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NORTH AMERICA. No. 1 (1874).

CORRESPONDENCE

WITH THE

GOVERNMENT OF THE UNITED STATES

RESPECTING THE

COMMUNICATION TO OTHER GOVERNMENTS

OF THE

RULES

OF THE

TREATY OF WASHINGTON.

Presented to both Houses of Parliament by Command of Her Majesty.
1874.

LONDON:

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Correspondence with the Government of the United States
respecting the Communication to other Governments of the
Rules of the Treaty of Washington.

No. 1.

Earl Granville to Sir E. Thornton.

Sir,

Foreign Office, June 12, 1871.

I RECEIVED, on the 22nd of May, your telegram of the previous day, reporting that, with the view of obviating a difficulty which I informed you had suggested itself as to the proper construction of the Second Rule contained in Article VI of the Treaty of the 8th of May, Mr. Fish had suggested that, simultaneously with the approval of the Treaty, the Senate should pass a resolution setting forth that the understanding of the Senate and Government of the United States was that the acts mentioned in that Rule were prohibited only when done for the service of a vessel cruising or carrying on war, or intended to cruise or carry on war, against either of the belligerents, and that the provisions of that Rule did not extend to any exportation from the neutral country of arms or other military supplies in the ordinary course of commerce.

I acquainted you, in reply, that this course was satisfactory to Her Majesty's Government, and it was with great regret that they learned by your telegram of the 28th of May that the Senate had adjourned without adopting the Resolution, the great majority of the members being of opinion that it was superfluous, as the meaning of the Second Rule was evidently in accordance with the understanding which it was proposed should be set forth in the Resolution.

As, however, you stated that, if Her Majesty's Government wished you to declare in a note to Mr. Fish their understanding of the Second Rule, he would answer that the understanding of the United States' Government was identical, I instructed you on the 3rd instant, immediately to exchange notes with Mr. Fish declaring your common understanding that the acts mentioned in the Second Rule contained in Article VI of the Treaty are prohibited only when done for the service of a vessel cruising or carrying on war, or intended to cruise or carry on war, against either of the belligerents.

But Her Majesty's Government learned by your telegram of the 4th instant that, though his personal opinion of the meaning of the Second Rule was the same as theirs, Mr. Fish thinks that he has no right to construe for his Government any part of the Treaty, and that his personal opinion, abstractedly expressed, would not commit the Government of the United States.

It appears, however, from your telegram of the 4th instant, that Mr. Fish has suggested as a preferable course, that when the ratifications of the Treaty have been exchanged, each Government, in presenting to other maritime Powers the Rules for adoption by them, should state that in its view the second Rule does not restrict the sale by the neutral country of arms or other military supplies in the ordinary course of commerce.

I am, &c.
(Signed) GRANVILLE.

No. 2.

Earl Granville to Sir E. Thornton.

Sir,

Foreign Office, June 13, 1871.

I HAD my first interview with General Schenck on Friday last, the 9th instant, and after expressing to him the satisfaction which Her Majesty's Government felt at his

presence in this country as Envoy of the United States, and my congratulations on the successful conclusion of the important negotiation in which he had been engaged, I adverted to the difficulty which had been raised, and which has formed the subject of the telegrams which have passed between us, as set forth in my despatch of the 12th instant, respecting the import of the Second Rule which forms part of the VIth Article of the Treaty of the 8th of May.

I stated to him that, as you are aware, Her Majesty's Government understood that Rule as prohibiting the use of neutral ports or waters for the renewal or augmentation of military supplies or arms to a belligerent, only when those acts are done for the service of a vessel cruising or carrying on war, or intended to cruise or carry on war, against another belligerent, and not when military supplies or arms are exported for the use of a belligerent Power from neutral ports or waters in the ordinary course of commerce.

I told him that Lord de Grey, Sir Stafford Northcote, and Mr. Mountague Bernard had informed Her Majesty's Government that it was the intention of the Joint High Commission that the acts mentioned in the Second Rule contained in Article VI of the Treaty signed at Washington on the 8th of May, are prohibited only when done for the service of a vessel cruising or carrying on war against either of the belligerents; and that the provisions of that rule do not extend to any exportation from the neutral country of arms or other military supplies in the ordinary course of commerce.

General Schenck, in answer to my question whether he concurred in the opinion expressed by Lord de Grey, Sir Stafford Northcote, and Mr. Bernard, as to the intention of the Joint High Commission in framing the Second Rule in the VIth Article, informed me that he had no instructions from his Government, but that, as a Member of the Joint High Commission, he entirely agreed with his English colleagues. He told me in answer to my further inquiry, that he would ask the permission of his Government to write a note to me before the afternoon of the 12th, agreeing that, immediately after the exchange of the ratifications of the Treaty, both Governments shall, in bringing the three Rules contained in Article VI to the knowledge of other maritime Powers, and in inviting them to accede to them, give their view that the provisions of the Second Rule do not restrict the sale by the neutral country of arms or other military supplies in the ordinary course of commerce.

I again saw General Schenck on the morning of the 12th, when he informed me that he had received instructions from his Government that the President understands and insists that the Second Rule in Article VI does not prevent the open sale of arms and of other military supplies in the ordinary course of commerce, as they have been heretofore sold in neutral countries to friendly belligerents; and that in bringing the Rules to the knowledge of other Powers, and in inviting their assent, the Government of the United States will express their view, and will insist that such is the proper interpretation and meaning of the Rule.

