ENGLAND'S GUARANTEE TO BELGIUM AND LUXEMBURG

C. P. SANGER AND H. T. J. NORTON

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WITH THE FULL TEXT OF THE TREATIES

BY

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"Toutes les garanties sont comme de l'ouvrage de filigrane, plus propres à satisfaire les yeux qu'à être de quelque utilité."

FREDERICK THE GREAT

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PREFACE

ENGLAND, in the past, has entered into many Treaties of Guarantee. Such Treaties are, apparently, entered into without any serious consideration of the nature of the obligations which they may import. This book is intended to give all the information which will enable the reader to form an opinion as to the Treaty obligations of England towards Belgium and Luxemburg. It is necessary to study the circumstances under which the Treaties were made as well as the actual words of the Treaties. The proceedings at the Vienna Conference of 1855 throw some light on the nature of such Treaties; the proceedings of the London Conference of 1867, and the earlier negotiations show how completely Bismarck was outwitted by Lord Derby in the Luxemburg affair. On the other hand the State Papers and Protocols from 1830 to 1839 do not, apparently, throw any light on the Belgian Guarantee of 1839. The labour of reading the various State Papers, debates, documents, and books which might throw light upon the intentions of the signatories to the various Treaties or upon the

circumstances under which the Treaties were made has been undertaken by Mr. Norton. But for the legal aspects of the matter and for all opinions expressed in this book Mr. Sanger is responsible.

C. P. S.
H. T. J. N.

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CHAPTER I

BELGIUM AND LUXEMBURG

CHAPTER I

BELGIUM AND LUXEMBURG

BEFORE the war few people were aware of the Treaties under which the neutrality of Belgium and Luxemburg was guaranteed. The object of this essay is to discuss the liability incurred by Great Britain as a party to such Treaties. This chapter contains a short account of the international position of Belgium and Luxemburg and of the circumstances under which the Treaties were made. The subject of guarantees in general is discussed in Chapter II. Since many arguments have been based on the Ottoman guarantees, it was found necessary to discuss these at some length in Chapter III. The remaining chapters are devoted to the Belgian and Luxemburg guarantees. The present chapter is not a short history of Belgium and Luxemburg during the past century; it is confined to such matters as are relevant to a proper appreciation of the Treaties affecting them.

Scope and arrangement of the book.

Belgium, which had been ruled by the King of Spain in the seventeenth century and the Emperor of Austria in the eighteenth, was annexed by the

French in 1792. In 1814, after Napoleon's first abdication, Austria, Russia, Prussia, and Great Britain agreed that Belgium should be united with Holland under the rule of William of Nassau-Dietz, who at the end of the previous year had returned from exile and been acclaimed King of Holland.

The Netherlands in 1814.

The conditions of the union between Holland and Belgium were defined in eight articles, drawn up in June 1814. These articles, which at first were kept secret, were afterwards embodied in the Vienna Congress Treaty (Article LXXIII). On May 23, 1815, the new kingdom called the Netherlands was formally recognized by the four Powers. The territory which constituted the Kingdom of the Netherlands was defined by the Vienna Congress Treaty of June 9, 1815, and by the General Treaty of Frankfort of July 20, 1819. It was substantially the same as that which is at present divided between the two kingdoms of Holland and Belgium, except that the present province of Luxembourg Belge was assigned in 1815 to the Grand Duchy of Luxemburg. It consisted of the former Republic of the United Provinces, of the former Austrian Netherlands, of the Prince-bishopric of Liége and of smaller districts, among which were included part of the Duchy of Bouillon and the districts of Philippeville and Marienbourg. Since the two territories last mentioned will be mentioned again, it may be convenient to explain where they are situated. In the present

The territory of the new kingdom.

Philippeville and Marienbourg.

position of the frontier between France and Belgium, there is a peculiar promontory of French soil which projects into Belgium along the valley of the Meuse. The point of the promontory is occupied by Givet. On one side of Givet the frontier runs south-eastward between the towns of Bouillon and Sedan to the neighbourhood of Montmédy. On the other side between Givet and Maubeuge it forms a semi-circular bay. The districts of Philippeville and Marienbourg lie in this bay, and the part of the Duchy of Bouillon which was included in the Netherlands lies on the other side of the promontory, between Bouillon and Givet, and is at present included in the Belgian province of Namur. These three districts had been left to France by the first Treaty of Paris, but they were withdrawn after the Hundred Days and were assigned to the Netherlands by the Treaty of Frankfort (July 20, 1819, Article XXXIV). Thenceforward, in most of the diplomatic negotiations of the nineteenth century in which a change in the French frontier is contemplated, the names of Philippeville and Marienbourg occur.

The Grand Duchy of Luxemburg.

Besides the Kingdom of the Netherlands, the Congress of Vienna presented William of Orange with Luxemburg. There had been, before the Napoleonic era, a Duchy of Luxemburg which had passed at different times into the hands of the French, the Austrians, and the Spanish, and which, except when in the possession of France, had been ruled as a dependency of Belgium. After 1815 the Duchy was divided; some districts on the

right bank of the Moselle were given to Prussia, and others on the French frontier to France. Out of the remainder, together with a part of Bouillon, a Grand Duchy was formed of which the King of the Netherlands was made Grand Duke. In return for the Duchy, the Germanic possessions of the House of Nassau-Orange were renounced in favour of Prussia.

Its relation to the Netherlands.

The Grand Duchy and the Netherlands were connected by a personal and by an administrative tie, but they did not occupy the same international position. The Kingdom of the Netherlands was an independent sovereign State; Luxemburg was a member of the Germanic Confederation, a union of the smaller sovereign States of Germany with Prussia and Austria, created by the Congress of Vienna in the place of the Empire which had perished in 1806. The Federal Bond did not affect the internal affairs of the separate members, but it combined them all against the encroachments of other Powers; all the component States were bound to resist an aggression on any. To this body Luxemburg belonged, and its capital was a federal fortress. The composition of the garrison varied at different times; by the Treaty of Frankfort and its annexes, three-quarters of the troops were to be Prussian and one-quarter from the Netherlands; later, the whole garrison became Prussian.

Its fortress.

From the first the union of Belgium with Holland was unpopular. The Fundamental Law which defined the constitution of the new kingdom was rejected by a majority of the Belgian

The union unpopular.

notables; to create an apparent majority, all those who had been summoned but had not come to Brussels were reckoned as in favour of the Law.

The differences between Holland and Belgium were great. Belgium is and was an agricultural and manufacturing country—its religion was Roman Catholic, and, in spite of a large Teutonic element in the population, the civilization and language of the cultivated classes was French. The Dutch, on the other hand, were a seafaring and commercial people, in religion largely Calvinists, with a Teutonic language and civilization. The Belgians had, or thought that they had, grievances. The Catholic priests hated religious equality, which formed part of the Fundamental Law. In 1817 the Bishop of Liége was banished. An attempt to establish a concordat between the Pope and the Government of the Netherlands proved unsuccessful. In 1821 taxes were imposed on flour and meat which the Belgians considered unfair. A third grievance was that in 1822 Dutch was recognized as the official language; three years earlier, knowledge of it had been made necessary for all public employments. The King was not the man to deal wisely with such a situation. His intentions may have been admirable, but he was obstinate and tactless. Belgian discontent increased. In 1829 the Budget was rejected. Finally, the French Revolution of July 1830 spread the idea of revolt. On August 25th the inhabitants of Brussels

The differences between the two peoples.

The Belgian grievances.

The Belgian revolt.

rose, and in two months the only Dutch troops in Belgium were those in the citadel of Antwerp. The fortress of Luxemburg was held by troops of the Germanic Confederation.

King William called upon the Powers for assistance, and on November 4, 1830, a Conference of the five Powers—France had been added to the former four—met in London. On January 20, 1831, the Conference decided that Belgium should be an independent neutral State. Prince Leopold of Saxe-Coburg, the uncle of Queen Victoria, was chosen to be King of the Belgians. On November 14, 1831, a Convention was signed between the four Powers and the King of the Belgians, which provided: "*Article I.*—In consequence of the changes which the independence and the neutrality of Belgium have effected in the military situation of that country, as well as in its disposable means of defence, the High Contracting Parties agree to cause to be dismantled such of the fortresses constructed, repaired, or enlarged in Belgium since the year 1815, either wholly or partly at the cost of the Courts of Great Britain, Austria, Prussia, and Russia, of which the maintenance would henceforward only become a useless charge. In conformity with this principle, all the fortified works of the fortresses of Menin, Ath, Mons, Philippeville, and Marienbourg shall be demolished within the periods fixed by the following Articles. . . . *Article IV.*—The fortresses of Belgium, which are

The Convention as to the Belgian fortresses.

not mentioned in Article I of the present Convention as destined to be dismantled, shall be maintained. His Majesty, the King of the Belgians, engages to keep them constantly in good order."

Two questions remained. Of what territory should Belgium consist? In particular, should the Grand Duchy of Luxemburg form part of Belgium? In what proportions should the National Debt of the Netherlands be apportioned between Belgium and Holland? It took eight years and five formal acts of the Conference to effect a settlement.

On November 15, 1831, a Treaty was signed at London between the five Powers and Belgium.

The Treaty of 1831.

The first twenty-four Articles of this defined the terms of the separation of Holland and Belgium into two kingdoms, but the King of Holland refused to accept them. On May 21, 1833, the King was willing to accept—not the twenty-four Articles—but the *status quo*. Belgium and Luxemburg paid their taxes to King Leopold; King William remained obstinate. At last, in 1838, he informed Lord Palmerston that he was willing to accept the twenty-four Articles.

On April 19, 1839, three Treaties were signed—one between Holland and Belgium, comprising

The Treaties of 1839.

the twenty-four Articles, one between the five Powers and Holland, one between the five Powers and Belgium. By the two last Treaties the five Powers guaranteed the Articles which were annexed to the

Treaties. The text of these Treaties, which hold in the main to-day, is given in the Appendix. Shortly, the result was that the greater part of the Duchy of Luxemburg was added to Belgium, and forms the province of Luxembourg Belge. A sovereign Duchy was made out of a portion of the former Duchy of Limburg and given to the King of Holland. This, although it was administered as an integral part of the Kingdom of Holland, was incorporated in the Germanic Confederation, and conjointly with the Duchy of Luxemburg sent a representative to the Federative Diet. Belgium became an independent neutral State guaranteed by the five Powers.

On the same day the Germanic Confederation acceded to the territorial arrangements concerning the Grand Duchy of Luxemburg contained in the first seven Articles.

Since that date there has been no change in the boundaries or international position of Belgium, except that the Congo Independent State, founded by Leopold II in 1882, was annexed to Belgium in 1908.

Luxemburg in 1866.

The result of the Austro-Prussian War of 1866 produced a change in the international position of Luxemburg. By Article IV of the Treaty of Prague of August 23, 1866, the Germanic Confederation was acknowledged by Austria to have been dissolved. A new North German Confederation was created, consisting of Prussia—enlarged by the incorporation of some small States—and of the other German States north of

the Main. Luxemburg was not willing to be a member. But what was her position to be? By the Treaty of February 8, 1842, Luxemburg had entered the German Zollverein. The Zollverein had come to an end. The fortress, reputed to be one of the strongest in Europe, had been a federal fortress, garrisoned by federal troops. What was to be the position in future?

Not only the Grand Duchy, but France, Prussia, and Holland were interested in these questions. The feelings of the inhabitants of the Grand Duchy are described by M. Servais.[1] They were not German in sentiment, and did not like the presence of the Prussian garrison. On the other hand they did not wish to be annexed to France. They wished to control their own affairs. In the midst of the crisis, says M. Servais, the gist of the patriotic songs was "Nous voulons rester ce que nous sommes." Their wishes were: that the Prussian garrison should be withdrawn, that the connection with Germany should not be renewed, and that the Grand Duchy should remain in the House of Orange-Nassau.

The feelings of its inhabitants.

But there were ominous signs. Napoleon III had remained neutral during the Austro-Prussian War, and had been encouraged by Bismarck to expect some reward. The success of the Prussian armies, and the possible inclusion of Luxemburg, with its fortress, in the new North German Confederation, menaced the security of the French frontiers. France

[1] *Le Luxembourg et le Traité de 1867.*

hoped to obtain the cession of some German territory. One suggestion was that embodied in the famous draft in Count Benedetti's handwriting which was subsequently published by Bismarck.

The Dutch Government did not like the connection of Luxemburg with Holland, as it might involve Holland in difficulties. They were willing to buy the enfranchisement of Limburg with the cession of Luxemburg.

Discussions began in the summer of 1866. On the 12th of October it was suggested by Holland that Prussia and Holland should agree to a defensive alliance, the readmission of Luxemburg into the Zollverein, a mixed garrison in the fortress, and the severance of the connection of Limburg with Germany. Prussia made no answer. The King of Holland turned to Napoleon III, who proposed a secret treaty guaranteeing the free possession of Limburg to the King of Holland, and protection against Prussia; in return, France was to purchase Luxemburg at the price, it is said, of £20 per inhabitant. France undertook to obtain the consent of Prussia. On March 28, 1867, the King of Holland consented to the cession of the Grand Duchy and informed the Prussian Minister. On April 1st the Plenipotentiaries were about to sign the agreement when M. van Zuylen discovered a formal error in it and the matter was postponed to the next day; but that evening the project vanished into limbo. The French Government had not obtained Bismarck's consent. On April 1st, in

The various proposals.

reply to an interpellation, Bismarck stated that the Prussian Government had given no opinion on the future of the Grand Duchy, and would not give one, until it had consulted the Powers who signed the Treaties of 1839, the German States, and German public opinion. On April 5th the King of Holland informed the Powers that he had withdrawn from the project. A dangerous situation arose. France could not demand from Prussia the right to buy Luxemburg, but, on the other hand, what right had Prussia to retain the garrison in the fortress? In the second week of April France, in a despatch to the Powers, raised the question of the future of the Grand Duchy and the question of the garrison. Austria, England, and Russia were not directly interested, but they intervened in the interest of peace. Count Beust, the Foreign Minister of Austria, made two proposals: the first, that the King of Holland should retain Luxemburg, the fortress be neutralized and the Prussian garrison withdrawn; the second, that Luxemburg should be annexed to Belgium, the garrison being withdrawn as before, and that in exchange the districts of Philippeville and Marienbourg should be ceded to France. However, Belgium declined to cede, and Napoleon III declined to accept, any territory. But would Prussia accept the first proposal? On April 15th Count Bernstorff informed Lord Stanley that[1] "in the

Bismarck's statement.

Count Beust's proposals.

[1] Correspondence respecting the Grand Duchy of Luxemburg (1867), p. 2, No. 4.

actual state of things in Germany, Prussia is not in a position to consent to the separation, under any form, of Luxemburg from Germany, or to the evacuation of the fortress." Three days later he explained that Bismarck was not personally opposed to Count Beust's proposal, but that in the actual state of public sentiment in Germany he could do nothing but maintain the *status quo*.

On April 17th the British Government took a decided step. Lord Stanley wrote to the British Ambassador in Berlin to the following effect: "Her Majesty's Government perceived with much regret, from the communication made to me by Count Bernstorff on the 15th instant, of which an account is contained in my despatch of that day, that there was so little prospect of a satisfactory solution of the question respecting Luxemburg. But the point directly in issue is one rather of principle and feeling than of national importance, and it would be strange, therefore, if some expedient could not be devised by which a continental war might be averted. Does any such expedient suggest itself to Prussia?

Lord Stanley's despatch.

"Her interests are more involved in the result than those of any other part of Germany. She has a very long sea-coast and ports to defend, while the season is favourable for maritime operations; she has no means of resisting naval pressure by France on her own coasts, and the havoc which the naval superiority of France would enable

her to commit on German commerce, not only in Europe, but also in other parts where it is actively carried on, might produce a very serious financial crisis in Germany.

"It would seem, therefore, desirable that Prussia should look to these considerations.

"Her Majesty's Government have no desire to express an opinion on the merits of the question between Prussia and France, as it now stands."

Two days later the British Government sent a second and less peremptory despatch. But Bismarck was inaccessible; on April 19th he left Berlin for Pomerania, where he remained five days, and the British Ambassador could do nothing.

On April 23rd Russia intervened. Prince Gortchakoff proposed a European Conference on the basis of the evacuation of the fortress and the neutralization of the Grand Duchy, with a guarantee such as was given to Belgium in 1839. France and Austria supported this; but the British Government refused to discuss it until they had received a reply to their despatches. Bismarck remained inaccessible. He returned to Berlin on April 25th. The next day he told the Austrian and British Ambassadors that Prussia was willing to enter a Conference, but could not accede to any terms beforehand. He would not promise to withdraw the garrison, but gave them to understand that this would be done when the Conference had come to a conclusion. France, Austria, and Russia acquiesced.

Prince Gortchakoff's proposal.

The British Government, however, refused to take part in a Conference without a binding engagement from Prussia to abide by the result. "Supposing," said Lord Stanley to Count Bernstorff, "that the Conference recommended the withdrawal of the Prussian garrison from Luxemburg, and that Prussia declined to accede to this proposition, in what a position should we all be placed!" At first the Prussian Ambassador would not commit himself, but later he returned and read to Lord Stanley the following telegram from Bismarck: "Prussia is prepared to concede the evacuation and razing of the fortress, if the Conference expresses as the result of its discussion the wish that she should do so, and at the same time gives a European guarantee for the neutrality of Luxemburg, such as now exists in the case of Belgium." [1]

Bismarck's telegram.

With this undertaking the peremptoriness of the British Government was rewarded. They need no longer fear a European war. But Prussia insisted on a guarantee.

The meaning of the word "guarantee" is discussed in a later part of this essay, but in order to appreciate the diplomatic manœuvres of the British Government it is necessary to bear in mind that when a status, such as neutrality, is guaranteed, this imposes a twofold duty on the guarantors: first, to respect—that is, not infringe—the status; secondly, to

The proposed guarantee.

[1] Correspondence respecting the Grand Duchy of Luxemburg (1867), p. 9, No. 18.

prevent others from infringing the status. The extent of the latter obligation is, as will be seen later, a matter of controversy; but there is some obligation. Lord Derby's Government[1] had no objection to promising to respect the neutrality of Luxemburg, but they did not want to be under an obligation to go to war if some Power—France or Prussia—violated the neutrality. They therefore tried to keep the word "guarantee" out of the Treaty. On April 28th Lord Stanley agreed that Great Britain should enter the Conference, but omitted all reference to a guarantee. The British Government prepared two draft Treaties; in neither did the word "guarantee" occur. On May 7th, the day of the first meeting of the Conference, the British Ambassador at Berlin asked Bismarck to accept some such phrase as[2] "the High Contracting Parties engage to respect the principle of neutrality of the Grand Duchy."

But all these attempts to avoid a guarantee failed. Prussia wanted a guarantee precisely for the reason that Lord Derby's Government did not want to give it—because it imposed a duty to maintain the status guaranteed. Lord Derby was not dismayed; the word "guarantee" did not matter, if it did not involve any duty to maintain the status; nor was an obligation to maintain at all onerous, if it was

[1] Lord Derby was Prime Minister; his son, Lord Stanley, was Foreign Secretary.

[2] Correspondence, etc., No. 67; see Article II of the Treaty of November 14, 1863, for the annexation of the Ionian Islands to Greece.

only an obligation to maintain it against some Power—for example Tibet—which was not likely to infringe it. The fact that the obligations imported by the word "guarantee" were not fixed would make almost any interpretation a possible one; the danger of war was distracting the attention of the continental diplomats, who for that reason would not haggle over the precise formula used. The Conference[1] met at three o'clock on Tuesday, May 7, 1867, at No. 10 Downing Street. The draft Treaty prepared by the British Government was read. The Prussian Plenipotentiary said that he had, in general no objection to make to the project of Treaty presented by Lord Stanley, but that he remarked in it a departure from the programme on the basis of which his Government had accepted the invitation to the Conference; that was to say, the European guarantee of the neutrality of the Grand Duchy of Luxemburg. The Plenipotentiaries of Austria, France, the Netherlands, and Russia confirmed the statement that the Powers had accepted as the basis of negotiation the neutrality of Luxemburg under a European guarantee. Lord Stanley said that by the Treaties of April 19, 1839, the Grand Duchy was already placed under a European guarantee; and that the words in the draft Treaty referring to the neutrality of Luxemburg were identical with those which declared the neutrality of Belgium in

The meeting of the Conference.

