés par la Déclaration signée, le 16 Avril dernier, dont vous avez bien voulu m'envoyer également une copie.

En réponse à cette note, j'ai l'honneur de vous informer, Monsieur, que le Président de la République est d'avis que les principes établis dans cette Déclaration sont non-seulement d'une justice rigoureuse, mais qu'ils peuvent être en même temps une garantie pour les nations faibles ; en conséquence, son Excellence, avec l'assentiment unanime de son Cabinet d'Etat, donne avec satisfaction son adhésion formelle aux principes importants contenus dans la Déclaration faite, le 16 Avril dernier, par le Congrès de Paris.—Je saisis, &c.

P. DE AYCINENA.

HAITI.

LE MINISTRE DES RÉLATIONS EXTÉRIEURES D'HAÏTI AU CHARGÉ D'AFFAIRES DE FRANCE.

Cayes, le 17 *Septembre*, 1856.

Le Soussigné, Ministre des Relations Extérieures de Sa Majesté l'Empereur d'Haïti, a eu l'honneur de recevoir la note de M. le Vice-Consul, chargé de la Légation et du Consulat général de France à Port-au-Prince, par laquelle il a officiellement signifié au Gouvernement Haïtien la Déclaration du 16 Avril dernier des Plénipotentiaires Européens du Congrès de Paris, et demandé au Gouvernement de Sa Majesté Impériale son adhésion aux principes du droit maritime international proclamés dans le Congrès précité.

Le Ministre des Relations Extérieures d'Haïti est chargé d'annoncer au Vice-Consul de France la pleine et entière adhésion du Gouvernement Impérial et ajoute que cette adhésion,

ainsi que la Déclaration qui y a donné lieu, seront rendues publiques par le journal officiel du Gouvernement.

Le Ministre des Relations Extérieures d'Haïti prie M. le Vice-Consul d'agréer, &c.

L. Dufrene.

HAMBURG.

LE SYNDIC CHARGÉ DES AFFAIRES ÉTRANGÈRES DE HAMBOURG AU MINISTRE RÉSIDENT DES VILLES LIBRES À PARIS.

Hambourg, le 27 *Juin*, 1856.

Monsieur le Ministre,

M. l'Envoyé de Sa Majesté l'Empereur des Français m'a communiqué le 3 de ce mois, en m'en laissant copie, une dépêche que le Ministre des Affaires Étrangères, M. le Comte Walewski, lui avait adressée, en date du 19 Mai, au sujet des principes de droit maritime en temps de guerre adoptés par les Puissances signataires du Traité de Paris, et par l'adoption desquels les signataires, et surtout la France, par la généreuse proposition de laquelle cette résolution a été prise, se sont acquis des titres durables à la profonde reconnaissance de toutes les nations maritimes. Une communication analogue m'a été faite le même jour par les Ministres d'Autriche, de la Grande-Bretagne, de Prusse et de Russie.

Sur le rapport que je lui en avais fait, le Sénat vous autorise, conformément au désir que M. le Comte Walewski en avait exprimé dans sa dépêche du 19 Mai, à déclarer à Son Excellence, au nom du Sénat, que le Sénat adhère pleinement et sans restriction quelconque aux 4 points contenus dans la Déclaration sur le droit maritime en temps de guerre, que M. Cintrat a bien voulu nous transmettre, et que le Sénat s'engage en même temps à n'entrer à l'avenir, sur l'application du droit maritime en temps de guerre, dans aucun arrangement sans stipuler la stricte observation des 4 points résolus par cette Déclaration.

Vous profiterez en même temps de cette occasion, Monsieur, pour réitérer à M. le Ministre des Affaires Étrangères l'expression de la sincère reconnaissance du Sénat pour tous les généreux principes de droit public qui, sur l'initiative de l'Empereur, inspiré de la politique traditionnelle de la France, ont été consacrés par le Congrès, dans le noble but d'empêcher dorénavant, autant que cela est possible, les guerres, ou d'en diminuer les tristes conséquences.

Vous voudrez bien donner lecture et laisser copie de cette dépêche à M. le Ministre des Affaires Étrangères.—Agréez, &c.

Merck.

HANOVER.

LE MINISTRE DES AFFAIRES ÉTRANGÈRES DE HANOVRE AU MINISTRE DE FRANCE.

Hanovre, le 31 *Mai*, 1856.

Le Soussigné, Ministre d'Etat et des Affaires Etrangères, a reçu la note du 28 de ce mois, que M. le Comte de Reculot, Envoyé Extraordinaire et Ministre Plénipotentiaire de Sa Majesté l'Empereur des Français, au nom de son Gouvernement, a bien voulu lui adresser pour inviter le Gouvernement Hanovrien à adhérer à la Déclaration des Plénipotentiaires au Congrès de Paris relative aux nouveaux principes du droit maritime arrêtés dans la séance du 16 Avril dernier.

Appréciant dans toute leur valeur la généreuse initiative prise à cette occasion et les motifs élevés qui l'ont dictée, le Gouvernement Hanovrien reconnaît avec une vive satisfaction, dans les principes appelés désormais à servir de règle au droit maritime international, l'éclatant témoignage d'un grand progrès accompli, constatant, à la véritable gloire de ceux qui l'ont réalisé, le sentiment profond du droit et de l'équité, et qui restera dans l'histoire comme l'un des plus beaux monuments de la civilisation moderne.

Organe de la plus vive reconnaissance de Gouvernement Hanovrien envers les Hautes Puissances représentées au Congrès de Paris, le soussigné Ministre d'Etat et des Affaires Etrangères, autorisé à cet effet par le Roi, son auguste Maître, a l'honneur de porter à la connaissance de M. le Comte de Reculot, que le Gouvernement Hanovrien adhère avec empressement à la Déclaration des Plénipotentiaires au Congrès de Paris relative aux nouveaux principes du droit maritime arrêtés dans la séance du 16 Avril dernier, qu'il en accepte l'application pleine et entière, et qu'il s'engage nommément à n'entrer, à l'avenir, en aucun arrangement sur l'application du droit maritime en temps de guerre sans stipuler la stricte observation des quatre points résolus par ladite Déclaration.—Le Soussigné, &c.

PLATEN HALLERMUND.

HESSE-CASSEL.

LE MINISTRE D'ÉTAT DE HESSE-CASSEL AU CHARGÉ D'AFFAIRES DE FRANCE.

Cassel, le 4 *Juin*, 1856.

MONSIEUR,

Ayant reçu par l'intermédiaire de M. de Montherot, Envoyé Extraordinaire et Ministre Plénipotentiaire de Sa Majesté l'Empereur des Français près la Cour Electorale de Hesse, les

copies d'une dépêche de M. le Ministre des Affaires Etrangères de Sa Majesté l'Empereur, ainsi que d'une Déclaration en date du 16 Avril dernier, toutes deux ayant trait aux nouveaux principes du droit maritime en temps de guerre adoptés par les Plénipotentiaires au Congrès de Paris, j'ai l'honneur de vous prévenir, Monsieur, que je me suis fait un devoir d'en porter le contenu à la connaissance de l'Electeur, mon auguste Maître, et que Son Altesse Royale a accueilli cette communication avec un intérêt particulier, daignant en même temps exprimer son adhésion aux principes énoncés.—Veuillez, &c.

DE MEYER.

HESSE-DARMSTADT.

LE MINISTRE DES AFFAIRES ÉTRANGÈRES DE HESSE-DARMSTADT AU MINISTRE PLÉNIPOTENTIAIRE DE SON ALTESSE ROYALE LE GRAND-DUC À PARIS.

Darmstadt, le 15 *Juin*, 1856.

M. LE BARON,

J'ai l'honneur de vous transmettre sous ce pli copie de deux pièces importantes que M. le Vicomte Rœderer a bien voulu me communiquer, il y a quelque temps, savoir, d'une dépêche de M. le Comte Walewski, en date du 15 du mois passé, et d'une Déclaration des Plénipotentiaires qui ont signé le Traité de Paris du 30 Mars dernier, destinée à fixer les principes du droit maritime en temps de guerre.

Le Gouvernement Grand-Ducal, très-sensible à l'invitation que le Cabinet des Tuileries lui a fait adresser, par l'organe de la Légation Impériale à Darmstadt, d'accéder à la Déclaration du Congrès de Paris sur cette importante matière, ne saurait qu'applaudir à une doctrine si favorable à la sécurité et au développement des rapports internationaux.

Son Altesse Royale le Grand-Duc m'a, en conséquence, donné l'ordre de vous charger, Monsieur le Baron, de faire connaître au Gouvernement Impérial combien celui du Grand-Duché de Hesse se réjouit des heureux résultats des démarches que, par ordre de Sa Majesté l'Empereur, M. le Comte Walewski a faites au Congrès de Paris dans un but d'utilité si réelle et si universelle.

Vous ajouterez que le Gouvernement Grand-Ducal adhère avec empressement, sans réserve ni restriction quelconque, à cette Déclaration comme établissant des principes indivisibles.

Vous voudrez bien, d'ailleurs, donner lecture et laisser copie de la présente dépêche à son Excellence M. le Comte Walewski. —Agréez, &c.

BARON DE DALWIGK.

HOLLAND.

LE MINISTRE DES AFFAIRES ÉTRANGÈRES DES PAYS-BAS AU MINISTRE DE FRANCE.

La Haye, le 7 Juin, 1856.

Le Soussigné, Ministre d'Etat et des Affaires Etrangères, a eu l'honneur de recevoir de M. le Baron d'André, Envoyé Extraordinaire et Ministre Plénipotentiaire de Sa Majesté l'Empereur des Français, en date du 2 de ce mois, communication de la Déclaration faite en Conférence à Paris, le 16 Avril, 1856, au nom de leurs Gouvernements respectifs, par les Plénipotentiaires qui ont signé le Traité du 30 Mars de la même année, et relative au droit maritime en temps de guerre.

Pareille communication a été faite au Soussigné par les autres légations des Puissances signataires du Traité du 30 Mars, accréditées à la Haye.

A cette communication était jointe l'invitation d'accéder à la Déclaration précitée.

Le Gouvernement de Sa Majesté le Roi des Pays-Bas a reçu cette communication avec une satisfaction proportionnée à l'œuvre de haute civilisation qui, par l'adoption unanime des maximes contenues dans la Déclaration, a été accomplie dans la Conférence de Paris.

A ces maximes, du reste, les Pays-Bas ont toujours rendu hommage.

C'est, en conséquence, avec empressement que le Soussigné, d'après les ordres du Roi son auguste Maître, et en son nom, déclare accéder à ladite Déclaration du 16 Avril, en exprimant l'espoir que l'adoption des principes qui y sont établis sera générale et que leur maintien ne souffrira jamais d'interruption.

Le Soussigné a fait parvenir une note identique à MM. les autres Représentants des Puissances signataires.

Il prie M. le Baron d'André de vouloir bien lui accuser la réception de la présente et d'agréer, &c.

Van Hall.

JAPAN.

FRENCH NOTIFICATION OF THE ACCESSION OF JAPAN TO THE DECLARATION OF PARIS OF APRIL 16, 1856, RESPECTING MARITIME LAW. PARIS, DECEMBER 24, 1886.

Sa Majesté l'Empereur du Japon ayant accédé à la Déclaration signée le 16 Avril, 1856, au Congrès de Paris, pour régler divers points de droit maritime, par l'Acte d'Accession délivré

par son Excellence M. Inouyé Kaoru, Ministre des Affaires Étrangères muni de pleins pouvoirs en bonne et due forme ; acte d'acceptation dont la teneur suit ici mot pour mot :—

"Le Soussigné, Ministre des Affaires Étrangères de Sa Majesté l'Empereur du Japon, a l'honneur de faire savoir à M. Sienkiewicz, Ministre de France à Tôkiô, que le Gouvernement du Mikado, appréciant la haute justice des principes proclamés dans le Déclaration dressée le 16 Avril 1856, par le Congrès de Paris, et dont le texte est ci-joint, donne son adhésion entière définitive aux quatre clauses contenues dans cette Déclaration, et s'engage à s'y conformer exactement.

"Le Soussigné attacherait du prix à ce que son Gouvernement fût informé des adhésions qui se sont déjà produites et de celles qui pourront avoir lieu dans la suite.—Il saisit, &c.

"(L.S.) Inouye Kaoru,
"*Ministre des Affaires Étrangères.*

"Ministère des Affaires Étrangères, Tôkiô, le 30 jour du 10 mois de la 19 année de Meiji (30 Octobre, 1886)."

Nous, Ministre des Affaires Étrangères de la République Française, dûment autorisé à cet effet, acceptons formellement la dite accession tant au nom du Gouvernement de la République qu'au nom des Hautes Puissances Signataires de la Déclaration du 16 Avril, 1856 ; et nous nous engageons à accomplir les obligations contenues dans la dite Déclaration qui pourront concerner Sa Majesté l'Empereur du Japon.

En foi de quoi nous avons signé le présent Acte d'Acceptation d'Accession et y avons apposé notre cachet.

Fait à Paris, le 24 Decembre, 1886.

(L.S.) Flourens.

LUBECK.

LE SYNDIC CHARGÉ DES AFFAIRES ÉTRANGÈRES DE LA VILLE DE LUBECK AU MINISTRE RÉSIDENT DES VILLES LIBRES À PARIS.

Lubeck, le 20 *Juin*, 1856.

M. le Ministre,

Monsieur l'Envoyé Extraordinaire et Ministre Plénipotentiaire de Sa Majesté l'Empereur des Français accrédité auprès de la ville libre et anséatique de Lubeck, par une note du 1er courant a fait communication de la Déclaration des Ministres signataires de la paix de Paris, du 30 Mars dernier, au sujet des principes de droit maritime en temps de guerre. Cette communication et l'invitation y ajoutée d'adhérer à ladite Déclaration ont été accueillies par le Sénat avec toute la satis-

faction due à l'adoption de principes si favorables aux intérêts des neutres et si conformes aux vues éclairées du siècle. Le Sénat, Monsieur, après avoir fait précéder des communications intérieures, s'empresse d'adhérer, au nom de Lubeck, à cette même Déclaration, telle qu'elle est signée par les membres du Congrès de Paris, le 16 Avril dernier, acte qui produira tout l'effet désiré par l'ensemble des quatre points y contenus et inséparablement liés.

En conséquence, Monsieur, je viens d'être chargé par le Sénat de vous inviter à porter cette adhésion pleine et entière à la connaissance de son Excellence Monsieur le Comte Walewski, en lui laissant copie de la présente dépêche.

CURTIUS, *Syndic.*

MECKLENBURG-SCHWERIN.

LE MINISTRE DES AFFAIRES ÉTRANGÈRES DE MECKLEMBOURG-SCHWÉRIN AU MINISTRE DE FRANCE.

Schwérin, le 22 *Juillet*, 1856.

Le Soussigné, Ministre des Affaires Etrangères de Son Altesse Royale le Grand-Duc de Mecklembourg-Schwérin, a reçu la note dont son Excellence M. de Cintrat, Envoyé Extraordinaire et Ministre Plénipotentiaire de Sa Majesté l'Empereur des Français à Hambourg, l'a honoré, en date du 1er Juin dernier, et qui a pour objet d'inviter le Gouvernement Grand-Ducal à accéder à la Déclaration signée, le 16 Avril dernier, par les Puissances qui ont participé au Congrès de Paris, sur les principes du droit maritime en temps de guerre.

Après avoir pris les ordres du Grand-Duc, son auguste Souverain, le Soussigné est chargé d'être l'interprète de la vive satisfaction dont Son Altesse Royale a été pénétrée en voyant établie, par la consécration de ces principes, une nouvelle base du droit public maritime, propre à atténuer les calamités de la guerre et à mettre un terme à l'état d'incertitude auquel a donné lieu jusqu'à présent l'application de la loi internationale en pareille matière.

Plus Son Altesse Royale sait apprécier le caractère élevé d'un tel acte, plus elle s'est empressée de prononcer sa pleine et entière adhésion à la Déclaration susmentionnée et aux principes qu'elle renferme.

Ayant l'honneur de transmettre ci-jointe à M. de Cintrat la copie de la patente qui, en conséquence, vient d'être publiée par l'organe officiel du Gouvernement Grand-Ducal, le Soussigné, &c.

COMTE DE BULOW.

PUBLICATION RELATIVE À L'ADHÉSION DU GRAND-DUCHÉ DE MECKLEMBOURG-SCHWÉRIN À LA DÉCLARATION SUR LES DROITS DES NEUTRES, EN TEMPS DE GUERRE, SIGNÉE À PARIS, LE 16 AVRIL, 1856.

Schwérin, le 22 *Juillet*, 1856.

(Traduction)

Nous, Frédéric-François, par la grâce de Dieu, Grand-Duc de Mecklembourg, &c., savoir faisons que les Plénipotentiaires des Puissances représentées au Congrès de Paris ayant signé, le 16 Avril dernier, la Déclaration sur les droits des neutres en temps de guerre, dont le texte original et la traduction sont imprimés ci-après dans le supplément A, et lesdits Plénipotentiaires étant, en outre, convenus que les Puissances qui ont signé cette Déclaration, ou qui pourraient y accéder encore, seraient tenues de ne passer désormais aucune transaction sur le droit des neutres en temps de guerre qui ne reposât sur les quatre principes dans leur ensemble posés dans ladite Déclaration, avons, sur l'invitation faite à notre Gouvernement, appréciant pleinement les motifs qui ont dirigé les signataires de la Déclaration du 16 Avril dernier, et étant parfaitement d'accord avec le contenu d'icelle, complétement accédé, avec notre Grand-Duché, non-seulement à cette Déclaration, mais aussi à la condition relative à l'indivisibilité des quatre principes posés, et avons ordonné de publier notre accession par le présent acte.

Donné en notre Ministère d'Etat, Schwérin, le 22 Juillet, 1856. FREDERIC FRANÇOIS.

Comte Bulow de Schrœter de Brock.

MECKLENBURG-STRELITZ.

LE MINISTRE D'ÉTAT DE MECKLEMBOURG-STRÉLITZ AU MINISTRE DE FRANCE.

Neu-Strélitz, le 25 *Août*, 1856.