General Schenck further informed me that his Government was of opinion that it would be well that the two Governments should agree upon the same terms of expression in presenting the Rules to other Powers.

Her Majesty's Government agree with Mr. Fish that, in order to prevent the possibility of any future misunderstanding in other quarters, it would be convenient, in communicating the Rules to other maritime Power, and inviting their accession to them, that the two Governments should state distinctly the construction they themselves put upon the Second Rule, and under which they invite and will accept the accession of other Powers.

I am, &c.
(Signed) GRANVILLE.

No. 3.

Earl Granville to Sir E. Thornton.

Sir,

I TRANSMIT to you herewith, for communication to Mr. Fish, a draft of note to be presented by the Representatives of Her Majesty to the several maritime Powers to which they are respectively accredited, inviting their accession to the three Rules; and you will suggest to Mr. Fish that, if this draft meets with his concurrence, the Representatives of the United States may be instructed to address a similar note.

I am, &c.
(Signed) GRANVILLE.

Inclosure in No. 3.

Draft of Note to be presented to the Governments of Maritime Powers by the Representatives of England and of the United States accredited to them.

THE Undersigned, &c., has received the commands of the Queen, his Sovereign, to make the following communication to the Minister of Foreign Affairs of the Government.

The differences which have arisen between Her Majesty and the United States, growing out of the acts committed by the several vessels which have given rise to the claims generically known as the "Alabama" Claims, are a matter so notorious as to render it unnecessary to enter into any detailed explanation of them on the present occasion. It is enough to say that, after protracted negotiations extending over many years, a Treaty has been concluded between the respective Parties by means of which they trust that those differences will be for ever set at rest.

But it is no less notorious that one of the greatest obstacles to a settlement of those differences presented itself in the divergent views of the Contracting Parties in regard to principles of international law, and it appeared, therefore, to be an essential preliminary to any such settlement that the two Parties should come to an understanding between themselves upon those principles, which should not only apply to the matters immediately in question, but should be observed as between themselves for the future.

The Contracting Parties accordingly agreed to lay down, as between themselves, the following Rules, viz., that a neutral Government is bound—

First. To use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruize or to carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruize or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

Secondly. Not to permit or suffer either belligerent to make use of its ports or water as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

Thirdly. To exercise due diligence in its own ports and waters, and as to all persons within its jurisdiction to prevent any violation of the foregoing obligations and duties.

But the Contracting Parties to this engagement are so impressed with the salutary influence on their mutual relations, where one may be a belligerent while the other may remain a neutral, of the Rules which they have thus laid down to be observed as between themselves, that they have thought it to be their duty, in the interest of the common harmony of nations, to bring these Rules to the knowledge of other maritime Powers and to invite them to accede to them; and, for carrying out of their conviction in this respect, the Undersigned is ordered by his Government to make the present communication to the Government of

But, in doing so, he is desired further to say, as some question has been raised as to the true import of the Second Rule, that that Rule is understood by Her Majesty's Government (and, as the Government of _____ will learn from a similar communication that will be addressed to it by the Representative of the United States, by the Government of the United States also) as prohibiting the use of neutral ports or waters for the renewal or augmentation of military supplies or arms to a belligerent, only when those acts are done for the service of a vessel cruising or carrying on war, or intended to cruize or carry on war, against another belligerent; and not when military supplies or arms are exported for the use of a belligerent Power from neutral ports or waters in the ordinary course of commerce. And it is in order to prevent any future misunderstanding on this point that the Undersigned, in communicating the three Rules above recited to the Government of _____, and in inviting the accession of that Government to them, is ordered distinctly to state the construction which the Government of Her Britannic Majesty put upon the Second Rule, and under which they invite and desire to accept the accession of the Government of _____, as they will that of all other maritime Powers.

No. 4.

Sir E. Thornton to Earl Granville.—(Received July 22.)

(Extract)

Washington, July 7, 1871.

MR. BANCROFT DAVIS, Acting Secretary of State during Mr. Fish's absence, arrived here the night before last, and begged me to meet him at the State Department yesterday.

On my going there, Mr. Bancroft Davis told me that Mr. Fish had sent for him to his country-house; that he was still very unwell, but had examined the copy which I had left with him of the inclosure in your Lordship's despatch of the 17th ultimo. Mr. Fish had explained to Mr. Davis certain alterations in that document which he wished your Lordship to agree to, and of some of which he had strongly urged the adoption.

But Mr. Davis explained that Mr. Fish had been most urgent with regard to the alterations he had proposed in the draft of the note to the Governments of the different maritime Powers,

Some of the alterations are, as your Lordship will perceive, mere differences of style. Mr. Fish objected to using the word "desired" with regard to the instructions given to the Representative of the United States, attributing to it a much more imperative meaning than I am inclined to admit.

Mr. Davis informed me that Mr. Fish had observed that it was not the whole of the Second Rule contained in Article VI about the meaning of which there was any doubt, but merely a part of it; and that it was, therefore, necessary to specify the particular part, which he considered to be the prohibition "of the renewal or augmentation of military supplies or arms." He thought that the words which he had proposed to add would remedy this objection.

With regard to the words "as not prohibiting the open sale of arms or other military supplies," Mr. Bancroft Davis gave me to understand that Mr. Fish had expressed his particular desire that they should be substituted for those forwarded to me by your Lordship, viz., "not when military supplies or arms are exported for the use of a belligerent Power from neutral ports or waters;" and he had added that the words he now proposed were in exact accordance with a telegram which he had sent to General Schenck in the early part of last month.