[1] Protocols of Conferences held in London respecting the Grand Duchy of Luxemburg.

Article VII of the Annex to the Treaty of April 19, 1839.

This was true but irrelevant, since the guarantee of neutrality is not contained in the Annex, but in the Treaties. The Prussian Plenipotentiary pointed out that the Treaty of 1839 did not guarantee the neutrality of Luxemburg, and expressed the hope of seeing the same guarantee given by the Powers to the neutrality of Luxemburg as was enjoyed by that of Belgium. When the Conference came to Article II he proposed to add the words: "That principle is and remains placed under the sanction of the collective (or common) guarantee of the Powers signing parties to the present Treaty, with the exception of Belgium, which is itself a neutral State." This formula is not identical with that used in the Treaties of 1839: it is said to have been invented by M. de Brunnow, the Russian Plenipotentiary.[1] The majority supported it; Lord Stanley said he would refer it to the Cabinet.

The Prussian proposed amendment.

Evidently there would have to be a guarantee. At the next sitting, two days later, Lord Stanley accepted the amendment. Apparently Bismarck had won. Article IV, as to the evacuation of the fortress, was postponed. The Dutch Plenipotentiary proposed to add the sentence which forms Article VI of the

[1] M. Rothan (*L'Affaire du Luxembourg*, p. 373), states that in the course of the previous negotiations Bismarck "réclamait, pour assurer la neutralisation du grand-duché, la garantie formelle et individuelle des puissances"; but we know of no evidence which supports this statement.

Treaty. This accomplished the enfranchisement of Limburg. The next sitting of the Conference was fixed for the following day.

But, although the question of the guarantee had ceased to exist for the Conference, it had just begun to exist for the Houses of Parliament. On May 9th, in reply to a question, Lord Stanley said that he would not discuss the guarantee at the moment, and that, though a new guarantee had been given, the country had incurred no new responsibility, but had rather got the former one narrowed and defined.

Lord Stanley in the House of Commons.

On the next day the discussion of Article IV was again postponed. Finally, on May 11th, at the fourth sitting, Article IV was agreed to. The meeting to sign and seal the treaty was held on Monday, May 13th. That afternoon, in the House of Lords, Lord Stanley of Alderley suggested that the new guarantee might involve the nation in war for the neutrality of Luxemburg. Lord Derby replied that the Treaty contained a collective guarantee: it, therefore, imposed no special and separate duty on this country of enforcing its provisions. But he deprecated further discussion till the Treaty had been laid on the table. On May 31, 1867, the Treaty, which is set out in the Appendix, was ratified. In this way war was averted and the withdrawal of the Prussian garrison and demolition of the fortress achieved. In exchange, Bismarck had got, or thought he had got, a European guarantee.

Lord Derby in the House of Lords.

In 1870 war broke out between France and Prussia and her allies. Lord Granville approached the belligerents and negotiated two Treaties in similar form, which are set out in the Appendix. By one the Emperor of the French declared his determination to respect the neutrality of Belgium, and Great Britain declared that in the event of the neutrality being violated by the North German Confederation she would co-operate with France in defence of the same, but should not have to take part in the war outside Belgium. The Treaty was to be in force during the war and for twelve months after the peace. A similar Treaty was entered into with Prussia and her allies.

The Treaties of 1870.

This short account is, it is hoped, sufficient to explain the circumstances under which Great Britain guaranteed the neutrality of Belgium in 1839 and of Luxemburg in 1867.

Note.

The succession to the Kingdom of the Netherlands is determined by the constitutional laws of 1815 and 1848, under which the Crown was hereditary in the House of Orange-Nassau. The succession to the Grand Duchy of Luxemburg is regulated by the Family Pact (*Nassauischer Erbverein*) of 1783, confirmed by the Vienna Congress Treaty.

King William I of the Netherlands abdicated in 1840 in favour of his son William II, on whose death nine years later William III came to the

throne. He died in 1890, and was succeeded by his daughter Wilhelmina, the present Queen of Holland. But under the Family Pact females could not succeed, and the Grand-Duchy of Luxemburg passed to Adolphus, Duke of Nassau. He was succeeded by the Grand Duke William, who died in 1912 and was succeeded by his daughter Maria Adelaide, the present Grand Duchess, in virtue of a law passed in 1907. The present King of the Belgians succeeded his uncle, Leopold II, who had succeeded Leopold I.

CHAPTER II

TREATIES OF GUARANTEE

I. The nature of a Treaty of guarantee.
II. Examples of such Treaties.
III. The views of international lawyers.
IV. The meaning of neutrality.
V. When does the obligation of a guarantor arise ?

CHAPTER II

TREATIES OF GUARANTEE

I

By the two Treaties of April 19, 1839, Great Britain guaranteed the neutrality of Belgium; by the Treaty of May 11, 1867, Great Britain guaranteed the neutrality of Luxemburg. When Germany sent troops first into Luxemburg and then into Belgium, what was England's duty? Was there an absolute obligation to go to war? Was there an obligation under certain conditions? Was there no obligation? This essay discusses the answers which have been given to such questions.

The question to be discussed.

What is a Treaty of guarantee? A Treaty is an agreement between two States. It resembles a contract between two individuals, but the analogy is not complete. The subject-matter of many Treaties is not of the same kind as the subject-matter of ordinary contracts, nor are States individuals. There is no tribunal with the force of an executive behind it which can cause Treaties to be performed or

Treaties are not exactly analogous to civil contracts.

compel compensation to the injured party if they are broken. Frequently Treaties are expressed in language which is intentionally vague. In an ordinary contract in writing—especially if it has been drawn by lawyers—the obligations are expressed in technical or legal language and can be ascertained by the application of definite legal principles. From all this it is likely to be the case that many views of the obligations imposed by a particular Treaty may be reasonable, so that no one construction can be said to be certain or even the most probable.

The nature of a guarantee.

In Treaties of guarantee these difficulties are increased. The most familiar form of guarantee is that of a debt or agreement to pay money. A and B propose to enter into an agreement under which B has in the future to pay A a sum of money. A doubts B's capacity to pay, and therefore requires that some third person C should guarantee the payment. If this is agreed to, we have first an agreement between A and B, and then an agreement between A and C that if B makes default under the former agreement C will pay. This type of agreement requires three parties. But political guarantees are not usually of this nature. In particular, Treaties which guarantee

Guarantees of neutrality.

the existence of a certain status—such as the neutrality, independence, or integrity of a country—do not resemble agreements which guarantee a debt. If several States, A, B, and C, guarantee the neutrality of a fourth State D, this may import a whole series of obligations, as follows :

A agrees with D to respect the neutrality of D; B and C agree with D and with each other that they will cause A to respect it; B agrees with D to respect the neutrality of D, A and C agree with D and with each other that they will cause B to respect it; C agrees with D to respect the neutrality of D, A and B agree with D and with each other that they will cause C to respect it. In addition, A, B, and C agree with D and with each other that they will prevent any other Power from infringing the neutrality of D. So that each party has not entered into one obligation, but many.

The questions which arise.

In construing such a Treaty several questions arise :—

1. Has A entered into all the obligations suggested above or only some, and, if so, which of them?

2. What is the nature of the status guaranteed? That is, what does "neutrality" mean?

3. What is the nature of the obligation imposed by the word "guarantee"?

4. If two or more States guarantee together, does this impose the same obligation as if each had guaranteed separately, or is the obligation greater or less?

Further, the wording of the Treaty—in particular, the addition of an adverb qualifying the word "guarantee"—may or may not modify the meaning which is to be attached to the word "guarantee."

We shall find that all these questions do not admit of a decisive answer. Nor is this all. In the case of the guarantee of a debt the guarantor has a liability

limited to the amount of the debt and he can discharge his obligation by payment. But a guarantee that somebody else will not do something imposes a liability of a very different type. What means should be used? Is the liability unlimited? In contracts it is sometimes stipulated that a party "shall use his best endeavours" to procure something to be done—for example, a tenant who cannot assign his lease without his landlord's consent may agree to use his best endeavours to get such consent. This creates some legal obligation—but it does not create an indefinite liability—it does not mean that the tenant ought to offer his whole fortune to the landlord to get him to consent.

The extent of the liability imposed.

If a State agrees to prevent a status being infringed, it is reasonable to suppose that this obligation only imposes a duty to do what it is reasonable under the particular circumstances to expect the guarantor to do, though some writers think that it imposes a definite obligation to go to war in the last event.

Again, it is generally admitted that a material change of circumstances may release a State from its obligations under a Treaty. Some such provision is implied in all Treaties, but it is not possible in advance to determine what changes are material and what are not.

Under all these circumstances it is permissible to use every kind of assistance in aid of the interpretation of the written words and to consider all the surrounding circumstances. The intentions of the

signatories, the opinions of jurists, the views of diplomats and statesmen may all be regarded.

The words of the Treaty are of primary importance, but the mere words, even if reasonably clear—which is rarely the case—are far from being conclusive. A complete discussion of the nature and principles of construction of Treaties will not be attempted here. The foregoing observations are only intended to indicate the kind of questions which have to be answered and the kind of difficulties which inevitably arise.

The obligation cannot be ascertained from the mere words.

II

The Treaties under which the obligations of Great Britain to Belgium and Luxemburg arise are printed in the Appendix, but it is convenient to set out the precise words which create the guarantee of neutrality and to compare them with the words used in other Treaties of guarantee.

In 1839 the Great Powers signed two Treaties, one with Holland and one with Belgium. Each Treaty has an annex of twenty-four Articles. By the first Article of the Treaty with Belgium and the second Article of the Treaty with Holland the monarchs of the five Powers declare that the twenty-four annexed Articles "are considered as having the same force and validity as if they were textually inserted in the present Act, and that they are thus placed under the guarantee of their said Majesties." Article VII of

The Belgian guarantee of 1839.

the annex runs, "Belgium, within the limits specified in Articles I, II, and IV, shall form an independent and perpetually neutral State. It shall be bound to observe such neutrality towards all the States." This is the Belgian guarantee.

The Luxemburg guarantee is contained in Article II of the Treaty of May 11, 1867, which runs as follows: "The Grand Duchy of Luxemburg, within the limits determined by the Act annexed to the Treaties of the 19th of April, 1839, under the guarantee of the Courts of Great Britain, Austria, France, Prussia, and Russia, shall henceforth form a perpetually neutral State. It shall be bound to observe the same neutrality towards all other States. The High Contracting Parties engage to respect the principle of neutrality stipulated by the present Article. That principle is and remains placed under the sanction of the collective guarantee of the Powers signing parties to the present Treaty, with the exception of Belgium, which is itself a neutral State."

The Luxemburg guarantee of 1867.

In each case the language is vague and the obligations undefined. Let us compare the language with that of other guarantees entered into during the past hundred years. The English text of the twelve important guarantees set out below is taken from Hertslet's *Map of Europe by Treaty*.

The Vienna Congress Treaty guaranteed the independence and neutrality of Cracow,[1] and the

[1] Cracow was annexed by Austria; see Convention of November 6, 1846, between Austria, Prussia, and Russia.

cession to Prussia of part of Saxony in the following words :—

1. Neutrality and independence of Cracow.

Article VI.—"The Town of Cracow, with its Territory, is declared to be for ever a Free, Independent, and strictly Neutral City, under the protection of Austria, Russia, and Prussia."

Article IX.—"The Courts of Russia, Austria, and Prussia engage to respect, and to cause to be always respected, the Neutrality of the Free Town of Cracow and its Territory. No armed force shall be introduced on any pretence whatever."

2. Possession of part of Saxony by the King of Prussia, 1815.

Article XV dealt with the cession of parts of Saxony to Prussia.

Article XVII.—"Austria, Russia, Great Britain, and France guarantee to His Majesty the King of Prussia, his descendants and successors, the possession of the countries marked out in Article XV, in full property and sovereignty."

3. Neutrality and independence of Switzerland.

By the Act signed at Paris on November 20, 1815, between Austria, France, Great Britain, Prussia, and Russia, the Powers declare "their formal and authentic Acknowledgment of the perpetual Neutrality of Switzerland and they Guarantee to that country the Integrity and Inviolability of its Territory . . ."; they "acknowledge, in the most formal manner, by the present Act, that the Neutrality and the Inviolability of Switzerland, and her Independence of all foreign influence, enter into the true Interests of the policy of the whole of Europe." It will be noticed that Switzerland is

not expressly required to observe neutrality to all other States.

4. Neutrality of Belgium, 1831.

The first twenty-four Articles of the Treaty of November 15, 1831, signed at London between Great Britain, Austria, France, Prussia, and Russia on the one part and Belgium on the other part are, on the whole, similar to (but not quite the same as) those annexed to the Treaties of 1839; the twenty-fifth Article is as follows:—"The Courts of Great Britain, Austria, France, Prussia, and Russia guarantee to His Majesty the King of the Belgians the execution of all the preceding Articles."

5. The independence of Greece, 1832.

The Treaty of London of May 7, 1832, between Great Britain, France, and Russia on the one part and Bavaria on the other part contains the following: *Article IV.*—"Greece, under the sovereignty of the Prince Otho of Bavaria, and under the guarantee of the three Courts, shall form a monarchical and independent State, according to the terms of the Protocol signed between the said Courts on the 3rd February, 1830, and accepted both by Greece and by the Ottoman Porte." King Otho was deposed in 1862.

The Treaty of Paris of March 30, 1856, between Great Britain, Austria, France, Prussia, Russia, Sardinia, and Turkey, contains four guarantees as follows:—

Article XV.—"The Act of the Congress of Vienna having established the principles intended to regulate the Navigation of Rivers which separate

or traverse different States, the Contracting Powers stipulate among themselves that these principles shall in future be equally applied to the Danube and its Mouths. They declare that its arrangement henceforth forms a part of the Public Law of Europe, and take it under their guarantee."

6. The navigation of the Danube, 1856.

Article XXII.—"The Principalities of Wallachia and Moldavia shall continue to enjoy under the Suzerainty of the Porte, and under the Guarantee of the Contracting Powers, the Privileges and Immunities of which they are in possession. No exclusive Protection shall be exercised over them by any of the guaranteeing Powers. . . ."

7. The privileges of Moldavia and Wallachia, 1856.

Article XXVIII.—"The Principality of Servia shall continue to hold of the Sublime Porte, in conformity with the Imperial Hats which fix and determine its Rights and Immunities, placed henceforward under the Collective Guarantee of the Contracting Powers."

8. The immunities of Servia, 1856.

Article VII. (The six monarchs) "declare the Sublime Porte admitted to participate in the advantages of the Public Law and System [concert] of Europe. Their Majesties engage, each on his part, to respect the Independence and the Territorial Integrity of the Ottoman Empire; Guarantee in common the strict observance of that engagement; and will, in consequence, consider any act tending to its violation as a question of general interest."

9. The independence and integrity of the Ottoman Empire, 1856.

Article VIII.—"If there should arise between the Sublime Porte and one or more of the other Signing Powers any misunderstanding which might endanger the maintenance of their relations, the Sublime Porte, and each of such Powers, before having recourse to the use of force, shall afford the other Contracting Powers the opportunity of preventing such an extremity by means of their Mediation."

On April 15, 1856, France, Austria, and Great Britain signed a separate Treaty which is important by reason of the use of the words "jointly and severally" (*solidairement*); it provides:—

10. The independence and integrity of the Ottoman Empire.

Article I.—"The High Contracting Parties Guarantee, jointly and severally, the Independence and the Integrity of the Ottoman Empire, recorded in the Treaty concluded at Paris on the 30th of March, 1856."

Article II.—"Any infraction of the stipulations of the said Treaty will be considered by the Powers signing the present Treaty as a *casus belli.* They will come to an understanding with the Sublime Porte as to the measures which have become necessary, and will without delay determine among themselves as to the employment of their Military and Naval Forces."

Article II of the Convention of Paris, signed on August 19, 1858, between Great Britain, Austria, France, Prussia, Russia, Sardinia, and Turkey, stipulates that "In virtue of the Capitulations issued

by the Sultans Bajazet I, Mahomet II, Selim I, and Soliman II, which constitute their self-government, settling their relations with the Sublime Porte, and which are recorded in various Hatti-Sheriffs, specially that of 1834; conformably also to Articles XXII and XXIII of the Treaty concluded at Paris on the 30th March, 1856, the Principalities shall continue to enjoy, under the Collective Guarantee of the Contracting Powers, the Privileges and Immunities of which they are in possession. . . ."

11. Privileges of Moldo-Wallachia, 1858.

Article III of the Treaty of London, signed on July 13, 1863, between Great Britain, France, and Russia on the one part and Denmark on the other part is as follows: "Greece, under the Sovereignty of Prince William of Denmark, and the Guarantee of the three Courts, forms a Monarchical, Independent, and Constitutional State."

12. Independence of Greece, 1863.

How far the differences in the language in which the guarantees are expressed involve differences in the obligations imposed is, as we shall see, a matter of controversy. In the Cracow guarantee the word "guarantee" is not used: instead, we have the double obligation, which is always implied in a guarantee—to respect and to cause to be respected—stated in terms. In some cases the guarantee is expressly stated to be collective or in common. The Treaty of April 15, 1856, is singular in two respects: the guarantee is joint and several, and the obligation imposed is defined in

Article II. These points are important and must be borne in mind.

III

With the examples quoted in the last section before us, we can usefully see what opinions international lawyers have held as to the nature of and obligations imposed by such Treaties. The following quotations are given as fair specimens of the views held by writers of repute.

Hall (*International Law*, 6th ed., p. 334) says:—

Hall on the nature of a guarantee.

"Treaties of guarantee are agreements through which powers engage, either by an independent treaty to maintain a given state of things, or by a treaty or provisions accessory to a treaty, to secure the stipulations of the latter from infraction by the use of such means as may be specified or required against a country acting adversely to such stipulations. Guarantees may either be mutual, and consist in the assurance to one party of something for its benefit in consideration of the assurance by it to the other of something else to the advantage of the latter . . . or they may be undertaken by one or more powers for the benefit of a third . . . or finally they may be a form of assuring the observance of an arrangement entered into for the general benefit of the contracting parties. . . .

"In the two former cases a guarantor can only intervene on the demand of the party or, where more than one is concerned, of one of the parties

interested. . . . In the last-mentioned case, on the other hand, any guarantor is at liberty to take the initiative, every guaranteeing State being at the same time a party primarily benefited."

Hall's first case, which he illustrates by the treaty of Tilsit, does not differ in essence from any contract in which each party stipulates for the benefit of the other—that is, a contract with consideration on each side.

Hall illustrates his second case by the Treaty of April 15, 1856, but it is doubtful whether that Treaty was made for the benefit of Turkey and how far Turkey, who was not a party, is entitled to claim the benefit of it.

The guarantee of the neutrality of Belgium was doubtless intended to be for the benefit of Belgium as well as of the Powers. The precise definition of a guarantee is not a subject of great importance. What is important is to ascertain the obligation imposed. In fact, guarantees are not given by one Power but by several.

We have already noticed that some guarantees are merely expressed in the word "guarantee"; in others we find that guarantees are given "collectively" or "in common," and in one case "jointly and severally." The following quotations illustrate the opinions which have been held as to the meaning of these words.

Hall (*International Law*, 6th ed., p. 337) says:—

"When a guarantee is given collectively by several powers the extent of their obligation is

not quite so certain. M. Bluntschli lays down that they are bound, upon being called upon to act in the manner contemplated by the guarantee, to examine the affair in common for the purpose of seeing whether a case for intervention has arisen, and to agree if possible upon a common conclusion and a common action; but that, if no agreement can be arrived at, each guarantor is not only authorized but bound to act separately, according to his views of the requirements of the case."