Le Soussigné, Ministre d'Etat de Son Altesse Royale le Grand-Duc de Mecklembourg-Strélitz, a l'honneur de faire part à Son Excellence M. l'Envoyé Extraordinaire et Ministre Plénipotentiaire de Sa Majesté l'Empereur des Français, en réponse à sa note du 1 Juin, 1856, que la Confédération Germanique, en appréciant hautement et à l'unanimité le contenu et le but de la Déclaration arrêtée par les Plénipotentiaires assemblés au Congrès de Paris sur l'interprétation et l'application du droit maritime en temps de guerre et signée, le 16 Avril de cette

année, comme annexe du Protocole de la vingt-quatrième conférence, ayant accédé à cette déclaration, Son Altesse Royale le Grand-Duc a prononcé son adhésion à cette même Déclaration par un arrêté du 14 de ce mois.

Le Soussigné prie Son Excellence M. Cintrat de vouloir bien en informer son Gouvernement, et profite, &c.

BERNSTORFF.

MEXICO.

ACCESSION OF MEXICO TO THE DECLARATION RESPECTING MARITIME LAW SIGNED AT PARIS, APRIL 16, 1856–FEBRUARY 13, 1909.

THE FRENCH CHARGÉ D'AFFAIRES TO SIR EDWARD GREY.

Ambassade de France,
Londres, le 9 Avril, 1909.

M. LE SECRÉTAIRE D'ETAT,

Le Ministre du Mexique à Paris vient d'informer le Gouvernement de la République de l'accession de son Gouvernement à la Déclaration de Paris du 16 avril, 1856, sur le droit maritime.

Je suis chargé par M. le Ministre des Affaires Etrangères de porter cette information à la connaissance de votre Excellence en lui remettant copie de l'acte par lequel le Gouvernement français a accepté, tant en son nom qu'au nom des Puissances signataires de la Déclaration de 1856, l'adhésion du Gouvernement mexicain.—Veuillez, &c., E. DAESCHNER.

(Inclosure.)

ACTE D'ACCEPTATION D'ACCESSION.

Le Gouvernement des États-Unis mexicains ayant accédé à la Déclaration signée le 16 avril, 1856, au Congrès de Paris, pour régler divers points de droit maritime, par l'Acte d'Accession délivré par M. S. B. de Mier, Envoyé extraordinaire et Ministre plénipotentiaire du Mexique à Paris, Acte d'Accession dont la teneur suit :—

Le Soussigné, Envoyé extraordinaire et Ministre Plénipotentiaire des États-Unis du Mexique près le Président de la République française, a l'honneur de faire savoir à M. S. Pichon, Senateur, Ministre des Affaires Étrangères de la République française, que le Gouvernement des États-Unis mexicains, appréciant la haute justice des principes proclamés dans la Déclaration dressée le 16 avril, 1856, par le Congrès de Paris, donne son adhésion entière et définitive aux quatre clauses

contenues dans cette Déclaration et s'engage à s'y conformer entièrement.

Paris, le 13 février, 1909.

(L.S.) S. B. de Mier.

Nous, Ministre des Affaires Étrangères de la République française, dûment autorisé à cet effet, acceptons formellement ladite accession, tant au nom du Gouvernement de la République qu'au nom des Hautes Puissances signataires de la Déclaration du 16 avril, 1856.

En foi de quoi nous avons signé le présent Acte d'Acceptation d'Accession et y avons fait apposer notre cachet.

Fait à Paris, le 13 février, 1909.

(L.S.) S. Pichon.

Sir Edward Grey to the French Chargé d'Affaires.

Foreign Office, April 21st, 1909.

Sir,

I have the honour to acknowledge the receipt of your note of the 9th instant, in which you inform me of the accession of the United States of Mexico to the Declaration respecting maritime law, signed at Paris on the 16th April, 1856, and inclose a copy of the Act by which the Government of the French Republic has accepted such accession.

In thanking you for this communication, of which I have taken due note, I have, &c.

E. Grey.

NASSAU.

Le Ministre d'État de Nassau au Chargé d'Affaires de France.

Wiesbaden, le 18 Juin, 1856.

Le Soussigné, Ministre d'Etat de Son Altesse le Duc de Nassau, a eu l'honneur de mettre sous les yeux de son auguste Souverain la copie de la dépêche de M. le Comte Walewski que M. le Vicomte Rœderer, Chargé d'Affaires de France, a bien voulu lui remettre.

Son Altesse le Duc, convaincu de la justesse ainsi que de la salutaire influence des quatre principes du droit maritime international consignés dans la Déclaration que les Plénipotentiaires des Puissances représentées au Congrès de Paris ont formellement émise, le 16 Avril dernier, n'hésite point à y adhérer sans restriction.

En priant M. le Vicomte Rœderer de vouloir bien porter cette haute résolution à la connaissance de son Gouvernement, le Soussigné, &c.

PRINCE DE WITTGENSTEIN.

NORWAY. *See* SWEDEN AND NORWAY.

OLDENBURG.

LE MINISTRE DES AFFAIRES ÉTRANGÈRES D'OLDENBOURG AU MINISTRE DE FRANCE.

Oldenbourg, le 9 *Juin*, 1856.

Le Soussigné a eu l'honneur de recevoir la note, en date du 1 du courant, par laquelle Son Excellence M. Cintrat, Envoyé Extraordinaire et Ministre Plénipotentiaire de Sa Majesté l'Empereur des Français, a bien voulu lui communiquer la Déclaration signée à Paris, le 16 Avril dernier, par les Membres du Congrès, dans le but de fixer les bases d'un droit maritime uniforme en temps de guerre. Le Gouvernement Grand-Ducal a partagé la vive satisfaction avec laquelle l'établissement d'une législation uniforme en fait de droits de guerre navale a été généralement accueilli; il se félicite d'être invité par les Hautes Puissances contractantes à accéder à un arrangement qui répond tant à l'esprit de notre époque et qui promet tant d'avantages pour les intérêts du commerce et de la navigation.

En conséquence, le Soussigné est autorisé à déclarer que le Gouvernment de Son Altesse Royale le Grand-Duc d'Oldenbourg adhère aux principes posés dans les quatre Articles du Protocole mentionné du 16 Avril dernier, et qu'il reconnaît l'indivisibilité de ces principes.

En priant Son Excellence M. Cintrat de vouloir bien lui accuser réception de l'adhésion de son Gouvernement, le Soussigné, &c.

DE ROSSING.

PAPAL STATES.

SON ÉMINENCE LE CARDINAL SECRÉTAIRE D'ÉTAT À L'AMBASSADEUR DE FRANCE.

Du Vatican, le 2 *Juin*, 1856.

(Traduction)

Le Soussigné, Cardinal Secrétaire d'Etat, s'est empressé de placer sous les yeux du Saint Père, non-seulement le texte de la délibération du Congrès de Paris relative aux principes de droit maritime applicables en temps de guerre, mais aussi la dépêche

de M. le Ministre des Affaires Etrangères de Sa Majesté l'Empereur, votre auguste Maître, laquelle en était le commentaire. Votre Excellence avait eu la bonté de me transmettre copie de ces documents par la note qu'elle m'a fait l'honneur de m'adresser le 27 du mois dernier. A cette occasion, votre Excellence annonçait qu'elle avait été chargée par le Gouvernement Impérial d'inviter celui du Saint Siége à donner son adhésion à cette résolution du Congrès, attendu les avantages qui résultent pour les neutres de dispositions positives conformes à l'esprit de la civilisation moderne.

Sa Sainteté, après avoir porté son attention sur les considérations diverses qui ont engagé les Plénipotentiaires signataires du Traité de Paix à discuter et résoudre un point d'une aussi grande importance, ne pouvait manquer d'apprécier les principes qui les ont guidés. Il lui a semblé qu'ils répondaient parfaitement à la nécessité de protéger les intérêts commerciaux et les nombreuses transactions qui en sont la conséquence, et qui, dans les circonstances actuelles, ont pris un si grand dévcloppement chez toutes les nations. En reconnaissant que l'on a eu en vue d'éviter que, durant une lutte entre Puissances belligérantes, la propriété des sujets d'un Gouvernement neutre eût à souffrir de la divergence des opinions, Sa Sainteté a vu avec satisfaction que les Articles de la résolution combinée par les Plénipotentiaires donnaient pleine garantie contre une pareille éventualité. En conséquence de ces observations, Sa Sainteté, s'étant déterminée à accueillir l'invitation qui lui était faite, a chargé le Soussigné de faire connaître, en son nom, que, de la part du Saint Siége, entière adhésion était donnée à l'acte susmentionné concernant le droit maritime international.

Le Soussigné, en accomplissant avec plaisir une mission si honorable, prie votre Excellence de vouloir bien en rendre compte à son Gouvernement et d'agréer, &c.

ANTONELLI.

PARMA.

LE MINISTRE DES AFFAIRES ÉTRANGÈRES DE PARME AU MINISTRE DE FRANCE.

Parme, le 20 *Août*, 1856.

Le Soussigné, Ministre d'Etat pour le Département des Affaires Etrangères de Son Altesse Royale Madame la Duchesse-Régente de Parme, a eu l'honneur de recevoir la dépêche de Son Excellence M. le Prince de Latour-d'Auvergne, Ministre Plénipotentiaire de Sa Majesté l'Empereur des Français près les Cours de Parme et de Toscane, en date du 30 Juin dernier, par

laquelle le Gouvernement de Parme a reçu du Gouvernement Français communication de la Déclaration signée par les Plénipotentiaires réunis au Congrès de Paris, le 16 Avril, 1856, ayant pour objet de faire reconnaître des principes déterminés de droit maritime en temps de guerre, et pour l'inviter à adhérer à ladite Déclaration.

Le Gouvernement de Son Altesse Royale est trop disposé à applaudir et à s'associer à tout ce qui peut faciliter aux peuples le progrès dans les voies de la civilisation pour ne pas accueillir une telle invitation.

C'est pourquoi le Soussigné se félicite de pouvoir déclarer, d'après les ordres reçus de Madame la Duchesse-Régente des Etats de Parme, au nom du Duc Robert I, que Son Altesse donne son entière adhésion aux quatre principes énoncés dans la Déclaration du 16 Avril, 1856, des Plénipotentiaires au Congrès de Paris, ainsi conçus :

1°. La course est et demeure abolie ;

2°. Le pavillon neutre couvre la marchandise ennemie, à l'exception de la contrebande de guerre ;

3°. La marchandise neutre, à l'exception de la contrebande de guerre, n'est pas saisissable sous le pavillon ennemi ;

4°. Les blocus, pour être obligatoires, doivent être effectifs, c'est-à-dire maintenus par une force suffisante pour interdire réellement l'accès du littoral de l'ennemi.—Le Soussigné, &c.

PALLAVICINI.

PERU.

LE MINISTRE RÉSIDENT DU PÉROU À PARIS AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE L'EMPEREUR.

Paris, le 23 Novembre, 1857.

M. LE COMTE,

Son Excellence D. D. Manuel Ortiz de Zeballos, Ministre des Relations Extérieures du Pérou, m'annonce, par le dernier courrier, que la Convention nationale et le Gouvernement Suprême ont adopté avec plaisir les principes reconnus comme base du droit maritime par le Congrès de la Paix, dans sa Déclaration faite à Paris, le 16 Avril, 1856.

Ces principes sont :

1°. La course est et demeure abolie ;

2°. Le pavillon neutre couvre la marchandise ennemie, à l'exception de la contrebande de guerre ;

3°. La marchandise neutre, à l'exception de la contrebande de guerre, n'est pas saisissable sous pavillon ennemie ;

4°. Les blocus, pour être obligatoires, doivent être effectifs,

c'est-à-dire maintenus par une force suffisante pour interdire réellement l'accès du littoral de l'ennemi.

J'ai l'honneur, en portant ces faits à la connaissance de votre Excellence, selon l'ordre que j'en ai reçu de mon Gouvernement, de la prier de vouloir bien me permettre de saisir cette occasion, &c.

LUIZ MESONES.

PORTUGAL.

LE MINISTRE DES AFFAIRES ÉTRANGÈRES DE PORTUGAL AU MINISTRE DE FRANCE.

(Traduction) *Palais, le* 28 *Juillet*, 1856.

EXCELLENCE,

Par ordre de son Gouvernement, votre Excellence a été chargée, de concert avec les autres Représentants des Puissances signataires du Traité de Paix du 30 Mars de cette année, d'inviter le Gouvernement de Sa Majesté à adhérer à la Déclaration du 16 Avril dernier, signée par les Plénipotentiaires qui ont pris part au Congrès de Paris et contenant les quatre principes suivants de droit maritime, à savoir :

1°. La course est et demeure abolie ;

2°. Le pavillon neutre couvre la marchandise ennemie, à l'exception de la contrebande de guerre ;

3°. La marchandise neutre, à l'exception de la contrebande de guerre, n'est pas saisissable sous pavillon ennemi ;

4°. Les blocus, pour être obligatoires, doivent être effectifs, c'est-à-dire maintenus par une force suffisante pour interdire réellement l'accès du littoral de l'ennemi.

Sa Majesté, à qui j'ai rendu compte, comme c'était mon devoir, de la susdite invitation, appréciant pleinement les grands avantages qui doivent résulter, pour les intérêts généraux du commerce et de la navigation, de l'adoption des quatre principes établis, m'a ordonné de demander immédiatement aux Cortès l'autorisation nécessaire, qu'elles ont accordée par la loi du 25 courant. J'ai alors reçu de Sa Majesté l'ordre de répondre à votre Excellence que son Gouvernement adhère avec plaisir, pleinement et entièrement, à la susdite Déclaration, d'autant plus que les principes énoncés dans les Articles II., III. et IV. sont les mêmes que ceux que le Portugal a déjà admis, en 1782, dans un Traité avec la Russie, et récemment dans le Traité de Commerce et de Navigation qu'il a conclu avec la Confédération Argentine.

D'autre part, Sa Majesté a daigné m'autoriser à déclarer à

votre Excellence, que le Gouvernement Portugais adhère également au principe énoncé dans l'Article VIII. du Traité de Paris, et auquel se rapporte le Protocole XXIII. du 14 Avril dernier, portant que: "Les Etats entre lesquels s'élèverait un dissentiment sérieux, avant d'en appeler aux armes, auraient recours, en tant que les circonstances l'admettraient, aux bons offices d'une tierce Puissance," sans toutefois que cette adhésion de la part du Gouvernement du Roi affecte en rien son indépendance et sa liberté d'action.

Je prie votre Excellence de vouloir bien porter la présente déclaration à la haute connaissance de Sa Majesté l'Empereur des Français, et je profite, &c.

MARQUIS DE LOULE.

LE MINISTRE DES AFFAIRES ÉTRANGÈRES DE PORTUGAL AU MINISTRE DE FRANCE.

(Traduction) *Palais, le* 28 *Juillet*, 1856.

EXCELLENCE,

Pour satisfaire aux désirs que votre Excellence m'a exprimés par ordre de son Gouvernement, en ce qui concerne la restriction contenue dans le Protocole XXIV. du 16 Avril, 1856, j'ai l'honneur de l'informer que les termes dans lesquels le Gouvernement de Sa Majesté a cru devoir donner son adhésion à la Déclaration du 16 de ce mois, ne pouvant être que ceux qu'ont autorisés les Cortès et qui sont identiques aux termes adoptés par les Gouvernements de Belgique et de Suède, le Gouvernement Portugais se trouve, par conséquent, en ce qui concerne ladite restriction, dans le même cas que ces deux nations et que les autres qui auraient adhéré ou qui viendraient à le faire dans des termes semblables à ceux de la Déclaration dont il est question.—Je profite, &c.

MARQUIS DE LOULE.

SAXE-ALTENBURG.

LE MINISTRE DES AFFAIRES ÉTRANGÈRES DE SAXE-ALTENBOURG AU MINISTRE DE FRANCE.

Altenbourg, le 9 *Juin*, 1856.

Le Soussigné a eu l'honneur de recevoir la note de Son Excellence M. le Vicomte des Méloizes, Ministre de France, du 5 Mai dernier, avec les copies des dépêches de son Excellence M. le Comte Walewski, Ministre des Affaires Etrangères de

France, et n'a pas manqué de prendre les ordres de Son Altesse Royale le Duc, son auguste Souverain, qui l'a chargé de faire à son Excellence la présente communication :

Le Gouvernement du Duc reconnaît parfaitement la justesse du vœu des Puissances représentées au Congrès de Paris, qui a été exprimé dans le Protocole No. XXIII., de la séance du 14 Avril dernier, savoir ; " que les Etats entre lesquels s'élèverait un dissentiment sérieux, avant d'en appeler aux armes, eussent recours, en tant que les circonstances l'admettraient, aux bons offices d'une Puissance amie." Le Gouvernement du Duc hésite d'autant moins à s'associer à ce principe, que celui-ci ne porte aucun préjudice ni à la souveraineté des Etats individuels, ni aux relations et aux devoirs particuliers reposant sur la solidarité des Etats Allemands.

Les principes concernant le commerce maritime en temps de guerre, sur lesquels le Congrès de paix est tombé d'accord, et qui se trouvent posés et résolus dans la Déclaration du 16 Avril, 1856, n'ont pu que faire éprouver au Gouvernement du Duc la plus grande satisfaction, de sorte qu'il ne tarde point à répondre à l'invitation qu'il a reçue et à accéder à ladite Déclaration dans toute sa teneur.

Le Soussigné prie Son Excellence de vouloir bien porter les déclarations ci-dessus à la connaissance de son Gouvernement, et profite de cette occasion, &c. LARISCH.

SAXE-COBURG-GOTHA.

LE MINISTRE DES AFFAIRES ÉTRANGÈRES DE SAXE-COBOURG-GOTHA AU MINISTRE DE FRANCE.

Gotha, le 22 *Juin*, 1856.

M. LE VICOMTE,

En vous accusant la réception de vos lettres du 20 Mai avec les annexes relatives aux principes adoptés par les Plénipotentiaires signataires du Traité de Paris du 30 Mars, sur les droits des pays neutres, en temps de guerre, et le recours à prendre aux bons offices d'une Puissance amie, avant d'en appeler aux armes, j'ai l'honneur de remercier votre Excellence de cette communication. En même temps je me félicite de pouvoir vous assurer que le Gouvernement du Duché de Cobourg-Gotha, en tous points d'accord avec les sentiments du Congrès, y accède pleinement, sauf les engagements qu'il a pris envers la Confédération Germanique.—Veuillez, &c.

SEEBACH.

SAXE-WEIMAR.

LE MINISTRE DES AFFAIRES ÉTRANGÈRES DE SAXE-WEIMAR AU MINISTRE DE FRANCE.

Weimar, le 22 *Juin*, 1856.

M. LE VICOMTE,

Après mon retour de la campagne, on m'a fait part de deux offices du 20 Mai, par lesquels votre Excellence, au nom du Gouvernement Impérial, a bien voulu inviter la Cour Grand-Ducale à accéder à la pensée de haute médiation internationale introduite dans l'Article VIII. du Traité du 30 Mars et aux principes proclamés par la Déclaration du 16 Avril concernant le commerce maritime en temps de guerre.