No. 5.

Sir E. Thornton to Earl Granville.—(Received July 30.)

My Lord,

Washington, July 17, 1871.

ON the receipt of your Lordship's telegram of the 10th instant I communicated its contents to Mr. Bancroft Davis, who promised to forward them to Mr. Fish. He subsequently told me that Mr. Fish had gone to Long Branch on the 11th instant to consult with the President upon the subject.

On the 13th instant Mr. Bancroft Davis informed me that he had received a telegram in reply from Mr. Fish. Mr. Fish gave in his telegram no reasons for declining to admit the words "or export" which your Lordship desires should be inserted in the draft note to the maritime Powers except the meagre expressions contained in his telegrams, the meaning of which Mr. Bancroft Davis did not pretend to explain. But whilst declaring that he was not aware of the precise objection which Mr. Fish had to the words "or export," he assured me that he must have strong reasons, because he knew him to be anxious to concur with your Lordship in the terms of the note.

I expressed my surprise that Mr. Fish should now object to the export of arms and other military supplies, when it was notorious that during the late Franco-German war immense quantities had been exported from New York to one at least of the belligerents in neutral vessels as well as in vessels of that belligerent. I added that in the resolution with regard to the Second Rule which it was at one time proposed should be passed by the Senate, and copy of which was transmitted to your Lordship in my telegram of the 21st of May last, Mr. Fish had himself inserted the words "exportation from the neutral country." But Mr. Bancroft Davis reminded me that certain Senators had objected to the second period of the proposed resolution, and had wished that the first part of it only should be passed. This was actually the case, but even with the omission of the last

period it had been found impossible to pass the resolution. Mr. Bancroft Davis thought it probable that this was one of the reasons which deterred Mr. Fish from agreeing to the words "or export."

I have, &c.
(Signed) EDWD. THORNTON.

No. 6.

Sir E. Thornton to Earl Granville.—(Received August 2.)

My Lord,

New York, July 22, 1871.

WHEN at Mr. Fish's country-house on the 20th instant, I thought it right to question him further as to his objection to the insertion of the words "or export" in the draft note proposed by your Lordship relative to the acceptance by the maritime Powers of the three Rules contained in Article VI of the Treaty of the 8th of May last.

I reminded Mr. Fish that when an objection was first made to the wording of the Second Rule, and it was proposed to solve the difficulty by means of a resolution to be passed by the Senate simultaneously with the approval of the Treaty, I had submitted to him the wording of such a resolution, and that after having consulted with Judge Hoar he had proposed some alterations in it, and had himself inserted the word "exportation," and the words "in the ordinary course of commerce," so that the last phrase ran thus: "And that the provisions of that rule do not extend to any exportation from the neutral country of arms or other military supplies in the ordinary course of commerce."

I also pointed out to him that both of us were well aware that during the late Franco-German war arms and munitions of war were exported from New York, and from English ports to France at least, in vessels of all countries, including those of the neutrals whence they were exported, and of one belligerent at least—France, if not of the other.

Mr. Fish replied that when the above-mentioned resolution was submitted to the Senate, its first period had been objected to by several Senators. He had called upon me with reference to this objection, as he actually did, and had suggested the expediency of omitting that part of the resolution, and contenting ourselves with the second part only. In this I had acquiesced, as the second part seemed to be sufficient to meet your Lordship's wishes.

Notwithstanding this alteration, however, Mr. Fish now tells me, though I had not previously been informed of it, that the Senate in secret Session had actually voted upon and adopted a proposal to lay the resolution on the table, which he considered tantamount to its rejection. Under these circumstances Mr. Fish thought it out of his power to agree, in explaining to the maritime Powers the meaning of the Second Rule, to a wording which had been rejected by the Senate.

Mr. Fish further stated that in the Proclamation of Neutrality issued by the President in the late Franco-German war it had been declared illegal for United States' citizens to supply either belligerent with contraband of war; he considered, therefore, that if he were now to state that the Second Rule did not prohibit the export of arms and other military supplies to a belligerent, the President might be accused of countenancing what he had before declared to be illegal.

I pointed out to Mr. Fish that he seemed to consider the export from the neutral country and the import into the belligerent's country as one and the same act; that neither Great Britain nor the United States had practically prohibited, nor wished to prohibit, the former, whilst the care of preventing the latter devolved upon the other belligerent. My observations, however, seemed to have no effect upon Mr. Fish, who repeated that it was out of his power to concur in the insertion of the words "or export" in the draft note to the maritime Powers.

I have, &c.
(Signed) EDWD. THORNTON.

No. 7.

Mr. Pakenham to Earl Granville.—(Received August 14.)

My Lord,

Washington, August 1, 1871.

I HAVE the honour to state that, in the course of a short conversation which I had to-day with Mr. Fish, he informed me that the chief cause of his objection to the words "or export" in the draft of note proposed to be presented to the maritime Powers, was that these were the precise words eliminated by the Senate from the resolution presented to them shortly before the British Commissioners left Washington for Europe, and he appeared to apprehend embarrassment on the part of that body in its next Session, should the words thus deliberately struck out by it be re-inserted in the document referred to.

(Signed) F. PAKENHAM.

No. 8.

Earl Granville to Mr. Pakenham.