Oppenheim (*International Law*, 2nd ed., p. 601) says :—

Oppenheim.

"In contradistinction to treaties constituting a guarantee on the part of one or more States severally, the effect of treaties constituting a *collective* guarantee on the part of several States requires special consideration. On June 20, 1867, Lord Derby maintained in the House of Lords, concerning the collective guarantee by the Powers of the neutralization of Luxemburg, that in case of a collective guarantee each guarantor had only the duty to act according to the Treaty when all the other guarantors were ready to act likewise; that, consequently, if one of the guarantors themselves should violate the neutrality of Luxemburg, the duty to act according to the Treaty of collective guarantee would not accrue to the other guarantors. This opinion is certainly not correct, and I do not know of any publicist who would or could approve

The Derby doctrine.

of it. There ought to be no doubt that in a case of collective guarantee one of the guarantors alone cannot be considered bound to act according to the treaty of guarantee. For a collective guarantee can have the meaning only that the guarantors should act in a body. But if one of the guarantors themselves violates the object of his own guarantee, the body of the guarantors remains, and it is certainly their duty to act against such faithless co-guarantor. If, however, the majority, and therefore the body of the guarantors, were to violate the very object of their guarantee, the duty to act against them would not accrue to the minority."

Sir F. E. Smith (*International Law*, 4th ed. p. 99) says :—

"Such treaties" (i.e. of guarantee) "are sometimes difficult to construe, especially when the guarantee is jointly made by several powers. . . . Of a collective guarantee a well-known instance was the treaty by which the great powers in 1831 asserted the perpetual neutrality of Belgium. It has been much disputed whether, if the other parties to such a guarantee decline to intervene on occasion, a single signatory is released from his obligations."

Sir F. E. Smith.

After stating Lord Derby's doctrine, the learned author continues: "On principle Lord Derby's contention is unanswerable. If a State undertakes a duty in concert with others, on what principle is it committed to an isolated performance? It

was never pledged to such action, and its unassisted resources may fall far short of the occasion." But it may be observed that the question at issue is whether the guarantor was pledged to isolated action.

Geffken.

Geffken (in *Holzendorf. Handbuch des Völkerrechts*, vol. iii, p. 102) holds that there is no difference between the expressions "guarantee," "guarantee in common," and "guarantee collectively." He strongly opposes Lord Derby's doctrine of a collective guarantee.

Milovanović.

Milovanović (*Traités de Garantie au XIX^e^ Siècle*, pp. 51–6) holds that the rights and duties of the guarantors depend on the object of the Treaty and the intentions of the signatories as exhibited explicitly or implicitly in the stipulations. In general, the duty of a guarantor is to lend the State guaranteed his moral and material assistance to withstand aggression; and it is the same in all guarantees, whether collective or not. But if there are many guarantors, they have also a duty to one another, namely to enter into communication with one another with a view to combined or collective action.

Despagnet.

Despagnet (*Droit international public*, p. 130) holds that guarantees may be (1) pure and simple or individual; (2) collective. In the first case each guarantor can and ought to intervene alone to defend the neutrality, or, if he prefers, to take steps jointly (*s'entendre*) with his co-guarantors. In the second case all the guarantors

ought to try to take joint action. One guarantor is not obliged to act alone if the others do not act; but, conversely, the deliberate refusal by one or several of the guarantors does not paralyse the action of the others.

Quabbe.

Quabbe (*Die völkerrechtliche Garantie*, p. 155) argues that in the Treaty of Paris of March 30, 1856,[1] the expressions "guarantee in common" (Article VII), "guarantee" (Article XXII), and "collective guarantee" (Articles XXV and XXVIII) are used indifferently and apparently with one and the same meaning. Quabbe considers that a collective guarantee is the same as a collective and separate guarantee, and that, in reality, whatever may be the form of words used, there is only one kind of guarantee by two or more persons. In Quabbe's opinion, the person for whose benefit the guarantee was entered into may call on all the guarantors together to take the necessary steps for the preservation of the thing guaranteed; and if the guarantors do not act together when so called upon, then as a second resort each guarantor may be called upon separately.

The lawyers are not of one mind, therefore we cannot suppose the signatories to such Treaties attached a definite legal or technical meaning to the words used. To appreciate the discussions on the unhappy word "collective" it is necessary to find out how that word came to be introduced into some of the Ottoman guarantees. This will be

[1] See above, p. 33.

examined in the next chapter, but two less difficult points will be discussed first: the meaning of neutrality, and the occasion on which the obligation, if any, to cause it to be respected arises.

IV

What is the meaning of neutrality? May a neutral State allow the troops of a belligerent to pass through its territory? The Hague Convention of 1907 on the Rights and Duties of Neutral Powers and Persons in Land Warfare has now established a series of rules; but the obligations of a neutral a century ago, and even at a more recent date, were not those laid down by the Hague Convention.

What is neutrality?

A neutral State during the eighteenth century and the first half of the nineteenth might permit belligerent troops to pass through its territory. Thus Hall says (*International Law*, 6th ed., p. 594):—

"During the eighteenth century it was an undisputed doctrine that a neutral State might grant a passage through its territory to a belligerent army, and that the concession formed no ground of complaint on the part of the other belligerent. The earlier writers of last century, and Sir R. Phillimore more lately, preserve this view, only so far modifying it as to insist with greater strength that the privilege, if accorded, shall be offered impartially

Neutrality in the eighteenth and early nineteenth century.

to both belligerents." (Cf. also Baty, *International Law in South Africa*, London, 1900, pp. 69–83, where many quotations will be found.)

That the privilege might conceivably have been granted in 1815 is suggested by the Article of the Vienna Congress Treaty relating to the neutrality of Cracow (see above, p. 31). Austria, Prussia, and Russia promised not only to respect the neutrality of Cracow, but also to introduce no armed forces into the town. And, in fact, the privilege has been granted more than once. For instance, in the Polish insurrections of 1832 and 1863 a Russian army was allowed to pass through East Prussia in order to attack the rear of the insurgents.[1]

But there was a considerable change of opinion in the last fifty years of the nineteenth century. All modern authors[2] hold that passage must be totally refused to the troops of belligerents. Yet in the South African War, at the beginning of the year 1900,[3] the British Government obtained permission to send British troops through neutral territory belonging to Portugal; and the Rhodesian Field Force, under Sir Frederick Carrington, was landed at Beira and sent by rail to Rhodesia. When the Transvaal Government protested, they were informed that Great Britain had acquired a right of passage by the Treaty of June 11, 1891. But it is exceed-

The South African War.

[1] *Hansard*, III, vol. 170, col. 1955–6. [2] Baty, l.c., p. 73.
[3] *Times History of the War in South Africa*, vol. iv, pp. 565–6.

ingly doubtful whether any Treaty could authorize Portugal to do what was contrary to international law.[1] It must be presumed therefore that neither the British nor the Portuguese Governments believed the granting of a passage to be illegal. At any rate, whether this be so or not, it is not disputable that so lately as the year 1900 a British army did obtain permission to cross—and did cross—neutral territory.[2]

The Hague Convention.

Seven years later, by the Hague Convention,[3] it was laid down in Article I that "the territory of neutral Powers is inviolable"; and in Article II that "Belligerents are forbidden to move across the territory of a neutral Power troops or convoys either of munitions of war or of supplies"; and in Article V that "A neutral Power ought not to allow on its territory any of the acts referred to in Articles II to IV." This Convention determines what are the duties and the rights of neutrals at the present time.

The application of the preceding facts to the present war appears to be this: If Belgium had permitted German or French troops to pass through her territory she would, according to the present

[1] It is asserted in Sir F. E. Smith's *International Law* that it could not (4th ed., p. 212), and Mr. Baty's opinion appears to be the same (l.c, p. 77).

[2] It has been alleged that in the present war Japanese and British troops passed through Chinese territory to attack Tsing Tau. There will no doubt be an official explanation.

[3] Hague Convention of 1907 respecting the Rights and Duties of Neutral Powers and Persons in War on Land.

international law, have ceased to be neutral. When Belgium refused permission, Germany by forcing a passage broke the Treaty of 1839. But it is at least arguable that if Belgium had granted a passage to German or French troops she would not have broken the Treaty of 1839. For it may be contended that the Hague Contention did not alter the construction of a Treaty which already existed; that the Treaty of 1839 bound Belgium to remain neutral only in that sense in which the word "neutrality" was used in 1839, and that neutrality in this sense is compatible with a grant of passage. However, since Belgium resisted the passage of the German troops, and did not allow the right of way, Germany unquestionably broke her treaty obligations.

The breach of neutrality by Germany.

In 1867, when Luxemburg was neutralized, it was a common opinion that a neutral should not permit the passage of belligerent troops, but since by the Treaty of 1867 Luxemburg may not keep an army, she cannot in fact be under any obligation to resist the passage of troops. Germany's action was an undoubted breach of the Treaty of 1867.

V

The duty to respect the neutrality or other status guaranteed is absolute. The duty to take steps to cause the neutrality to be respected will only arise when some State threatens to infringe that neutrality. But does it necessarily arise then? We have seen

(above, p. 36) that in Hall's opinion, where the guarantee is undertaken by one or more persons for the benefit of a third, a guarantor can only intervene on the demand of a party interested. But it is not always easy to determine for whose benefit a guarantee is given. Prima facie it would seem to be likely that the person benefited would be a party to the Treaty, and it was held by Lord Derby that because Turkey was not a party to the Treaty of April 15, 1856, the Treaty confers no right on Turkey to appeal to the guarantors, but, as noticed above, Hall does not take this view. The doctrine that no person who is not a party to a contract can claim a benefit under it can, indeed, be supported by an analogy to the English law of contract, but in continental systems of law it is possible to contract for the benefit of a third party (*Bürgerliches Gesetzbuch*, § 328, Code Civil, Article 1121). It would seem to follow that where a guarantee is clearly for the benefit of a Power not a party to a Treaty, such a Power should have the right to call on the guarantors, and that unless the Treaty is also for the benefit of the guarantors, they should not act unless called upon. But, in fact, it is reasonably clear that Powers which enter into a Treaty of guarantee usually do so because they think it is for their benefit that the status guaranteed shall continue to exist. At any rate, unless the guarantors thought it for their benefit to act, it is not likely that they would do so unless

Is a Treaty only for the benefit of the parties to it?

called upon. In the present case Belgium, after the violation of her territory, appealed to Great Britain, France, and Russia to co-operate as guaranteeing Powers in the defence of her territory.[1] It can hardly be doubted that the guarantees of the independence of Greece were for the benefit of Greece, and a similar observation applies to some of the other guarantees which have been quoted. But Oppenheim (*International Law*, 2nd ed., vol. i, pp. 563–4) seems to take the other view.

Illustration of a Treaty only for the benefit of the parties.

On the other hand, if the Treaty is for the benefit only of the contracting parties, it is reasonable to suppose that they may put an end to it. The Treaties excluding Napoleon and his family from the throne of France were of this nature. Article II of the Treaty of Alliance and Friendship between Great Britain and Austria, signed on November 20, 1815, runs as follows:—"The High Contracting Parties, having engaged in the War which has just terminated for the purpose of maintaining inviolably the Arrangements settled at Paris last year, for the safety and interest of Europe, have judged it advisable to renew the said Engagements by the present Act, and to confirm them as mutually obligatory, subject to the modifications contained in the Treaty signed this day with the Plenipotentiaries of His Most Christian Majesty, and particularly those by which Napoleon Bonaparte and his

[1] Diplomatic Correspondence respecting the War published by the Belgian Government. Miscellaneous, No. 12 (1914), Cd. 7627, No. 42.

family, in pursuance of the Treaty of the 11th April, 1814, have been for ever excluded from Supreme Power in France, which exclusion the Contracting Powers bind themselves, by the present Act, to maintain in full vigour, and, should it be necessary, with the whole of their forces. And as the same Revolutionary Principles which upheld the last criminal usurpation might again, under other forms, convulse France, and thereby endanger the repose of other States; under these circumstances the High Contracting Parties, solemnly admitting it to be their duty to redouble their watchfulness for the tranquillity and interests of their people, engage, in case so unfortunate event should again occur, to concert among themselves, and with His Most Christian Majesty, the measures which they may judge necessary to be pursued for the safety of their Respective States, and for the general Tranquillity of Europe."

Separate Treaties were signed on the same day by Plenipotentiaries of Great Britain, Russia, and Prussia respectively.

But in spite of these vigorous words Napoleon III became Emperor of the French. The signatories to the Treaty of November 20, 1815, signed a Protocol, on December 3, 1852, stating that the change which had taken place in the form of the government in France concerned its internal affairs (*régime intérieur*), and that, faithful to the principle of not interfering in the domestic affairs of that country, the other Powers did not consider themselves called upon "*à se prononcer sur ce changement.*"

CHAPTER III

THE OTTOMAN GUARANTEES

I. The Treaties of March 30, 1856, and April 15, 1856.
II. The proceedings at the Vienna Conference of 1855.
III. Observations on the evidence and on the word *solidairement*.
IV. Views of Lord Derby, Lord Salisbury, and Mr. Gladstone.
V. Deduction from the Moldo-Wallachian guarantees.

CHAPTER III

THE OTTOMAN GUARANTEES

I

The Treaty of Paris of March 30, 1856, not only contained the four guarantees which are quoted in Chapter II (above, p. 33), but, as will be seen, used three different formulæ of guarantee. The subsequent Treaty of April 15, 1856, not only used yet another formula, but went on to define the obligations imposed. The importance of these Treaties is so great that they must be discussed amply. They are important for several reasons.

The Treaties of 1856.

In the first place, the Treaty of April 15th appears to be the only Treaty of guarantee in which the words "jointly and severally" (*solidairement*) occur. In the second place, the Treaty of March 30th and the Treaty of April 15th guarantee the same settlement in varying words. As the implications of the guaranteeing formula of the former had been in dispute, and as the words "joint and several" (*solidaire*) in the latter Treaty are technical legal terms, it is probable

that these words were introduced deliberately, and that some distinction was intended to be drawn between the two guarantees.

And, in the third place, they were employed by Lord Derby to support his interpretation of the Luxemburg guarantee. The circumstances in which the Treaties were signed and the intentions of the signatories must therefore be discussed at some length. Unfortunately, the evidence is not sufficient to draw any certain conclusions. A theory which seems to explain the purport of these Treaties in a plausible way will be put forward. It cannot be proved, but to show that it is plausible will be sufficient. Lord Derby did not say that his distinction between a collective and a several guarantee was to his own knowledge adopted by the diplomatists at Paris ; but, as will be seen later, he adduced the Treaties of 1856 as being by their wording and their relations obvious illustrations of his theory. To show that they can be plausibly explained in another way will refute his argument on this point.

The Treaty of Paris of March 30, 1856, was signed by Great Britain, France, Austria, Prussia, Russia, Sardinia, and Turkey. The Treaty of April 15th was, as Lord Derby says, a supplementary Treaty, signed a fortnight later by Great Britain, France, and Austria.

The Treaty of Paris consists of thirty-four Articles, and three Conventions are annexed to it. The Articles deal with the following subjects : Peace and Friendship, Evacuation of Territory, the Russo-

Turkish Frontier, etc. (I–VI and XXX–XXXII); the admission of the Porte into the European System (VII–IX); the neutralization of the Black Sea and the closing of the Bosphorus and the Dardanelles (X–XIV, and two Conventions); the Navigation of the Danube (XV–XIX); Moldavia and Wallachia (XX–XXVII); Servia (XXVIII–XXIX); the Aland Islands (XXXIII, and a Convention between Great Britain, France, and Russia). In the course of the Treaty, guarantees are given: of the integrity and independence of the Ottoman Empire (Articles VII and VIII); of the Free Navigation of the Danube (Article XV); of the Privileges and Immunities of Wallachia and Moldavia (Article XXII); of the Rights and Immunities of Servia (Article XXVIII). The text of these guarantees has already been quoted.

The provisions of the Treaty of March 30, 1856.

The second Treaty, signed on April 15, 1856, by Great Britain, France, and Austria, was supplementary to the former. The English text of the first two Articles has already been given (above, p. 34). The Preamble recites that the three monarchs, "wishing to settle between themselves the combined action which any infraction of the stipulations of the Peace of Paris would involve on their part, have named for that purpose as Plenipotentiaries [here follow the names], who . . . have agreed upon the following Articles."

The Treaty of April 15, 1856.

II

The Conference of Vienna, 1855.

Now the reasons for which this second and supplementary Treaty was signed are apparently to be found in the proceedings of the Conference of Vienna in 1855. As it will be necessary to consider the proceedings of this Conference at length, it will be convenient to explain, at the start, the connection of events. In the middle of the Crimean War, in December 1854, after the battles of Inkerman and Alma had been fought and before Sevastopol had been taken, negotiations of peace were opened. The representatives of Austria, Russia, France, Great Britain, and Turkey met in conference at Vienna from March 15th to June 4th, 1855. Lord John Russell and Lord Westmoreland represented Great Britain. The Minister of Foreign Affairs for France, M. Drouyn de Lhuys, attended the Conference on and after the ninth sitting on April 9th. Prince Gortchakoff was the chief representative of Russia, and Count Buol Schauenstein, who presided, of Austria. At the eleventh meeting of the Conference, on April 19th, a formula, by which the independence and integrity of Turkey received the guarantee in common of the Powers, was accepted by all the Plenipotentiaries. It appeared, however, at the next meeting that Prince Gortchakoff and the representatives of the other three Powers did not attribute the same meaning to the formula. According to the French, Austrian, and British representatives,

if the guarantee should be violated by one of the contracting parties, it would then be the duty of the remainder to use all possible methods to obtain respect for their common engagement, the use of arms not being excepted. According to the Russian view, in the event of a violation of the integrity and independence of the Ottoman Empire by one of the guarantors, Russia would be free to take up arms or refuse to take them up, as she might think expedient. When the Conference separated, these different interpretations were still maintained by their respective supporters.

In the Conference of Paris, which met between February and April 1856, after the second Crimean campaign, a formula similar to that adopted at Vienna was accepted by the Powers and included in the Treaty of Peace. The meaning of the formula was not, apparently, discussed. But the provisions of the second Treaty, which was concluded between Austria, France, and Great Britain a fortnight later, were closely related to the interpretation which was maintained by the representatives of those three Powers at Vienna.[1]

In the events of which the preceding paragraph is the summary, there are three which must be discussed in more detail: the formula accepted at

[1] The Protocols of the Conference of Vienna will be found in British and Foreign State Papers, vol. xlv; and the Protocols of the Conference of Paris and the French text of the Treaties of 1856 in vol. xlvi of the same. Cf. also Milovanović, l.c., pp. 17–20, 55, 324–347.

Vienna, the meaning attributed to it by France, Austria, and Great Britain, and the meaning maintained by Prince Gortchakoff. They will be discussed in order.

The French text of the proposed guarantee.

The words in which at Vienna it was proposed to guarantee the integrity and independence of Turkey were drafted by M. Drouyn de Lhuys with the help of a formula which had been proposed by one of the Ottoman representatives. They were as follows (State Papers, xlv, p. 97):—

M. Drouyn de Lhuys' draft.

Article I.—"The High Contracting Parties, wishing that the Sublime Porte should participate in the advantages of the Concert established by Public Law between the different States of Europe, undertake each on his part to respect the Independence and the Territorial Integrity of the Ottoman Empire, guarantee in common the strict observance of that engagement, and will, in consequence, consider any act and any event which may be of a nature to violate it as a question of European interest.

Article II.—"If a conflict [*conflit*] should arise between the Porte and one of the contracting Powers, the two States before having recourse to the use of force ought to afford the other Powers the opportunity of preventing such extremity by pacific means [*les voies pacifiques*]." [1]

When this formula was proposed and accepted the Russian Plenipotentiaries added that they did

[1] The translations of the French text are not official.

not mean by it to involve (*engager*) their Court in a territorial guarantee (pp. 92, 93). At this M. Drouyn de Lhuys explained that, as had already been stated at the previous Conference, the engagement which the Powers were to contract imposed upon them the obligation to respect the independence and integrity of the Ottoman Empire themselves, and to cause it to be respected by the others, in such a way that any contracting Power which should infringe this territorial integrity would be responsible to the remainder, who would employ, in order to cause their common engagement to be respected, all the means in their power, not excepting force.