Je me suis hâté de transmettre ces communications intéressantes à Monseigneur le Grand-Duc, mon auguste Maître, et Son Altesse Royale, convaincue des effets bienfaisants de pareils principes adoptés au concert des Etats Européens, m'a chargé d'exprimer ses remercîments de la communication susdite et de déclarer à votre Excellence qu'elle accédait aux principes en question d'autant plus sans aucune hésitation, que Son Altesse Royale a appris qu'on ne peut pas douter que la même accession aura lieu de la part de la Confédération Germanique.

En priant votre Excellence de bien vouloir faire part de cette déclaration au Gouvernement Impérial, je profite de cette occasion, &c. WATZDORF.

SAXONY.

LE MINISTRE DES AFFAIRES ÉTRANGÈRES DE SAXE AU MINISTRE DE FRANCE.

Dresde, le 16 *Juin*, 1856.

M. LE BARON,

C'est avec un vif intérêt que le Gouvernement de Saxe a reçu la communication que vous avez été chargé de lui faire de la Déclaration arrêtée, le 16 Avril dernier, entre les Puissances réunies au Congrès de Paris, pour poser les bases d'un nouveau droit maritime en temps de guerre, et qui est conçue en ces termes :—

1°. La course est et demeure abolie ;

2°. La pavillon neutre couvre la marchandise ennemie, à l'exception de la contrebande de guerre ;

3°. La marchandise neutre, à l'exception de la contrebande de guerre, n'est pas saisissable sous pavillon ennemi ;

4°. Les blocus, pour être obligatoires, doivent être effectifs, c'est-à-dire maintenus par une force suffisante pour interdire réellement l'accès du littoral de l'ennemi.

Le Gouvernement de Sa Majesté l'Empereur des Français, en nous donnant connaissance de cet accord, ayant bien voulu y joindre l'invitation d'y accéder, je m'empresse, d'après les ordres de Sa Majesté le Roi, mon auguste Souverain, de constater ici :

L'adhésion pleine et entière du Royaume de Saxe à la Déclaration mentionnée ci-dessus et aux principes qu'elle renferme, comme établissant entre les neutres et les belligérants un droit international qui ne saurait avoir que de bien salutaires effets ;

Ainsi que l'intention de n'entrer, à l'avenir, sur l'application du droit des neutres en temps de guerre, en aucun engagement qui ne repose à la fois sur les quatre principes objets de ladite Déclaration.

En vous priant, M. le Baron, de bien vouloir porter cet acte d'adhésion à la connaissance de votre Gouvernement, je saisis, &c. BEUST.

SPAIN.

EXCHANGE OF NOTES BETWEEN THE BRITISH AND FRENCH GOVERNMENTS RESPECTING THE ACCESSION OF SPAIN ON JANUARY 18, 1908, TO THE DECLARATION RESPECTING MARITIME LAW SIGNED AT PARIS, APRIL 16, 1856.

THE FRENCH AMBASSADOR TO SIR EDWARD GREY.

Ambassade de France,
Londres, le 15 *février*, 1908.

M. LE SECRÉTAIRE D'ÉTAT,

L'Ambassadeur d'Espagne à Paris vient de notifier à M. le Ministre des Affaires Étrangères que son Gouvernement adhérait à la Déclaration du 16 avril, 1856, sur le droit maritime.

Je suis chargé de transmettre à votre Excellence une copie de l'Acte par lequel le Gouvernement de la république a accepté l'accession de l'Espagne, tant en son nom qu'en celui des Puissances signataires de la Déclaration précitée.—Veuillez agréer, &c. PAUL CAMBON.

(Inclosure.)

ACTE D'ACCEPTATION D'ACCESSION.

Sa Majesté le Roi d'Espagne ayant accédé à la Déclaration signée le 16 avril, 1856, au Congrès de Paris, pour régler divers points de droit maritime, par l'Acte d'Accession délivré par son Ambassadeur extraordinaire et Plénipotentiaire à Paris, son Excellence M. de León y Castillo, Marquis del Munis, Acte d'Accession dont la teneur suit :—

Le soussigné Ambassadeur extraordinaire et Plénipotentiaire de Sa Majesté le Roi d'Espagne près le Président de la République française, a l'honneur de faire savoir à M. S. Pichon, sénateur, Ministre des Affaires Étrangères de la République française, que le Gouvernement espagnol, appréciant la haute justice des principes proclamés dans la Déclaration, dressée le 16 avril, 1856, par le Congrès de Paris, donne son adhésion entière et définitive aux quatre clauses contenues dans cette Déclaration, et s'engage à s'y conformer exactement.

Paris, le 18 janvier, 1908.

(L.S.) F. de León y Castillo.

Nous, Ministre des Affaires Étrangères de la République française, dûment autorisé à cet effet, acceptons formellement ladite accession, tant au nom du Gouvernement de la république qu'au nom des Hautes Puissance signataires de la Déclaration du 16 avril, 1856.

En foi de quoi nous avons signé le présent Acte d'Acceptation d'Accession et y avons fait apposer notre cachet.

Fait à Paris, le 18 janvier, 1908. (L.S.) S. Pichon.

Sir Edward Grey to the French Ambassador.

Foreign Office, February 18, 1908.

Your Excellency,

I have the honour to acknowledge the receipt of your note of the 15th instant, in which you inform me of the accession of Spain to the Declaration respecting maritime law, signed at Paris on the 16th April, 1856, and inclose a copy of the Act by which the Government of the French Republic has accepted such accession.

In thanking your Excellency for this communication, of which I have taken due note, I have, &c. E. Grey.

SWEDEN AND NORWAY.

LE MINISTRE DES AFFAIRES ÉTRANGÈRES DE SUÈDE ET DE NORVÈGE AU MINISTRE DE FRANCE.

Stockholm, le 13 *Juin*, 1856.

Monsieur,

Par votre office du 27 du mois passé, vous m'avez fait l'honneur de me communiquer, d'ordre de votre Cour, la Déclaration que MM. les Plénipotentiaires au Congrès de Paris ont adoptée, le 16 Avril dernier, ayant pour but d'établir une doctrine uniforme sur le droit maritime en temps de guerre,

Déclaration qui a été portée à la connaissance des Etats non représentés au Congrès, avec l'invitation d'y accéder.

Cette Déclaration porte,

1°. Que la course est et demeure abolie ;

2°. Que le pavillon neutre couvre la marchandise ennemie, à l'exception de la contrebande de guerre ;

3°. Que la marchandise neutre, à l'exception de la contrebande de guerre, n'est pas saisissable sous pavillon ennemi ;

Et 4°. Que les blocus, pour être obligatoires, doivent être effectifs, c'est-à-dire, maintenus par une force suffisante pour faire interdire réellement l'accès du littoral de l'ennemi.

Les principes énoncés dans les Articles II. et III. de la susdite Déclaration, par l'adoption desquels l'application du droit maritime se trouverait fixée pour l'avenir, ayant de tout temps été reconnus et défendus par la Suède, qui, dans mainte occasion, s'est efforcée à les faire triompher, le Gouvernement de Sa Majesté le Roi de Suède et de Norwége ne saurait hésiter à en reconnaître la justice et l'utilité. Il s'estime donc heureux d'y adhérer et de déclarer en même temps qu'appréciant les raisons péremptoires qui ont motivé l'adoption des premier et quatrième points de la Déclaration susmentionnée, il les accepte également et sans restriction quelconque, en reconnaissant l'indivisibilité des principes qui s'y trouvent consignés.

En exprimant toute la satisfaction qu'éprouve le Roi mon auguste Souverain de voir ainsi réglée, par un acte solennel qui exercera une si grande influence sur l'avenir du commerce Européen, une question menaçante pour ses intérêts les plus chers, je vous prie, Monsieur, de vouloir bien porter à la connaissance de votre auguste Cour la présente déclaration et d'agréer, &c. STIERNELD.

On the 16th November 1905, after the separation of Norway from Sweden, the following official statement was made with regard to the treaty obligations of the two Powers under existing Treaties :—

> . . . Si ces Conventions et Arrangements pouvaient être jusqu'ici considérés comme entraînant pour la Norvège et pour la Suède une responsabilité commune vis à vis des obligations qui en résultent pour chacun d'entre eux, le Gouvernement Norvégien se tient donc dès à présent responsable seulement des obligations des dits Conventions et Arrangements communs qui concernent la Norvège. Il en est de même rélativement aux Conventions Internationales auxquelles la Norvège et la Suède ont adhéré en commun.

SWISS CONFEDERATION.

LE CONSEIL FÉDÉRAL SUISSE AU MINISTRE DE FRANCE.

Berne, le 28 *Juillet*, 1858.

Son Excellence M. le Ministre de France a bien voulu communiquer, au nom du Gouvernement de Sa Majesté l'Empereur, à M. le Président de la Confédération, une Déclaration en quatre articles émanant des Hautes Puissances représentées au Congrès de la Paix à Paris, sur les principes du droit maritime à observer dorénavant en temps de guerre, le 16 Avril dernier, en invitant en même temps la Confédération Suisse à adhérer à cette déclaration.

Le Conseil Fédéral a voué une sérieuse attention à cette ouverture et, aimant à reconnaître dans les bases de cette Déclaration un progrès important dans les voies de l'humanité et de la civilisation, ainsi que les grands avantages qui en résulteront pour le commerce et la navigation en temps de guerre, il n'a pu hésiter à y donner suite. A cet effet, il a soumis cette affaire avec recommandation à l'Assemblée Fédérale Suisse, et l'adhésion de la Confédération Suisse à la susdite Déclaration a été prononcée par décret du $\frac{14}{16}$ du mois courant.

En ayant l'honneur d'adresser ci-incluse à Son Excellence une expédition vidimée de ce décret, rendu par la Haute Assemblée Fédérale, le Conseil Fédéral prie M. le Comte de Salignac-Fénélon de bien vouloir le faire parvenir au Haut Gouvernement Français, et saisit, &c.—Au nom du Conseil Fédéral Suisse,

Le Président de la Confédération, STAEMPFLI.
Le Chancelier de la Confédération, SCHIESS.

ARRÊTÉ FÉDÉRAL CONCERNANT L'ADHÉSION DE LA SUISSE AU DROIT MARITIME EN TEMPS DE GUERRE.

Berne, le 16 *Juillet*, 1856.

L'Assemblée Fédérale de la Confédération Suisse, considérant les grands avantages résultant de la Déclaration collective arrêtée dans le Congrès de Paris, sur le droit maritime pour la navigation et le commerce en temps de guerre ;

Vu la proposition du Conseil Fédéral,

Arrête :

La Confédération Suisse adhère à la Déclaration des Puissances représentées au Congrès de Paris, sur le droit maritime en temps de guerre, du 16 Avril, 1856.

Ainsi arrêté par le Conseil des Etats Suisses.
Berne, le 11 Juillet, 1856.
Au nom du Conseil des Etats Suisses.
Le Secrétaire, J. KERN GERMANN. *Le Président*, F. DUBS.

Ainsi arrêté par le Conseil National Suisse.
Au nom du Conseil National Suisse.
Berne, *le* 28 *Juillet*, 1856.
Le Secrétaire, SCHIESS. *Le Président*, JULES MARTIN.

L'expédition conforme à l'original.
Le Chancelier de la Confédération, SCHIESS.

TUSCANY.

LE MINISTRE DES AFFAIRES ÉTRANGÈRES DE TOSCANE AU MINISTRE DE FRANCE.

Florence, le 5 *Juin*, 1856.

MON PRINCE,

La communication que Votre Excellence m'a fait l'honneur de m'adresser, le 30 du mois passé, à l'égard des nouveaux principes de droit maritime proclamés par le Congrès de Paris, a tout de suite occupé la plus sérieuse attention de la part du Gouvernement Grand-Ducal.

Ces principes constituent un progrès de civilisation trop notable et sont dictés par un esprit trop généreux d'humanité et de tolérance, pour que leur Déclaration ne soit pas accueillie par le monde entier avec la plus vive reconnaissance.

La Toscane, appelée par le Gouvernement de Sa Majesté l'Empereur des Français, aussi bien que par ceux de Sa Majesté la Reine de la Grande-Bretagne et de Sa Majesté Impériale et Royale Apostolique, à s'associer à cette Déclaration et à donner son adhésion aux principes qui en forment le sujet, a de tout temps professé des sentiments si conformes à ceux qui ont animé les magnanimes résolutions du Congrès de Paris, elle a toujours, et d'une manière tellement constante, réglé sa conduite sur ces nobles maximes, que sa réponse ne saurait être douteuse.

Conséquemment, mon Prince, ayant invoqué les ordres de mon auguste Souverain, j'ai l'honneur de vous signifier que le Gouvernement Grand-Ducal adhère purement, simplement et indivisiblement, aux quatre points de droit maritime résolus par le Congrès de Paris dans sa séance du 8 Avril de cette année ; qu'il les regardera, à l'avenir, comme faisant partie de son droit international, et s'engage à n'entrer avec qui que ce soit en

aucun arrangement sur l'application du droit maritime en temps de guerre, sans stipuler leur fidèle observation.

Je suis bien aise d'avoir à constater une pareille conformité de vues entre le Gouvernement de Son Altesse Impériale et Royale le Grand-Duc mon Maître et celui de Sa Majesté l'Empereur des Français, et je saisis cette occasion pour avoir l'honneur de réitérer à Votre Excellence les témoignages de ma haute considération. BALDASSERONI.

THE TWO SICILIES.

LE MINISTRE DES AFFAIRES ÉTRANGÈRES DES DEUX SICILES AU MINISTRE DE FRANCE.

Naples, le 31 *Mai*, 1856.

(Traduction)

Le Soussigné, chargé du Portefeuille du Ministère des Affaires Etrangères, a reçu la note que son Excellence M. le Baron Brenier, Envoyé Extraordinaire et Ministre Plénipotentiaire de Sa Majesté l'Empereur des Français lui a fait l'honneur de lui adresser, en date du 25 du mois passé, pour inviter le Gouvernement de Sa Majesté Sicilienne à adhérer aux principes contenus dans la Déclaration adoptée par les Plénipotentiaires réunis au Congrès de Paris, relativement au commerce et à la navigation des neutres en temps de guerre.

Le Soussigné se fait un plaisir de faire connaître à son Excellence que le Gouvernement du Roi accueille bien volontiers l'invitation du Gouvernement Impérial de se conformer aux susdites maximes adoptées par la France et par les autres Puissances qui ont pris part aux Conférences de Paris, maximes propres à maintenir la réciprocité de leurs bonnes relations internationales, d'autant plus que ce sont celles qui, depuis un temps éloigné, sont professées par le Gouvernement royal lui-même.

Le Soussigné ne doit pas cependant négliger, dans cette circonstance, de manifester combien a été agréable la conviction exprimée par son Excellence dans la susdite note, que le Gouvernement Royal ne ferait pas de difficulté d'adopter des principes inspirés par la plus sage politique et par la vraie civilisation, et à l'occasion desquels le Gouvernement du Roi se plait à déclarer qu'une semblable proposition est, par sa nature, de celles qui ont toujours trouvé en France le plus fort appui, et dont le résultat est à l'honneur du Gouvernement Impérial.—Le Soussigné, &c. CARAFA.

URUGUAY.

[*See* Count Walewski's Report to the Emperor, p. 348.]

WURTEMBERG.

LE MINISTRE DES AFFAIRES ÉTRANGÈRES DE WURTEMBERG AU MINISTRE DE WURTEMBERG À PARIS.

Stuttgard, le 25 *Juin*, 1856.

M. le Baron,

J'ai l'honneur de vous informer qu'une communication m'a été faite par les Ministres d'Autriche, de Prusse, de Russie, de France et d'Angleterre, accrédités près cette cour, ayant pour objet de me faire savoir que les Plénipotentiaires assemblés au Congrès de Paris ont pris une décision relative à plusieurs questions du droit maritime, jusqu'à présent douteuses, décision qui a été immédiatement adoptée, comme règle invariable, par les Puissances représentées au Congrès. En même temps, lesdits Ministres m'ont remis une copie de l'acte rédigé sous forme de Déclaration solennelle, dans lequel les Plénipotentiaires ont énoncé les considérations qui ont servi de base à cet arrangement, ainsi que les principes qui ont été établis en conséquence, en exprimant le désir de voir le Gouvernement du Roi donner son adhésion aux principes du droit des gens consacrés par cette Déclaration.

En vous transmettant une copie de la déclaration dont il s'agit, j'ai l'honneur de vous informer que le Gouvernement du Roi approuve complétement les considérations sur lesquelles repose l'arrangement en question, attendu qu'il lui parait non-seulement désirable, mais même indispensable, d'après l'état actuel des relations internationales, de résoudre, autant que possible, tous les doutes qui ont subsisté jusqu'à présent à l'égard d'une partie aussi essentielle du droit des gens, et de prévenir désormais des conflits qui peuvent résulter de l'incertitude sur des principes légaux. Le Gouvernement du Roi reconnaît également que les principes établis dans la Déclaration dont il s'agit répondent au but qui vient d'être indiqué ; et il ne peut qu'applaudir au progrès notable que ces principes consacrent dans la voie d'un développement du droit des gens général, conforme aux idées et aux besoins de notre époque.

Je vous prie, en conséquence, M. le Baron, de vouloir bien, en donnant lecture de la présente dépêche au Ministre des Affaires Etrangères de Sa Majesté l'Empereur des Français,

M. le Comte Walewski, et, en lui en laissant une copie, notifier en même temps à son Excellence que le Gouvernement de Sa Majesté le Roi, notre auguste Maître, accède complétement et sans restriction aux quatre principes relatifs au futur droit maritime en temps de guerre, qui sont établis dans la Déclaration susmentionnée.

Vous voudrez bien en même temps exprimer à M. le Comte Walewski que le Gouvernement du Roi a vu, par la dépêche adressée par son Excellence à M. le Marquis de Ferrière, et dont celui-ci m'a laissé une copie, que la conclusion de cet arrangement, qui est d'un si haut intérêt pour les relations commerciales internationales, lesquelles ont acquis de nos jours une si grande importance, doit être attribuée principalement aux efforts du Cabinet Français, qui s'est acquis ainsi un nouveau titre aux sentiments de reconnaissance du Gouvernement du Roi.

En attendant l'avis de la prompte exécution du mandat qui vous est confié, je saisis cette occasion, &c.