Sir,

Foreign Office, August 15, 1871.

HER Majesty's Government have had under their consideration Sir E. Thornton's despatch of the 22nd ultimo, reporting the reasons given by Mr. Fish for objecting to the use of the words "or export" in the explanatory statement with regard to the Second Rule which it is proposed to make to the maritime Powers in inviting their adhesion to the Rules laid down in the VIth Article of the Treaty of Washington; and I have now to instruct you to represent to Mr. Fish that the passages in the President's Proclamation of Neutrality of the 22nd of August, 1870, to which Mr. Fish has referred, do not appear to Her Majesty's Government to conflict with the interpretation which they had proposed should be put upon the Second Rule.

The Proclamation states that "the laws of the United States, without interfering with the free expression of opinion and sympathy, or with the open manufacture or sale of arms or munitions of war, nevertheless impose upon all persons who may be within their territory and jurisdiction, the duty of an impartial neutrality during the existence of the contest," and then recites certain clauses of the American Foreign Enlistment Act, showing the nature of the acts which are forbidden by law, and further warns all citizens and persons residing within the United States that although "they may lawfully and without restriction, by reason of the aforesaid state of war, manufacture and sell within the United States arms and munitions of war, and other articles ordinarily known as 'contraband of war,' yet they cannot carry such articles upon the high seas for the use or service of either belligerent . . . without incurring the risk of hostile capture and the penalties denounced by the law of nations in that behalf."

This is substantially the same as the warning contained in the Proclamations of Neutrality which have from time to time been issued in this country, and in which it is usual to declare that all persons carrying any article considered to be contraband of war by the law of nations, will rightfully and justly be liable to hostile capture, together with their ships and goods, and to the penalties denounced by the law of nations in that behalf.

Her Majesty's Government had no desire, in proposing to use the expression "not prohibiting the sale or export of arms," to interfere with the well-recognized rule of international law, by which contraband of war is liable to hostile capture, but only to explain that the Second Rule in question is not intended to bind a neutral Government to prevent arms or other military supplies being furnished to a belligerent from its territories in the ordinary course of commerce.

The First Rule states that a neutral Government is bound to use diligence to prevent the departure from its jurisdiction of any vessel intended to cruize or carry on war, such vessel having been specially adapted within its jurisdiction to warlike use.

Her Majesty's Government do not understand Mr. Fish to be of opinion that a neutral Government is, or should be, bound to prevent the departure of a vessel having on board military supplies intended to be conveyed to a belligerent in the ordinary course of commerce.

The policy and practice of Great Britain and the United States have always been the same in this respect. As Mr. Jefferson stated in his well-known letter to Mr. Hammond in 1793, "American citizens have always been free to make, vend, and export arms; it is

the constant occupation and livelihood of some of them; to suppress their callings, the only means, perhaps, of their subsistence, because a war exists in foreign and distant countries in which we have no concern, would scarcely be expected; it would be hard in principle and impossible in practice; the law of nations therefore respecting the rights of those at peace does not require from them such an internal derangement of their occupations; it is satisfied with the external penalty pronounced by the President's Proclamation, that of confiscation of such portion of those arms as shall fall into the hands of any of the belligerent Powers in the way to the ports of their enemies; to this penalty American citizens are warned that they will be abandoned, and that even private contraventions may work no inequality between the parties at war, the benefit of them will be left free and open to all."

If, as Her Majesty's Government believe, the Government of the United States concur with them in adhering to the views thus forcibly expressed by Mr. Jefferson, Mr. Fish will no doubt see that, in order to obviate any future misunderstanding on the part of other Governments, it will be necessary to state clearly that the Second Rule does not bind a neutral Government to prevent the shipment any more than the sale of military supplies to a belligerent.

I am, &c.
(Signed) GRANVILLE.

No. 9.

Mr. Pakenham to Earl Granville.—(Received September 17.)

My Lord,

Washington, September 5, 1871.

I HAVE the honour to state that on receipt of your Lordship's despatch of the 15th ultimo, I waited upon Mr. Fish without loss of time, and read to him its contents. As to the reinsertion of the words "or export" in the explanatory statement with regard to the Second Rule which it is proposed to make to the maritime Powers, Mr. Fish resolutely adhered to the objection he had put forward from the first, and which was reported in Sir Edward Thornton's despatch of the 22nd of July, viz., his unwillingness to be brought into collision with the Senate on its next Session, and which, were these words reinserted, he said he thought would most certainly be the case. Mr. Fish made this statement more than once in the course of the conversation, and dwelt on it at some length on each occasion.

He added that he considered the insertion of the words in question unnecessary, the language as it stood being sufficiently clear for all practical purposes, and he hinted at the embarrassments which might arise in the case of blockades in the future; unless, indeed, Mr. Fish said, Her Majesty's Government determine to abandon the right of blockade altogether—a proceeding in which he added the United States would gladly concur, and for which, in his opinion, they were even now prepared.

I informed Mr. Fish that upon this subject I was not in possession of the views of Her Majesty's Government, and that I could not, therefore, offer any observation thereupon.

I have, &c.
(Signed) F. PAKENHAM.

No. 10.

Earl Granville to Mr. Pakenham.

Sir,

Foreign Office, October 5, 1871.