M. Drouyn de Lhuys' explanation of a guarantee.

The Plenipotentiaries of Great Britain and Austria agreed with the opinion of M. Drouyn de Lhuys and asked that the expression of regret with which they took note of Prince Gortchakoff's interpretation should be inserted in the Protocol (p. 99). Prince Gortchakoff explained further that the formula imposed an obligation on Russia to consider any act tending to violate the territorial integrity as a question of European interest, but he refused to make the engagement involve a *casus belli*.

Prince Gortchakoff's explanation.

M. Drouyn de Lhuys said (p. 100) that Russia was not willing to give a guarantee of any kind to the Ottoman Empire. That Russia reduced the guarantee in Article I to a chimera, since even if a Turkish province were invaded by one of the contracting Powers,

The reply of M. Drouyn de Lhuys.

Russia, according to Prince Gortchakoff's interpretation, would confine herself to using her good offices.

The position was summed up by Count Buol, who said that if one of the contracting Powers attached to the common guarantee a different meaning from that of the four others, it would do so at its own risk, since the four would maintain their interpretation (p. 104).

By the end of this meeting it had become clear that it would be impossible to reach an agreement on the question of the neutralization of the Black Sea, and Lord John Russell did not attend the Conference again. But two more meetings were actually held, at the first of which, on April 26th, Prince Gortchakoff explained his view of the guarantee in greater detail. He began by quoting the passage from the Protocol of the preceding meeting of the Conference which has been already quoted on p. 57, and in answer to these remarks of M. Drouyn de Lhuys pointed out that the Plenipotentiaries of Russia have, in agreement with the other members of the Conference, adopted the principle of making the Sublime Porte participate in the advantages of the European Concert, and of placing it under the ægis of the Public Law of Europe; they have also (*enfin*) in the name of their Court undertaken to respect the Independence and Territorial Integrity of the Ottoman Empire. Could these engagements be termed chimerical? One of the reasons for which he had declined to give an active territorial guarantee of

Prince Gortchakoff.

the Ottoman Empire was the difficulty of defining its limits with precision. Once the territorial guarantee had been given, would it not extend to the most distant parts of the Empire, for example, Tunis and Aden, and make any attack directed against one of these territories by one of the contracting Parties a *casus belli?* He refused to give so large an extension to the engagement which he had contracted, since the blood of Russia belonged only to Russia. That did not imply that Russia would confine herself to the employment of her good offices. The Independence of the Sublime Porte was not only a European interest but also a Russian interest. If it was threatened, Russia would not be the last to defend it, but she reserved to herself the right, in such a case, to deliberate whether or [1] no there was occasion for the employment of her material resources.

Observations on Prince Gortchakoff's statement.

It will be noticed that these statements of Prince Gortchakoff leave two points in obscurity. The first is the reasons which were given by the Russian representatives for their interpretation of the guarantee. Prince Gortchakoff explained why he was unwilling to sign an active guarantee, but he did not explain, or at least there is no record of his doing so, why he thought that the formula adopted did not involve one.

It is possible that Prince Gortchakoff maintained Lord Derby's theory that collective guarantees never

[1] The French text gives "*au*," which seems to be a misprint for "*ou*." The English translation is rather free.

involve an obligation to take up arms against a faithless guarantor. But it is also possible that he attached his interpretation to the phrase in the guarantee about "European interest," and maintained that the only obligation of the guarantors was to regard an attack on Turkey as a matter of general interest.

The second point which is obscure is the duty which in the view of the representatives of Russia would be imposed on the guarantors, in the event of an attack being made on Turkey by some non-guaranteeing Power. Such an attack was certainly possible, as, for instance, by Greece or Persia. But the Conference do not seem to have contemplated its possibility.

Prince Gortchakoff may have held, in accordance with Lord Derby's view, that in the event of such an attack there would be an obligation to defend the integrity of Turkey; or he may have held that there would be no such obligation. Either alternative is compatible with the statements recorded in the Protocols, though the latter seems to be the more probable.

The Conference of Paris, after the second Crimean campaign, decided to guarantee the integrity and independence of the Ottoman Empire in terms which are essentially the same as those adopted by the Conference of Vienna. This will be seen on comparing the draft, which is given above (p. 56), with the text of the guarantee of the Treaty of Paris, which is given on p. 33. In the

The Conference of Paris.

Protocols of the Conference of Paris there does not appear to be any reference to the Ottoman guarantee,[1] unless one is contained in the following passage :—

"At this point Count Walewski reminded the Conference that it would be a suitable occasion to recognize formally the admission of Turkey into the Public Law of Europe. The Plenipotentiaries were of opinion that this new situation should be recognized by the insertion of a special clause in the general Treaty. The draft to this effect which had been agreed upon at Vienna was read, and it was agreed that it should be accepted by the Congress."

From this evidence, two fairly certain conclusions may be drawn.

Two conclusions.

In the first place, it appears probable that the representatives of Russia at Paris held that the guarantee of Ottoman integrity, which was contained in the Peace of Paris, was not an active guarantee: that is to say, they held that if the independence or integrity of Turkey were infringed by one of the guarantors, Russia would be free to take up arms or to refuse to take them up, as she might think expedient. In favour of this conclusion, it may be urged: that in the opinion of the Russian representatives the guarantee adopted at Vienna was not an active one; that the guarantees of Vienna and of the Treaty of March 30th are in similar terms; that the Russian representatives at Paris did not state that they had changed their

[1] State Papers, vol. xlvi, pp. 63–137.

opinion ; and that there would have been no reason to make the Treaty of April 15th if the guarantee of the Treaty of Paris had been admitted to be active by all the Powers. And it may further be urged that the Russian interpretation was subsequently accepted in England (see below, p. 68). Further, it is clear that such a guarantee of Ottoman integrity as in the Russian view was implied by the Treaty of March 30, 1856, was not the guarantee which was wanted by Austria, France, and Great Britain. It must have been for that reason they signed the Treaty of April 15th. But it is not clear whether they did or did not accept the Russian view as correct. They may have been converted by the arguments, whatever they were, of the representatives of Russia, and been persuaded that the Treaty of March 30th did not imply an active guarantee. Or they may have thought at Paris, as they certainly did at the end of the Conference of Vienna, that the guarantee of March 30th really was an active guarantee, but recognized, at the same time, that Russia held it was not, and intended to act as if it were not. Either alternative is compatible with the evidence of Protocols and with the signing of the second Treaty.

III

We can now turn to the questions for the sake of which the discussion of these Treaties was begun, and ask : With what intentions did the signatories of the Treaties of March 30th and April 15th intro-

duce the words "*solidairement*" and "*en commun*" into the formulæ of guarantee?

The meaning of "solidairement."

The word "*solidairement*" is a technical term of French law. Since guarantees are not usually expressed in technical language, the use of a technical word is a matter of importance. The entry in Littré's dictionary under the word "*solidairement*" is as follows:— "Terme de jurisprudence. D'une façon solidaire, d'une manière où chacun répond pour le tout." Articles 1197 et seq. of the Code Civil deal with "Obligations Solidaires." Article 1887 says: "Si plusieurs ont conjointement emprunté la même chose, ils en sont solidairement responsables envers le prêteur." The English translation of the Treaty gives "jointly and severally." In English law, if a contract is made with several persons jointly, they must all join together in suing upon it; if two or more persons are jointly liable for a debt, each is liable for the whole debt, yet they are considered as one person and should all be sued together during their joint lives. If the liability is several, each can be sued individually. But it must not be forgotten that there is little analogy between a guarantee of a debt by several persons and a guarantee of neutrality or integrity by several Powers.

It will be noticed that the second Treaty supplements the first in two respects. Firstly, it guarantees the Integrity and Independence of the Ottoman Empire in a different form of words: "*garantissent solidairement*"—"guarantee jointly and severally"—

take the place of "*garantissent en commun*"—"guarantee in common." Secondly, it defines the action which will be taken by France, Austria, and Great Britain if any stipulation of the Peace of Paris is infringed; they will treat the infringement as a *casus belli*, and will consult with the Porte, and determine among themselves as to the employment of their naval and military forces.

It will be noticed that this second Article would come into operation if *any* stipulation of the Treaty of Paris were infringed; the first Article is only concerned with the Independence and Integrity of Turkey: the second Article, therefore, cannot be supposed merely to define the meaning of the first.

The distinction between "en commun" and "solidaire."

What distinction did the signatories intend to draw between a "*garantie en commun*" and a "*garantie solidaire*"? It will be seen that the preceding evidence affords no definite answer. The evidence is so far relevant that there are certain facts of which account must be taken, but it is not sufficient for any definite answer to be considered certain. For this reason, the following account of the intentions of the signatories of this Treaty is put forward merely as plausible and consistent with what is known of the facts; it is not suggested that the account is demonstrably true.

In the first place, as to the reason for which the words "*en commun*" were introduced by M. Drouyn de Lhuys into the Ottoman guarantees of Vienna and Paris. It is suggested that these words were

meant to imply that if the integrity or independence of Turkey were violated either by one of the signatories or by some external Power, then the guarantors—or, in the case of the violator being a guarantor, the faithful guarantors—should take what in diplomatic language is called "common" or "collective" or "joint" action; that is, they should consult together as to the steps which ought to be taken, and having come to an agreement should all—that is, all the faithful guarantors—support the actions agreed upon and hold and declare themselves jointly responsible for them. This is a view of a collective guarantee which has been already suggested. In the next place, as to the word "*solidairement.*" When the Treaty of Paris was negotiated, the situation was very much as it had been left at the end of the Conference of Vienna; Russia interpreted the Ottoman guarantee of the 30th of March in one way, and the other four Powers interpreted it in another. The question then arose how the other four—or, rather, since Turkey might be left out of account, the other three—could maintain their interpretation and make sure that an infringement of the integrity of Turkey would be resisted, if necessary, by force of arms. The obvious way to effect this would be for the three Powers—France, Austria, and Great Britain—to sign a second Treaty which should state their interpretation of the obligations imposed by the first. But this would not be sufficient; it would also be necessary for them to bind themselves to

act on their interpretation. And it seems probable that the word "*solidairement*" was introduced into the second Treaty precisely for this purpose, to bind the signatory Powers to defend the integrity of Turkey, if necessary, by force of arms, in spite of the opposition or the dissent of Russia.

To put the point in a different way: it seems probable that if all the signatories of a collective guarantee were agreed as to the general nature of the obligations imposed by the guarantee, then, if a *casus garantiæ* should arise, the faithful guarantors would not in general find any difficulty in taking collective action. The questions they would have to discuss would be: How best to obtain respect for the guarantee? Whether it had become necessary to use force? By which of the signatories could force be most conveniently applied? Questions, in short, on which agreement might be reached by ordinary diplomatic methods. If, however, the signatories conceived different notions of the actions and duties which the guarantee imposed and authorized, then, when a *casus garantiæ* arose, no collective action might be possible. For instance, in the case of the Ottoman guarantee of the 30th of March, if Greece were to invade Turkey and refuse to retire at the request of the Powers, if all diplomatic methods had been used and had failed and only force remained, it might happen that Russia, interpreting the obligations of the guarantee as Prince Gortchakoff had done, might refuse not only to use her armed forces against Greece but

also to authorize or countenance, or in any way to hold herself responsible for, the use of force by the other signatories. It would thus be impossible for the guarantors to agree what steps were necessary, and collective action would become impossible.

Hence, in all probability, it was in order to meet this eventuality that the word "*solidairement*" was introduced into the Treaty of April 15th; that, in the first clause of that Treaty, France, Austria, and Great Britain declared themselves to guarantee "*solidairement*," "jointly and severally," the integrity of Turkey, because they wished to make clear that they would not hold themselves released from the obligations imposed by the former guarantee of March 30th, even though, owing to the attitude of Russia, collective action under that guarantee should be impossible; and that, in the second clause, they declared what they conceived the obligations imposed by the guarantee of March 30th to be, because, again owing to the attitude of Russia, the nature of the obligations might, in the event of a *casus garantiæ* arising, be disputed.

IV

It is convenient to insert here some observations made by Lord Derby[1] and other statesmen on the Treaties of 1856. Referring to the Treaty of April 15, 1856, he said, on June 15, 1876 (*Hansard*, III, vol. 229, col. 1891–2), that

Lord Derby in 1876.

[1] The fifteenth Earl, formerly Lord Stanley; the fourteenth Earl died in 1869.

he was unwilling to enter upon "a purely hypothetical discussion as to the circumstances under which guarantees of that kind are to be held absolutely binding on the countries which have joined in them. No doubt they give us a right of interference, and no doubt, under certain circumstances, they might constitute on our part a duty to interfere; but what are the precise circumstances under which this right of interference ought to be exercised is a question which I think no one ought to be called upon to determine, and which no one can determine till the case actually arises."

Lord Derby in 1877.

On February 8, 1877 (*Hansard*, III, vol. 232, col. 41), Lord Derby, referring to the Treaty of Paris of March 30, 1856, said: "Now mark, my Lords, the words of that Treaty, for they are important. We undertake to respect the integrity and independence of the Ottoman Empire. That is easy enough for us, who certainly have no designs against Turkey. We guarantee in common the strict observance of that engagement —that is, we each undertake to observe it, and to do what we can to make others observe it; but there is no shadow of a promise in that Treaty to make non-observance by other Powers a *casus belli*. The words stop short of that—they carefully avoid any such pledge—in fact, they point directly to a different course of action, namely, to collective discussion and negotiation. As far as that Treaty is concerned, therefore, we are in no sense bound by a promise to fight for Turkey." Lord Derby

then proceeds to argue that the Treaty of April 15, 1856, binds us only to interfere if called upon by France or Austria, and continues: "But that is not an engagement entered into with the Porte. It is not an engagement to which the Porte is a party. It does not, therefore, bind us in any way except to France and to Austria; and, unless France or Austria call upon us to interfere—a step which, in existing circumstances, they are not the least likely to take—it binds us to nothing at all."

This statement of Lord Derby's is interesting because at an earlier date Lord Salisbury had taken a different view of the second Treaty. Speaking on March 6, 1871, Lord Salisbury said (*Hansard*, III, vol. 204, col. 1363): "In a discussion on a recent guarantee a short time ago, it was shown that the guarantee was purely a joint one; that the execution of it could never be required unless all the parties who joined in it were prepared to join in executing it; and that, as the parties who were to join in executing it were the only parties at all likely to break it, it did not involve much danger. But this cannot be said of our guarantee with regard to Turkey. This guarantee is joint and several. If you stand alone—if, as Mr. Odo Russell said the other day, 'with or without allies' —the infraction of the Treaty on any point of the frontier of Turkey binds you in honour to interfere. From the moment this guarantee was entered into, the frontier of Turkey became to you as the

Lord Salisbury, 1871.

frontier of England—indeed, something more, for you can deal with the frontier of England with loss but without dishonour, whereas you cannot abandon an inch of Turkish frontier without forfeiting your plighted honour."

Mr. Gladstone in 1877.

In a speech on the Bulgarian atrocities delivered by Mr. Gladstone on February 16, 1877 (*Hansard*, III, vol. 232, col. 475–6), after referring to the guarantees contained in the two treaties of 1856, he said: "What is the nature and force of these guarantees in general? Are they to be understood as an abstract, literal declaration, wholly irrespective of all the circumstances which may intervene before the possibility of being called upon to act upon them arises, or do they depend, in particular, on the conduct of the party to whom the guarantee is given? I may, without offence and with some advantage, perhaps, refer to the view of the case which I have often heard from the mouth of Lord Palmerston in the Cabinet, which I have heard in this House, and which I believe is, and certainly was up to a recent time, perfectly well known in the Foreign Office as a tradition. Lord Palmerston, who could not but be regarded as a great authority on a subject of this kind, used to contend, without much or any qualification, that the nature of these guarantees was to give the right of interference but not to impose an obligation. . . . What I contend is that it is impossible to separate from any of these guarantees not only the general alteration of

the circumstances which may occur, but also the conduct of the party on behalf of whom the guarantee is given."

The importance of this statement is that it refers to the later as well as to the earlier of the 1856 Treaties.

On the same day Mr. Gathorne Hardy, speaking on behalf of the Government, said, in reference to the earlier Treaty (*Hansard*, III, vol. 232, col. 492): "Under this Treaty we are not bound to go to war; nor is there anything in the Treaty which can compel us to go to war. The Treaty of 1856 is a Treaty which says that under certain circumstances things shall become matters of general interest. That is the whole of it."

Mr. Gathorne Hardy, 1877.

V

Some further light can be thrown on the meaning which diplomatists probably attached to the expression "collective guarantee" before the Treaty of 1867. In the Treaty of Paris of March 30, 1856, the guarantee of the Independence and Integrity of the Ottoman Empire was "in common"; the guarantee of the privileges and immunities of Wallachia and Moldavia was expressed merely by the word "guarantee," while the rights and immunities of Servia were placed under the "collective guarantee" of the Powers. It certainly is difficult to imagine why the immunities of Moldavia and Wallachia

The Moldo-Wallachian guarantee.

should be guaranteed in one way and those of Servia in another. As we have seen above (p. 41), Quabbe argues from this that there is no difference between "guarantee" and "collective guarantee." The wording of the Convention of Paris of August 19, 1858, supports this view; in it "conformably also to Articles XXII and XXIII of the Treaty concluded at Paris on March 30, 1856, the Principalities shall continue to enjoy, under the Collective Guarantee of the Contracting Powers, the Privileges and Immunities of which they are in possession." It is reasonably clear from the wording that "collective guarantee" in this Convention was intended to have the same meaning as "guarantee" in Article XXII of the Treaty of Paris. What the Powers considered to be their obligations under such guarantee is not clear; but it certainly is difficult to contend that at that date the expression "collective guarantee" had a definite technical meaning. Full details of the difference of opinion between Russia and the other Powers as to the obligations imposed by the words "guarantee in common" have been given; but nothing seems to turn on the words "in common" as distinguished from "collective." On the evidence, the result appears to be that before 1860 the signatories to Treaties of guarantee did not consider that the precise wording made any difference to the obligations involved; but that there was a Russian view that a Treaty of guarantee did not necessarily involve an absolute obliga-

The Convention of August 19, 1858.

tion on the guarantors to use force if necessary. What the obligations were if a guarantor declined to act was uncertain, and the Treaty of April 15, 1856, was intended to make the obligations more precise in a particular case, but this does not imply that a guarantee in common is the same as a joint and several guarantee ; nor, on the other hand, does it prove that there is a difference.

CHAPTER IV

THE LUXEMBURG GUARANTEE

I. Lord Derby's doctrine.
II. Observations upon it.
III. The supposed protest by Luxemburg.

CHAPTER IV

THE LUXEMBURG GUARANTEE

I

Lord Derby's doctrine.

