

**THE STRAITS OF THE  
DARDANELLES AND THE  
BOSPHORUS: THE RIGHT OF WAY  
UNDER INTERNATIONAL LAW**

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The Straits of the Dardanelles and the Bosphorus: The Right of Way Under International law by  
Walter Robinson

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**WALTER ROBINSON**

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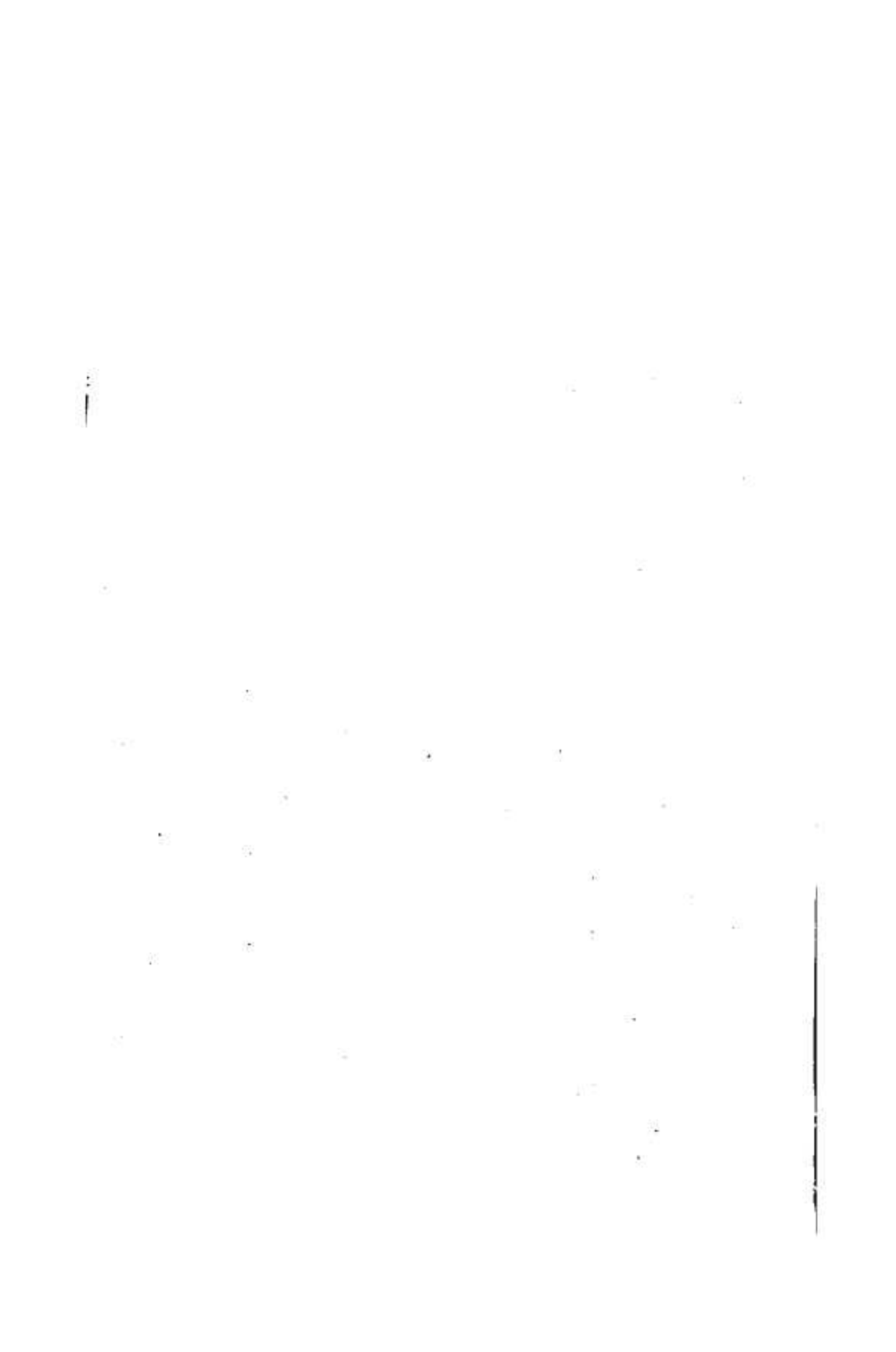
BY  
 WALTER ROBINSON  
 OF THE INNER TEMPLE,  
 BARRISTER-AT-LAW.



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 "J'ai le passe-partout."—GEORGE DANDIN.  
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LONDON:  
 WILLIAM RIDGWAY, 169, PICCADILLY, W.  
 1878.



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THE few brief pages which follow are written as an endeavour to prove that under the general principles of international law—apart from treaties—the Straits of the Dardanelles and the Bosphorus are natural and free thoroughfares open alike to the merchant vessels and the ships of war of all countries for the purpose of ingress to and egress from the Black Sea.