HUGEL.

Adherences to the Mediation Proposal[1] *included in the Declaration* [*contained in 23rd Protocol of April* 14.]

Anhalt Dessau Coethen.
Argentine Confederation.
Baden.
Brazil.
Bremen.
Chili.
Denmark.
Frankfort.
Germanic Confederation.
Greece.
Hamburgh.
Hanover.
Hesse-Cassel.
Hesse-Darmstadt.
Lubeck.
Mecklenburg-Schwerin.
Modena.
Nassau.
New Grenada.
Oldenburg.
Parma.
Portugal.
Saxe-Altenburg.
Saxe-Coburg-Gotha.
Saxe-Meiningen.
Saxe-Weimar.
Saxony.
Two Sicilies.
Sweden and Norway.
Tuscany.
Wurtemberg.

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[1] Hertslet, *Map of Europe by Treaty*, vol. ii. p. 1284.

20

Indirect Adherences to the Declaration of Paris.

A.—GUATEMALA.

[By Treaty with Italy, 1868.[1]]

Art. XII. As a complement of the principles of maritime law established by the declaration of the Congress of Paris on the 16th April 1856, which are accepted without reservation by the two parties in their mutual relations, the two Powers agree that, in case of the misfortune of a war between them, private property of any kind belonging to citizens of one shall be respected by the other, the same as property of neutrals, and this both at sea and on land, on the high seas as well as in the territorial seas, and in any other place whatever, and under whatsoever flag the vessels and the goods are navigating, without any other restrictions than the case of breaking blockade and the case of contraband of war.

Nevertheless, the right is maintained of preventing during the war all trade and communication between all or any parts of the shores of their own territory and merchant ships navigating under a hostile flag, as well as of applying confiscation and other penalties to the transgressors of the interdiction, provided that the prohibition and the penalty be determined by a suitable manifesto previously published.

B.—HONDURAS.

[By Treaty with Italy, 1868.[2]]

XII. As a complement to the principles of maritime law established by the Declaration of the Congress of Paris on the 16th of April 1856, which are accepted without reservation by the two parties in their mutual relations, the two Powers agree that, in case of the misfortune of a war between them, private property of any kind belonging to citizens of one shall be respected by the other, the same as property of neutrals,

[1] *State Papers*, vol. lx. p. 759.

[2] *Ibid.*, vol. lxi. p. 1049.

and this both at sea and on land, on the high seas as well as the territorial seas, and in any other place whatever, and under whatsoever flag the vessels and the goods are navigating, without any other restrictions than the case of breaking blockade and the case of contraband of war.

Nevertheless, the right is maintained of preventing during the war all trade and communication between all or any parts of the shores of their own territory and merchant ships navigating under a hostile flag, as well as of applying confiscation and other penalties to the transgressors of the interdiction, provided that the prohibition and the penalty be determined by a suitable manifesto previously published.

XIII. The blockade to be obligatory must be effective and declared.

The blockade shall not be considered effective unless it be maintained by forces sufficient for the real prevention of any access to the coasts or the ports blockaded.

C.—MEXICO.

[By Treaty with Italy, 1870.[1]]

XX. The contracting States, if either of them should be at war with another country, will recognise and observe the principle that the neutral flag covers the enemy's merchandize, that is, that the effects or goods belong to citizens of a country at war are exempt from capture and from confiscation when found on board neutral vessels, with the exception, however, of contraband of war, and that the property of neutrals found on board a vessel belonging to the enemy shall not be liable to capture and confiscation, unless it be contraband of war.

XXII. If one of the contracting States should be at war with a third Power the citizens of the other may continue their navigation and trade with the belligerents, saving contraband of war, and excepting those places which may be blockaded or besieged by sea or by land.

D.—PERU.

[By Treaty with France, 1861.[2]]

XIX. Les deux Hautes Parties Contractantes adoptent dans leurs relations mutuelles les 4 principes de droit maritime

[1] *State Papers*, vol. lx. p. 1016. [2] *Ibid*, vol. lii. p. 122.

proclamés dans la déclaration de 16 Avril, 1856, par les Plénipotentiaires de l'Autriche, de la France, de la Grande-Bretagne, de la Prusse, de la Russie, de la Sardaigne, et de la Turquie, réunis au Congrès de Paris, et reconnus également par le Gouvernement du Pérou, aux terms de la résolution législative du 3 Octobre, 1857,[1] savoir :

1°. La course est et demeure abolie ;
2°. Le pavillon neutre couvre la propriété ennemie, à l'exception de la contrebande de guerre ;
3°. La propriété neutre, à l'exception de la contrebande de guerre, n'est pas sujete à confiscation sous pavillon ennemi ;
4°. Les blocus, pour être obligatoires, doivent être effectifs, c'est-à-dire maintenus par une force suffisante, capable d'interdire réellement tout accès à la côte de l'ennemi.

XX. Comme conséquence des principes qui précédent les deux Hautes Parties Contractantes conviennent les points suivant :

1. Les navires de celui des deux Etats qui demeurera neutre pourront naviguer librement d'un port ou d'un territoire neutre à un autre neutre, d'un port ou d'un territoire neutre à un autre ennemi, et d'un port ou territoire ennemi à un autre également ennemi, à l'exception, bien entendu, des endroits ou des ports en état de blocus, et, dans tous les cas, la marchandise chargée à bord de ces navires, quel qu'en soit le propriétaire, sera libre, à l'exception, de la contrebande de guerre. Sera également libre tout individu embarqué à bord du bâtiment neutre, lors même qu'il serait sujet ou citoyen de l'Etat ennemi, pourvu qu'il ne soit pas actuellement au service de l'ennemi ou en destination pour y entrer.
2. Les propriétés et les sujets ou citoyens de celle des deux Parties Contractantes qui demeurera neutre, tandis que l'autre sera engagée dans une guerre seront à l'abri de toute confiscation et arrestation, même à bord d'un navire ennemi, à moins qu'il ne s'agisse de contrebande de guerre ou de contrebande de guerre ou de personnes actuellement au service de l'ennemi ou à destination pour y entrer.

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[1] See Adherence of Peru, p. 375.

E.—SALVADOR.

[By Treaty with France, 1858.[1]]

XIX. Les deux Hautes Parties Contractantes adoptent dans leurs relations mutuelles les principes suivants :

1°. La course est et demeure abolie ;
2°. Le pavillon neutre couvre la marchandise ennemie, à l'exception de la contrebande de guerre ;
3°. La marchandise neutre, à l'exception de la contrebande de guerre, n'est pas saisissable sous pavillon ennemi ;
4°. Les blocus, pour être obligatoires, doivent être effectifs, c'est-à-dire maintenus par une force suffisante pour interdire réellement l'accès du territoire de l'ennemi.

Il est d'ailleurs convenu que la liberté du pavillon assure aussi celle des personnes, et que les individus appartenant à une Puissance ennemie qui seraient trouvés à bord d'un bâtiment neutre ne pourront pas être faits prisonniers à moins qu'ils ne soient militaires et pour le moment engagés au service de l'ennemi.

Les deux Hautes Parties Contractantes n'appliqueront ces principes, en ce qui concerne les autres Puissances, qu'à celles qui les reconnaîtront également.

[By Treaty with Italy, 1860.[2]]

XIX. Les deux Hautes Parties Contractantes adoptent dans leurs relations mutuelles les principes suivants :

1°. La course est et demeure abolie,
2°. Le pavillon neutre couvre la marchandise ennemie à l'exception de la contrebande de guerre.
3°. La marchandise neutre à l'exception de la contrebande de guerre n'est pas saisissable sous pavillon ennemi.
4°. Les blocus, pour être obligatoires, doivent être effectifs, c'est-à-dire maintenus par une force suffisante pour interdire réellement l'accès du littoral de l'ennemi.

Il reste en outre convenu que la liberté du pavillon garantit aussi celles des personnes et que les individus appartenant à une Puissance ennemie qui seraient rencontrés à bord d'un bâtiment neutre, ne pourront être faits prisonnier, à moins que ce ne soient des militaires et qu'ils ne soient en ce moment

[1] *State Papers*, vol. l. p. 389. [2] *Ibid.*, vol. lxi. p. 1037.

au service de l'ennemi. Les deux Hautes Parties Contractantes n'appliqueront ces principes qu'aux Puissances qui les reconnaissent également.

F.—SANDWICH ISLANDS.

[By Treaty with Italy, 1863.[1]]

ADDITIONAL ARTICLE TO THE TREATY OF COMMERCE AND NAVIGATION, JULY 22, 1863.

The two High Contracting Parties, moreover, agree that they will conform to the principles sanctioned by the Congress of Paris, and enunciated in the Declaration of April 16, 1856, relative to privateering, the rights of neutrals, and blockade, in the following terms, that is :—

"1. Privateering is and remains abolished.
"2. The neutral flag covers the merchandise of the enemy, with the exception of contraband of war.
"3. Neutral merchandise, excepting contraband of war, cannot be sequestrated under hostile flag.
"4. Blockades, to be obligatory, must be effective; that is, maintained by a sufficient force really to prevent access to the shores of the enemy."

G.—SIAM.

[By Treaty with Italy, 1868.[2]]

XVI. The High Contracting Parties, recognizing the principles of maritime law established by the Paris Congress of 1856, agree that if a war should take place between them, private property, of whatever kind, belonging to citizens of the one, shall be respected by the other, in the same manner as the property of neutrals. This shall be observed on land, at sea, on the high seas, in the territorial waters, and everywhere else, and whatever may be the flag under which the vessels navigate or the goods are carried, without any limitations, except the case of breaking blockade and the case of contraband of war.

The right is maintained, however, of preventing, during the war, all commerce and communications between all or any points of the coast of their own territory, and merchant ships under hostile flags, and also to visit transgressors of the pro-

[1] *State Papers*, vol. lx. p. 404. [2] *Ibid.*, vol. lx. p. 777.

hibition with confiscation and other penalties, provided the prohibition and the penalties be made known by a suitable manifesto published previously.

XVII. If Siam should be at war with another nation, this circumstance shall not cause any impediment to the free trade of Italy with Siam or with the hostile nation.

Italian ships may always, save in the case of effective blockade, proceed from the ports of one to the ports of the other belligerent nation, transact the usual business there, and import or export all kinds of goods not prohibited.

21

Second Marcy Note, 1856.

Mr Marcy to Count Sartiges.

Department of State, Washington
July 28, 1856.

The Undersigned, Secretary of State of the United States, has laid before the President "The Declaration concerning Maritime Law," adopted by the Plenipotentiaries of Great Britain, Austria, France, Prussia, Russia, Sardinia, and Turkey, at Paris, on the 16th of April 1856, which the Count de Sartiges, Envoy Extraordinary and Minister Plenipotentiary of France, has presented on behalf of the Emperor of the French to the Government of the United States, for the purpose of obtaining its adhesion to the principles therein contained.

Nearly two years since the President submitted, not only to the Powers represented in the late Congress at Paris, but to all other maritime nations, the second and third propositions contained in that Declaration, and asked their assent to them as permanent principles of international law. The propositions thus submitted by the President were :—

"1. That free ships make free goods—that is to say, that the effects or goods belonging to subjects or citizens of a Power or State at war are free from capture and confiscation when found on board of neutral vessels, with the exception of articles contraband of war.

"2. That the property of neutrals on board an enemy's

vessel is not subject to confiscation unless the same be contraband of war."

It will be perceived that these propositions are substantially the same as the second and third in the Declaration of the Congress at Paris.

Four of the Governments with which negotiations were opened on the subject by the United States have signified their acceptance of the foregoing propositions.[1] Others were inclined to defer acting on them until the return of peace should furnish a more auspicious time for considering such international questions. The proceeding of the Congress of the Plenipotentiaries at Paris will, as a necessary consequence, defeat the pending negotiations with the United States, if the two following propositions, contained in Protocol No. 24, are acceded to:— 1st, that the four principles shall be indivisible; and 2nd, that the Powers which have signed or may accede to the Declaration shall not enter into any arrangement in regard to the application of the right of neutrals in time of war which does not at the same time rest on the four principles which are the object of said Declaration. As the indivisibility of the four principles, and the limitation upon the sovereign attribute of negotiating with other Powers, are not a part of the Declaration, any nation is at liberty to reject either, or both, and to act upon the Declaration without restriction, acceding to it in whole or in part. In deliberating on this important subject, it behoves all Powers to consider, and, if they think proper, to act upon this distinction. All the Powers which may accede to that Declaration, and the subsequent restrictions contained in the 24th Protocol, will assume an obligation which takes from them the liberty of assenting to the propositions submitted to them by the United States, unless they at the same time surrender a principle of maritime law which has never been contested—the right to employ privateers in time of war.

The second and third principles set forth in the Declaration, being those submitted to other maritime Powers for adoption by this Government, it is most anxious to see incorporated, by general consent, into the code of maritime law, and thus placed beyond future controversy or question. Such a result, securing so many advantages to the commerce of neutral nations, might have been reasonably expected, but for the proceedings of the Congress at Paris, which require them to be purchased by a too costly sacrifice—the surrender of a right which may well be considered as essential to the freedom of the seas.

[1] For the treaties with three of these Governments, see Group 16, p. 331; see also p. 148. It is uncertain which is the fourth Government.

The fourth principle contained in the Declaration, namely, "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," can hardly be regarded as one falling within that class with which it was the object of the Congress to interfere; for this rule has not, for a long time, been regarded as uncertain, or the cause of any "deplorable disputes." If there have been any disputes in regard to blockades, the uncertainty was about the facts, but not the law. Those nations which have resorted to what are properly denominated "paper blockades" have rarely, if ever, undertaken afterwards to justify their conduct upon principle, but have generally admitted the illegality of the practice, and indemnified the injured parties. What is to be judged "a force sufficient really to prevent access to the coast of the enemy," has often been a severely contested question; and certainly the Declaration, which merely reiterates a general undisputed maxim of maritime law, does nothing towards relieving the subject of blockade from that embarrassment. What force is requisite to constitute an effective blockade remains as unsettled and as questionable as it was before the Congress at Paris adopted the Declaration.

In regard to the right to employ privateers, which is declared to be abolished by the first principle put forth in the Declaration, there was, if possible, less uncertainty. The right to resort to privateers is as clear as the right to use public armed ships, and as incontestable as any other right appertaining to belligerents. The policy of that law has been occasionally questioned, not, however, by the best authorities; but the law itself has been universally admitted, and most nations have not hesitated to avail themselves of it; it is as well sustained by practice and public opinion as any other to be found in the Maritime Code.

There is scarcely any rule of international law which particular nations in their Treaties have not occasionally suspended or modified in regard to its application to themselves. Two Treaties only can be found in which the Contracting Parties have agreed to abstain from the employment of privateers in case of war between them. The first was a Treaty between the King of Sweden and the States-General of the United Provinces, in 1675. Shortly after it was concluded the parties were involved in war, and the stipulation concerning privateers was entirely disregarded by both. The second was the Treaty of 1785, between the United States and the King of Prussia. When this Treaty was renewed in 1799, the clause stipulating

not to resort to privateering was omitted. For the last half century there has been no arrangement, by Treaty or otherwise, to abolish the right, until the recent proceedings of the Plenipotentiaries at Paris.

By taking the subject of privateering into consideration, that Congress has gone beyond its professed object, which was, as it declared, to remove the uncertainty on points of maritime law, and thereby prevent "differences of opinion between neutrals and belligerents, and consequently serious difficulties and even conflicts." So far as the principle in regard to privateering is concerned, the proceedings of the Congress are in the nature of an act of legislation, and seek to change a well-settled principle of international law.

The interest of commerce is deeply concerned in the establishment of the two principles which the United States had submitted to all maritime Powers; and it is much to be regretted that the Powers represented in the Congress at Paris, fully approving them, should have endangered their adoption by uniting them to another inadmissible principle, and making the failure of all the necessary consequence of the rejection of any one. To three of the four principles contained in the Declaration there would not probably be a serious objection from any quarter, but to the other a vigorous resistance must have been anticipated.

The policy of the law which allows a resort to privateers has been questioned for reasons which do not command the assent of this Government. Without entering into a full discussion on this point, the Undersigned will confront the ordinary and chief objection to that policy, by an authority which will be regarded with profound respect, particularly in France. In a commentary on the French Ordonnance of 1681, Valin says:—

"However lawful and time-honoured this mode of warfare may be, it is, nevertheless, disapproved of by some pretended philosophers. According to their notions, such is not the way in which the State and the Sovereign are to be served: whilst the profits which individuals may derive from the pursuit are illicit, or at least disgraceful. But this is the language of bad citizens, who, under the stately mask of a spurious wisdom, and of a crafty, sensitive conscience, seek to mislead the judgment by a concealment of the secret motive which gives birth to their indifference for the welfare and advantage of the State. Such as are worthy of blame as are those entitled to praise who generously expose their property and their lives to the dangers of privateering."

In a work of much repute published in France almost simultaneously with the proceedings of the Congress at Paris, it is declared that—" The issuing of letters of marque, therefore, is a constantly customary belligerent act. Privateers are *bonâ-fide* war-vessels, manned by volunteers, to whom, by way of reward, the Sovereign resigns such prizes as they make, in the same manner as he sometimes assigns to the land forces a portion of the war contributions levied on the conquered enemy " (Pistoye et Duverdy, *Des Prises Maritimes*).

It is not denied that annoyances to neutral commerce, and even abuses, have occasionally resulted from the practice of privateering; such was the case formerly more than in recent times: but when it is a question of changing a law, the incidental evils are to be considered in connexion with its benefits and advantages. If these benefits and advantages can be obtained in any other way, without injury to other rights, these occasional abuses may then justify the change, however ancient or firmly established may be the law.

The reasons which induced the Congress of Paris to declare privateering abolished are not stated, but they are presumed to be only such as are usually urged against the exercise of that belligerent right.

The prevalence of Christianity and the progress of civilization have greatly mitigated the severity of the ancient mode of prosecuting hostilities. War is now an affair of Governments. " It is the public authority which makes and carries on war; individuals are not permitted to take part in it, unless authorized to do so by their Government." It is a generally received rule of modern warfare, so far at least as operations upon land are concerned, that the persons and effects of non-combatants are to be respected. The wanton pillage or uncompensated appropriation of individual property by an army, even in possession of an enemy's country, is against the usage of modern times. Such a mode of proceeding at this day would be condemned by the enlightened judgment of the world, unless warranted by special circumstances. Every consideration which upholds this sentiment in regard to the conduct of a war on land favours the application of the same rule to the persons and property of citizens of the belligerents found upon the ocean.