The story of the negotiations which led to the Treaty of May 11, 1867, has been told in Chapter I, and the nature of Lord Derby's doctrine has been briefly stated in Chapter II. This doctrine must now be examined. Lord Derby may not have invented it; some misstatements may be due to the fact that his lordship repeated arguments which he had not completely mastered. Bismarck had asked for the same guarantee in the case of Luxemburg as in the case of Belgium. He thought he had got it, but was quickly disillusioned. Lord Derby's speech in the House of Lords on July 4, 1867 (*Hansard*, III, vol. 188, col. 968–974), developed the following line of argument: The Belgian guarantee is joint and several, the Luxemburg collective. The former imposes an obligation to maintain the status guaranteed; the latter does not, if a guarantor infringes it. The following quotations from that celebrated speech give Lord Derby's arguments:—

"In the year 1831 a Conference of the five Great Powers laid down twenty-five Articles, which were to determine the relations between Belgium and Holland, and which were to form the basis of a Treaty between those two countries. The Powers who were parties to the Conference of 1831 bound themselves to uphold, not collectively, but severally and individually, the integrity of the Treaty. That was a separate and individual guarantee. But, notwithstanding, in 1832, when Belgium, who had not been put in possession of the territory assigned to her by that Treaty, called on the Powers parties to the Conference to enforce her rights, Prussia, Russia, and Austria declined to interfere by force of arms for that purpose; while, on the other hand, France and England, taking a stricter view of the obligations imposed on them by that Treaty, proceeded to enforce it by combined naval and military operations. In the same Treaty there was comprised a guarantee for the possession of Luxemburg by the King of Holland, not in his capacity as King of Holland, but as Grand Duke of Luxemburg. In 1839, after a Treaty had been made between Belgium and Holland embodying the main provisions of the Treaty of 1831, a separate one was entered into between the five Powers and Belgium, in which the obligations of the former Treaty of 1831 were repeated and renewed, and the five Powers bound themselves separately to maintain the integrity of Belgium, its neutrality and independence."

Lord Derby, July 4, 1867.

"A several guarantee binds each of the parties to do its utmost individually to enforce the observance of the guarantee. A collective guarantee is one which is binding on all the parties collectively; but which, if any difference of opinion should arise, no one of them can be called upon to take upon itself the task of vindication by force of arms. The guarantee is collective and depends upon the union of all the parties signing it; and no one of these parties is bound to take upon itself the duty of enforcing the fulfilment of the guarantee."

Lord Derby, July 4, 1867.

Again, later in the same speech, he said (*Hansard*, l.c., col. 974):—

". . . And I say again that by a collective guarantee it is well understood that while in honour all the Powers who are parties to it severally engage to maintain, for their own part, a strict respect for the territory for which neutrality is guaranteed; and although, undoubtedly, any one Power has a perfect right to declare a *casus belli* if she thinks fit because of the violation of the guarantee, yet a single Power is not bound to take up the cudgels for all the other Powers with whom she gave a collective guarantee. I can give no further interpretation of the Treaty than this—that, as far as the honour of England is concerned, she will be bound to respect the neutrality of Luxemburg; and I expect that all the other Powers will equally respect it; but she is not bound to take upon herself the quixotic

duty, in the case of a violation of the neutrality of Luxemburg by one of the other Powers, of interfering to prevent its violation—because we have only undertaken to guarantee it in common with all the other Great Powers of Europe. The integrity of the neutrality of Luxemburg must not rest upon the force of arms of any particular one of the guaranteeing Powers, but upon the honour of all the guaranteeing Powers together, upon the general obligation taken in the face of Europe by all the signatory Powers; and if the neutrality should be violated by any one of them, then, I say, it is not a case of obligation, but a case of discretion with each of the other signatory Powers, as to how far they should singly or collectively take upon themselves to vindicate the neutrality guaranteed."

And again, in answer to a question, he said on June 20th (*Hansard*, III, vol. 188, col. 157–8):—

Lord Derby.

"It is quite true that if France were to invade the territory of Luxemburg, the other Powers, though they may be called upon to resist the invasion, were not bound to do so. They might or might not think it proper to defend the neutrality of Luxemburg, but no individual Power could be compelled, under the Treaty, to render assistance."

Such is Lord Derby's answer to the question: What is the nature of the Belgian and Luxemburg guarantees?

In the House of Commons his doctrine was

stated by his son, Lord Stanley, who was British Plenipotentiary in the Conference at which the Luxemburg Treaty was made. Lord Stanley said (*Hansard*, III, vol. 187, col. 1922–3):—

(A collective guarantee means) "that in the event of a violation of neutrality, all the Powers who had signed the Treaty may be called upon for their collective action. No one of those Powers is liable to be called upon to act singly or separately. It is a case, so to speak, of limited liability. We are bound in honour—you cannot place a legal construction on it—to see, in concert with others, that these arrangements are maintained. But if the other Powers join with us, it is certain there will be no violation of neutrality. If they, situated exactly as we are, decline to join, we are not bound single-handed to make up the deficiencies of the rest. . . ." "It would give a right to make war, but not necessarily impose the obligation."

Lord Stanley.

Lord Derby's doctrine was also supported by Lord Clarendon and Lord Russell.

Thus, Lord Clarendon said (*Hansard*, III, vol. 188, col. 152):—

"I look upon our guarantee in the case of Belgium as an individual guarantee, and have always so regarded it; but this is a collective guarantee. No one of the Powers, therefore, can be called upon to take single action, even in the improbable case of any difficulty arising."

Lord Clarendon.

And Lord Russell (*Hansard*, III, vol. 188, col. 975):—

Lord Russell.

"With regard to the technical interpretation of the Treaty, I am inclined not to dispute that given by the noble Earl."

But, further, Lord Derby implied that not only was this a correct account of the Belgian guarantee and of the Luxemburg guarantee, but also that it was generally known to be correct, for he said (*Hansard*, III, vol. 188, col. 968):—

Lord Derby.

"I am not much skilled in the ways of diplomatists, but I believe that if there be one thing more clear than another it is the distinction between a collective guarantee and a separate and several guarantee."

And at another point of his speech he said (*Hansard*, III, vol. 188, col. 971–2):—

"The Prussian Minister must have been perfectly well aware of the terms of that Treaty (1839) by which the five Powers, acting individually, guaranteed the independence of Belgium; yet if he thought the one kind of guarantee equal to the other, I want to know why should he have studiously altered the words and asked not for a separate and several guarantee, but for a collective guarantee by the Great Powers for the integrity and independence of Luxemburg."

II

Lord Derby's theory is remarkable, and his arguments do not rest upon a very secure basis. Before discussing the arguments, some observations may be made on the general nature of the doctrine.

Observations on Lord Derby's doctrine.

In the first place, the essential point about his notion of a "collective" guarantee is, no doubt, that he thought such a guarantee depended on the union of all the signatory parties. In his opinion, in a collective guarantee, what guarantees is the class or collection of all the signatories. If the subject of the guarantee is violated, then an obligation devolves upon the collection; and the obligation is to do what it—the class—can to vindicate the settlement guaranteed. If the settlement is infringed by one of the members of the class—that is, by one of the signatory parties—the class as a whole will be unable to do anything, for there will be, presumably, no action to which all its members would agree; and, therefore, since there is no obligation on any member or any combination of the members of the class except to take part in the collective action of the whole, no one member, nor the whole remainder of the members, excluding the faithless signatory, will be under any obligation to do anything.

In other words, in Lord Derby's opinion, a collective guarantee is a guarantee given by a collection; and the difference between a collective

and a several guarantee lies not in the guarantee but in the guarantor. In the latter case, there are many guarantors, each signatory of the Treaty being one; in the former, there is only one, namely, the class or collection of all the signatories.

In the next place comes a point which, though it is of no great importance, is worth making, for the sake of precision: if Lord Derby is correct in supposing the 1839 guarantee to be several and the 1867 one to be joint, it follows that we—the Great Powers—have guaranteed the possession of Luxemburg to the King of Holland *severally* and the neutrality of Luxemburg *collectively*; for the latter was guaranteed by the 1867 treaty and the former by the 1839 one.

In the third place, Lord Derby was almost certainly incorrect when he implied that his doctrine was generally admitted.

First, as appears from the account which has already been given of the negotiations for the Treaty of 1867, the whole object of Bismarck was to obtain for Luxemburg a guarantee similar to that of Belgium. This view was expressly stated by the Prussian representative at the Conference and was supported by the representatives of other Powers. This disposes of Lord Derby's argument from "the studious alteration of the words." Secondly, the reception which was accorded to Lord Derby's explanations on the Continent makes it most improbable that these explanations were mere commonplaces. This reception is testified to by several speakers in the House of Lords. Thus (*Hansard*, III, vol. 188, col. 975):—

Lord Russell.—". . . We know that the explanations given by the noble lord, reported as they have been in the newspapers and otherwise, have created a very unpleasant feeling in Prussia, and that it is commonly said there that it is no use to sign a Treaty with England, because England will find a means of escaping from the obligations imposed on her by it."

The reception of Lord Derby's speech on the Continent.

And *Lord Houghton* (*Hansard*, III, vol. 188, col. 968): ". . . There is political agitation going on in both France and Prussia with respect to this subject."

And Lord Granville, at a later date, August 10, 1870, said (*Hansard*, III, vol. 203, col. 1756):—

"We are not now in a position like that described by a Conservative Government, when we joined in a Treaty guaranteeing Luxemburg, and when, almost before the ink with which it was signed was dry, the Prime Minister and the Foreign Minister of this country announced, to the surprise of France and the indignation of Prussia, that we had signed as a collective guarantee, and as the co-operation of the other Powers was the only case in which the guarantee could possibly be brought into question, England had brought herself under no new obligation at all."

Thirdly, all the jurists, except Sir F. E. Smith, repudiate Lord Derby's doctrine.

It was therefore absurd of Lord Derby to suggest that his doctrine was generally admitted. But Lord Derby also based an argument upon the Treaty of Paris of March 30, 1856, and the subsequent Treaty

of April 15, 1856. These Treaties we have already discussed. Lord Derby argued as follows (*Hansard*, III, vol. 188, col 972). After quoting Article VII of the Treaty of Paris (set out above, p. 33), his lordship proceeded :—

The argument from the Treatles of 1856.

"The engagement 'each on his part' and 'guarantee in common' are precisely[1] the terms introduced into the Treaty of May 1867 on the request of the Prussian Minister. Are these Treaties, then, to be deemed binding on all the Powers, signatories of the Treaty, not only individually to respect but collectively, individually, and separately to guarantee and enforce the neutrality of Luxemburg?" The answer to this question, Lord Derby said, was provided by the second Treaty of 1856, which was signed a fortnight later. In this Treaty the integrity of the Ottoman Empire was guaranteed jointly and severally by France, Austria, and Great Britain.

By the separate Treaty, said Lord Derby, "the three Powers separately and individually guarantee the same thing which a fortnight before had been collectively guaranteed. The three Powers found it necessary to sign a Treaty which shall express an obligation upon each, because the previous Treaty

[1] This statement appears to be incorrect. The words "each on his part" and "guarantee in common" do not appear in the Treaty. The Prussian Minister did propose a phrase "*garantie collective (ou commune)*," as appears from the Protocols, p. 3; there is no sign of the words "each on his part."

was not binding separately and severally on all the signatory Powers."

The discussions in the previous chapter have shown that Lord Derby's argument from the Treaties of 1856 is not a sound one.

III

In the face of the evidence it would require great hardihood to contend that in 1867 Lord Derby's view was a reasonable construction of the Treaty. The translator of Homer was a bold man. It may, however, be argued that if, immediately after the signature of a Treaty, one of the parties attaches a certain construction to the words and the other parties do not protest, then in the course of time such contemporaneous exposition becomes the true meaning. Undoubtedly Bismarck was surprised, was annoyed, was irritated, and felt that he had been cheated, but no signatory Power seems to have made any formal protest, either in 1867 or at any subsequent date. It is often said that Luxemburg did make such a protest in 1870, but this does not appear to have been the case. On December 3, 1870, Bismarck issued a circular to the Powers complaining that the neutrality of Luxemburg had not been respected by France or the Grand Duchy. The fortress of Thionville had been provisioned by trains from Luxemburg so long as the French held it; after the surrender of Metz, masses

Was there a formal protest?

Bismarck's circular of December 3, 1870.

of soldiers and officers had passed into the Grand Duchy and entered France again, evading the German posts. The French Vice-Consul had established an office at the Luxemburg railway station to facilitate the passage of the fugitives: in all more than 2,000 men had been through. This constituted a violation of the neutrality of the Grand Duchy, and therefore "the Royal Government can no longer consider itself bound to any consideration of the neutrality of the Grand Duchy, in the military operations of the German Army, and in the measures for the security of the German troops against the injuries inflicted on them from Luxemburg." M. Servais, the Minister of State for Luxemburg, answered these charges in a despatch of great length dated December 14, 1870, ending by saying: "The determination you have notified to me does not appear to me consistent with the Treaty of May 11, 1867. The terms of that Treaty insure the neutrality of the Grand Duchy under the guarantee of the contracting Powers, amongst whom is the North German Confederation. Such a stipulation would have no force if each one of the Powers who have adhered to it could cease to recognize the neutrality and then take separate action, as if a State were concerned whose position had not been regulated by an International Convention. The necessity that an agreement should take place as regards any action that would alter the conditions of existence of the Grand Duchy consequently appears to me evident."

M. Servais's despatch.

A copy of this despatch was sent to the British Minister at The Hague, with a note from M. Servais which concluded as follows: "Relying on the justice of the Prussian Government, I have reason to hope that that decision will not be put into execution. If such were, however, to be the case, it would constitute an infraction of the Treaty concluded on May 18 [? 11], 1867, between the principal Powers of Europe, the dangerous character of which could not be disregarded. And what, above all, will not escape the notice of Her Majesty's Government is that the neutrality conferred on certain States of Europe would no longer have any real existence, if the existence of a State constituted as neutral in virtue of a Treaty could depend on the will of a single one of the contracting Powers."

M. Servais's note to the British Minister.

Lord Odo Russell informed Earl Granville (in a despatch received on January 15, 1871) that Bismarck had assured him that the circular respecting Luxemburg was a military measure for the security of the German Army, not a denunciation of the Treaty of 1867.

Nothing further arose out of this incident.

M. Servais's point was that if one guarantor ceased to respect the neutrality, this then does not relieve the other guarantors from their duty to respect the neutrality. This may be a good point, but it is not a denial of Lord Derby's doctrine, which holds that in such a case there is no duty on

the remaining guarantors to cause the neutrality to be respected.

If no Power has protested against Lord Derby's doctrine, then, in spite of the amazing nature of the doctrine and the arguments by which it was supported, in spite of its condemnation by jurists, may it not be reasonable for a Power to invoke it as an excuse for not acting? This is what in fact has occurred. Germany infringed the neutrality of the Grand Duchy on August 2, 1914. None of the signatories to the Treaty of 1867 treated this as a *casus belli*. On the same day M. Cambon asked Sir E. Grey about the violation of Luxemburg, who told him the doctrine on that point laid down by Lord Derby and Lord Clarendon in 1867.[1] It is curious if M. Cambon had not heard of it. But Sir E. Grey clearly intended to affirm the doctrine.

Sir E. Grey and M. Cambon.

[1] White Paper, Cd. 7467, p. 74, No. 148.

CHAPTER V

THE BELGIAN GUARANTEE

I. Guarantees by several persons.
II. The official view of the Belgian guarantee in 1870.
III. The semi-official view in 1887.
IV. Observations on these views.

CHAPTER V

THE BELGIAN GUARANTEE

I

WHAT obligation to cause the neutrality of Belgium to be respected is imposed on the Powers who guaranteed this neutrality in the Treaties of April 19, 1839? The question is sometimes stated as if it were, "Is the Belgian guarantee 'collective' or 'joint and several'?" But the question cannot be put in this form. Lord Derby, as we have seen,[1] described the Belgian guarantee as joint and several; and Sir F. E. Smith[2] describes that of 1831, which is worded in the same way as that of 1839, as collective. But the actual words are "under the guarantee of" the signatory Powers. What did this mean in 1839? The words "collective" and "joint and several" did not become of importance before the time of the Ottoman guarantees. The international lawyers, on the whole, as may be seen from the opinions mentioned in Chapter II, incline to the view that

The Belgian guarantee.

The jurists' view.

[1] Above, p. 78.

[2] Above, p. 39.

if several Powers together guarantee the maintenance of a given status—such as neutrality—this involves a duty when the status is threatened to consult together and take common action to maintain the status, and if a guarantor defaults, then the duty devolves on the others to take such action; and it is frequently held that this may involve a duty to have recourse to arms. What the diplomatists who negotiate the Treaty think cannot generally be ascertained. Sometimes, as we have seen, the Treaty states more precisely the nature of the obligation. Usually it does not. No doubt diplomatists do contemplate the possibility that a guarantor may break the Treaty and infringe the status guaranteed. We have seen that this was actually so in the case of the negotiations at Vienna in 1855. But it is a delicate matter to enter upon such discussions. Often it is important in the interests of peace to arrive at an agreement—or apparent agreement: the Luxemburg affair of 1867 illustrates this. Remote future contingencies are not considered; diplomats are not lawyers; indeed, their want of precision in the language is sometimes deliberate. A formula which will satisfy all parties may in truth only do this because it is capable of bearing several different constructions and each party takes his own. Yet because it does produce an agreement in words, though not in intentions, it may at the time be most valuable. For the special case of guarantees it must be noticed that only part of the

obligation is ambiguous. Each party who guarantees neutrality does unconditionally agree to respect it. It is only the liability under the obligation to cause it to be respected that is in doubt.

Joint action is more effective than separate action.

Now if several Powers together guarantee that a state of affairs shall continue, and some Power takes a step which threatens to disturb the state of affairs so guaranteed, it is evident that if all the guarantors act together they will be more effective than if they act singly. Diplomatic representations which are collective (as in the case of a joint note) are likely to be more effective than separate representations; and, if force is necessary, military operations agreed upon in common are more effective than independent operations by separate Powers. It therefore is probable that diplomatists, when they arrange guarantees by two or more Powers, are not thinking so much of what obligations, if any, arise if a guarantor fails to act, but of the fact that the duty is not to act separately but in common.

Again, if the guarantors do act in common, probably the mere threat of military operations will be sufficient to maintain the status guaranteed. Hence the question how far, if at all, it may be the duty of a single Power to go to war, may not be very clearly raised in the minds of the diplomats who negotiate the Treaty. Nor is there any ground in general for supposing that all the Plenipotentiaries at the conference would, if they were asked, answer the questions in the same way. In 1855, as we

have seen, they did not. Lord Palmerston, who was a signatory to the Treaties of 1839, did not agree with the opinion of M. Drouyn de Lhuys (see above, p. 57), but held (see above, p. 70, and below, p. 98) that Treaties of guarantee gave a right to interfere but did not impose an obligation to interfere. It is therefore reasonable to consider what views have been held as to our obligations under the Belgian guarantee.

II

In 1870 there was a possibility that France or Prussia would violate the neutrality of Belgium; the special Treaties negotiated by Lord Granville have already been mentioned. The official view of the Liberal Government in 1870 is found in a speech by Mr. Gladstone on August 10, 1870 (*Hansard*, III, vol. 203, col. 1787); in explaining the motives which actuated the Government in the matter of the maintenance of Belgian neutrality he says: "There is, I admit, the obligation of the Treaty" (of 1839). "It is not necessary, nor would time permit me, to enter into the complicated question of the obligations of that Treaty; but I am not able to subscribe to the doctrine of those who have held in this House what plainly amounts to an assertion, that the simple fact of the existence of a guarantee is binding on every party to it irrespectively altogether of the particular position in which it may find itself at the time when the

Mr. Gladstone's view in 1870.

occasion for acting on the guarantee arises. The great authorities on foreign policy to whom I have been accustomed to listen—such as Lord Aberdeen and Lord Palmerston—never, to my knowledge, took that rigid, and, if I may venture to say so, that impracticable view of a guarantee. The circumstance that there is already an existing guarantee in force is of necessity an important fact and a weighty element in the case, to which we are bound to give full and ample consideration. There is also this further consideration, the force of which we must all feel most deeply, and that is the common interest against the unmeasured aggrandizement of any Power whatever."

In 1872 Sir Wilfrid Lawson moved an amendment to the Address requesting Her Majesty to withdraw from all Treaties which might involve our intervention by force. The following extracts from Mr. Gladstone's speech on April 12, 1872 (*Hansard*, III, vol. 210, col. 1178–80), show the view of the Government.

Mr. Gladstone in 1872.

