BELLIGERENT RIGHT ON THE HIGH SEAS, SINCE THE DECLARATION OF PARIS (1856)

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BY

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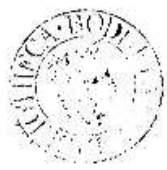

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ON BELLIGERENT RIGHT ON THE HIGH SEAS, SINCE THE DECLARATION OF PARIS (1856).

A Generation of Statesmen has passed away since the Plenipotentiaries of the Seven Powers, who took part in the Congress of Paris of 1856, agreed upon a Declaration respecting Maritime Law, the motive of which was a desire to render war, as a state of international relations, as little onerous as possible to neutrals. The object of the Powers, as expressed in the preamble of the Declaration, was to establish an uniform doctrine on certain points, on which the uncertainty of the Law and of the duties resulting therefrom gives rise to differences of opinion between belligerents and neutrals, that may occasion serious difficulties and even conflicts between them. Their first Resolution accordingly was to declare Privateering (La Course) to be abolished. Their second and third Resolutions restricted the belligerent right of interference with neutral commerce to cases where that commerce was materially sustaining the enemy's defence. The fourth Resolution declared that blockades in order to be binding must be effective. The Signatory Powers on this occasion undertook to invite the States, which had not taken part in the Congress, to accede to the Declaration. Of the States so invited, two States only of the first rank as Maritime Powers declined to accede to the Declaration. The United States of America were unwilling to adhere to the first Resolution unless the Powers would go one step further and apply the principle of inviolability to all private property on the High Seas. Spain on the other hand objected absolutely to the abolition of Privateering, and on the same grounds, Mexico, Venezuela, New Granada, Bolivia and Uruguay have not given

their adhesion to the Declaration. In pursuance therefore of the concluding paragraph of the Declaration, the Resolutions of the Signatory Powers are not binding upon the Powers above-mentioned, which have not acceded to it.

It should be observed that the Declaration of Paris has not made the non-observance of its provisions an offence against the Law of Nations. The Declaration is, in fact, nothing more than a solemn pledge on the part of the States, which have signed or adhered to it, that they will mutually observe its provisions in their relations towards one another. They have not undertaken to enforce its provisions against the States, which may decline to adhere to them, although they have agreed in a Protocol of their proceedings, subsequent to the signing of the Declaration, not to enter for the future into any arrangement on the application of the Right of Neutrals, in time of war, that does not at the same time rest upon the four principles, which are the object of the said Declaration. On the other hand they remain perfectly free to extend the benefit of the Declaration to neutrals in a war against an enemy, who has not become a party to it. In fact, it may be a question as we shall presently consider more carefully, whether they are not under an obligation in such a war to allow to such neutrals as have acceded to it the full benefit of its provisions as regards their commerce on the High Seas.

Since the Deliberations of the Congress of Paris were brought to a close, no less than eight great wars have interrupted the peaceful course of the world's history. The majority of those wars have been confined to Europe, and have but slightly interfered with neutral commerce on the High Seas, having been directed mainly to the movements of armies on land with a view to the aggrandisement or adjustment of territory. The war, for instance, of France and Sardinia as allies against Austria in 1859 terminated in the cession of Lombardy on the part of Austria to France,

and its transfer by France to Sardinia. The Sleswig-Holstein War of 1864 terminated in the King of Denmark renouncing his sovereignty over the Duchies of Sleswig and of Holstein, and likewise over the Duchy of Lauenberg, all of which Duchies have subsequently passed under the dominion of Prussia. The Austro-Italian war of 1866 ended in Austria ceding her Lombardo-Venetian Provinces to the Emperor of the French, who tranferred them to the King of Italy. TheAustro-Prussian war of the same year terminated in the withdrawal of Austria with her German possessions from the Germanic Confederation. The Franco-German war of 1870 ended in the renunciation on the part of France of her sovereignty over Alsace and part of Lorraine in favour of the German Empire. The Russo-Turkish war of 1878 terminated in the severance of the Kingdoms of the Lower Danube from the Ottoman Empire, and in the cession by Turkey of Batoum and other territory on the coast of the Black Sea to Russia. There was little or no occasion to call for any interpretation of the Resolutions of the Congress of Paris as regards the incidents of these six wars, except in the case of the Franco-German war. In the wars of 1866 both Prussia and Italy were of one mind with Austria in not interfering in any way with commerce on the High Seas, even in the case of enemy merchant vessels. On the other hand, in the war between France and Germany in 1870, the King of Prussia issued an Ordinance to exempt all enemy merchant vessels from capture on the High Seas on condition of reciprocity on the part of France, but as France thought it more for her interest to exercise the right of capture under the General Law of Nations against enemy merchant vessels, the King of Prussia revoked his Ordinance. Some discussion however arose in the course of this war as to the proper interpretation to be given to the first Resolution of the Seven Powers, according to which Privateering (La Course) was declared to be abolished, and likewise as to