It is fair to presume that the strong desire to ameliorate the severe usages of war by exempting private property upon the ocean from hostile seizure, to the extent it is usually exempted on land, was the chief inducement, which led to " the declaration " by the Congress at Paris, that " privateering is and remains abolished."

The Undersigned is directed by the President to say, that to this principle of exempting private property upon the ocean, as well as upon the land, applied without restriction, he yields a most ready and willing assent. The Undersigned cannot better express the President's views upon the subject than by quoting the language of his annual Message to Congress, of December 4, 1854 :—

"The proposition to enter into engagements to forego a resort to privateers, in case this country should be forced into a war with a great naval Power, is not entitled to more favourable consideration than would be a proposition to agree not to accept the services of volunteers for operations on land. When the honour or rights of our country require it to assume a hostile attitude, it confidently relies upon the patriotism of its citizens, not ordinarily devoted to the military profession, to augment the army and navy, so as to make them fully adequate to the emergency which calls them into action. The proposal to surrender the right to employ privateers is professedly founded upon the principle that private property of unoffending non-combatants, though enemies, should be exempt from the ravages of war; but the proposed surrender goes but little way in carrying out that principle, which equally requires that such private property should not be seized or molested by national ships of war. Should the leading Powers of Europe concur in proposing, as a rule of international law, to exempt private property, upon the ocean, from seizure by public armed cruizers as well as by privateers, the United States will readily meet them upon that broad ground."

The reasons in favour of the doctrine that private property should be exempted from seizure in the operations of war are considered in this enlightened age so controlling as to have secured its partial adoption by all civilized nations; but it would be difficult to find any substantial reasons for the distinction now recognized in its application to such property on land, and not to that which is found upon the ocean.

If it be the object of the Declaration adopted at Paris to abolish this distinction, and to give the same security from the ravages of war to the property of belligerent subjects on the ocean as is now accorded to such property on the land, the Congress at Paris has fallen short of the proposed result, by not placing individual effects of belligerents beyond the reach of public armed ships as well as privateers. If such property is to remain exposed to seizure by ships belonging to the navy of the adverse party, it is extremely difficult to perceive why it should not, in like manner, be exposed to seizure by privateers,

which are, in fact, but another branch of the public force of the nation commissioning them.

If the principle of capturing private property on the ocean and condemning it as prize of war be given up, that property would, and of right ought to be, as secure from molestation by public armed vessels as by privateers; but if that principle be adhered to, it would be worse than useless to attempt to confine the exercise of the right of capture to any particular description of the public force of the belligerents. There is no sound principle by which such a distinction can be sustained; no capacity which could trace a definite line of separation proposed to be made; and no proper tribunal to which a disputed question on that subject could be referred for adjustment. The pretence that the distinction may be supported upon the ground that ships not belonging permanently to a regular navy are more likely to disregard the rights of neutrals than those which do belong to such a navy is not well sustained by modern experience. If it be urged that a participation in the prizes is calculated to stimulate cupidity, that, as a peculiar objection, is removed by the fact that the same passion is addressed by the distribution of prize-money among the officers and crews of ships of a regular navy. Every nation which authorizes privateers is as responsible for their conduct as it is for that of its navy, and will, as a matter of prudence, take proper precaution and security against abuses.

But if such a distinction were to be attempted, it would be very difficult, if not impracticable, to define the particular class of the public maritime force which should be regarded as privateers. "Deplorable disputes," more in number and more difficult of adjustment, would arise from an attempt to discriminate between privateers and public armed ships.

If such a discrimination were attempted, every nation would have an undoubted right to declare what vessels should constitute its navy, and what should be requisite to give them the character of public armed ships. These are matters which could not be safely or prudently left to the determination or supervision of any foreign Power, yet the decision of such controversies would naturally fall into the hands of predominant naval Powers, which would have the ability to enforce their judgments. It cannot be offensive to urge weaker Powers to avoid as far as possible such an arbitrament, and to maintain with firmness every existing barrier against encroachments from such a quarter.

No nation which has a due sense of self-respect will allow any other, belligerent or neutral, to determine the character

of the force which it may deem proper to use in prosecuting hostilities; nor will it act wisely if it voluntarily surrenders the right to resort to any means, sanctioned by international law, which, under any circumstances, may be advantageously used for defence or aggression.

The United States consider powerful navies and large standing armies, as permanent establishments, to be detrimental to national prosperity and dangerous to civil liberty. The expense of keeping them up is burdensome to the people; they are, in the opinion of this Government, in some degree a menace to peace among nations. A large force, ever ready to be devoted to the purposes of war, is a temptation to rush into it. The policy of the United States has ever been, and never more than now, adverse to such establishments; and they can never be brought to acquiesce in any change in international law which may render it necessary for them to maintain a powerful navy or large regular army in time of peace. If forced to vindicate their rights by arms, they are content, in the present aspect of international relations, to rely, in military operations on land, mainly upon volunteer troops, and for the protection of their commerce in no inconsiderable degree upon their mercantile marine. If this country were deprived of these resources, it would be obliged to change its policy, and assume a military attitude before the world. In resisting an attempt to change the existing maritime law that may produce such a result, it looks beyond its own interest, and embraces in its view the interest of all such nations as are not likely to be dominant naval Powers. Their situation in this respect is similar to that of the United States, and to them the protection of commerce, and the maintenance of international relations of peace, appeal as strongly as to this country, to withstand the proposed change in the settled Law of Nations. To such nations, the surrender of the right to resort to privateers would be attended with consequences most adverse to their commercial prosperity, without any compensating advantages. Most certainly no better reasons can be given for such a surrender than for foregoing the right to receive the services of volunteers; and the proposition to abandon the former is entitled, in the judgment of the President, to no more favour than a similar proposition in relation to the latter. This opinion of the importance of privateers to the community of nations, excepting only those of great naval strength, is not only vindicated by history, but sustained by high authority. The following passage in the Treatise on maritime prizes to which I have before referred, deserves particular attention :—

"Privateers are especially useful to those Powers whose navy is inferior to that of their enemies. Belligerents, with powerful and extensive naval armaments, may cruize upon the seas with their national navies; but should those States whose naval forces are of less power and extent be left to their own resources, they could not hold out in a maritime war; whilst by the equipment of privateers they may succeed in inflicting upon the enemy an injury equivalent to that which they themselves sustain. Hence Governments have frequently been known, by every possible appliance, to favour privateering armaments. It has even occurred that Sovereigns, not merely satisfied with issuing letters of marque, have also taken, as it were, an interest in the armament. Thus did Louis XIV. frequently lend out his ships, and sometimes reserve for himself a share in the prizes."

It certainly ought not to excite the least surprise that strong naval Powers should be willing to forego the practice, comparatively useless to them, of employing privateers, upon condition that weaker Powers agree to part with their most effective means of defending their maritime rights. It is, in the opinion of this Government, to be seriously apprehended that if the use of privateers be abandoned, the dominion over the seas will be surrendered to those Powers which adopt the policy and have the means of keeping up large navies. The one which has a decided naval superiority would be potentially the mistress of the ocean, and by the abolition of privateering that domination would be more firmly secured. Such a Power engaged in war with a nation inferior in naval strength would have nothing to do for the security and protection of its commerce but to look after the ships of the regular navy of its enemy. These might be held in check by one-half, or less, of its naval force, and the other might sweep the commerce of its enemy from the ocean. Nor would the injurious effects of a vast naval superiority to weaker States be much diminished if that superiority was shared among three or four great Powers. It is unquestionably the interest of such weaker States to discountenance and resist a measure which fosters the growth of regular naval establishments.

In discussing the effect of the proposed measure—the abolition of privateering—a reference to the existing condition of nations is almost unavoidable. An instance will at once present itself in regard to two nations where the commerce of each is about equal, and about equally wide-spread over the world. As commercial Powers they approach to an equality, but as naval Powers there is great disparity between them.

The regular navy of one vastly exceeds that of the other. In case of a war between them, only an inconsiderable part of the navy of the one would be required to prevent that of the other from being used for defence or aggression, while the remainder would be devoted to the unembarrassed employment of destroying the commerce of the weaker in naval strength. The fatal consequences of this great inequality of naval force between two such belligerents would be in part remedied by the use of privateers ; in that case, while either might assail the commerce of the other in every sea, they would be obliged to distribute and employ their respective navies in the work of protection. This statement only illustrates what would be the case, with some modification, in every war where there may be considerable disparity in the naval strength of the belligerents.

History throws much light upon this question. France, at an early period, was without a navy, and in her wars with Great Britain and Spain, both then naval Powers, she resorted with signal good effect to privateering, not only for protection, but successful aggression. She obtained many privateers from Holland, and, by this force, gained decided advantages on the ocean over her enemy. Whilst in that condition, France could hardly have been expected to originate or concur in a proposition to abolish privateering. The condition of many of the smaller States of the world is now, in relation to naval Powers, not much unlike that of France in the middle of the sixteenth century. At a later period, during the reign of Louis XIV., several expeditions were fitted out by him, composed wholly of privateers, which were most effectively employed in prosecuting hostilities with naval Powers.

Those who may have at any time a control on the ocean will be strongly tempted to regulate its use in a manner to subserve their own interests and ambitious projects. The ocean is the common property of all nations, and instead of yielding to a measure which will be likely to secure to a few —possibly to one—an ascendancy over it, each should pertinaciously retain all the means it possesses to defend the common heritage. A predominant Power upon the ocean is more menacing to the well-being of others than such a Power on land, and all are alike interested in resisting a measure calculated to facilitate the permanent establishment of such domination, whether to be wielded by one Power or shared among a few others.

The injuries likely to result from surrendering the dominion of the seas to one or a few nations which have powerful navies arise mainly from the practice of subjecting private property

on the ocean to seizure by belligerents. Justice and humanity demand that this practice should be abandoned, and that the rule in relation to such property on land should be extended to it when found upon the high seas.

The President, therefore, proposes to add to the first proposition in the Declaration of the Congress at Paris the following words: "And that the private property of the subjects or citizens of a belligerent on the high seas shall be exempted from seizure by public armed vessels of the other belligerent, except it be contraband." Thus amended, the Government of the United States will adopt it, together with the other three principles contained in that Declaration.

I am directed to communicate the approval of the President to the second, third, and fourth propositions, independently of the first, should the amendment be unacceptable. The amendment is commended by so many powerful considerations, and the principle which calls for it has so long had the emphatic sanction of all enlightened nations in military operations on land, that the President is reluctant to believe it will meet with any serious opposition. Without the proposed modification of the first principle, he cannot convince himself that it would be wise or safe to change the existing law in regard to the right of privateering.

If the amendment should not be adopted, it will be proper for the United States to have some understanding in regard to the treatment of their privateers when they shall have occasion to visit the ports of those Powers which are, or may become, parties to the Declaration of the Congress at Paris. The United States will, upon the ground of right and comity, claim for them the same consideration to which they are entitled, and which was extended to them, under the Law of Nations, before the attempted modification of it by that Congress.

As connected with the subject herein discussed, it is not inappropriate to remark, that a due regard to the fair claims of neutrals would seem to require some modification, if not an abandonment, of the doctrine in relation to contraband trade. Nations which preserve the relations of peace should not be injuriously affected in their commercial intercourse by those which choose to involve themselves in war, provided the citizens of such peaceful nations do not compromise their character as neutrals by a direct interference with the military operations of the belligerents. The laws of siege and blockade, it is believed, afford all the remedies against neutrals that the parties to the war can justly claim. Those laws interdict all

trade with the besieged or blockaded places. A further interference with the ordinary pursuits of neutrals in nowise to blame for an existing state of hostilities is contrary to the obvious dictates of justice. If this view of the subject could be adopted, and practically observed by all civilized nations, the right of search, which has been the source of so much annoyance, and of so many injuries to neutral commerce, would be restricted to such cases only as justified a suspicion of an attempt to trade with places actually in a state of siege or blockade.

Humanity and justice demand that the calamities incident to war should be strictly limited to the belligerents themselves, and to those who voluntarily take part with them ; but neutrals, abstaining in good faith from such complicity, ought to be left to pursue their ordinary trade with either belligerent, without restrictions in respect to the articles entering into it.

Though the United States do not propose to embarrass the other pending negotiations, relative to the rights of neutrals, by pressing this change in the law of contraband, they will be ready to give it their sanction whenever there is a prospect of its favourable reception by other maritime Powers.

The Undersigned, &c.

(Signed) W. L. Marcy.

22

United States Proposals for a Convention, 1857.

(1) MR DALLAS TO THE EARL OF CLARENDON.

Legation of the United States,
London, February 24, 1857.

With reference to the interview at the Foreign Office on the 20th instant, the Undersigned, Envoy Extraordinary and Minister Plenipotentiary of the United States, has now the honour to submit to the Earl of Clarendon, Her Majesty's Principal Secretary of State for Foreign Affairs, the accompanying draft of a Convention, declaratory of certain principles of maritime law, to the adoption of which he has been specially instructed to invite Her Majesty's Government.

The Plenipotentiaries of Great Britain, Austria, France,

Prussia, Russia, Sardinia, and Turkey, while assembled in Congress at Paris on the 16th of April 1856, having taken into consideration the subject of maritime law in time of war, agreed to a Declaration containing the following four " maxims " :—

1. Privateering is, and remains, abolished.

2. The neutral flag covers enemy's goods, with the exception of contraband of war.

3. Neutral goods, with the exception of contraband of war, are not liable to capture under 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.

The Plenipotentiaries also engaged that their respective Governments should bring this Declaration to the knowledge of the States which had not taken part in the Congress of Paris, and invite them to accede to it ; and added, that it was not and should not be binding, except between those Powers who have acceded, or shall accede, to it.

To the United States the above-mentioned Declaration has been formally made known by several of the Governments whose Plenipotentiaries subscribed it (though not by Her Majesty's Government), and their adhesion invited.

These four principles of international relation have long engaged the consideration of the American Government. About two years prior to the meeting of the Congress at Paris, negotiations had been originated, and were in train, with the maritime nations, for the adoption of the second and third propositions, substantially as enunciated in the Declaration. The fourth of those principles, respecting blockades, had, it is believed, long since become a fixed rule of the law of war. And, in relation to the first of those principles, contemplating, in deference to the higher civilization and purer philanthropy of the age, a general relinquishment of a right undoubtedly possessed by every nation—that of employing private armed vessels against an enemy—the President of the United States had publicly, in his Message to Congress at the opening of the session in December 1854, expressed the policy and sentiment of the American Government and people.

To all of the propositions of the Declaration made by the Plenipotentiaries at Paris, the Government of the United States has been, therefore, for some time, and still is, prepared cordially to accede, excepting only with such an addition to the first as has always seemed to the President indispensable to the attainment of its true and humane purpose—that of diminishing the calamities of war.

The Undersigned forbears, in this communication, to press upon the Earl of Clarendon the reasons which brought the Government of the United States to the conviction that the enlargement of the first proposition in the Declaration of the Plenipotentiaries at Paris, as made in the accompanying draft of a Convention, is necessary before that proposition can justly claim its assent. Those reasons have been distinctly and fully stated in various Executive and international Papers, which have doubtless heretofore reached his Lordship's notice. They arise, indeed, naturally, in any deliberative mind, by which the relinquishment of the right to employ privateers is considered in its bearing upon the Constitutional structure, the economical policy, the commercial activity, and the defensive means of the United States.

It is undoubtedly true that some incongruity may be detected in comparing the second and third propositions with the first of the furnished draft; but it has been thought most prudent to abstain from any effort to improve the form of the Convention by changing the phraseology employed by the Plenipotentiaries at Paris, or by the American Executive. The respective propositions, thus worded, have been addressed to and reflected upon by maritime nations generally, and much delay and inconvenience would necessarily be consequent upon moulding them anew. If Her Majesty's Government be disposed to concur in the principles themselves, it is not presumed that an objection will be suggested by the mere form in which they are embodied.

The Undersigned is directed to invite Her Majesty's Government to conclude the proposed Convention; and he has the honour to apprise the Earl of Clarendon that the President of the United States has transmitted him a full power to negotiate and sign it whenever agreed upon.

The Undersigned, &c.

(Signed) G. M. Dallas.

Inclosure.

A Treaty, &c.

The United States of America and

animated by a common desire to render more intimate the relations of friendship and good understanding now so happily subsisting between them, and more especially to establish these relations in accordance with the present state and progress of civilization, have mutually resolved to declare, by means of a

formal Convention, the principles of Maritime Law which the High Contracting Parties acknowledge as the basis of neutral and belligerent rights at sea, and which they agree to recognize as permanent and immutable, and to observe between themselves and with other Powers which shall recognize and observe the same towards the Parties to this Convention.

For this purpose, the President of the United States has conferred full powers on

and

has conferred like powers on

and said Plenipotentiaries, after having exchanged their full powers, found in good and due form, have concluded and signed the following Articles :—

Article I.

The High Contracting Parties do hereby agree to observe the following principles as immutable rules of Maritime Law :—

First. That privateering is, and shall remain, abolished, and the private property of subjects or citizens of a belligerent, on the high seas, shall be exempted from seizure by the public armed vessels of the other belligerent, except it be contraband.

Second. The neutral flag covers enemy's goods, with the exception of contraband of war.

Third. Neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag.

Fourth. 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.

Article II.

The High Contracting Parties do hereby declare that, henceforward, in judging of the rights of citizens and subjects of neutral nations, they will observe the principles contained in the foregoing Articles, and be guided by them, and that all nations which shall stipulate by Treaty to accede to the aforesaid principles, and observe the same, shall enjoy the rights secured thereby as fully as the two Powers signing this Convention.

This Convention shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof and by , and the

ratifications shall be exchanged at
within fifteen months, to be counted from the date of the signature hereof, or sooner, if possible.

(2) MR DALLAS TO THE EARL OF CLARENDON.

Legation of the United States,
London, April 25, 1857.

The Undersigned, Envoy Extraordinary and Minister Plenipotentiary of the United States, referring to his letter of the 24th February 1857, relating to a modification of the rules of maritime law which were proposed by the Conference at Paris, has the honour to inform the Earl of Clarendon, Her Majesty's Principal Secretary of State for Foreign Affairs, that he has recently been specially instructed by his Government to suspend negotiations upon that subject until he shall have received further instructions.

The Undersigned, &c.

(Signed) G. M. DALLAS.

23

Report of the Select Committee on Merchant Shipping, AUGUST 28, 1860.

EXTRACT FROM REPORT RELATING TO BELLIGERENT RIGHTS AT SEA.