(My honourable friend) "appears to be of opinion that every guarantee embodied in a Treaty is in the nature of an absolute unconditional engagement, binding this country, under all circumstances, to go to war for the maintenance of the state of things guaranteed in the Treaty—irrespective of the circumstances of this country itself; irrespective of the causes by which that war may have been brought about; irrespective of the conduct of the Power on whose behalf the guarantee may have been invoked, and which may itself have been the cause of the

war ; and irrespective of those entire changes of circumstances and relations which the course of time frequently introduces, and which cannot be overlooked in the construction of these engagements. I have often heard Lord Palmerston give his opinion of guarantees both in this House and elsewhere ; and it was a familiar phrase of his, which, I think, others must recollect as well as myself, that while a guarantee gave a right of interference it did not constitute of itself an obligation to interfere. Without adopting that principle as a rigid doctrine or theory applicable to this subject—on which it is very difficult and perhaps not very convenient to frame an absolute rule—yet I think there is very great force in Lord Palmerston's observation ; and that . . . it was an observation of great importance . . . it ought to remove that apprehension with respect to a guarantee under which the honourable Mover and Seconder of the Resolution appear more or less to labour."

Mr. Gladstone points out that the guarantee in the Treaty of April 15, 1856, is remarkable because it refers to the obligations to take up arms, and continues : "But undoubtedly that Treaty constitutes an exception, and other Treaties which exist are rather in the nature of general declarations and strong declarations of policy and general intention, than in the nature of covenants of a specific and determinate character, the obligation of which can, under all circumstances, be exacted."

In another passage Mr. Gladstone said : "It is

not possible, I think, to contend from the nature of these general guarantees that they are such as to exclude a just consideration of the circumstances of the time at which they may be supposed to be capable of being carried into effect. I believe that consideration of circumstances will always have a determining influence, not only without derogation to good faith, but in perfect consistency with the principles of good faith, upon the practical course to be pursued."

III

The question again came to the front in 1887, when there was a likelihood of war between France and Germany. At that time the Conservative party was in power and the *Standard* was its principal organ. On February 4, 1887, there appeared in the *Standard* a letter signed "Diplomaticus" and a leading article, which is generally believed to have been semi-official. (See Milovanović, p. 405.)

The semi-official view in 1887.

This letter and article are very important. The letter was as follows:—

THE NEUTRALITY OF BELGIUM.

To the Editor of the STANDARD.

SIR,—It is with no wish to add to the fears that prevail on all sides at the present moment, but simply from a desire, which I think you will hold to be pardonable, that the English people should reflect, in good time, what may prove to be the nature and extent of their

The letter of "Diplomaticus."

difficulties and responsibilities in the event of war between France and Germany, that I take up my pen to urge you to lay before them the following considerations.

Military experts are of opinion that France has spent so much money, and spent it so well, during the last sixteen years in providing herself with a fresh military frontier, that a direct advance by the German Armies into France, past the new fortresses and forts that have been erected and linked together, would be, even if a possible, a very hazardous undertaking.

But if Germany was, or considered itself to be, provoked into a struggle of life and death with France, would Prince Bismarck, with the mighty forces he can set in motion, consent to be baffled by the artificial obstacles to which I have alluded, so long as there existed a natural and undefended road by which he could escape from his embarrassment?

Such a road or way out does exist. It lies on Belgian territory. But the neutrality of Belgium is protected by European guarantee, and England is one of the guarantors.

In 1870 Earl Granville, then at the head of the English Foreign Office, alive to this danger, promptly and wisely bound England to side with France if Prussia violated Belgian territory, and to side with Prussia if France did so.

Would Lord Salisbury act prudently to take upon himself a similar engagement, in the event

of a fresh conflict between those two countries? It is for Englishmen to answer the question. But it seems to me, as one not indifferent to the interests and the greatness of England, that such a course at the present moment would be unwise to the last degree. However much England might regret the invasion of Belgian territory by either party to the struggle, she could not take part with France against Germany (even if Germany were to seek to turn the French flank by pouring its armies through the Belgian Ardennes), without utterly vitiating and destroying the main purposes of English policy all over the world.

But, it will be asked, must not England honour its signature and be faithful to its public pledges? I reply that your Foreign Minister ought to be equal to the task of meeting this objection without committing England to war. The temporary use of a right of way is something different from a permanent and wrongful possession of territory; and surely England would easily be able to obtain from Prince Bismarck ample and adequate guarantees that, at the close of the conflict, the territory of Belgium should remain intact as before?

You will see, Sir, that I raise, in a very few words, an exceedingly important question. It is for the English people to perpend and pronounce. But it is high time they reflected on it.

I am, Sir, your obedient servant,

DIPLOMATICUS.

February 2.

The article in the *Standard* ran as follows :—

"We are reminded this morning, by a Correspondent who speaks with high authority, that while we are all wondering how long it will be before a fresh conflict breaks out between France and Germany, Englishmen are shutting their eyes to a question closely, and perhaps inevitably, allied with that contingent event, and affecting the interests of this country more vitally than they could be affected even by any probable result from the struggle between those two powerful States. 'Diplomaticus' writes with unprofessional terseness; but his observations are to the point, and are expressed with significant lucidity. Nor can there be any doubt as to the nature or as to the gravity of the question raised in his communication. In the event of war between Germany and France, and in case either Germany or France were to disregard the neutrality of Belgian territory, what ought England to do? That is the question, and he indicates pretty plainly a reply with which, we may say at once, we do not believe the English people will be disposed to quarrel. In order, however, to enable them to respond to the inquiry with full knowledge and deliberate judgment, it is necessary to lay before them the facts and contingencies of the situation somewhat more amply and more *in extenso* than is done by 'Diplomaticus.' On the Declaration of War by France against Prussia, in 1870, Earl Granville, as we all know, with more promptness and decision than he usually displayed, sought to secure respect for

The "Standard" article, February 4, 1887.

Belgian territory by notifying that, should either combatant ignore the neutrality secured to it by public treaty, England would side actively with the other combatant. It may be said, why cannot the same course be pursued once more, in the event of a similar condition of affairs coming into play? The answer is that a similar condition of affairs no longer exists. In the first place, in 1870 neither of the combatants had any pressing temptation to resort to a violation of Belgian territory, in the execution of their military designs. The territory of Germany was avowedly vulnerable in several places; and France was so assured of its military superiority, and so confident that '*À Berlin!*' not '*Nach Paris!*' would prove the successful war cry of the struggle, that no precautions had been taken against the possibility of France being invaded. As the event proved, even such magnificent fortresses as Metz and Strasburg, with their large civil population and their imperfect stores of provisions, proved an encumbrance and a source of danger rather than one of safety; and, these once invested, there was nothing to stop the march of the victors of Sedan towards the French capital. Metz and Strasburg are now German fortresses; and no one requires to be told that Germany has neglected no precautions or expedients to render an invasion of the territory of the Fatherland a difficult if not an impracticable undertaking. Armed to the head for offence, Germany is likewise armed to the heel for defence. She is more invulnerable than Achilles, for there is no point uncovered.

"How stands it with France as regards defence against invasion? During the last sixteen years all that money profusely spent, and military skill judiciously applied, could do to provide her with a strong military frontier against Germany, has been quietly, but steadily and unremittingly, carried forward. Not only does France possess a first line of fortresses, contiguous to German territory, in Belfort, Epinal, Toul, and Verdun; but all four are linked with each other, in succession, by another line of detached forts. Not to encumber ourselves here with military details, the full exposition of which would demand considerable space, we may say that 'Diplomaticus' is guilty of no exaggeration when he declares that military experts are of opinion that France has spent so much money, and spent it so well, since the last war in providing herself with a fresh military frontier, that a direct advance by the German Armies into France past the new fortresses and forts that have been erected and linked together would be, even if a possible, a very hazardous undertaking. There are, however, two other ways of entering France from Germany. One is through Switzerland; the other is through Belgium. Both are what is understood by 'neutral territory'; but the mountainous character of Switzerland renders access to France through its passes more arduous and less available than through the territory of Belgium. In case the German armies found themselves practically prevented from engaging in offensive military operations against

France by the admirable line of defence with which she has provided herself, would Prince Bismarck, and the great soldiers whom he would inspire, consent to be thwarted by the inviolability of Belgium as guaranteed by European Treaty? 'Diplomaticus' puts the question with undiplomatic bluntness. He forbears from answering it; and so must we. But it will be obvious to everybody that there is a possibility, a danger, of Germany not being willing to be debarred from invading France by an obstacle that has grown up since the Treaty guaranteeing the neutrality of Belgium was signed. Our readers will at once perceive that the situation is absolutely different from the one that existed in 1870, when Earl Granville quickly and cheerfully imposed on England the obligation to take part against either combatant that violated Belgian soil. Neither combatant was much tempted to do so; and thus the engagement assumed by England—a very proper one at the time—was not very serious or onerous, and saved appearances rather than created responsibility. Now the position is entirely changed. If England, with a view to securing respect for Belgian territory, were to bind itself, as in 1870, to throw its weight into the balance against either France or Germany, should either France or Germany violate Belgian ground, we might, and probably should, find ourselves involved in a war of giants on our own account.

"We think that 'Diplomaticus' understands the English people when he hints his suspicions that

such a result would be utterly alien alike to their wishes and to their interests. For, over and above the fact that, as we have seen, the temptation to violate Belgian territory by either side is much greater than it was in 1870, the relations of England with the European Powers have necessarily and naturally undergone considerable modification during that period. We concur with our Correspondent in the opinion he expresses that for England and Germany to quarrel, it matters not upon what subject, would be highly injurious to the interests of both. Indeed, he is right when he says that the main outlines of our policy would be blurred and its main purposes embarrassed, if not defeated, were we suddenly to find ourselves in a state of hostility to Germany, instead of one of friendliness and sympathy. No doubt, if Germany were to outrage the honour, or to disregard the interests, of England, we should be ready enough to accept the challenge thrown down to us. But would the violation of Belgian territory, whether by Germany or France, be such an injury to our honour and such a blow to our interests? It might be so, in certain circumstances; and it would assuredly be so if it involved a permanent violation of the independence of Belgium. But, as 'Diplomaticus' ingeniously suggests, there is all the difference in the world between the momentary use of a 'right of way,' even if the use of the right of way be, in a sense, wrongful, and the appropriation of the ground covered by the right of way. We trust that both Germany and France would refrain even from

this minor trespass. But if they did not? If one or the other were to say to England, 'All the military approaches to France and Germany have been closed; and only neutral approaches lie open to us. This state of things is not only detrimental, but fatal to our military success, and it has arisen since the Treaty guaranteed the sacredness of the only roads of which we can now avail ourselves. We will, as a fact, respect the independence of Belgium and we will give you the most solemn and binding guarantees that, at the end of the conflict, Belgium shall be as free and as independent as before.' If Germany,—and, of course, our hypothesis applies also to France—were to use this language—though we trust there will be no occasion for it—we cannot doubt what would be the wise and proper course for England to pursue, and what would be the answer of the English Government. England does not wish to shirk its true responsibilities. But it would be madness for us to incur or assume responsibilities unnecessarily, when to do so would manifestly involve our participation in a tremendous War."

On the same evening the *Pall Mall Gazette*, then a Liberal organ, had a special article headed "England and Belgium: Are we bound to intervene? There is no Guarantee," which discusses the Treaties, and says: "There is, therefore, no English guarantee to Belgium."

Sir Charles Dilke, who was in favour of intervention in support of the neutrality of Belgium, wrote

a series of articles in the *Fortnightly Review*.[1] In the sixth, which appeared in June 1887, he sums up the result of the discussion in the English Press in the following sentences: "The principal party organ of the Conservatives of England has declared that our intervention in support of Belgium, which up to last year was assumed as a matter of course by both parties in the State, 'would be not only insane, but impossible.' It has been suggested by 'Diplomaticus' and the *Standard* that we are to allow Belgium to be temporarily utilized as 'a right of way,' and the *National Review* has endorsed the suggestion of 'Diplomaticus,' and told us that it might be 'possible to obtain a guarantee that the territory of Belgium, if traversed for military purposes, should not be permanently violated, and that, at the end of the struggle, the neutrality and independence of that country should be religiously respected.'"

Sir Charles Dilke's articles.

In a subsequent passage Sir Charles Dilke says: "Treaties die out, no doubt, in time. The Treaty of 1839, with regard to Belgium, is after all much older than the Treaty of the 21st of November, 1855, with regard to Sweden. France and England would now think it an insane idea that they should attempt to preserve the integrity of Sweden against Russia, and similarly, to all appearance, thinks England with regard to Belgium now. . . ."

[1] These articles were republished under the title of *The Present Position of European Politics, or Europe in 1887*.

IV

From all the evidence it is clear that in the past the British Government has not considered that the Treaty of 1839 imposed a binding obligation to go to war with any Power which infringed the neutrality of Belgium. But the various reasons given demand careful consideration. In the first place, Mr. Gladstone's view has much to recommend it as a reasonable compromise between Lord Palmerston's and that of M. Drouyn de Lhuys. He admits that under certain circumstances there may be a binding obligation to take up arms; but does not define what those circumstances are. The fact that it was a guarantor who broke the Treaty would be one; the fact that some guarantors failed to act would be another; the fact that it was to our interest to go to war might be a third; the fact that the Treaty was old and the European situation has changed might be a fourth, and so on. This is not to assert that the Treaty is not binding, or that it is not important. The doctrine only asserts that the word "guarantee" does not import an unconditional obligation to go to war.

Observations on Mr. Gladstone's view.

Treaties are mortal. But how far do changes of condition or lapse of time release the signatories from their obligations? It is generally admitted that Treaties are concluded under the tacit condition *rebus sic stantibus*. This does not mean that any change of circumstances releases the

"Rebus sic stantibus."

signatories; the change must be of a vital nature. The *Standard* considers that the French forts along the Alsace frontier, by making it very difficult for Germany to invade France from Alsace, released Germany from her obligations under the Treaty of 1839. This is a strange proposition. It is based upon the assumption that two Great Powers ought to be able to fight if they wish it, and that Treaties ought not to be allowed to stand in their way. But two of the objects of neutralizing Belgium were to prevent Belgium from being attacked and to prevent other countries being attacked via Belgium. The proposition assumes that war between France and Germany is so desirable in itself that a Treaty that renders such war difficult cannot be binding. The opinion of the late Lord Salisbury cannot be lightly disregarded, but in this case he must have erred, unless it is true that military necessity is an excuse for any act.

Lapse of time.

Lapse of time, as Sir Charles Dilke says (above, p. 108), may operate to destroy Treaty obligations. But this can only be because circumstances change with time. He illustrates his view from the Treaty of Stockholm of November 21, 1855, between Great Britain, France, and Sweden and Norway. Article II is as follows: "In case Russia should make to His Majesty the King of Sweden and Norway any Proposal or Demand having for its object to obtain either the Cession or the Exchange of any part whatsoever of the Territories belonging to the

The Treaty of November 21, 1855.

Crowns of Sweden and Norway, or the power of occupying certain points of the said Territories, or the Cession of Rights of Fishery, of Pasturage, or of any other Right upon the said Territories and upon the Coasts of Sweden and Norway, His Majesty the King of Sweden and Norway engages forthwith to communicate such Proposal or Demand to Her Britannic Majesty and His Majesty the Emperor of the French; and their said Majesties, on their part, engage to furnish to His Majesty the King of Sweden and Norway sufficient Naval and Military Forces to co-operate with the Naval and Military Forces of His said Majesty, for the purpose of resisting the Pretensions or Aggressions of Russia. The description, number, and destination of such forces shall, if occasion should arise, be determined by common agreement between the three Powers."

Why should this have ceased to be operative in thirty years? Russian aggression was an ever-present menace to Sweden. If this Treaty ceased to have binding force after a generation, it is hard to see how any Treaty can be binding after such a period. Sir Charles Dilke was a great authority on foreign affairs, but if his view in this respect were acted on, Treaties by Great Britain would not be very valuable. It cannot be correct.

However this may be, the Treaties of 1870, though they prove that there was a serious doubt as to our obligations under the Treaty of 1839,[1] definitely

[1] See Mr. Gladstone's speech quoted above (p. 96), which

stated that after the expiration of the 1870 Treaties the obligations under the Treaty of 1839 should remain in force, and thus recognized that those Treaties did or might impose obligations which were to persist.

The vested interest argument.

There is a further argument in favour of the persistence of Treaties which guarantee neutrality and impose it upon the neutralized State. Such a State cannot enter into alliances; it may, in reliance upon the guarantee, not make adequate preparations for defence; in the special case of Luxemburg the Grand Duchy may not keep an army. The neutralized State has a kind of vested interest in having its neutrality defended. It has acted, to the knowledge of the guarantors, upon the basis that the signatories to the Treaty will do their duty. This is a consideration which deserves weight. The result seems to be that although the extent of the obligations of Great Britain under the Treaty of 1839 is a matter of great doubt, yet there does seem to be some obligation. It is true that in 1887 Great Britain would not have considered it necessary to try to prevent Germany from sending troops through Belgium; but this is not inconsistent with Mr. Gladstone's doctrine. Against it, it may be urged that Lord Palmerston's view was well known. Now Oppenheim (*International Law*, 2nd ed., vol. i, p. 584) says: "The prin-

"In dubio mitius."

proves that the English Government did not consider that the Treaty of 1839 imposed a binding obligation on Great Britain.

ciple *in dubio mitius* must be applied in interpreting treaties. If, therefore, the meaning of a stipulation is ambiguous, such meaning is to be preferred as is less onerous for the obliged party."

On this principle, it would follow that where Great Britain enters into a Treaty of guarantee, it is reasonable to suppose that no positive obligation to take active steps to prevent the infringement of the status guaranteed was imposed.

Argument from the nature of the Treaties of 1839.

The nature of the Treaties of 1839 shows that any infringement of any provision could not impose an obligation to go to war, for what is guaranteed is the twenty-four annexed Articles, which deal with many subjects, and it is absurd to suppose, for instance, that Great Britain was under an obligation to go to war if Article V was not carried out. Hence the word "guarantee" in the Treaty cannot have been intended to impose such an obligation.

On the whole Mr. Gladstone's doctrine is reasonable and more honourable. States have, in the past, acted as Lord Palmerston would have done; they may do so in the future; but to make the word "guarantee" import a right instead of an obligation is almost paradoxical.

CHAPTER VI

CONCLUSIONS

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CONCLUSIONS

Our discussions lead to rather lame and impotent conclusions. The questions suggested at the beginning of Chapter II do not admit of certain answers. Municipal law does not know of contracts which are precisely analogous to guarantees of neutrality by great Powers. The opinions of lawyers, so far as they are based upon the analogy of contracts in which a party guarantees a payment, if even they were practically unanimous, which they are not, cannot be considered as decisive. The evidence shows that diplomats and statesmen—at any rate, Russian diplomats and English statesmen—do not hold that a guarantee of neutrality imposes an unconditional liability to take up arms against a country which threatens the neutrality guaranteed. The fact that some Treaties expressly stipulate that in certain events military action shall be taken, shows that it is not recognized that a guarantee certainly imposes such an obligation. But this uncertainty does not prevent us from asking: Has Germany broken her Treaty obligations? Have Belgium and

The difficulty of drawing conclusions.

Luxemburg kept theirs? What, under the present circumstances, are Great Britain's Treaty obligations to Belgium and Luxemburg?

1. The first question can be easily answered. Admitting, for the sake of argument, that in 1839 belligerent troops might pass through a neutral country, if the neutral did not object, and that the Hague Convention of 1907 was not intended to alter the construction of all earlier Treaties in which the word "neutrality" occurs, yet, in fact, Belgium did object, Belgium was entitled to object, and therefore Germany, by using force, did break the Treaty of 1839. By 1867 it was generally recognized that belligerent troops must not pass through neutral territory—the Hague Convention only confirmed the generally received opinion. Hence Germany, although Luxemburg did not, and could not, actively resist, broke the Treaty of 1867.