AS it appears from your despatch of the 5th of September, that Mr. Fish persistently adheres to his objection to the words "or exportation," in the draft of note to be presented to the Governments of maritime Powers by the Representatives of England and the United States accredited to them, I have to authorize you to inform Mr. Fish that Her Majesty's Government will no longer insist on their insertion; and are, therefore, prepared to instruct Her Majesty's Ministers to present the note as soon as their American colleagues receive instructions to do so.

In order to secure identity in the communications of the British and American Ministers, I send you the draft of note in which the alterations suggested by Mr. Fish

in the original draft, and reported by Sir Edward Thornton in his despatch of the 7th of July, are adopted; and I am to instruct you to apprise me by telegraph as soon as Mr. Fish shall have signified to you his acceptance of the draft, and his intention to instruct the Representatives of the United States to present it.

You will perceive certain verbal amendments written in red ink in the margin of the inclosed draft, which you will submit to Mr. Fish as improvements in wording, and ascertain whether he consents to them. Her Majesty's Government do not wish to press them upon him if he has any objection, and the draft may, in that case, stand as written in black ink.

I am, &c.
(Signed) GRANVILLE.

Inclosure in No. 10.

Draft of Note to be presented to the Governments of Maritime Powers by the Representatives of England and of the United States accredited to them.

THE Undersigned, &c., has received the commands of the Queen his Sovereign to make the following communication to the Minister of Foreign Affairs of the Government.

The differences which have arisen between Her Majesty and the United States, growing out of the acts committed by the several vessels which have given rise to the claims generically known as the "Alabama" Claims, are a matter so [notorious] as to render it unnecessary to enter into any detailed explanation of them on the present occasion. It is enough to say that, after protracted negotiations, extending over many years, a Treaty has been concluded between the respective parties, by means of which they trust that those differences will be for ever set at rest.

[But it is no less notorious that one of the greatest obstacles to a settlement of those differences presented itself in the divergent] views of the Contracting Parties in regard to principles of international law, and it appeared, therefore, to be an essential preliminary to any such settlement that the two Parties should come to an understanding between themselves upon those principles, which should not only apply to the matters immediately in question, but should be observed as between themselves for the future.

The Contracting Parties accordingly [agreed to] lay down as between themselves the following Rules, viz.:—

That a neutral Government is bound—

First, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruize or to carry on war against a Power with which it was at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruize or carry on war as above, such vessel having been specially adapted, in whole or

Query, substitute "widely known."

Query, substitute "But, as is no less widely known, no settlement of those differences could be effected until there was an ascertained accordance in the . . ."

in part, within such jurisdiction, to warlike use.

Secondly, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

Thirdly, to exercise due diligence in its own ports and waters, and as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.

But the Contracting Parties to this engagement are so impressed with the salutary influence on their mutual relations, where one may be a belligerent while the other may remain a neutral, of the Rules which they have thus [laid down] to be observed as between themselves, that they have agreed to bring these Rules to the knowledge of other maritime Powers, and to invite them to accede to them; and for carrying out their conviction in this respect, the Undersigned is ordered by his Government to make the present communication to the Government of

[But in doing so he is] instructed further to say, as some question has been raised as to the prohibition of the renewal or augmentation of military supplies or arms contained in the Second Rule, that that part of the said Rule is understood by Her Majesty's Government (and, as the Government of will learn from a similar communication that will be addressed to it by the Representative of the United States, by the Government of the United States also), as prohibiting the use of the ports or waters or the neutral for the renewal or augmentation of military supplies or arms only when such supplies or arms are for the service of a vessel cruising or carrying on war, or intended to cruise or carry on war, against either belligerent, and as not prohibiting [the] sale of arms or other military supplies in the ordinary course of commerce. And it is in order to prevent any [future] misunderstanding on this point that the Undersigned, in communicating the three Rules above recited to the Government of , and in inviting the accession of that Government to them, is ordered distinctly to state the construction which the Government of Her Britannic Majesty and the Government of the United States put upon that part of the Second Rule, and under which they invite and desire to accept the accession of the Government of , as they will that of all other Maritime Powers.

Query, substitute "He is, however, in doing so."

Query, substitute "any."

No. 11.

*Earl Granville to Mr. Pakenham.*Sir, *Foreign Office, October 27, 1871.*

GENERAL SCHENCK informed me this morning that he had received a telegram from Mr. Fish, instructing him to urge upon Her Majesty's Government the importance of settling the words of the Circular despatch, asking, on behalf of both countries, other foreign nations to concur in the Rules which were agreed upon by the Commission of Washington.

Congress would meet on the first Monday in December. It was desirable that I should instruct you to agree to the words suggested in Mr. Fish's telegram of the 10th of June:—

“The President understands and insists that the Second Rule of Article VI does not prevent the open sale of arms or other military supplies in the ordinary course of commerce.”

I informed General Schenck that I had sent instructions to you on the 5th, to inform Mr. Fish that Her Majesty's Government would no longer insist upon the insertion of the words proposed and objected to.

But at the same time I suggested a verbal alteration in the prefatory observations, namely, to substitute—“But, as is no less widely known, no settlement of those differences could be effected until there was an ascertained accordance in the,” &c., instead of, “But it is no less notorious that one of the greatest obstacles to a settlement of those differences presented itself in the divergent,” &c.

I am, &c.
(Signed) GRANVILLE.

No. 12.

*Mr. Pakenham to Earl Granville.—(Received November 18.)*My Lord, *Washington, November 7, 1871.*

I HAVE the honour to inclose copy of a proposed draft note for communication to the maritime Powers, which has been drawn up by Mr. Fish, and in which he modifies in certain respects the wording of the draft note inclosed in your Lordship's despatch of the 5th ultimo.