The question of belligerent rights at sea, with reference to merchant shipping, affects alike the British shipowner in the prosecution of his business, and the general interests of Great Britain, and, therefore, the evidence given on the subject has received from Your Committee that attention which its gravity demands.

Great Britain formerly asserted principles of the law of nations, with reference to the rights of belligerents and neutrals, though other nations defended maxims in some points differing from our own.

But in the war with Russia in 1854, England having formed an alliance with France, both nations waived their rights to

confiscate enemy's goods on board neutral ships, as also neutral goods, in either case not contraband of war, found on board an enemy's ship. This mutual but provisional waiver of belligerent rights placed the allies in harmonious action, and practically countenanced the principle that "free ships make free goods." Upon the return of peace, the Declaration of Paris of April 1856, signed by Austria, France, Great Britain, Prussia, Russia, Sardinia, and Turkey, gave a formal sanction to this principle. Privateering was also abolished.

America was invited to be a party to this general international agreement, but demurred, and coupled at first her assent to the abolition of privateering with the condition that private property at sea should no longer be subject to capture. Finally, she refused to be a party to a convention whereby she would be precluded from resorting to her merchant marine for privateering purposes in case she became a belligerent. But this is not surprising, for the United States has obtained a recognition of the rights of neutrals for which she contended throughout a former period of hostilities; and Great Britain has surrendered her rights without any equivalent from the United States. Our shipowners will thereby be placed at an immense disadvantage in the event of a war breaking out with any important European Power. In fact, should the Declaration of Paris remain in force, during a period of hostilities, the whole of our carrying trade would be inevitably transferred to American and other neutral bottoms.

From the evidence given by various witnesses, it appears that at a recent period, upon a mere rumour of war in Europe, in which it was apprehended that Great Britain might be involved, American and other neutral ships received a decided preference in being selected to carry produce from distant ports of the world to ports in Europe, whereby even in a period of peace British shipowners were seriously prejudiced. It seems, therefore, that the state of international law, with reference to belligerent rights affecting merchant shipping, cannot remain in its present state; for whilst England may be involved in any great European war, the United States is almost certain to be neutral; and thus our great maritime rival would supplant us in the carrying trade.

We must therefore either secure the general consent of all nations to establish the immunity of merchant ships and their cargoes from the depredations of both privateers and armed national cruisers during hostilities; or we must revert to the maintenance of our ancient rights, whereby, relying upon our maritime superiority, we may not merely hope to guard un-

molested our merchant shipping in the prosecution of their business, but may capture enemies' goods in neutral ships, and thus prevent other nations from seizing the carrying trade of the kingdom during a state of hostilities.

Your Committee consider it their duty to call the attention of Your Honourable House to the great importance of this question, which, if not solved during a period of peace, may cause incalculable embarrassment at the outbreak of a war. It is doubtless the Prerogative of the Crown to initiate proper measures to maintain the honour and guard the interests of the country in this respect. Your Committee, however, cannot but express their opinion that a compact, like the Declaration of Paris, to which a great maritime Power has refused to be a party, may, in the event of hostilities, produce complications highly disastrous to British interests. As matters stand, England is under all the disadvantages of the want of reciprocal pledges on the part of the United States to refrain from privateering, or from the attempt to break a blockade, which, as heretofore, a sense of self-preservation might compel Great Britain to establish; while Powers so unpledged, urged by every motive of self-interest, would be in a position to inflict the deepest injury upon British interests, under the same unjustifiable pretences as were put forth during the war at the commencement of the present century.

Your Committee have thought it their duty thus briefly to point out to Your Honourable House the present unsatisfactory position of this question as it immediately affects British merchant shipping. They have done so in the confidence that the whole subject will receive due attention in that quarter where the responsibility rests of taking such measures, in concurrence with foreign Powers, as may place the present international regulations on a better footing. Your Committee are aware that grave objections have been urged by high authorities against any further step in advance; but they cannot close this brief comment on so important a question without expressing a hope that Your Honourable House will agree with them in the opinion that, in the progress of civilisation and in the cause of humanity, the time has arrived when all private property, not contraband of war, should be exempt from capture at sea. Your Committee are of opinion that Great Britain is deeply interested in the adoption of this course. This country has at all times a much larger amount of property afloat than any other nation, and consequently requires a very large naval force to protect her merchant shipping, perhaps at a time when the whole of our ships of war may be urgently wanted to defend our shores.

24

The American Civil War and the Declaration of Paris.

CORRESPONDENCE RELATIVE TO THE OVERTURES ADDRESSED TO THE CONTENDING PARTIES IN THE UNITED STATES, WITH A VIEW TO THEIR ADHESION TO THE PRINCIPLES OF MARITIME LAW AS LAID DOWN BY THE CONGRESS OF PARIS IN 1856. [SELECTED EXTRACTS.[1]]

No. 1.

LORD J. RUSSELL TO EARL COWLEY.

Foreign Office, May 6, 1861.

MY LORD,

Although Her Majesty's Government have received no despatches from Lord Lyons by the mail which has just arrived, the communication between Washington and New York being interrupted, yet the accounts which have reached them from some of Her Majesty's Consuls, coupled with what has appeared in the public prints, are sufficient to show that a civil war has broken out among the States which lately composed the American Union.

Other nations have, therefore, to consider the light in which, with reference to that war, they are to regard the Confederacy into which the Southern States have united themselves; and it appears to Her Majesty's Government that, looking at all the circumstances of the case, they cannot hesitate to admit that such Confederacy is entitled to be considered as a belligerent, and, as such, invested with all the rights and prerogatives of a belligerent.

I have stated this to Lord Lyons in the despatch of which I enclose a copy for your Excellency's information.

In making known to M. Thouvenel the opinion of Her Majesty's Government on this point, your Excellency will add that you are instructed to call the attention of the French Government to the bearing which this unfortunate contest threatens to have on the rights and interests of neutral nations.

On the one hand, President Lincoln, in behalf of the Northern portion of the late United States, has issued a Proclamation declaratory of an intention to subject the ports of the Southern

[1] The numbering of the despatches corresponds with that of the White Paper (North America, No. 3, 1862) in which the correspondence was published

portion of the late Union to a rigorous blockade ; on the other hand, President Davis, on behalf of the Southern portion of the late Union, has issued a Proclamation declaratory of an intention to grant letters of marque for cruizers to be employed against the commerce of the North.

In this state of things it appears to Her Majesty's Government to be well deserving of the immediate consideration of all maritime Powers, but more especially of France and England, whether they should not take some steps to invite the contending Parties to act upon the principles laid down in the 2nd and 3rd Articles of the Declaration of Paris of 1856, which relates to the security of neutral property on the high seas.

The United States, as an entire Government, have not acceded to that Declaration ; but in practice they have, in their Conventions with other Powers, adopted the 2nd Article, although admitting that without some such Convention the rule was not one of universal application.

As regards the 3rd Article, in recent Treaties concluded by the United States with South American Republics, the principle adopted has been at variance with that laid down in the Declaration of Paris.

Your Excellency will remember that, when it was proposed to the Government of the United States, in 1856, to adopt the whole of the Declaration of Paris, they in the first instance agreed to the second, third, and fourth Proposals, but made a condition as to the first that the other Powers should assent to extending the Declaration so as to exempt all private property whatever from capture on the high seas ; but before any final decision was taken on this proposal, the Government of President Buchanan, which in the interval had come into power, withdrew the proposition altogether.

It seems to Her Majesty's Government to be deserving of consideration whether a joint endeavour should not now be made to obtain from each of the belligerents a formal recognition of both principles as laid down in the Declaration of Paris, so that such principles shall be admitted by both, as they have been admitted by the Powers who made or acceded to the Declaration of Paris, henceforth to form part of the general law of nations.

Her Majesty's Government would be glad to be made acquainted with the views of the Imperial Government on this matter with as little delay as possible.

(Signed) J. Russell.

No. 3.

Earl Cowley to Lord J. Russell.

Paris, May 9, 1861.

My Lord,

I called this afternoon on M. Thouvenel for the purpose of obtaining his answer to the proposals contained in your Lordship's despatch of the 6th instant, relative to the measures which should be pursued by the Maritime Powers of Europe for the protection of neutral property in presence of the events which are passing in the American States.

M. Thouvenel said the Imperial Government concurred entirely in the views of Her Majesty's Government, and would be prepared to join Her Majesty's Government in endeavouring to obtain of the belligerents a formal recognition of the 2nd and 3rd Articles of the Declaration of Paris. M. de Flahault would receive instructions to make this known officially to your Lordship.

With regard to the manner in which this endeavour should be made, M. Thouvenel said that he thought a communication should be addressed to both parties in as nearly as possible the same language, the Consuls being made the organs of communication with the Southern States; that the language employed should be that of goodwill and friendship; that the present state of things should be deplored, and a declaration made that the Governments of Great Britain and France intended to abstain from all interference, but that the commercial interests of the two countries demanded that they should be assured that the principles with respect to neutral property laid down by the Congress of Paris would be adhered to—an assurance which the two Governments did not doubt they should obtain, as the principles in question were in strict accordance with those that had been always advocated by the United States.

M. Thouvenel observed that as France and the United States had been always agreed on these maritime questions, it would be difficult for either party in America to refuse their assent to the principles now invoked.

His Excellency said further that, in looking for precedents, it had been discovered that Great Britain, although treating at the commencement of the American war letters of marque as piracy, had, after a time, recognized the belligerent rights of the States in rebellion against her.

(Signed) Cowley.

No. 7.

LORD J. RUSSELL TO LORD LYONS.

Foreign Office, May 18, 1861.

MY LORD,

Her Majesty's Government deeply lament the outbreak of hostilities in North America, and they would gladly lend their aid to the restoration of peace.

You are instructed, therefore, in case you should be asked to employ your good offices, either singly or in conjunction with the Representatives of other Powers, to give your assistance in promoting the work of reconciliation.

But as it is most probable, especially after a recent letter of Mr Seward, that foreign advice is not likely to be accepted, you will refrain from offering it unasked. Such being the case, and supposing the contest not to be at once ended by signal success on one side, or by the return of friendly feeling between the two contending parties, Her Majesty's Government have to consider what will be the position of Great Britain as a neutral between the two belligerents.

So far as the position of Great Britain in this respect towards the European Powers is concerned, that position has been greatly modified by the Declaration of Paris of April 16, 1856.

[Here follows a reference to the terms of the Declaration.]

Mr Secretary Marcy, in acknowledging on the 28th July, 1856, the communication of the Declaration of Paris made to the Government of the United States by the Count de Sartiges,[1] proposed to add to Article 1 thereof the following words: "and that the private property of the subjects or citizens of a belligerent on the high seas shall be exempted from seizure by public armed vessels of the other belligerent, except it be contraband": and Mr Marcy expressed the willingness of the Government of the United States to adopt the clause so amended, together with the other three principles contained in the Declaration. Mr Marcy also stated that he was directed to communicate the approval of the President of the second, third, and fourth propositions, independently of the first, should the proposed amendment of Article 1 be unacceptable.

The United States Minister in London, on the 24th of February, 1857, renewed the proposal in regard to Article 1, and submitted a draft of Convention[2] in which the Article so

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[1] Document No. 21.

[2] Document No. 22.

amended would be embodied with the other three Articles. But before any decision was taken on this proposal, a change took place in the American Government, by the election of a new President of the United States, and Mr Dallas announced on the 25th of April, 1857, that he was directed to suspend negotiations on the subject. Up to the present time those negotiations have not been renewed.

The consequence is, that the United States remaining outside the provisions of the Declaration of Paris, the uncertainty of the law and of international duties with regard to such matters may give rise to differences of opinion between neutrals and belligerents which may occasion serious difficulties and even conflicts.

It is with a view to remove beforehand such " difficulties " and to prevent such " conflicts " that I now address you.

For this purpose, I proceed to remark on the four Articles, beginning not with the first, but with the last.

In a letter to the Earl of Clarendon of the 24th of February, 1857, Mr Dallas, the Minister of the United States, while submitting the draft of a new Convention, explains the views of the Government of the United States on the four Articles.

In reference to the last Article he says :—" The fourth of those principles respecting blockades had, it is believed, long since become a fixed rule of the law of war."

There can be no difference of opinion, therefore, with regard to Article 4.

With respect to the 3rd Article, the principle laid down in it has long been recognised as law, both in Great Britain and in the United States. Indeed, this part of the law is stated by Chancellor Kent to be uniform in the two countries.

With respect to the 2nd Article, Mr Dallas says, in the letter before quoted : " About two years prior to the meeting of the Congress at Paris, negotiations had been originated, and were in train with the maritime nations, for the adoption of the second and third propositions substantially as enumerated in the Declaration."

The United States, therefore, have no objection, in principle, to the second proposition. Indeed, Her Majesty's Government have to remark that this principle is adopted in the Treaties between the United States and Russia of the 22nd of July, 1854,[1] and was sanctioned by the United States in the earliest period

[1] Document No. 16. A sentence has apparently dropped out of the despatch, as the word " Treaties " indicates an intention to refer to the treaties concluded by the United States with other Powers.

of the history of their independence by their accession to the armed neutrality.[1]

With Great Britain the case has been different; she formerly contended for the opposite principle as the established rule of the Law of Nations, but having in 1856, upon full consideration, determined to depart from that rule, she means to adhere to the principle she then adopted. The United States, who have always desired this change, can, it may be presumed, have no difficulty in assenting to the principle set forth in Article 2 of the Declaration of Paris.

There remains only to be considered Article 1, namely, that relating to privateering, from which the Government of the United States withheld their assent. Under these circumstances it is expedient to consider what is required on this subject by the general law of nations. Now it must be borne in mind that privateers bearing the flag of one or other of the belligerents may be manned by lawless and abandoned men, who may commit, for the sake of plunder, the most destructive and sanguinary outrages. There can be no question, however, but that the Commander and crew of a ship bearing a letter of marque must, by the law of nations, carry on their hostilities according to the established laws of war. Her Majesty's Government must, therefore, hold any Government issuing such letters of marque responsible for, and liable to make good, any losses sustained by Her Majesty's subjects in consequence of wrongful proceedings of vessels sailing under such letters of marque.

In this way, the object of the Declaration of Paris may to a certain extent be attained without the adoption of any new principle.

You will urge these points upon Mr Seward.

The proposals of Her Majesty's Government are made with a view to limit and restrain that destruction of property, and that interruption of trade, which must in a greater or less degree be the inevitable consequences of the present hostilities. Her Majesty's Government expect that these proposals will be received by the United States' Government in a friendly spirit. If such shall be the case, you will endeavour (in concert with M. Mercier) to come to an agreement on the subject, binding France, Great Britain, and the United States. If these proposals, should, however, be rejected, Her Majesty's Government

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[1] This is a mistake. The United States did not adhere to the Armed Neutrality Convention. They expressed their desire to do so, but being belligerents it was not acceded to.

will consider what other steps should be taken with a view to protect from wrong and injury the trade and the property and persons of British subjects.

(Signed) J. Russell.

No. 8.

Lord J. Russell to Lord Lyons.

Foreign Office, May 18, 1861.

(Extract)

I think it right to acquaint your Lordship that my instruction to you of the 6th instant, in which I stated to you the grounds on which Her Majesty's Government had thought it incumbent on them to admit the belligerent rights of the Confederate States of America, as well as my instruction to you of this day, have severally been communicated to the French Government, and that, as I learn from Lord Cowley and the French Ambassador, the Imperial Government concur in those instructions, and have sent corresponding instructions to M. Mercier.

Your Lordship may therefore be prepared to find your French colleague ready to take the same line with yourself in his communications with the Government of the United States.

I need not tell your Lordship that Her Majesty's Government would very gladly see a practice, which is calculated to lead to great irregularities, and to increase the calamities of war, renounced by both the contending parties in America as it has been renounced by almost every other nation of the world; and therefore you will not err in encouraging the Government to which you are accredited to carry into effect any disposition which they may evince to recognize the Declaration of Paris in regard to privateering, as Her Majesty's Government do not doubt that they will, without hesitation, recognize the remaining Articles of the Declaration, to which you are now instructed to call their attention.

You will clearly understand that Her Majesty's Government cannot accept the renunciation of privateering on the part of the Government of the United States if coupled with the condition that they should enforce its renunciation on the Confederate States, either by denying their right to issue letters of marque, or by interfering with the belligerent operations of vessels holding from them such letters of marque, so long as they carry on hostilities according to the recognized principles and under the admitted liabilities of the law of nations.

You will take such means as you shall judge most expedient

to transmit to Her Majesty's Consul at Charleston or New Orleans a copy of my previous despatch to you of this day's date, to be communicated at Montgomery to the President of the so-styled Confederate States.

No. 10.

Lord J. Russell to Mr Grey.

Foreign Office, June 12, 1861.

Sir,

The Ambassador of France came to me yesterday, and informed me that the Minister of the United States at Paris had made to M. Thouvenel two propositions.

The first was that France should agree to add to the 1st Article of the Declaration of Paris the plan of protecting private property on the sea from capture in time of war.

The second proposition was, that privateering being abolished by the adoption of the 1st Article of the Declaration of Paris, amended as proposed, the privateers sent out by the so-styled Southern Confederacy should be considered as pirates.

M. Thouvenel wishes to learn the opinions of Her Majesty's Government upon these propositions. Her Majesty's Government decidedly object to the first proposition. It seems to them that it would reduce the power in time of war of all States having a military as well as a commercial marine.

It is hardly necessary to point out that in practice it would be almost impossible to distinguish between *bonâ-fide* ships carrying merchandize, and ships fraudulently fitted out with means of war under the guise of merchant vessels.

With regard to the second point, Her Majesty's Government are not disposed to depart from the neutral character which Her Majesty, as well as the Emperor of the French, has assumed.

You will read this despatch to M. Thouvenel.

(Signed) J. Russell.

No. 11.

Mr Grey to Lord J. Russell.

Paris, June 14, 1861.

My Lord,

In obedience to your Lordship's instructions, I, yesterday, read to M. Thouvenel your despatch of the 12th instant, relating to the propositions made by the Minister of the United States to his Excellency.

M. Thouvenel expressed great satisfaction on finding how completely your Lordship's views coincided with his own. His Excellency said he was already aware that your Lordship entertained the same opinion as he himself did on this subject, but he had not yet heard it so decidedly expressed, and he desired me to convey his thanks to your Lordship for the communication.