1. Germany has broken the Treaties of 1839 and 1867.

2. The second question also presents little difficulty. If Belgium had wished to permit the passage of German troops she could have used the arguments suggested above as to the meaning of neutrality in 1839, and could also have said that she was not strong enough to resist. But she neither used these dubious arguments nor pleaded weakness. She was entitled to resist (and such resistance is not a non-neutral act), and did so. Belgium certainly acted up to her Treaty obligations. There is a German suggestion that she had ceased to be neutral—(1) by

2. Belgium and Luxemburg have not broken the Treaties.

permitting French troops or officers to enter her territory; (2) by entering into some military arrangements with France and Great Britain, but, at present, there is not sufficient evidence to support either contention.

Since by the Treaty of 1867 Luxemburg is not allowed to have an army, she could not have any duty to resist the passage of German troops.

3. Did the fact that Great Britain, with four other Powers, had in 1839 taken the neutrality of Belgium under her guarantee impose an absolute obligation on Great Britain to take up arms when Germany violated this neutrality? Great Britain declared war after Belgium had asked for diplomatic support on August 3rd,[1] but before Belgium on August 5th appealed to Great Britain, France, and Russia to co-operate in the defence of her territory.[2] On Hall's theory (see above, p. 36) a technical argument might be raised that Great Britain acted before she was called upon by the Power for whose benefit the guarantee was given; but this seems trivial. The real point is that British statesmen had never considered that there was an absolute obligation—irrespective of all circumstances—to take up arms in defence of Belgian neutrality. There is no need to repeat the evidence given in the last chapter.

3. Duty of Great Britain to Belgium.

[1] Diplomatic Correspondence respecting the War, published by the Belgian Government. Miscellaneous, No. 12 (1914). Cd. 7627. No. 25.

[2] L.c., No. 42.

On July 31st Sir Edward Grey told M. Cambon[1] that "the preservation of the neutrality of Belgium might be, I would not say a decisive, but an important factor, in determining our attitude." This is a clear denial of the doctrine of M. Drouyn de Lhuys (above, p. 57). It is consistent with the views of either Lord Palmerston or Mr. Gladstone. Unquestionably the invasion of Belgium by Germany was important for England. Lord Palmerston might well have considered it a good reason for going to war. Mr. Gladstone might, after considering all the circumstances of the case, have considered that it involved an obligation to go to war. But we cannot tell. Undoubtedly the evidence is in favour of Sir Edward Grey's view that the obligation was not unconditional. The assurance given to M. Cambon on August 2nd[2] makes it highly probable that in any event we should have gone to war; but that is not relevant to the questions discussed in this essay. Many irresponsible people have held the view that the violation of Belgian neutrality by itself compelled us to go to war, and that the eminent British statesmen of the last century were wrong. It is satisfactory that Sir Edward Grey should have adopted the traditional view of our obligations.

4. When, as we have seen (above, p. 90), Sir Edward Grey explained Lord Derby's doctrine to M. Cambon, he no doubt meant that the British

[1] Correspondence respecting the European Crisis. Miscellaneous, No. 6 (1914). Cd. 7467, No. 119.

[2] L.c., No. 148.

Government would act—as in fact it did—in accordance with it. Where Bismarck thought he got a European guarantee, he had only got a piece of wastepaper—that is what the doctrine, under the circumstances, amounted to. But this does not show that the action of Sir Edward Grey and the British Government was wrong in 1914. Nobody could reasonably suppose that this country would act in compliance with an obligation which was repudiated in 1867. Had Lord Derby's doctrine been abandoned in 1914, it might reasonably have been said that we were seeking a pretext for war.

4. Duty of Great Britain to Luxemburg.

The final result, then, is that the obligations of Great Britain under the Treaties of 1839 and 1867 are extremely doubtful. Probably there is some obligation under each Treaty, though even this can be contested. But in the circumstances of the case Sir Edward Grey adhered to the traditional views of English statesmen. This was certainly the most prudent and probably the most correct course.

Final conclusion.

Treaties of guarantee may assist in preserving peace, but they may involve the guarantors in the calamity of war. Whether on the whole they do more good than harm cannot be determined, but there can be no doubt that if, in the future, any such Treaties are entered into they should define with accuracy the obligations intended to be imposed. Diplomatists do not appear to have the requisite training or capacity for doing this. Treaty makers should have sufficient intelligence to know and sufficient honesty to state clearly what they mean.

APPENDIX

APPENDIX

TREATIES RELATIVE TO THE NETHERLANDS AND BELGIUM

Signed at London, April 19, 1839.

I.—Treaty between Great Britain, Austria, France, Prussia, and Russia, on the one part, and The Netherlands, on the other.

In the Name of the Most Holy and Indivisible Trinity.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, His Majesty the Emperor of Austria, King of Hungary and Bohemia, His Majesty the King of the French, His Majesty the King of Prussia, and His Majesty the Emperor of all the Russias, having taken into consideration their Treaty concluded with His Majesty the King of the Belgians, on the 15th of November 1831 ; and His Majesty the King of the Netherlands, Grand Duke of Luxembourg, being disposed to conclude a definitive arrangement on the basis of the 24 Articles agreed upon by the Plenipotentiaries of Great Britain, Austria, France, Prussia, and Russia, on the 14th of October 1831 ; Their said Majesties have named for their Plenipotentiaries, that is to say :—

[*Here follow the names.*]

Who, after having communicated to each other their Full Powers, found in good and due form, have agreed upon the following Articles :—

ARTICLE I.

His Majesty the King of the Netherlands, Grand Duke of Luxembourg, engages to cause to be immediately converted into a Treaty with His Majesty the King of the Belgians the Articles annexed to the present Act, and agreed upon by common consent, under the auspices of the Courts of Great Britain, Austria, France, Prussia, and Russia.

ARTICLE II.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, His Majesty the Emperor of Austria, King of Hungary and Bohemia, His Majesty the King of the French, His Majesty the King of Prussia, and His Majesty the Emperor of all the Russias, declare, that the Articles mentioned in the preceding Article, are considered as having the same force and validity as if they were textually inserted in the present Act, and that they are thus placed under the guarantee of their said Majesties.

ARTICLE III.

The union which has existed between Holland and Belgium, in virtue of the Treaty of Vienna of the 31st of May 1815, is acknowledged by His Majesty the King of the Netherlands, Grand Duke of Luxembourg, to be dissolved.

ARTICLE IV.

The present Treaty shall be ratified, and the ratifications shall be exchanged at London at the expiration of six weeks, or sooner, if possible. The exchange of these ratifications shall take place at the same time as that of the ratifications of the Treaty between Holland and Belgium.

In witness whereof, the respective Plenipotentiaries have signed the present Treaty, and have affixed thereto the seal of their Arms.

Done at London, the nineteenth day of April, in the

year of Our Lord one thousand eight hundred and thirty-nine.

(L.S.) PALMERSTON. (L.S.) DEDEL.
(L.S.) SENFFT.
(L.S.) H. SEBASTIANI.
(L.S.) BULOW.
(L.S.) POZZO DI BORGO.

ANNEX TO THE TREATY SIGNED AT LONDON, ON THE 19TH APRIL 1839, BETWEEN GREAT BRITAIN, AUSTRIA, FRANCE, PRUSSIA, AND RUSSIA, ON THE ONE PART, AND THE NETHERLANDS, ON THE OTHER PART.

ARTICLE I.

The Belgian territory shall be composed of the provinces of

South Brabant ;
Liege ;
Namur ;
Hainault ;
West Flanders ;
East Flanders ;
Antwerp ; and
Limbourg ;

such as they formed part of the United Kingdom of the Netherlands constituted in 1815, with the exception of those districts of the province of Limbourg which are designated in Article IV.

The Belgian territory shall, moreover, comprise that part of the Grand Duchy of Luxembourg which is specified in Article II.

ARTICLE II.

In the Grand Duchy of Luxembourg, the limits of the Belgian territory shall be such as will be hereinafter described, viz.

Commencing from the frontier of France between *Rodange*, which shall remain to the Grand Duchy of Luxembourg, and *Athus*, which shall belong to Belgium,

there shall be drawn, according to the annexed map, a line which, leaving to Belgium the road from *Arlon* to *Longwy*, the town of *Arlon* with its district, and the road from *Arlon* to *Bastogne*, shall pass between *Messancy*, which shall be on the Belgian territory, and *Clemancy*, which shall remain to the Grand Duchy of Luxembourg, terminating at *Steinfort*, which place shall also remain to the Grand Duchy. From *Steinfort* this line shall be continued in the direction of *Eischen*, *Hecbus*, *Guirsch*, *Ober-Pallen*, *Grende*, *Nothomb*, *Parette*, and *Perlé*, as far as *Martelange*; *Hecbus*, *Guirsch*, *Grende*, *Nothomb*, and *Parette*, being to belong to Belgium, and *Eischen*, *Ober-Pallen*, *Perlé*, and *Martelange*, to the Grand Duchy. From *Martelange* the said line shall follow the course of the *Sure*, the water way (*thalweg*) of which river shall serve as the limit between the two States, as far as opposite to *Tintange*, from whence it shall be continued, as directly as possible, towards the present frontier of the *Arrondissement* of *Diekirch*, and shall pass between *Surret*, *Harlange*, and *Tarchamps*, which places shall be left to the Grand Duchy of Luxembourg, and *Honville*, *Livarchamps*, and *Loutremange*, which places shall form part of the Belgian territory. Then having, in the vicinity of *Doncols* and *Soulez*, which shall remain to the Grand Duchy, reached the present boundary of the *Arrondissement* of *Diekirch*, the line in question shall follow the said boundary to the frontier of the Prussian territory. All the territories, towns, fortresses, and places situated to the west of this line, shall belong to Belgium; and all the territories, towns, fortresses, and places situated to the east of the said line, shall continue to belong to the Grand Duchy of Luxembourg.

It is understood, that in making out this line, and in conforming as closely as possible to the description of it given above, as well as to the delineation of it on the map, which, for the sake of greater clearness, is annexed to the present Article, the Commissioners of demarcation, mentioned in Article V, shall pay due attention to the localities, as well as to the mutual necessity for accommodation which may result therefrom.

Article III.

In return for the cessions made in the preceding Article, there shall be assigned to His Majesty the King of the Netherlands, Grand Duke of Luxembourg, a territorial indemnity in the province of Limbourg.

Article IV.

In execution of that part of Article I which relates to the province of Limbourg, and in consequence of the cessions which His Majesty the King of the Netherlands, Grand Duke of Luxembourg, makes in Article II, His said Majesty shall possess, either to be held by him in his character of Grand Duke of Luxembourg, or for the purpose of being united to Holland, those territories, the limits of which are hereinafter described.

1°. *On the right bank of the Meuse;* to the old Dutch *enclaves* upon the said bank in the province of Limbourg, shall be united those districts of the said province upon the same bank, which did not belong to the States General in 1790; in such wise that the whole of that part of the present province of Limbourg, situated upon the right bank of the Meuse, and comprised between that river on the west, the frontier of the Prussian territory on the east, the present frontier of the province of Liege on the south, and Dutch Guelderland on the north, shall henceforth belong to His Majesty the King of the Netherlands, either to be held by him in his character of Grand Duke of Luxembourg, or in order to be united to Holland.

2°. *On the left bank of the Meuse;* commencing from the southernmost point of the Dutch province of North Brabant, there shall be drawn, according to the annexed map, a line which shall terminate on the Meuse above *Wessem*, between that place and *Stevenswaardt*, at the point where the frontiers of the present *Arrondissements* of *Ruremonde* and *Maestricht* meet on the left bank of the Meuse; in such manner that *Bergerot*, *Stamproy*, *Neer-Itteren*, *Ittervoordt*, and *Thorn*, with their districts, as well as all the other places situated to the north of this line, shall form part of the Dutch territory.

The old Dutch *enclaves* in the province of Limbourg,

upon the left bank of the Meuse, shall belong to Belgium, with the exception of the town of Maestricht, which, together with a radius of territory, extending twelve hundred *toises* from the outer glacis of the fortress, on the said bank of this river, shall continue to be possessed in full sovereignty and property by His Majesty the King of the Netherlands.

Article V.

His Majesty the King of the Netherlands, Grand Duke of Luxembourg, shall come to an agreement with the Germanic Confederation, and with the Agnates of the House of Nassau, as to the application of the stipulations contained in Articles III and IV, as well as upon all the arrangements which the said Articles may render necessary, either with the abovementioned Agnates of the House of Nassau, or with the Germanic Confederation.

Article VI.

In consideration of the territorial arrangements above stated, each of the two parties renounces reciprocally, and for ever, all pretension to the territories, towns, fortresses, and places situated within the limits of the possessions of the other party, such as those limits are described in Articles I, II, and IV.

The said limits shall be marked out in conformity with those Articles by Belgian and Dutch Commissioners of demarcation, who shall meet as soon as possible in the town of Maestricht.

Article VII.

Belgium, within the limits specified in Articles I, II, and IV, shall form an independent and perpetually neutral State. It shall be bound to observe such neutrality towards all other States.

Article VIII.

The drainage of the waters of the two Flanders shall be regulated between Holland and Belgium, according to the stipulations on this subject contained in Article VI

of the definitive Treaty concluded between His Majesty the Emperor of Germany and the States General, on the 8th of November 1785 ; and in conformity with the said Article, Commissioners, to be named on either side, shall make arrangements for the application of the provisions contained in it.

Article IX.

§ 1. The provisions of Articles CVIII to CXVII inclusive of the General Act of the Congress of Vienna, relative to the free navigation of navigable rivers, shall be applied to those navigable rivers which separate the Belgian and the Dutch territories, or which traverse them both.

§ 2. So far as regards specially the navigation of the Scheldt, and of its mouths, it is agreed, that the pilotage and the buoying of its channel, as well as the conservation of the channels of the Scheldt below Antwerp, shall be subject to a joint superintendence ; and that this joint superintendence shall be exercised by Commissioners to be appointed for this purpose by the two parties. Moderate pilotage dues shall be fixed by mutual agreement, and those dues shall be the same for the vessels of all nations.

In the meantime, and until these dues shall be fixed, no higher pilotage dues shall be levied than those which have been established by the tariff of 1829, for the mouths of the Meuse from the high sea to Helvoet, and from Helvoet to Rotterdam, in proportion to the distances. It shall be at the choice of every vessel proceeding from the high sea to Belgium, or from Belgium to the high sea, to take what pilot she pleases ; and upon the same principle, it shall be free for the two countries to establish along the whole course of the Scheldt, and at its mouth, such pilotage establishments as shall be deemed necessary for furnishing pilots. Everything relating to these establishments shall be determined by the regulation to be concluded in conformity with § 6 hereinafter following. These establishments shall be placed under the joint superintendence mentioned in the beginning of the present paragraph. The two Governments engage to preserve the navigable channels of the Scheldt, and of its

mouths, and to place and maintain therein the necessary beacons and buoys, each for its own part of the river.

§ 3. There shall be levied by the Government of the Netherlands, upon the navigation of the Scheldt and of its mouths, a single duty of florins 1.50 per ton ; that is to say, florins 1.12 on vessels which, coming from the high sea, shall ascend the Western Scheldt in order to proceed to Belgium by the Scheldt, or by the Canal of Terneuze ; and of florins 0.38 per ton on vessels which, coming from Belgium by the Scheldt or by the Canal of Terneuze, shall descend the Western Scheldt in order to proceed to the high sea. And in order that the said vessels may not be subject to any visit, nor to any delay or hindrance whatever within the Dutch waters, either in ascending the Scheldt from the high sea, or in descending the Scheldt in order to reach the high sea, it is agreed that the collection of the duty abovementioned shall take place by Dutch agents at Antwerp and at Terneuze. In the same manner, vessels arriving from the high sea in order to proceed to Antwerp by the Western Scheldt, and coming from places suspected in regard to health, shall be at liberty to continue their course without hindrance or delay, accompanied by one health guard, and thus to proceed to the place of their destination. Vessels proceeding from Antwerp to Terneuze, and *vice versâ*, or carrying on in the river itself coasting trade or fishery (in such manner as the exercise of the latter shall be regulated in pursuance of § 6 hereinafter) shall not be subjected to any duty.[1]

§ 4. The branch of the Scheldt called the Eastern Scheldt not being in its present state available for the navigation from the high sea to Antwerp and Terneuze, and *vice versâ*, but being used for the navigation between Antwerp and the Rhine, this eastern branch shall not be burthened, in any part of its course, with higher duties or tolls than those which are levied, according to the tariffs of Mayence of the 31st of March, 1831, upon the navigation from Gorcum to the high sea, in proportion to the distances.

§ 5. It is also agreed that the navigation of the intermediate channels between the Scheldt and the Rhine, in

[1] The Scheldt tolls were redeemed in 1863.

order to proceed from Antwerp to the Rhine, and *vice versâ*, shall continue reciprocally free, and that it shall be subject only to moderate tolls, which shall be the same for the commerce of the two countries.

§ 6. Commissioners on both sides shall meet at Antwerp in the space of one month, as well to determine the definitive and permanent amount of these tolls, as to agree upon a general regulation for the execution of the provisions of the present Article, and to include therein a provision for the exercise of the right of fishing and of trading in fish, throughout the whole extent of the Scheldt, on a footing of perfect reciprocity and equality in favour of the subjects of the two countries.

§ 7. In the meantime, and until the said regulations shall be prepared, the navigation of the Meuse and of its branches shall remain free to the commerce of the two countries, which shall adopt provisionally, in this respect, the tariffs of the Convention signed at Mayence on the 31st of March, 1831, for the free navigation of the Rhine, as well as the other provisions of that Convention, so far as they may be applicable to the said river.

§ 8. If natural events or works of art should hereafter render impracticable the lines of navigation mentioned in the present Article, the Government of the Netherlands shall assign to Belgian navigation other lines equally safe, and equally good and commodious, instead of the said lines of navigation become impracticable.

Article X.

The use of the canals which traverse both countries shall continue to be free and common to the inhabitants of both. It is understood that they shall enjoy the use of the same reciprocally, and on equal conditions ; and that on either side moderate duties only shall be levied upon the navigation of the said canals.

Article XI.

The commercial communications through the town of Maestricht, and through Sittardt, shall remain entirely free, and shall not be impeded under any pretext whatsoever.

The use of the roads which, passing through these

towns lead to the frontiers of Germany, shall be subject only to the payment of moderate turnpike tolls, for the repair of the said roads, so that the transit commerce may not experience any obstacle thereby, and that by means of the tolls abovementioned these roads may be kept in good repair, and fit to afford facilities to that commerce.

Article XII.

In the event of a new road having been constructed, or a new canal cut, in Belgium, terminating at the Meuse, opposite the Dutch canton of Sittardt, in that case Belgium shall be entitled to demand of Holland, who, on the other hand, shall not in such case refuse her consent, that the said road, or the said canal, shall be continued, according to the same plan, and entirely at the cost and charge of Belgium, through the canton of Sittardt, to the frontiers of Germany. This road or canal, which shall be used only as a commercial communication, shall be constructed, at the option of Holland, either by engineers and workmen whom Belgium shall obtain permission to employ for that purpose in the canton of Sittardt, or by engineers and workmen to be furnished by Holland, and who shall execute the works agreed upon at the expense of Belgium; the whole without any charge whatsoever to Holland, and without prejudice to her exclusive rights of sovereignty over the territory which may be traversed by the road or canal in question.

The two parties shall fix, by mutual agreement, the amount and the mode of collection of the duties and tolls which should be levied upon the said road or canal.

Article XIII.

§ 1. From and after the 1st of January, 1839, Belgium, with reference to the division of the public debt of the Kingdom of the Netherlands, shall remain charged with the sum of 5,000,000 of Netherland florins of annual interest, the capital of which shall be transferred from the debit of the Great Book of Amsterdam, or from the debit of the General Treasury

of the Kingdom of the Netherlands, to the debit of the Great Book of Belgium.

§ 2. The capitals transferred, and the annuities inscribed upon the debit of the Great Book of Belgium, in consequence of the preceding paragraph, to the amount of the total sum of 5,000,000 Netherland florins of annual interest, shall be considered as forming part of the Belgian National Debt ; and Belgium engages not to admit, either at present or in future, any distinction between this portion of her public debt arising from her union with Holland, and any other Belgian national debt already created, or which may be created hereafter.