On my presenting your Lordship's proposed draft note to Mr. Fish, he inquired whether I was empowered to alter the text thereof in any way beyond the marginal substitutions in red ink, or to accept any amendment he might think proper to suggest; and, on my replying in the negative, he requested me to leave the note with him for examination, and the result of which is the inclosure in this despatch.

Your Lordship will observe that the wording of Mr. Fish's modified amendment of the second substitute is a sort of composite of the original text and of the red ink proposed substitution, but the meaning, I think, is clear.

Mr. Fish's modifications of the proposed fifth substitution is, he says, a correction of what appeared to be a clerical omission; and, with reference to the subsequent insertion of the word “open,” he said he considered it desirable, as it would be difficult for the respective Governments to be always and in every case held responsible for the clandestine acts of unscrupulous traders.

The word “future” before the word “misunderstanding,” he considered unnecessary, and proposed its omission.

I have, &c.
(Signed) F. PAKENHAM.

Inclosure in No. 12

Draft of Note to be presented to the Governments of Maritime Powers by the Representatives of England and of the United States accredited to them.

THE Undersigned, &c., has received the commands of the Queen, his Sovereign, to make the following communication to the Minister of Foreign Affairs of the Government.

The differences which have arisen between Her Majesty and the United States growing out of the acts committed by the several vessels which have given rise to the Claims generically known as the "Alabama" Claims are a matter so [notorious] as to render it unnecessary to enter into any detailed explanation of them on the present occasion. It is enough to say that, after protracted negotiations extending over many years, a Treaty has been concluded between the respective Parties by means of which they trust that those differences will be for ever set at rest.

[But it is no less notorious that one of the greatest obstacles to a settlement of those differences presented itself in the divergent] views of the Contracting Parties in regard to principles of international law, and it appeared therefore to be an essential preliminary to any such settlement that the two Parties should come to an understanding between themselves upon those principles, which should not only apply to the matters immediately in question, but should be observed as between themselves for the future.

The Contracting Parties accordingly agreed to [lay down] as between themselves the following Rules, viz :—

That a neutral Government is bound,—

First, to use due diligence to prevent the fitting out, arming, or equipping within its jurisdiction of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against a power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted in whole or in part, within such jurisdiction to warlike use;

Secondly, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men;

Thirdly, to exercise due diligence in its own ports and waters, and as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.

Mr. Pakenham proposes to substitute "widely known." Mr. Fish agrees to it.

Substitute proposed by Mr. Pakenham :—
"But as is no less widely known, no settlement of those differences could be effected until there was an ascertained accordance in the."

Mr. Fish will accept this amendment in this modified form :—

"But, as is no less widely known, a great obstacle to a settlement of those differences," &c.

Substitute as proposed by Mr. Fish—
"observe."

But the Contracting Parties to this engagement are so impressed with the salutary influence on their mutual relations, where one may be a belligerent while the other may remain a neutral, of the Rules which they have thus [laid down] to be observed as between themselves, that they have agreed to bring these Rules to the knowledge of other maritime Powers, and to invite them to accede to them; and for carrying out their conviction in this respect the Undersigned is ordered by his Government to make the present communication to the Government of

[But in doing so he is] instructed further to say, as some question has been raised as to the prohibition of the renewal or augmentation of military supplies or arms contained in the Second Rule, that that part of the said Rule is understood by Her Majesty's Government (and as the Government of

will learn from a similar communication that will be addressed to it by the Representative of the United States, by the Government of the United States also), as prohibiting the use of the ports or waters of the neutral for the renewal or augmentation of military supplies or arms only when such supplies or arms are for the service of a vessel cruising or carrying on war, or intended to cruise or carry on war, against either belligerent; and as not prohibiting [the] sale of arms or other military supplies in the ordinary course of commerce. And it is in order to prevent any [future*] misunderstanding on this point, that the Undersigned, in communicating the three Rules above recited to the Government of

and in inviting the accession of that Government to them is ordered distinctly to state the construction which the Government of Her Britannic Majesty and the Government of the United States put upon that part of the second Rule, and under which they invite and desire to accept the accession of the Government of

as they will that of all other maritime Powers.

Substitute proposed by Mr. Fish—
“agreed.”

Substitute proposed by Mr. Pakenham—
“He is, however, in doing so” accepted by Mr. Fish.

Mr. Fish proposes to correct a clerical omission by inserting “true import of the.”

Mr. Pakenham proposes to substitute
“any.”

Mr. Fish declines, and says there is a clerical omission of the word “open” between the words “the” and “sale.” Mr. Fish thinks it important to retain this word.

* It was proposed by Mr. Fish to omit the word “future.” He still thinks it would be advisable, and suggests it anew.

No. 13.

General Schenck to Mr. Fish.—(Communicated to Earl Granville by General Schenck, December 4.)

(Extract.)

December 4, 1871.