whether "Coal" was to be accounted an article contraband of war within the intent of the Second and Third Resolutions of the Powers. On the subject of an effective blockade no occasion arose in the course of the above six wars, as far as we are aware, to consider the novel definition of such a blockade as agreed upon by the Powers in 1856, and accordingly it may be justly said that the precise interpretation to be given to the Fourth Resolution is *res integra* as far as the six wars above mentioned are concerned.

Mr. Dana in his edition of Wheaton's Elements of International Law, p. 610, has observed in a note upon the second Resolution of the Declaration of Paris, that "if a nation party to the Declaration is at war with one that is not, the former is not bound to abandon its right to take enemy's goods from vessels of neutral nations, which are parties to the Declaration, and as the stipulation is made not from any doubts that as between belligerents only such captures are the natural and proper results of war, but for the benefit of neutrals vexed thereby, all parties to the Declaration, when they are neutral, are in danger of losing the benefits of it." The conclusion, at which Mr. Dana arrives, seems to be insufficiently warranted, if the circumstances which led to the Declaration of Paris are taken into account, seeing that the Declaration of the Seven Powers assembled in Congress was simply a confirmation on their part of a Reform in the practice of Maritime warfare, which had been inaugurated by France and Great Britain in 1854 under a mutual agreement with respect to neutrals in a war against an enemy who was no party to the agreement. A memoir read by M. Drouyn de Lhuys before the French Academy on 4th April, 1868, may be cited in illustration of the views upon which France and Great Britain acted in 1854. His Excellency, who was Minister of Foreign Affairs in Paris in 1854, and who in that capacity initiated the mutual

compromise between France and Great Britain, which was subsequently embodied in the second and third Resolutions of the Declaration of 1856, thus expresses himself :—" The system inaugurated by the war of 1854 responded so well to the common wants of all countries, that it took without difficulty the character of a definitive Reform of International Law. At the Congress of Peace assembled in Paris in 1856, the Plenipotentiaries, whose mission it was to consecrate the results of the war, found themselves naturally led to comprise in it the confirmation of the Rules, which had been observed by the Belligerent Powers with regard to Neutrals. This was the object of the Declaration of Paris of 1856.*

Mr. Dana does not appear to have been aware at the time when he so interpreted the Declaration of Paris, that France and Great Britain, the two Powers with whom the Declaration originated, had in practice put an interpretation on the second and third Resolutions, which is calculated to relieve all neutrals, who have adhered to the Declaration of Paris, from all risk of losing the benefit of their adherence to it under the circumstances contemplated by Mr. Dana. For instance, in anticipation of a joint war against China, which Power has not acceded to the Declaration of Paris, France and Great Britain as allies in the event of war, issued each of them an ordinance " as to the observance of the Rules of Maritime Law under the Declaration of the Congress of Paris of 1856 towards the vessels and

* " Le Système inauguré par la guerre de 1854 répondait si bien à des besoins communs à tous les peuples, qu'il prit sans difficulté le caractère d'une réforme définitive du Droit International. Au Congrès de Paix réuni à Paris en 1856, les Plénipotentiaires, qui eurent pour mission de consacrer les résultats de la guerre, se trouvèrent naturellement amenés à y comprendre la confirmation des règles qui avaient été observées par les Puissances belligérantes à l'égard des neutres."—Les Neutres pendant la guerre d'Orient, par son Excellence M. Drouyn de Lhuys. Mémoire lu à l'Académie des Sciences Morales et Politiques, dans la Séance du 4 Avril, 1868, p. 40, Paris, 1868.