§ 3. The payment of the abovementioned sum of 5,000,000 Netherland florins of annual interest, shall take place regularly every six months, either at Brussels or at Antwerp, in ready money, without deduction of any kind whatsoever, either at present or in future.

§ 4. In consideration of the creation of the said sum of 5,000,000 florins of annual interest, Belgium shall be released from all obligation towards Holland, on account of the division of the public debt of the Kingdom of the Netherlands.

§ 5. Commissioners to be named on both sides, shall meet within the space of fifteen days in the town of Utrecht, in order to proceed to the transfer of the capitals and annual interest, which upon the division of the public debt of the Kingdom of the Netherlands, are to pass to the charge of Belgium, up to the amount of 5,000,000 florins of annual interest.

They shall also proceed to deliver up the archives, maps, plans, and other documents whatsoever which belong to Belgium, or which relate to her administration.

Article XIV.

The port of Antwerp, in conformity with the stipulations of the XVth Article of the Treaty of Paris, of the 30th of May, 1814, shall continue to be solely a port of commerce.

Article XV.

Works of public or private utility, such as canals, roads, or others of a similar nature, constructed wholly

or in part at the expense of the Kingdom of the Netherlands, shall belong, together with the advantages and charges thereunto attached, to the country in which they are situated.

It is understood that the capitals borrowed for the construction of these works, and specifically charged thereupon, shall be comprised in the aforesaid charges, in so far as they may not yet have been repaid, and without giving rise to any claim on account of repayments already made.

Article XVI.

The sequestrations which may have been imposed in Belgium during the troubles, for political causes, on any property or hereditary estates whatsoever, shall be taken off without delay, and the enjoyment of the property and estates abovementioned shall be immediately restored to the lawful owners thereof.

Article XVII.

In the two countries of which the separation takes place in consequence of the present Articles, inhabitants and proprietors, if they wish to transfer their residence from one country to the other, shall, during two years, be at liberty to dispose of their property, movable or immovable, of whatever nature the same may be, to sell it, and to carry away the produce of the sale, either in money or in any other shape, without hindrance, and without the payment of any duties other than those which are now in force in the two countries upon changes and transfers.

It is understood that the collection of the *droit d'aubaine et de détraction* upon the persons and property of Dutch in Belgium, and of Belgians in Holland, is abandoned, both now and for the future.

Article XVIII.

The character of a subject of the two Governments, with regard to property, shall be acknowledged and maintained.

Article XIX.

The stipulations of Articles from XI to XXI, inclusive, of the Treaty concluded between Austria and Russia, on the 3rd of May, 1815, which forms an integral part of the General Act of the Congress of Vienna, stipulations relative to persons who possess property in both countries to the election of residence which they are required to make, to the rights which they shall exercise as subjects of either State, and to the relations of neighbourhood in properties cut by the frontiers, shall be applied to such proprietors, as well as to such properties, in Holland, in the Grand Duchy of Luxembourg, or in Belgium, as shall be found to come within the cases provided for by the aforesaid stipulations of the Acts of the Congress of Vienna. It is understood that mineral productions are comprised among the productions of the soil mentioned in Article XX of the Treaty of the 3rd of May, 1815, above referred to. The *droits d'aubaine et de détraction* being henceforth abolished, as between Holland, the Grand Duchy of Luxembourg, and Belgium, it is understood that such of the abovementioned stipulations as may relate to those duties shall be considered null and void in the three countries.

Article XX.

No person in the territories which change domination, shall be molested or disturbed in any manner whatever, on account of any part which he may have taken, directly or indirectly, in political events.

Article XXI.

The pensions and allowances of expectants, of persons unemployed or retired, shall in future be paid, on either side, to all those individuals entitled thereto, both civil and military, conformably to the laws in force previous to the 1st November, 1830.

It is agreed that the above-mentioned pensions and allowances to persons born in the territories which now constitute Belgium, shall remain at the charge of the Belgian treasury ; and the pensions and allowances of persons born in the territories which now constitute the

Kingdom of the Netherlands, shall be at the charge of the Netherland treasury.

Article XXII.

All claims of Belgian subjects upon any private establishments, such as the widows' fund, and the fund known under the denomination of the *fonds des leges*, and of the chest of civil and military retired allowances, shall be examined by the Mixed Commission mentioned in Article XIII, and shall be determined according to the tenour of the regulations by which these funds or chests are governed.

The securities furnished, as well as the payments made, by Belgian accountants, the judicial deposits and consignments, shall equally be restored to the parties entitled thereto, on the presentation of their proofs.

If, under the head of what are called *the French* liquidations, any Belgian subjects should still be able to bring forward claims to be inscribed, such claims shall also be examined and settled by the said Commission.

Article XXIII.

All judgments given in civil and commercial matters, all acts of the civil power, and all acts executed before a notary or other public officer under the Belgian administration, in those parts of Limbourg and of the Grand Duchy of Luxembourg, of which His Majesty the King of the Netherlands, Grand Duke of Luxembourg, is to be replaced in possession, shall be maintained in force and validity.

Article XXIV.

Immediately after the exchange of the Ratifications of the Treaty to be concluded between the two parties, the necessary orders shall be transmitted to the commanders of the respective troops, for the evacuation of the territories, towns, fortresses, and places which change domination. The civil authorities thereof shall also, at the same time, receive the necessary orders for delivering over the said territories, towns, fortresses, and places

to the commissioners who shall be appointed by both parties for this purpose.

This evacuation and delivery shall be effected so as to be completed in the space of fifteen days, or sooner if possible.

(L.S.) PALMERSTON. (L.S.) DEDEL.
(L.S.) SENFFT.
(L.S.) H. SEBASTIANI.
(L.S.) BULOW.
(L.S.) POZZO DI BORGO.

[*A Treaty between Holland and Belgium, comprising the 24 Articles above recited, together with the usual engagement for Peace and Friendship between the Parties, was also signed by the Plenipotentiaries of those two Powers on the 19th of April; and the Ratifications were exchanged at the same time and place as those of the preceding Treaty.*]

II.—TREATY BETWEEN GREAT BRITAIN, AUSTRIA, FRANCE, PRUSSIA, AND RUSSIA, ON THE ONE PART, AND BELGIUM, ON THE OTHER.

In the Name of the Most Holy and Indivisible Trinity.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, His Majesty the Emperor of Austria, King of Hungary and Bohemia, His Majesty the King of the French, His Majesty the King of Prussia, and His Majesty the Emperor of all the Russias, taking into consideration, as well as His Majesty the King of the Belgians, their Treaty concluded at London on the 15th of November, 1831, as well as the Treaties signed this day between their Majesties the Queen of the United Kingdom of Great Britain and Ireland, the Emperor of Austria, King of Hungary and Bohemia, the King of the French, the King of Prussia, and the Emperor of all the Russias, on the one part, and His Majesty the King of the Netherlands, Grand Duke of Luxembourg, on the other part, and between His Majesty the King of the Belgians and His said Majesty the King of the Nether-

lands, Grand Duke of Luxembourg, their said Majesties have named as their Plenipotentiaries, that is to say :—

[*Here follow the names.*]

Who, after having communicated to each other their Full Powers, found in good and due form, have agreed upon the following Articles :—

ARTICLE I.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, His Majesty the Emperor of Austria, King of Hungary and Bohemia, His Majesty the King of the French, His Majesty the King of Prussia, and His Majesty the Emperor of all the Russias, declare, that the Articles hereunto annexed, and forming the tenour of the Treaty concluded this day between His Majesty the King of the Belgians and His Majesty the King of the Netherlands, Grand Duke of Luxembourg, are considered as having the same force and validity as if they were textually inserted in the present Act, and that they are thus placed under the guarantee of their said Majesties.

ARTICLE II.

The Treaty of the 15th of November, 1831, between their Majesties the Queen of the United Kingdom of Great Britain and Ireland, the Emperor of Austria, King of Hungary and Bohemia, the King of the French, the King of Prussia, and the Emperor of all the Russias, and His Majesty the King of the Belgians, is declared not to be obligatory upon the High Contracting Parties.

ARTICLE III.

The present Treaty shall be ratified, and the ratifications shall be exchanged at London at the expiration of six weeks, or sooner if possible. This exchange shall take place at the same time as that of the ratifications of the Treaty between Belgium and Holland.

In witness whereof, the respective Plenipotentiaries have signed the present Treaty, and have affixed thereto the seal of their Arms.

Done at London, the nineteenth day of April, in the year of our Lord one thousand eight hundred and thirty-nine.

(L.S.) PALMERSTON. (L.S.) SYLVAN VAN DE WEYER.
(L.S.) SENFFT.
(L.S.) H. SEBASTIANI.
(L.S.) BULOW.
(L.S.) POZZO DI BORGO.

ANNEX TO THE TREATY SIGNED AT LONDON ON THE 19TH OF APRIL, 1839, BETWEEN GREAT BRITAIN, AUSTRIA, FRANCE, PRUSSIA, AND RUSSIA, ON THE ONE PART, AND BELGIUM, ON THE OTHER PART.

[*This Annex, signed by the same Plenipotentiaries who signed the preceding Treaty, is word for word the same as the Annex to the Treaty between the Five Powers and the King of the Netherlands.*]

TREATY

BETWEEN HER MAJESTY, THE EMPEROR OF AUSTRIA, THE KING OF THE BELGIANS, THE EMPEROR OF THE FRENCH, THE KING OF ITALY, THE KING OF THE NETHERLANDS, THE KING OF PRUSSIA, AND THE EMPEROR OF RUSSIA, RELATIVE TO THE GRAND DUCHY OF LUXEMBURG.

Signed at London, 11 *May* 1867.

[TRANSLATION.]

In the Name of the Most Holy and Indivisible Trinity.

His Majesty the King of the Netherlands, Grand Duke of Luxemburg, taking into consideration the change produced in the situation of the Grand Duchy in consequence of the dissolution of the ties by which it was attached to the late Germanic Confederation, has invited Their Majesties the Queen of the United Kingdom of Great Britain and Ireland, the Emperor of Austria, the King of the Belgians, the Emperor of the French, the King of Prussia, and the Emperor of all the Russias, to assemble their Representatives in Conference at London, in order to come to an understanding, with the Plenipotentiaries of His Majesty the King Grand Duke, as to the new arrangements to be made in the general interest of peace.

And Their said Majesties, after having accepted that invitation, have resolved by common consent, to respond to the desire manifested by His Majesty the King of Italy to take part in a deliberation destined to offer a new pledge of security for the maintenance of the general tranquillity.

In consequence, Their Majesties, in concert with His Majesty the King of Italy, wishing to conclude a Treaty with a view to that object, have named as their Plenipotentiaries, that is to say :—

[*Here follow the names.*]

Who, after having exchanged their full powers, found in good and due form, have agreed upon the following Articles :—

ARTICLE I.

His Majesty the King of the Netherlands, Grand Duke of Luxemburg, maintains the ties which attach the said Grand Duchy to the House of Orange-Nassau, in virtue of the Treaties which placed that State under the sovereignty of the King Grand Duke, his descendants and successors.

The rights which the Agnates of the House of Nassau possess with regard to the succession of the Grand Duchy, in virtue of the same Treaties, are maintained.

The High Contracting Parties accept the present declaration, and place it upon record.

ARTICLE II.

The Grand Duchy of Luxemburg, within the limits determined by the Act annexed to the Treaties of the 19th of April 1839 under the guarantee of the Courts of Great Britain, Austria, France, Prussia, and Russia, shall henceforth form a perpetually neutral State.

It shall be bound to observe the same neutrality towards all other States.

The High Contracting Parties engage to respect the principle of neutrality stipulated by the present Article.

That principle is and remains placed under the sanction of the collective guarantee of the Powers signing parties to the present Treaty, with the exception of Belgium, which is itself a neutral State.

ARTICLE III.

The Grand Duchy of Luxemburg being neutralized, according to the terms of the preceding Article, the

maintenance or establishment of fortresses upon its territory becomes without necessity as well as without object.

In consequence, it is agreed by common consent that the city of Luxemburg, considered in time past, in a military point of view, as a Federal fortress, shall cease to be a fortified city.

His Majesty the King Grand Duke reserves to himself to maintain in that city the number of troops necessary to provide in it for the maintenance of good order.

Article IV.

In conformity with the stipulations contained in Articles II and III, His Majesty the King of Prussia declares that his troops actually in garrison in the fortress of Luxemburg shall receive orders to proceed to the evacuation of that place immediately after the exchange of the ratifications of the present Treaty. The withdrawal of the artillery, munitions, and every object which forms part of the equipment of the said fortress shall commence simultaneously. During that operation there shall remain in it no more than the number of troops necessary to provide for the safety of the material of war, and to effect the despatch thereof, which shall be completed within the shortest time possible.

Article V.

His Majesty the King Grand Duke, in virtue of the rights of sovereignty which he exercises over the city and fortress of Luxemburg, engages, on his part, to take the necessary measures for converting the said fortress into an open city by means of a demolition which His Majesty shall deem sufficient to fulfil the intentions of the High Contracting Parties expressed in Article III of the present Treaty. The works requisite for that purpose shall be commenced immediately after the withdrawal of the garrison. They shall be carried out with all the attention required for the interests of the inhabitants of the city.

His Majesty the King Grand Duke promises, moreover, that the fortifications of the City of Luxemburg shall not be restored in future, and that no military establishment shall be there maintained or created.

ARTICLE VI.

The Powers signing Parties to the present Treaty recognize that the dissolution of the Germanic Confederation having equally produced the dissolution of the ties which united the Duchy of Limburg, collectively with the Grand Duchy of Luxemburg, to the said Confederation, it results therefrom that the relations, of which mention is made in Articles III, IV, and V of the Treaty of the 19th of April 1839, between the Grand Duchy and certain territories belonging to the Duchy of Limburg, have ceased to exist, the said territories continuing to form an integral part of the Kingdom of the Netherlands.

ARTICLE VII.

The present Treaty shall be ratified, and the ratifications shall be exchanged at London within the space of four weeks, or sooner if possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at London, the eleventh day of May, in the year of our Lord one thousand eight hundred and sixty-seven.

(L.S.) STANLEY.
(L.S.) APPONYI.
(L.S.) VAN DE WEYER.
(L.S.) LA TOUR D'AUVERGNE.
(L.S.) D'AZEGLIO.
(L.S.) BENTINCK.
(L.S.) TORNACO.
(L.S.) E. SERVAIS.
(L.S.) BERNSTORFF.
(L.S.) BRUNNOW.

TREATY

BETWEEN HER MAJESTY AND THE KING OF PRUSSIA, RELATIVE TO THE INDEPENDENCE AND NEUTRALITY OF BELGIUM.

Signed at London, August 9, 1870.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the King of Prussia, being desirous at the present time of recording in a solemn Act their fixed determination to maintain the independence and neutrality of Belgium, as provided in the Seventh Article of the Treaty signed at London on the 19th of April 1839, between Belgium and the Netherlands, which Article was declared by the Quintuple Treaty of 1839 to be considered as having the same force and value as if textually inserted in the said Quintuple Treaty, their said Majesties have determined to conclude between Themselves a separate Treaty, which, without impairing or invalidating the conditions of the said Quintuple Treaty, shall be subsidiary and accessory to it ; and They have accordingly named as their Plenipotentiaries for that purpose, that is to say :—

[*Here follow the names.*]

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles :—

ARTICLE I.

His Majesty the King of Prussia having declared that, notwithstanding the hostilities in which the North German Confederation is engaged with France, it is his fixed

determination to respect the neutrality of Belgium, so long as the same shall be respected by France, Her Majesty the Queen of the United Kingdom of Great Britain and Ireland on her part declares that, if during the said hostilities the armies of France should violate that neutrality, She will be prepared to co-operate with His Prussian Majesty for the defence of the same in such manner as may be mutually agreed upon, employing for that purpose her naval and military forces to insure its observance, and to maintain, in conjunction with His Prussian Majesty, then and thereafter, the independence and neutrality of Belgium.

It is clearly understood that Her Majesty the Queen of the United Kingdom of Great Britain and Ireland does not engage herself by this Treaty to take part in any of the general operations of the war now carried on between the North German Confederation and France, beyond the limits of Belgium, as defined in the Treaty between Belgium and the Netherlands of April 19, 1839.

Article II.

His Majesty the King of Prussia agrees on his part, in the event provided for in the foregoing Article, to co-operate with Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, employing his naval and military forces for the purpose aforesaid ; and, the case arising, to concert with Her Majesty the measures which shall be taken, separately or in common, to secure the neutrality and independence of Belgium.

Article III.

This Treaty shall be binding on the High Contracting Parties during the continuance of the present war between the North German Confederation and France, and for twelve months after the ratification of any Treaty of Peace concluded between those Parties ; and on the expiration of that time the independence and neutrality of Belgium will, so far as the High Contracting Parties are respectively concerned, continue to rest as heretofore on the 1st Article of the Quintuple Treaty of the 19th of April, 1839.

ARTICLE IV.

The present Treaty shall be ratified, and the ratifications shall be exchanged at London as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at London, the ninth day of August, in the year of our Lord one thousand eight hundred and seventy.

(L.S.) GRANVILLE.
(L.S.) BERNSTORFF.

TREATY

BETWEEN HER MAJESTY AND THE EMPEROR OF THE FRENCH, RELATIVE TO THE INDEPENDENCE AND NEUTRALITY OF BELGIUM.

Signed at London, August 11, 1870.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the Emperor of the French, being desirous at the present time of recording in a solemn Act their fixed determination to maintain the independence and neutrality of Belgium, as provided by the Seventh Article of the Treaty signed at London on the 19th of April, 1839, between Belgium and the Netherlands, which Article was declared by the Quintuple Treaty of 1839 to be considered as having the same force and value as if textually inserted in the said Quintuple Treaty, Their said Majesties have determined to conclude between Themselves a separate Treaty, which, without impairing or invalidating the conditions of the said Quintuple Treaty, shall be subsidiary and accessory to it; and They have accordingly named as their Plenipotentiaries for that purpose, that is to say:

[*Here follow the names.*]

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

ARTICLE I.

His Majesty the Emperor of the French having declared that, notwithstanding the hostilities in which France is now engaged with the North German Con-

federation and its Allies, it is his fixed determination to respect the neutrality of Belgium, so long as the same shall be respected by the North German Confederation and its Allies, Her Majesty the Queen of the United Kingdom of Great Britain and Ireland on her part declares that, if during the said hostilities the armies of the North German Confederation and its Allies should violate that neutrality, She will be prepared to co-operate with His Imperial Majesty for the defence of the same in such manner as may be mutually agreed upon, employing for that purpose her naval and military forces to insure its observance, and to maintain, in conjunction with His Imperial Majesty, then and thereafter, the independence and neutrality of Belgium.

It is clearly understood that Her Majesty the Queen of the United Kingdom of Great Britain and Ireland does not engage herself by this Treaty to take part in any of the general operations of the war now carried on between France and the North German Confederation and its Allies, beyond the limits of Belgium, as defined in the Treaty between Belgium and the Netherlands of April 19, 1839.

ARTICLE II.

His Majesty the Emperor of the French agrees on his part, in the event provided for in the foregoing Article, to co-operate with Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, employing his naval and military forces for the purpose aforesaid ; and, the case arising, to concert with Her Majesty the measures which shall be taken, separately or in common, to secure the neutrality and independence of Belgium.

ARTICLE III.

This Treaty shall be binding on the High Contracting Parties during the continuance of the present war between France and the North German Confederation and its Allies, and for twelve months after the ratification of any Treaty of Peace concluded between those Parties ; and on the expiration of that time the independence and neutrality of Belgium will, so far as the High Contracting Parties are respectively concerned, continue to rest,

as heretofore, on the 1st Article of the Quintuple Treaty of the 19th of April, 1839.

ARTICLE IV.

The present Treaty shall be ratified, and the ratifications shall be exchanged at London as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at London, the eleventh day of August, in the year of our Lord one thousand eight hundred and seventy.

(L.S.) GRANVILLE.
(L.S.) LA VALETTE.

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