IN an interview I had with Mr. Hammond, Under-Secretary of State for Foreign Affairs, on the 26th of November, to express my great desire to obtain the earliest possible settlement of the form of the note to foreign Powers, I found him prepared to converse on the subject, but not authorized to come to any decision or solution of the question raised about the use or meaning of the phrase “open sale.” He would only say that his power was limited to hearing for Lord Granville, and communicating to him what I had to remark or present in connection with your telegram to me of the 13th November. It was then he promised to try to get in a day or two from his Lordship the

answer for which I am yet waiting. Mr. Hammond discussed with me our reasons for insisting on the words "open sale" in the ordinary course of commerce. I recapitulated the grounds on which you adhere to the phrase; and claimed that, in my interview with Lord Granville, on the 27th October, it was certainly understood by me that Mr. Pakenham had been instructed to withdraw his objections to the very words now in question.

Mr. Hammond produced and referred to his Lordship's note of that conversation, which quite corresponds with my account of it. But he thought his Lordship only meant to convey the idea that Mr. Pakenham's instructions were not to insist on the words "or export," although he had noted his statement to me of such instructions being given as made following, and in immediate reply to, my quotation of the very words (marked with quotation marks by Lord Granville himself) of your telegram of the 10th of June, giving the interpretation of the Rule held and insisted on by the President. I could only express to Mr. Hammond my regret if there was any misunderstanding on my part of the meaning of Lord Granville on that occasion, and my purpose to talk it over with his Lordship himself when I could have an opportunity.

No. 14.

Earl Granville to Sir E. Thornton.

Sir,

Foreign Office, December 23, 1871.

GENERAL SCHENCK called at the Foreign Office on the 27th of November, and, as I was absent from the Office, being detained by illness at Walner, he read to Mr. Hammond the explanations which he was instructed by Mr. Fish, as requested by Her Majesty's Government to give, as to the real import of the word "open" by which the United States proposed to define, in the communication to be made by the two Governments to the maritime Powers, "the sale of arms or other military stores in the ordinary course of commerce," which was not to be held as prevented by the Second Rule which forms part of the VIth Article of the Treaty of Washington of May 8, 1871.

General Schenck claimed that, in his interview with me on the 23rd October, it was understood by him that Mr. Pakenham had been instructed to withdraw his objections to the word now in question, and in support of this view quoted my statement of such instructions having been given in immediate reply to his quotation of the words of Mr. Fish's telegram of the 10th of June, giving the interpretation of the Rule held by and insisted on by the President.

Mr. Fish appears, from the detailed account given by Mr. Pakenham in his despatch of the 7th of November, of his communication with that Minister respecting the draft note, to have treated the insertion of the word "open," for which he pressed as a mere correction of a clerical omission. True it is that, in Mr. Fish's telegram of the 10th of June, which was communicated to me by General Schenck, the word "open" does appear, but only for the first time; and it may be observed that previously to that date in all the communications which passed between the two Governments respecting the interpretation of the Second Rule, not only was the word "open" not alluded to, but the word "exportation" was dwelt upon as not being prohibited by the Second Rule. Yet it is no less true that Her Majesty's Government never accepted the limitation implied by the word "open;" but, on the contrary, maintained that the Rule should be construed "as not prohibiting the sale or export of arms or other military supplies."

The subsequent discussion of the wording of the note, up to the time mentioned in Mr. Pakenham's despatch, turned mainly upon the omission or insertion of the words "or exportation." Her Majesty's Government deferred to the wishes of Mr. Fish, and agreed to the omission of those words; the insertion of the word "open" was subsequently claimed by Mr. Fish as the correction of a clerical omission.

I have shown that it was not a clerical but a deliberate omission in the British version, which Mr. Pakenham was instructed to present to Mr. Fish; and I regret that the grounds on which Her Majesty's Government contend for the omission of the word are not removed by the explanation which I have now received from General Schenck.

That explanation was to this effect, that the Government of the United States considered it to be the interest of both Governments to extend no favour to, but to discountenance all hidden, clandestine, covered, or disguised dealing in the article of arms.

Whatever may be the abstract value of this principle, its practical application, in the

manner which Mr. Fish would seem to understand it, would be calculated to involve both Governments in serious difficulties with third Powers, with whom it is proposed now to contract an international engagement. For the effect of the insertion of the word "open" would be to leave the two Governments responsible to the third Power for the clandestine dealings of their subjects and citizens. It would relieve them from any obligation to prevent that which they could prevent, namely, "open sale," but render them responsible for what they could not prevent, namely, "hidden, clandestine, covered, or disguised dealing in the article of arms."

But the latter species of dealing is the one usually adopted by persons engaged in supplying arms to a belligerent. If these transactions were "open," they would, as it were, advertise the other belligerent Government of what was in progress, and warn it, as it were, to be on the look out to defeat them. Therefore, in the ordinary course of commerce, every subterfuge is had recourse to in order to conceal such operations; and yet Mr. Fish would propose to make the neutral Government responsible for the success of such subterfuge.

Mr. Fish, from what General Schenck has said, would seem to be of opinion that if the neutral could show that he had used "due diligence" to prevent the clandestine exportation of arms, his liability under the Rule would be covered. But what is implied by "due diligence" in such a matter as is in question?

One of the principal objections entertained by Her Majesty's Government to any Rule which would make the prohibition of the exportation of arms obligatory upon a neutral is founded on the principle that it is not just or expedient that the fact of war should impose on the nations who are not belligerents unnecessary restrictions upon their commerce. If the municipal law of a neutral Government supplies the power, and sufficient evidence is forthcoming, there is nothing more easy than to carry out the Rules agreed upon by Her Majesty's Government and that of the United States as to vessels without any injury to commerce, or damage to any persons but those engaged in the venture. But to prevent the exportation of arms is almost impossible, and the attempt to do so must necessarily interfere with the whole legitimate export trade of the country.

