THE RIGHTS OF NEUTRALS AND BELLIGERENTS: FROM THE MODERN POINT OF VIEW

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649259519

The Rights of Neutrals and Belligerents: From the Modern Point of View by Anonymous

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

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Trieste

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THE RIGHTS

OF

NEUTRALS AND BELLIGERENTS,

FROM

A MODERN POINT OF VIEW,

BY A CIVILIAN.

Tempora mutantur, et nos mutamur in illis.

LONDON:
TRÜBNER AND CO., 60, PATERNOSTER ROW.

1862.

PREFACE.

THE latter portion of the present century has witnessed the growth of commerce to an extent surpassing the wildest dreams of the stormy years which ushered in its birth. Europe, then convulsed with conflict, required but repose and breathing time to develop those splendid truths of physical and abstract science, which held in their recognition the germ of the gigantic progress which has been made. The removal of each link of the chain with which commerce was, at the beginning of the century, so tightly bound, has been hailed as the producer of unmitigated good. But the triumph is not yet complete; the fetters are not yet altogether removed, and the measure of freedom already won requires that more should be done to realise its fullest development. To contribute to an end which involves so much the happiness of mankind is the duty of every one, and these pages are the writer's mite to the common fund. The study of what is actually passing around must convince us that theacceptance of manifest truths, is that real stream, fabled by the ancients, whose waters granted new life to those who were bold enough to plunge into them. Is it wise, therefore, to fear the invigorating plunge, to reject the truth for the privilege of becoming old? That we shall not long continue to fear the one and to reject the

other is beyond a doubt, but hesitation is the present difficulty, for which the remedy is simply honest boldness, a manly trust in truth, and a career of right.

The days of Vattel, Grotius, Puffendorf, and Bynkershoek are not our days; their doctrines, however applicable to those times, are unfit for these; they may have been suited for an era of war, they are unsuited to an epoch of peace. They advanced doctrines which, in their day, it was perhaps possible to maintain in some degree; but the conditions on which their views were framed have changed, and it would now be as easy to revive the dead creed of protection, as to rule the relations between neutrals and belligerents, by the antiquated laws of Oléron, the Costumbres Maritimas of Barcelona, or the once famed Consolato del Mare. It would be as easy to revert in medicine to the doctrines of Galen, and to accept the crude dogmas of Theophilus as the base of modern arts, as to define and govern our international relations by authorities, whose dicta have ceased to be in harmony with the feelings of the present time.

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CHAPTER I.

INTRODUCTION.

THE plenipotentiaries of the Governments of Great Britain, Austria, France, Prussia, Russia, Sardinia, and Turkey concluded their labours at the Congress of Paris, in 1856, by signing the following Declaration respecting Maritime Law:—

"Considering:

"That Maritime Law in time of war has long been the subject of deplorable disputes:

"That the uncertainty of the law and of the duties in such a matter gives rise to differences of opinion between neutrals and belligerents, which may occasion serious difficulties and even conflicts:

"That it is, consequently, advantageous to establish a uniform doctrine on so important a point:

"That the Plenipotentiaries assembled in Congress at Paris cannot better respond to the intentions by which their Governments are animated, than by seeking to introduce into international relations fixed principles in this respect.

"The above-mentioned Plenipotentiaries being duly authorised, resolved to concert among themselves as to the means of attaining this object, and having

come to an agreement, have adopted the following solemn Declaration:—

"1. Privateering is and remains abolished;

"2. The neutral flag covers enemy's goods with the exception of contraband of war;

"3. Neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag;

"4. Blockades, in order to be binding, must be effective, that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy."

The following States have since declared their unqualified adhesion to the principles which the Declaration maintained:—Baden, Bavaria, Belgium, Bremen, Brazils, Duchy of Brunswick, Chili, the Argentine Confederation, the Germanic Confederation, Denmark, the Two Sicilies, the Republic of the Equator, the Roman States, Greece, Guatemala, Hayti, Hamburgh, Hanover, the Two Hesses, Lübeck, Mecklenburg-Strelitz, Mecklenburg-Schwerin, Nassau; Oldenburg, Parma, Holland, Peru, Portugal, Saxony, Saxe-Altenburg, Saxe-Coburg-Gotha, Saxe-Meiningen, Saxe-Weimar, Sweden, Switzerland, Tuscany, Wurtemberg, Anhalt-Dessau, Modena, New Granada, and Uruguay.

Spain and Mexico, without agreeing to the abolition of privateering, accepted the remaining points of the declaration. The Government of the United States of America, however, regarding the declaration as too limited to confer upon commerce the whole of the privileges for which that Government contended, before granting its adherence to the proposals made by the

Emperor of the French, urged objections to its provisions on two specific grounds. These grounds, as stated by Mr. Marcy, in his despatch of the 28th of July, 1856, addressed to M. de Sartiges, the French Minister at Washington, were: 1st. That the amount of force required to constitute an effective blockade remained unsettled by the Declaration; and 2nd. That private property at sea should be equally respected during war as private territorial property. Mr. Marcy, however, stated that his Government was prepared to adopt the second, third, and fourth of the stipulations, in case the amendment proposed with regard to the first should not be assented to by the Powers which had acceded to the declaration. Subsequently, this amendment was submitted for adoption to all the Governments concerned. Generally, the proposition was not unfavourably received; but the principle yet remains to be consecrated by actual recognition.

At present, therefore, the Declaration drawn up at the Paris Congress, except the abolition of privateering, exists as the accepted basis of the International Maritime Code of the world. With that exception alone, it has been formally adopted by every country of Europe and America. Although the Government of the United States has not yet become a party to the general compact, that Government has long since, in special treaties with other countries admitted the principle of the second and fourth of its stipulations.*

Undoubtedly the doctrine promulgated by the

* See Treaties with Sweden, 1827; Mexico, 1831; Chili, 1832; Peru, 1836.