His Excellency proceeded to say that the first proposition had not been made by Mr Dayton until he had asked that Minister to address him an official note on the subject. His answer to it was that the Imperial Government would be glad if that of the United States acceded " purely and simply " to the Declaration of Paris, but that it was out of the question to accept the condition which it was proposed to add to that Declaration, for the effect would be, as your Lordship observes, greatly to reduce the power in time of war of all States having a military as well as a commercial marine. With regard to the second proposition, his Excellency said it was made by the United States with the evident object of leading the French Government to take a decided part against the Southern Confederacy, but this attempt had failed, and there was no intention on the part of the French Government to depart from their neutral character.

M. Thouvenel also informed me that he has not yet received any further communication from Mr Dayton.

(Signed) W. G. Grey.

No. 12.

Lord Lyons to Lord J. Russell. (Received June 17.)

Washington, June 4, 1861.

(Extract)

M. Mercier and I had a conversation respecting these instructions [as recited] a few hours after the despatches containing them reached us.

On one point we both entirely agreed. We were both convinced that the best hope of attaining the object of our instructions, and of preventing an inconvenient outbreak from this Government, lay in making the course of Great Britain and France as nearly as possible identical.

It is probable that Mr Adams may, before this despatch reaches your Lordship, have offered, on the part of this Government, to adhere to Article 1 of the Declaration of Paris, as well as to the others, and thus to declare privateering to be abolished. There is no doubt that this adherence will be offered in the

expectation that it will bind the Governments accepting it to treat the privateers of the Southern Confederacy as pirates. Had this Government offered its adherence immediately upon the appearance of the notice by the Southern Confederacy of its intention to issue letters of marque, it would probably have not been very difficult for Great Britain and France to have exercised an influence at Montgomery which would have prevented the letters from being actually issued. At the present moment, however, the privateers are in full activity, and have met with considerable success. It is not, therefore, to be expected that the Southern Confederacy will relinquish the employment of them, otherwise than on compulsion or in return for some great concession from France and England.

It seems to be far from certain that the United States' Congress would ratify the abolition of privateering; nor do I suppose that the Cabinet will abide by its proposal when it finds that it will gain nothing towards the suppression of the Southern privateering by doing so.

No. 13.

Lord J. Russell to Lord Lyons.

Foreign Office, June 21, 1861.

(Extract)

The United States Minister at Paris has made propositions to the Imperial Government, founded on the answer of Mr Marcy to the request formerly made to him, to adopt, on the part of his Government, the Declaration of Paris.

The Government of the Emperor entirely concur with Her Majesty's Government in the opinion that these propositions ought to be rejected.

When I asked Mr Adams whether he had similar propositions to make to Her Majesty's Government, he informed me that he had no instructions to do so.

No. 14.

Lord Lyons to Lord J. Russell. (Received June 30.)

[Reporting a visit with M. Mercier to Mr Seward.]

Washington, June 17, 1861.

(Extract)

. . . . . .

Mr Seward said at once that he could not receive from us a communication founded on the assumption that the Southern

rebels were to be regarded as belligerents; that this was a determination to which the Cabinet had come deliberately; that he could not admit that recent events had in any respect altered the relations between foreign Powers and the Southern States; that he would not discuss the question with us, but that he should give instructions to the United States' Ministers in London and Paris, who would be thus enabled to state the reasons for the course taken by their Government to your Lordship and to M. Thouvenel, if you should be desirous to hear them.

. . . . . .

Mr Seward proceeded, in a friendly and less formal tone, to say that he did not relish the identity of the course pursued by Great Britain and France; that he did not think that two European Powers ought to consult together upon the course to be pursued towards a great nation like the United States, and announce that they were acting in concert on the subject.

M. Mercier and I endeavoured to make it clear to Mr Seward that this was a susceptibility which was not indulged in by the Great Powers of Europe in their relations with each other. Nothing, we said, was more common than for two or more Powers to come to an agreement upon the policy to be pursued on a matter in which they had a common interest, and to unite their efforts in order to give effect to that policy. Such a course was never considered offensive or disrespectful. Certainly on the present occasion Great Britain and France had none but the most friendly feelings towards the United States.

Mr Seward replied that he could not but notice this point, although he did not mean to make it the subject of a formal complaint.

As to what the British and French Governments practically asked, he was, he said, perfectly ready to agree to all, and more than all, that was desired. The United States had always held, and held still, that the flag covered the cargo, and that the property of a friend was not liable to seizure under an enemy's flag. The Government admitted fully that it would be responsible for the acts of any privateer to whom it should issue letters of marque. He regarded these principles to be quite as applicable to measures of coercion adopted against rebels as to the operations of a regular war.

This being the case, Great Britain and France would, Mr Seward said, obtain all they wanted, and there was no need that any question should be raised by those two Powers with the United States, as to whether the Southern rebels were or were not invested with belligerent rights. France had made no public announcement on the subject; Great Britain had,

indeed, issued a Proclamation, and some of Her Majesty's Ministers had made declarations in Parliament. After all, however, the Proclamation was addressed only to Her Majesty's subjects; Americans, too, understood and respected, as much as Englishmen, the freedom of Parliamentary debate. He should not take official cognizance of the recognition of the belligerent rights of Southern rebels by Great Britain and France, unless he should be forced to do so by an official communication addressed to the Government of the United States itself.

Mr Seward's language and demeanour throughout the interview were calm, friendly, and good-humoured.

. . . . . .

No. 15.

Lord Lyons to Lord J. Russell. (Received June 30.)

Washington, June 17, 1861.

(Extract)

In the course of the conversation which Mr Seward held with M. Mercier and me yesterday, it appeared that he conceived that the communication which we were discussing with him was a matter entirely distinct from his proposal to adhere to the Declaration of Paris. He seemed to have concluded, from a despatch which he had received from Mr Adams, that your Lordship had authorized me to enter into a separate negotiation on that subject.

I have this morning explained to Mr Seward how the matter really stands. He said, in reply, that he thought he had reason to complain that the Governments of Europe had taken no notice of the offer he had made to them long ago, to adhere, without reserve, to the Declaration of Paris. He had announced that he preferred the proposal of Mr Marcy, but if that was not acceptable he was ready to agree to the Declaration as it stood. He should now desire Mr Adams to inform your Lordship that he was willing that the negotiation should be carried on either here or in London, without further delay.

No. 16.

Mr Adams to Lord J. Russell. (Received July 12.)

Legation of the United States, London, July 11, 1861.

My Lord,

. . . . . .

I am directed once more to renew the proposition here, and to say that, if agreeable to your Lordship, I am prepared

to present to your consideration a project of a Convention at any moment which it may be convenient to you to appoint.

(Signed) Charles Francis Adams.

No. 18.

Draft of Convention between the United States of America and Her Majesty the Queen of Great Britain and Ireland, upon the subject of the Rights of Belligerents and Neutrals in time of War. (*Communicated to Lord J. Russell by Mr Adams, July* 13.)

The United States of America and Her Majesty the Queen of Great Britain and Ireland being equally animated by a desire to define with more precision the rights of belligerents and neutrals in time of war, have for that purpose conferred full powers, the President of the United States upon Charles F. Adams, accredited as their Envoy Extraordinary and Minister Plenipotentiary to Her said Majesty, and Her Majesty the Queen of Great Britain and Ireland upon

And the said Plenipotentiaries, after having exchanged their full powers, have concluded the following Articles :—

Article I.

1. Privateering is and remains abolished.

2. The neutral flag covers enemy's goods, with the exception of contraband of war.

3. Neutral goods, with the exception of contraband of war, are not liable to capture under 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.

Article II.

The present Convention shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate, and by Her Majesty the Queen of Great Britain and Ireland ; and the ratifications shall be exchanged at Washington within the space of six months from the signature, or sooner if possible.

In faith whereof, the respective Plenipotentiaries have signed the present Convention in duplicate, and have thereto affixed their seals.

Done at London, the day of , in the year of Our Lord one thousand eight hundred and sixty-one.

No. 19.

Lord J. Russell to Mr Adams.

Foreign Office, July 18, 1861.

Sir,

Upon considering your propositions of Saturday last, I have two remarks to make:—First. The course hitherto followed has been a simple notification of adherence to the Declaration of Paris by those States which were not originally parties to it. Secondly. The Declaration of Paris was one embracing various Powers, with a view to general concurrence upon questions of Maritime Law, and not an insulated engagement between two Powers only.

Her Majesty's Government are willing to waive entirely any objection on the first of these heads, and to accept the form which the Government of the United States prefers.

With regard to the second, Her Majesty's Government are of opinion that they should be assured that the United States are ready to enter into a similar engagement with France, and with other maritime Powers who are parties to the Declaration of Paris, and do not propose to make singly and separately a Convention with Great Britain only.

But as much time might be required for separate communications between the Government of the United States and all the Maritime Powers who were parties to, or have acceded to, the Declaration of Paris, Her Majesty's Government would deem themselves authorized to advise the Queen to conclude a Convention on this subject with the President of the United States, so soon as they shall have been informed that a similar Convention has been agreed upon, and is ready for signature, between the President of the United States and the Emperor of the French, so that the two Conventions might be signed simultaneously, and on the same day.

(Signed) J. Russell.

No. 21.

[A covering letter containing the following copy letter as inclosure.]

Lord Lyons to Consul Bunch.

Washington, July 5, 1861.

Sir,

The course of events having invested the States assuming the title of the Confederate States of America with the character of belligerents, it has become necessary for Her Majesty's

Government to obtain from the existing Government in those States securities concerning the proper treatment of neutrals.

I am authorized by Lord John Russell to confide the negotiation on this matter to you; and I have great satisfaction in doing so. In order to make you acquainted with the views of Her Majesty's Government, I transmit to you a duplicate of a despatch to me in which they are fully stated.[1]

It is essential, under present circumstances, that you should act with great caution, in order to avoid raising the question of the recognition of the new Confederation by Great Britain. On this account, I think it unadvisable that you should go to Richmond, or place yourself in direct communication with the Central Authority which is established there.

The most convenient course will, probably, be for you to take advantage of the intercourse which you naturally hold with Mr Pickens, the Governor of the State of South Carolina. I cannot doubt that if you explain, verbally, to Mr Pickens the views of Her Majesty's Government, he will have no difficulty in inducing the Government at Richmond to recognize, by an official act, the rights secured to neutrals by the second and third Articles of the Declaration of Paris, and to admit its own responsibility for the acts of privateers sailing under its letters of marque.

The most perfect accord on this question exists between Her Majesty's Government and the Government of the Emperor of the French; and instructions corresponding to these are sent to-day by the Emperor's Minister here to the French Consul at Charleston. You will accordingly enter into the frankest communication with your French colleague on the subject, and will be careful to act in strict concert with him.

(Signed) Lyons.

No. 24.

Mr Adams to Lord J. Russell.

Legation of the United States,
London, July 29, 1861.

My Lord,

I have the honour now to inform your Lordship that in consonance with the intention expressed in my note of the 19th instant, I have written to Mr Dayton at Paris touching the extent of his powers to negotiate, upon the same basis proposed by me to you, with the Government of France to which he is accredited. I have also to say that since the date of my writing I have

[1] Despatch No. 7.

had the pleasure to converse personally with him, as well as to receive a letter from him in answer to my inquiry.

Mr Dayton informs me that some time since he made a proposal to the French Government to adopt the Declaration of the Congress at Paris in 1856, with an addition to the first clause, in substance the same with that heretofore proposed by his predecessor Mr Mason, under instructions given by Mr Marcy, then the Secretary of State of the United States; to that proposal he received an answer from the French Minister of Foreign Affairs declining to consider the proposition, not for any objection entertained against it, but because it was a variation from the terms of the original agreement, requiring a prior reference of it to the other parties to that Convention. This answer does not in his opinion make the ultimate acceptance of his addition impossible, and he does not feel as if he ought to abandon the support of what he considers as so beneficent an amendment to the original plan, until he has reason to despair of success; he has therefore requested to know of me whether I have reason to believe perseverance in this direction to be fruitless.

For my part I entirely concur in the view entertained by Mr Dayton of the value of this amendment; I also know so well the interest that my Government takes in its adoption as to be sure that it would refuse to justify a further procedure on our part which was not based upon a reasonable certainty that success is not attainable, at least, at the present moment. I have therefore ventured to state to Mr Dayton my belief that I have that certainty; I have therefore mentioned to him what I have likewise communicated to the proper Department of the Government of the United States—the fact that in the last Conference I had the honour to hold with your Lordship, allusion having been made to the amendment of Mr Dayton, I said that that amendment was undoubtedly the first wish of my Government, and that I had instructions to press it if there was the smallest probability of success; but that I supposed this matter to have been already definitely acted upon: to which I understood your Lordship to signify your assent, and to add that I might consider the proposition as inadmissible. If I have made no mistake in reporting the substance of what passed between us, Mr Dayton tells me he is satisfied, and expresses his readiness to proceed on the basis proposed by me to your Lordship, with the French Government. But in order to remove all possibility of misconception between him and myself, I have taken the liberty of recalling your Lordship's attention to the matter before it may be too late.

Should there have been any essential error of fact on the main point, I trust your Lordship will do me the favour to set me right.

Should it happen, on the contrary, that I am correct, I believe it will not be necessary to interpose any delay in the negotiation for further reference to the Government of the United States. Mr Dayton will take the necessary steps to apprize the Government of the Emperor of the French of his intention to accede to the Declaration of Paris pure and simple, and the negotiations may be carried on simultaneously in both countries, as soon as the necessary arrangements can be perfected on the respective sides.

However my Government may regret that it has not been able to expand the application of the principles of the Declaration of Paris to the extent which it deems desirable, it is too well convinced of the great value of the recognition actually given to those principles by the Great Powers of Europe in that act, longer to hesitate in giving in its cordial adhesion. But it ardently cherishes the hope that time and the favouring progress of correct opinion may before long bring about opportunities for additional developments of the system they initiate, through the co-operation of all the maritime nations of the earth, and most especially of one so enlightened and philanthropic as Great Britain.

(Signed) Charles Francis Adams.

No. 28.

Earl Russell to Mr Adams.

Foreign Office, August 19, 1861.

Sir,

I have the honour to inclose a copy of a Declaration which I propose to make, upon signing the Convention of which you gave me a draft, embodying the Articles of the Declaration of Paris.

I propose to make the Declaration in question in a written form, and to furnish you with a copy of it.

You will observe that it is intended to prevent any misconception as to the nature of the engagement to be taken by Her Majesty.

If you have no objection to name a day in the course of this week for the signature of this Convention, Mr Dayton can on that day and at the same time sign with M. Thouvenel a Convention identical with that which you propose to sign with me.

(Signed) Russell.

Inclosure in No. 28.

Draft of Declaration.

In affixing his signature to the Convention of this day between Her Majesty the Queen of Great Britain and Ireland and the United States of America, the Earl Russell declares, by order of Her Majesty, that Her Majesty does not intend thereby to undertake any engagement which shall have any bearing, direct or indirect, on the internal differences now prevailing in the United States.

No. 30.

Earl Cowley to Earl Russell.

Paris, August 20, 1861.

(Extract)

Knowing that M. Thouvenel was to see Mr Dayton this morning, I sent his Excellency a copy of your Lordship's note and declaration to Mr Adams with reference to the Convention respecting maritime law, as soon as they reached my hands. I have just seen M. Thouvenel, who informed me that he had apprized Mr Dayton that it was the intention of the Imperial Government to make a similar declaration to him ; Mr Dayton had thereupon said that he did not think that either he or Mr Adams could receive such a Declaration without reference to their Government. Mr Dayton hardly concealed from M. Thouvenel that the object of his Government in agreeing to sign the Convention was to force the Western Powers to treat the Southern privateers as pirates, arguing that as the Government of Washington was the only Government recognized by foreign Powers, the Southern States must, as far as foreign Powers were concerned, be subject to the consequences of the acts of that Government.

No. 31.—A long letter from Mr Adams to Earl Russell, dated 23rd August 1861, reviewing the negotiations, replied to at length by Earl Russell on 28th August, No. 32.

No. 33.

Earl Cowley to Earl Russell.

Paris, August 27, 1861.

My Lord,

I have informed M. Thouvenel that Mr Adams declines to sign the Convention respecting Maritime Law without further

orders. His Excellency has heard nothing more from Mr Dayton. (Signed) COWLEY.

No. 37.

EARL COWLEY TO EARL RUSSELL.

Paris, September 10, 1861.

MY LORD,

Mr Dayton has addressed to M. Thouvenel a note couched in much the same terms as that addressed by Mr Adams to your Lordship, declining to proceed with the Treaty sanctioning the Declaration of Paris without further orders from his Government.

M. Thouvenel's reply is to the same purport as your Lordship's. (Signed) COWLEY.

No. 38.

LORD LYONS TO EARL RUSSELL. (Received September 13.)

Washington, August 30, 1861.

(Extract)

I have received, just in time to have the inclosed copy made for your Lordship, a despatch from Mr Consul Bunch, reporting the proceedings taken by him, in conjunction with his French colleague, M. de Belligny, to obtain the adherence of the so-called Confederate States to the last three Articles of the Declaration of Paris.

Inclosure 1 in No. 38.

CONSUL BUNCH TO LORD LYONS.

[Reporting interview, in company with M. de Belligny, with Mr Davis, President of the Confederate States.]

Charleston, August 16, 1861.

(Extract)

. . . . . .

Mr Davis expressed no unwillingness to entertain the matter, although he signified his regret that it should not have been more formally brought before him, as it seemed to him that if the Declaration which it was sought to obtain from the Government of the Confederate States was of sufficient importance to require the overture now made to him, it was

of equal consequence that it should be made in a more regular manner.

. . . It was soon determined that Congress should be invited to issue a series of Resolutions, by which the second, third, and fourth Articles of the Declaration of the Treaty of Paris should be accepted by the Confederate States. These Resolutions were passed on the 13th instant, approved on the same day by the President. . . .

Your Lordship will observe that, by these Resolutions, the Confederate States accept the second, third, and fourth Articles of the Declaration of Paris, but by their Resolution declare, with reference to the first Article, that they " maintain the right of privateering as it has been long-established by the practice and recognized by the Law of Nations." With respect to this Resolution, I beg to remark that the wishes of Her Majesty's Government would seem to have been fully met, for as no proposal was made that the Confederate Government should abolish privateering, it could not be expected that they would do so of their own accord, particularly as it is the arm upon which they most rely for the injury of the extended commerce of their enemy. But the Secretary of State has placed in the hands of Mr ——, for communication to us, the inclosed copy of the instructions issued for the guidance of privateers, and appeals to them, as well as to the character of the Government, for a proof of their determination that the privateers shall conform themselves to the ordinary practices sanctioned by the Law of Nations. We think that we may rely on the assurances thus given, supported, as they are, by the language of the Resolution.