The whole question of the Straits is one of the greatest moment to this country, outweighing in importance any one of the individual subjects dealt with by the Preliminary Treaty of San Stefano, if not all of them collectively. If, as Lord Derby asserted, "The Eastern Question is Constantinople," it may with equal truth be said that the Eastern Question is—the Straits,—seeing that the Power which possesses naval superiority in the Sea of Marmora and the Straits of the Dardanelles must be master of the destinies of Constantinople. As the value of that city consists in its holding the key of

the Straits, so the policy and object of England, in respect of those passages, is as positive and definite to secure uninterrupted communications with the East, to protect Egypt, and to hinder a Power with the proclivities of Russia, from being able to avail itself of the Bosphorus and the Dardanelles for purposes of aggression, or, at will, to close them behind it and cover a retreat.

For my own part, I shall have fully accomplished the object I have in view if this little brochure should haply prove the means of leading to a fuller and more free discussion of the many difficult points of international law by which the question is beset. If it should seem to any that I have stated my views in too positive a manner, my excuse must be that I have wished them to stand out in clear and bold relief; and I hope I shall be acquitted of laying claim to the possession of any authority to be heard upon the subject beyond that contained in the data I have adduced, and the support they receive from the testimony of eminent jurists.

Nor, I trust, will the discussion now raised of the principles of general international law, applicable to the Black Sea and its approaches, prove to be purely academical, or merely idle and speculative. It is, so to speak, one which is forced into prominent notice by passing events. The presence of the Russian army before Constantinople, its close proximity to the forts on the Straits, and the entry of the English fleet into the Sea of Marmora, are stern realities which irresistibly place before us the fact that the Treaties of 1856 and 1871 have, for the nonce,



lost all operative force, and having ceased to exist *de facto*, can only be said to continue *de jure*.

Little or no light is thrown upon the subject by the solitary clause of the recent Treaty of San Stefano, which has express reference to the Straits. This clause, forming the twenty-fourth article of the Treaty, declares that—

“The Bosphorus and the Dardanelles shall remain open in time of war as in time of peace to the merchant-vessels of neutral States arriving from or bound to Russian ports.”

Nor does there seem to be much that is objectionable in this arrangement, which has merely for its motive the restoration of the commercial relations which previously existed between the subjects of the Czar and of the Sultan; but the effect of all the stipulations of that treaty combined would be serious in the extreme, as it would make of the Black Sea a Russian lake, actually making it subject to the rule of one despotic will, instead of placing it under the protection of a just and equal law. The Preliminary Treaty, however, is fortunately as yet wholly without juridical sanction, for although the war put an end to treaties as between the two belligerents themselves, yet, inasmuch as these belligerents had some years ago entered into treaty engagements with other Powers, no new stipulations contravening those previous engagements can be valid until ratified by all the signatory Powers. It is obvious that Russia cannot plead special immunity from the observance of treaties, and, whilst herself flagrantly violating them, hold England bound to

observe every clause to the letter. Nevertheless this very Power, after menacing Constantinople with the presence of its armies, and thereby forcing the Government of this country to despatch the fleet into the Sea of Marmora, now ventures to complain of that act as a contravention of the Treaties of 1856 and 1871, because, forsooth, it lacks the formality of a firman from the Sultan, although it is difficult to conceive how the Sultan could now be regarded as a sufficiently free agent to either give or to withhold his consent. In fact, in dealing with a State or person in such a condition of *duress* as to amount to positive disability, consent to further the performance of all just and necessary acts, must be assumed, and therefore need not be required, and by the same deduction the English Government would be equally justified in ordering the fleet through the Bosphorus into the Black Sea.

But the English squadrons have not passed the Dardanelles to infringe upon or to restrict the acknowledged rights and interests of Europe, but to uphold and to maintain them. Our fleet has taken up its position as a protest against the breach of treaties, and as a guarantee that the honour and interests of this country shall be upheld, with the European concert, if possible; without it, if necessary; and thus to enable England to support her great and historical rôle of "the Champion of Law and Justice."

It is strange how history repeats itself, and how nearly the present position resembles that of 1853,

when Lord Palmerston was only prevented by Lord Aberdeen from sending the fleet through the Dardanelles, on the ground that it would be a violation of the Treaty of 1841. There was little wisdom in waiting then; it would have been absolute folly to have halted now, "timidly and submissively at the back-door whilst Russia was violently, threateningly, and arrogantly forcing her way into the house." "We cannot" (any more at the present time than then) "say that Turkey is at peace, because no country is at peace when important parts of its territory are invaded as a means of coercion, with a threat of further advance if stubbornness and blindness should make such a step, in the opinion of the invader, necessary."

Again, now as then, Russia would fain prohibit our ships of war from approaching the Turkish capital. "It is the robber who declares that he will not leave the house until the policeman shall have first retired from the courtyard." And Lord Palmerston, in addition, wrote to Sidney Herbert, September 21, 1853, "The question between Russia and Turkey seems to be in an unsatisfactory and unpromising state, and yet it lies in a nutshell, and its solution depends upon the honest intentions and plain dealing on the part of Russia. - What is it the Emperor wants? Does he want merely what all of us want, namely, that the Christians in the Turkish Empire shall be safe from oppression, vexation, and injury? If that is what he wants, let him begin by setting the example, and let him, by evacuating the Principalities, relieve the Christian inhabitants of