The fact is, that the President and the Government are a good deal annoyed at the refusal of France, England, and other nations to allow prizes to be condemned in their ports, which they consider as somewhat of a departure from a strict neutrality, and which they still hope may be reconsidered as the contest advances. They also confidently expect that the same anxiety for the mitigation of the evil consequences of the present war, which has rendered the accession of the Confederate States to the Declaration of Paris a matter of interest to France and England, will induce other nations to insist upon the rigorous fulfilment by the United States of the principle contained in the fourth Article, viz., the effectiveness of the blockade instituted by that Power.

. . . . . .

Inclosure 2 in No. 38.

Resolution touching certain Points of Maritime Law, and defining the position of the Confederate States in respect thereto.

Whereas the Plenipotentiaries of Great Britain, Austria, France, Prussia, Russia, Sardinia, and Turkey, in a conference held at Paris on the 16th of April, 1856, made certain declarations concerning maritime law, to serve as uniform rules for their guidance in all cases arising out of the principles thus proclaimed;

And whereas, it being desirable not only to attain certainty and uniformity, as far as may be practicable, in maritime law, but also to maintain whatever is just and proper in the established usages of nations, the Confederate States of America deem it important to declare the principles by which they will be governed in their intercourse with the rest of mankind: Now, therefore, be it

Resolved by the Congress of the Confederate States of America:—

1st. That we maintain the right of privateering, as it has been long established by the practice, and recognized by the Law of Nations.

2nd. That the neutral flag covers enemy's goods, with the exception of contraband of war.

3rd. That neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag.

4th. That blockades, in order to be binding, must be effectual; that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.

Signed by the President of Congress, on the 13th August, and approved same day by the President of the Confederate States of America.

Inclosure 3 in No. 38.

Instructions issued by the President of the Confederate States to Private Armed Vessels.

1. The tenor of your commission, under the Act of Congress entitled "An Act recognizing the existence of war between the United States and the Confederate States and concerning letters of marque, prizes, and prize goods," a copy of which is herein annexed, will be kept constantly in your view. The high seas referred to in your commission, you will understand

generally to refer to the low-water mark; but with the exception of the space within one league, or three miles, from the shore of countries at peace with the United States and the Confederate States. You will, nevertheless, execute your commission within the distance of the shore of the nation at war within the United States, and even on the waters within the jurisdiction of such nation, if permitted to do so.

2. You are to pay the strictest regard to the rights of neutral Powers, and the usages of civilized nations, and in all your proceedings towards neutral vessels you are to give them as little molestation or interruption as will consist with the right of ascertaining their neutral character, and of detaining and bringing them in for regular adjudication in the proper cases.

You are particularly to avoid even the appearance of using force or seduction, with the view to deprive such vessels of their crews or the passengers, other than persons in the military service of the enemy.

3. Towards enemy's vessels and their crews you are to proceed in exercising the rights of war, with all the justice and humanity which characterizes this Government and its citizens.

4. The master and one or more of the principal persons belonging to the captured vessels are to be sent, as soon after the capture as may be, to the Judge or Judges of the proper Court in the Confederate States, to be examined on oath touching the interest or property of the captured vessel and her lading; and at the same time are to be delivered to the Judge or Judges all papers, charter-parties, bills of lading, letters and other documents and writings found on board; and the said papers to be proved by the affidavit of the commander of the captured vessel, or some other person present at the capture, to be produced as they were received, without fraud, addition, subtraction, or embezzlement.

5. Property, even of the enemy, is exempt from seizure on neutral vessels, unless it be contraband of war.

If goods contraband of war are found on any neutral vessel, and the commander thereof shall offer to deliver them up, the offer shall be accepted, and the vessel left at liberty to pursue its voyage, unless the quantity of contraband goods shall be greater than can be conveniently received on board your vessel, in which case the neutral vessel may be carried into port for the delivery of the contraband goods.

The following articles are declared by this Government contraband of war, as well as all others that are so declared by the laws of nations, viz. :—

All arms and implements serving for the purpose of war

by land or sea, such as cannons, mortars, guns, muskets, rifles, pistols, petards, bombs, grenades, balls, shot, shell, pikes, swords, bayonets, javelins, lances, horse furniture, holsters, belts, and generally all other implements of war.

Also, timber for building, pitch, tar, resin, copper in sheets, sails, hemp, cordage, and generally whatever may serve directly to the equipment of vessels, wrought iron and planks only excepted.

Neutral vessels conveying enemies' despatches, or military persons in the service of the enemy, forfeit their neutral character, and are liable to capture and condemnation. But this rule does not apply to neutral vessels bearing despatches from the public Ministers or Ambassadors of the enemy residing in neutral countries.

By the command of the President of the Confederate States.

(Signed) Robert Toombs, *Secretary of State.*

No. 40.

Lord Lyons to Earl Russell. (Received September 23.)

Washington, September 10, 1861.

My Lord,

Mr Seward read to me very rapidly, this morning, the draft of a long despatch which he has written to Mr Adams on the subject of the Declaration which your Lordship proposes to make upon signing the Convention by which the United States would adhere to the principles of maritime law laid down by the Congress of Paris.

The despatch would, he said, be communicated to your Lordship by Mr Adams. I was not able to follow Mr Seward very exactly as he read it, but so far as I could judge, the language appeared to be suitable and friendly. Mr Adams is, however, directed to break off the negotiation altogether if your Lordship insists upon making the Declaration. Hopes are expressed that it may be resumed at a more favourable moment.

A similar despatch will be addressed to Mr Dayton, to be communicated to the French Government.

In speaking to me, Mr Seward appeared to consider the negotiation to be completely at an end for the present.

(Signed) Lyons.

No. 42.

EARL RUSSELL TO LORD LYONS.

Foreign Office, December 24, 1861.

MY LORD,

I omitted at the proper time to mention to you that the refusal of Mr Adams to sign a Convention respecting the Declaration of Paris, with my Declaration attached to it, was approved by his Government.

I felt no doubt it would be so; but the communication of Mr Adams not being in writing, I omitted to state the fact.

(Signed) RUSSELL.

No. 43.

LORD LYONS TO EARL RUSSELL. (Received December 25.)

Washington, December 6, 1861.

(Extract)

I have the honour to transmit to your Lordship a copy of the Papers relating to Foreign Affairs which were laid before Congress with the President's Message.

A great deal of the space devoted to England and France is occupied by the negotiations concerning the adherence of the United States to the Declaration of Paris. Mr Adams writes frequently and at great length concerning his misapprehension of your Lordship's intentions as to transferring the negotiation to Washington. The simple explanation of this misapprehension is, that Mr Seward refused to receive the despatch [1] in which your Lordship's proposals were made.[2] Your Lordship will recollect that Mr Seward, having been permitted by M. Mercier and me to read and consider in private that despatch, and a despatch of a similar tenour from the Government of France, refused to receive the formal copies we were instructed to place in his hands, or to take any official notice of their contents. The English despatch was, however, subsequently communicated officially by your Lordship to Mr Adams.

From several of the papers now published it appears that it was only an act of common prudence on the part of the Governments of Great Britain and France not to accept the accession of this country to the Declaration of Paris without stating distinctly what obligations they intended, by doing so, to assume with regard to Seceded States. Little doubt can remain after reading the papers that the accession was offered solely with a

[1] No. 7. [2] See No. 14.

view to the effect it would have on the privateering operations of the Southern States ; and that a refusal on the part of England and France, after having accepted the accession, to treat the Southern privateers as pirates, would have been made a serious grievance, if not a ground of quarrel.

25

Observance of the Declaration of Paris.

BRITISH ORDER IN COUNCIL, RELATIVE TO THE OBSERVANCE OF THE RULES OF MARITIME LAW, UNDER THE DECLARATION OF THE CONGRESS OF PARIS, 1856, TOWARDS VESSELS AND GOODS OF THE ENEMY AND OF NEUTRAL POWERS, IN THE EVENT OF WAR BY FRANCE AND GREAT BRITAIN AGAINST CHINA, MARCH 7, 1860.

At the Court at Buckingham Palace,
the 7th Day of March 1860.

PRESENT,

The Queen's Most Excellent Majesty in Council.

Whereas, in the event of hostilities commencing between Her Majesty and her august Ally the Emperor of the French on the one hand, and the Emperor of China on the other hand, it is the intention and desire of Her Majesty, and of His Majesty the Emperor of the French, to act during such hostilities in strict conformity with the Declaration respecting Maritime Law, signed by the Plenipotentiaries of Great Britain, Austria, France, Prussia, Russia, Sardinia, and Turkey, assembled in Congress at Paris, and dated April 16, 1856 ; and whereas Her Majesty is willing to extend the benefits of the said Declaration of Paris to all Powers which may be neutral in the said hostilities :

Now Her Majesty is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, that so far as regards the ships of any neutral Power, the flag of any such Power shall cover the enemy's goods, with the exception of contraband of war ; so that no goods of enemies found on board any ship belonging to the subjects of such neutral Power, or to

those inhabiting within dominions of any such Power, and duly entitled to use the flag of such Power, shall be subject to capture or condemnation by reason only of such goods being enemies' goods; all other liabilities to capture and condemnation, respectively, of enemies' goods and neutral ships being reserved and remaining in all respects as before the Declaration of the said Congress at Paris, of the 16th of April, 1856.

And it is hereby further ordered that neutral goods, with the exception of contraband of war, shall not be liable to capture under the enemy's flag, by reason only of said goods being under the enemy's flag; all other liabilities to capture and condemnation of neutral goods being reserved, and remaining in all respects as before the Declaration of the said Congress at Paris, of the 16th of April, 1856: Provided always, and it is hereby ordered, that nothing herein contained shall be applicable to, or shall be construed, deemed, or taken, so as to operate or apply to, or in favour of any person, ship, or goods whatsoever, which may be captured for breaking or attempting to break, or which may be lawfully adjudged to have broken or attempted to break, any blockade maintained by a force sufficient really to prevent access to the coast of the enemy; but that all such persons, ships, and goods may be duly taken cognizance of, proceeded upon, adjudicated, dealt with, and treated, in all respects and to all purposes according to the course of Admiralty and the Law of Nations, as if this Order had never been made, anything hereinbefore to the contrary in anywise notwithstanding.

And it is further ordered that, notwithstanding the existence of hostilities between Her Majesty and her august Ally on the one hand, and the Emperor of China on the other hand, and during the continuance thereof, all and every the subjects of Her Majesty and of Her august Ally the Emperor of the French, shall and may, during such hostilities, freely trade at and with all parts and places wheresoever situate in the dominions of China, and also with all persons whomsoever, as well subjects of the Emperor of China as others residing or trading within any part of the dominions of the said Emperor.

And it is further ordered and declared that, if any Chinese ship or vessel shall be captured or taken by any of Her Majesty's vessels or forces, having on board any merchandize or goods being the *bonâ-fide* property of any subjects of Her Majesty or of her august Ally the Emperor of the French, such merchandize or goods shall not be subject or liable to be condemned as prize, but shall, on the proof of such property, as aforesaid, be restored to the owner or owners thereof: Provided always, and it is

hereby ordered, that this Order shall not apply, to be construed, deemed, or taken to operate to, or apply to or in favour of contraband of war, or to trading in, supply of, or dealing with, any articles or things which it may be declared by Her Majesty and her august Ally shall be deemed and taken as contraband of war, or to any trading or attempt to trade with places subject to effective blockade by the ships or fleets of Her Majesty and her august Ally, or either of them; and it is further ordered that Her Majesty's officers and subjects, and especially Her Majesty's Courts and officers exercising any prize jurisdiction, do take notice hereof, and govern themselves accordingly.

WM. L. BATHURST.

26

Observance of the Principles of the Declaration of Paris: War between United States and Spain.

A.—PROCLAMATION BY THE UNITED STATES.

Foreign Office, 3 *May* 1898.

The Secretary of State for Foreign Affairs has received the following note from the American Ambassador at this Court :—

American Embassy, London,
23 *April* 1898.

MY LORD,

I have the honour to acquaint you that I have been informed of the intention of the Government of the United States in the event of hostilities between the Government of Spain, not to resort to privateering but to adhere to the following recognised Rules of international law :—

1. The neutral flag covers the enemy's goods with the exception of contraband of war.

2. Neutral goods, with the exception of contraband of war, are not liable to capture under the enemy's flag; and

3. Blockades in order to be binding must be effective.

To the Marquess of Salisbury.

Foreign Office, May 9, 1898.

Her Majesty's Secretary of State for Foreign Affairs has this day received, through Her Majesty's Ambassador at Washington, the following Proclamation, which has been issued by the President of the United States of America :—

(Existence of War.—Spain.)

By the President of the United States of America.

A Proclamation.

Whereas by an Act of Congress approved the 25th April, 1898, it is declared that war exists and that war has existed since the 21st day of April, A.D. 1898, including said day, between the United States of America and the Kingdom of Spain ; and

Whereas it being desirable that such war should be conducted upon principles in harmony with the present views of nations, and sanctioned by their recent practice, it has already been announced that the policy of this Government will not be to resort to privateering, but to adhere to the Rules of the Declaration of Paris :

Now, therefore, I, William M'Kinley, President of the United States of America, by virtue of the power vested in me by the Constitution and the laws, do hereby declare and proclaim :—

1. The neutral flag covers enemy's goods, with the exception of contraband of war.

2. Neutral goods, not contraband of war, are not liable to confiscation under the enemy's flag.

3. Blockades in order to be binding must be effective.

4. Spanish merchant-vessels, in any ports or places within the United States, shall be allowed till the 21st May 1898, inclusive, for loading their cargoes and departing from such ports or places ; and such Spanish merchant-vessels, if met at sea by any United States ship, shall be permitted to continue their voyage, if, on examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term ; Provided, that nothing herein contained shall apply to Spanish vessels having on board any officer in the military or naval service of the enemy, or any coal (except such as may be necessary for their voyage), or any other article prohibited or contraband of war, or any despatch of or to the Spanish Government.

5. Any Spanish merchant-vessel which, prior to the 21st

May 1898, shall have sailed from any foreign port bound for any port or place in the United States, shall be permitted to enter such port or place, and to discharge her cargo, and afterwards forthwith to depart without molestation; and any such vessel, if met at sea by any United States ship, shall be permitted to continue her voyage to any port not blockaded.

6. The right of search is to be exercised with strict regard to the rights of neutrals, and the voyages of mail-steamers are not to be interfered with except on the clearest grounds of suspicion of a violation of law in respect of contraband or blockade.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, on the 26th day of April in the year of our Lord 1898, and of the Independence of the United States the 122nd.

(L.S.) WILLIAM M'KINLEY.

By the President,
Alvey A. Adee, Acting Secretary of State.

B.—PROCLAMATION BY SPAIN.

Foreign Office, May 3rd, 1898.

The Secretary of State for Foreign Affairs has received through His Majesty's Embassy at Madrid the following translation of a Decree issued by the Spanish Government on 23rd April 1898:—

Article III. Notwithstanding that Spain is not bound by the Declaration signed at Paris on the 16th April 1856, as she expressly stated her wish not to adhere to it, my Government, guided by the principles of international law, intends to observe, and hereby orders that the following Regulations for maritime law be observed:

(*a*) A neutral flag covers the enemy's goods, except contraband of war.
(*b*) Neutral goods, except contraband of war, are not liable to confiscation under the enemy's flag.
(*c*) A blockade to be binding must be effective, that is to say, maintained with a sufficient force to actually prevent access to the enemy's coast.

Article IV. The Spanish Government, while maintaining their right to issue letters of marque which they expressly

reserved in their note of 16th May 1857 in reply to the request of France for the adhesion of Spain to the Declaration of Paris relative to maritime law, will organise for the present a service of auxiliary cruisers of the navy composed of ships of the Spanish mercantile navy which will co-operate with the latter for the purposes of cruising and which will be subject to the statutes and jurisdiction of the navy.

ADDENDUM

To Correspondence relating to the Blockades: Document No. 13.

[Lord Clarendon's answer to M. Drouyn de Lhuys' letter of 19th April 1854 (p. 301) was not discovered in time to print with the other correspondence.]

LORD CLARENDON TO COUNT WALEWSKI.

Foreign Office, 1 *May* 1854.

M. L'AMBASSADEUR,

Her Majesty's Government have duly considered the suggestions made by M. Drouyn de Lhuys in the despatch to Your Excellency dated 19th inst. which you were so good as to communicate relative to blockade, and I have the honour to acquaint Your Excellency that Her Majesty's Government concur with M. Drouyn de Lhuys that the notification of blockade should be made jointly and in the name of the two Governments, although such notification is not essential to the validity of the blockade, which may be duly constituted *de facto* without any public or formal notification, by a sufficient force of either nation on the spot. Her Majesty's Government consider that, when practicable, the names of each port blockaded should be inserted in the notification, and that the addition suggested by M. Drouyn de Lhuys, pointing out the territorial limits of the blockade, is strictly proper if not absolutely necessary. With respect to the form and manner of conveying information to neutral Governments for the establishment of blockade, Her Majesty's Government have no objection to the form of the circular proposed by M. Drouyn de Lhuys to be addressed to the Minister of each neutral Government at London and Paris,

and will adopt that form as well as notify blockades in the *London Gazette*. It should, however, be distinctly understood that the validity of a blockade depends mainly upon the efficiency of a competent force on the spot, and that it will not be affected by the want of notification. The only effect of notification is to prevent the necessity of a warning in each particular instance.

Vice-Admiral Sir Charles Napier's announcement of his intention to blockade will not dispense with a formal notification, as an announcement of a mere intention has no legal effect.

With regard to the rule stated by M. Drouyn de Lhuys to have been established by the modern Law of Nations, of granting sufficient delay to neutral vessels to leave blockaded ports, either in ballast or laden, I have to state to Your Excellency that Her Majesty's Government are unable entirely to admit the rule to be as thus stated. The English prize-law and practice has, indeed, permitted egress to neutral ships in ballast, but it has only allowed egress to cargoes when such cargoes had either been taken into the port before the blockade, or had been *bonâ fide* purchased and laden on board before the commencement of the blockade. *Primâ facie* all laden ships coming out of a blockaded port are liable to capture, and it is for those interested to obtain restoration from the Prize Court when they shall have proved that neither the ships nor the cargoes were justly liable to condemnation.—I have, &c.,

(Signed) CLARENDON.

INDEX

[The word "Declaration" refers to the Declaration of Paris, 1856. Where the Declaration of 1854 is intended, the words "declaration to the neutrals" are used.]

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