The law may allow, but practice repudiates, the rigorous examination of every package of merchandize on its exportation from the neutral port. But it is certain that these packages containing arms and military stores intended to be clandestinely exported would be entered as containing other articles of innocent use, and the fraud would only come to light on opening the packages; and as those packages would have no distinguishing mark to facilitate their being picked out from the rest of a cargo entered for shipment, it might be contended by the complaining belligerent that "due diligence" in opening every package would have led to discovery, and that, in default of it, the neutral Government, under the Rule which only permitted the "open sale of arms," would be liable for the consequences of such clandestine shipment.

It appears, therefore, to Her Majesty's Government that whatever interest the two Governments, in a moral point of view, might have in preventing clandestine transactions on the part of their own subjects or citizens, in a political and international point of view, it would be contrary to their interest to contract an international engagement with third Powers which they could not fulfil, but the fulfilment of which, under the terms of their contract, might fairly be claimed at their hands.

It would scarcely be seemly for the two Governments to contend that, as clandestine trade in arms was that ordinarily resorted to by the persons engaged in the supply of such articles to belligerents the words "ordinary course of commerce," the sale of arms in which is to be permissible, would leave the Governments irresponsible for such transactions, even if they were supplemented by the further words stated in Mr. Fish's telegram of June 10, though omitted by General Schenck in his subsequent reference to the telegram in his conversation with me on the 27th of October, recorded in my despatch of that day, namely, "as they have been heretofore sold in neutral countries to friendly belligerents."

On the several grounds stated in this despatch, Her Majesty's Government feel bound again to submit to Mr. Fish no longer to insist on the insertion of the word "open."

I regret that there should have been any misapprehension between General Schenck and me as to the information which I gave him respecting the answer which had been sent Mr. Fish through Mr. Pakenham, a misapprehension probably arising from each having a different thing in his mind.

But I have to state that Governments may well contract with each other engagements that they can be confident of fulfilling; but an engagement which cannot be fulfilled may

become a source of great embarrassment, and is calculated to promote misunderstanding between friendly nations,

I am, &c.
(Signed) GRANVILLE.

No. 15.

Sir E. Thornton to Earl Granville.—(Received January 27.)

My Lord,

Washington, January 16, 1872.

IN compliance with your Lordship's instructions I this morning called upon Mr. Fish at the Department of State, and read to him your Lordship's despatch of the 23rd ultimo. He listened to it with great attention, and when I had finished, he said that it was too long for him to give a decided opinion upon it at once, but he thought it contained some arguments which were well worthy of consideration. He, however, expressed his conviction that he had been justified in having supposed that the omission of the word "open" in the draft inclosed in your Lordship's despatch to Mr. Pakenham of October 5, 1871, was a clerical error. This question I did not then think it expedient to discuss; but it is possible that he may recur to it more formally in a written answer.

I should observe that your Lordship's despatch above mentioned contains the following words with reference to Mr. Fish's telegram of the 10th of June to General Schenck—"the word 'open' does not appear; but only for the first time." It is evident that the insertion of the word "not" is an error, and I therefore omitted to read it to Mr. Fish, and it has been left out of the copy which, at his request, I delivered to him.

I have, &c.
(Signed) EDWD. THORNTON.

No. 16.

Sir E. Thornton to Earl Granville.—(Received June 29.)

My Lord,

Washington, June 14, 1873.

DURING a visit which I paid to Mr. Fish at the State Department on the 12th instant, he asked me when I was going to answer his last note relating to the communication of the Three Rules to the maritime Powers, which had remained without a reply.

I said that I did not quite understand to what note he alluded, as I did not remember any that had not been answered, and was on the contrary under the impression that it was he who had not communicated to me the decision at which his Government had arrived with regard to the omission of the word "open" in the note to the maritime Powers which had been suggested by your Lordship.

Mr. Fish replied that he did not remember the exact date of the note, but that it had been written towards the end of 1871, and was addressed either to Mr. Pakenham or to myself. I then reminded him that, in January 1872, I had read to him your Lordship's despatch of December 23, 1871, giving reasons for the omission of the word "open," and had delivered to him a copy of that despatch at his request.

Mr. Fish denied that this was an official communication, and maintained that his note to Her Majesty's Legation was the last official communication upon the subject of the note to the maritime Powers, and that it had remained unanswered. I expressed my opinion that the reading of your Lordship's despatch and the delivery of a copy of it were acts quite as official, and perhaps more courteous, than the transmission of a note. Mr. Fish thought not, and added that if I would address him a note embodying the contents of your Lordship's despatch, it was very possible that the Government of the United States might agree to the omission of the word "open."

I replied that I could not now take such a step without receiving express instructions to that effect from your Lordship, for he must be aware that the circumstances of the case were very much changed owing to the discussion which had taken place at Geneva and in England, in Parliament and out of it, as to the interpretation of the Three Rules; but I was convinced that Her Majesty's Government would be ready to consider any suggestions which he might think proper to make as to the mode in which those rules should be presented to the maritime Powers, and which might be most in accordance with

the dignity of the two Governments and might best contribute to the acceptance of the Rules.

Mr. Fish said that, as the two Governments had given it out to the world, through the Treaty, that they would invite the other maritime Powers to accede to the Rules, it appeared undignified that they should abstain any longer from doing so. He saw no reason why the note should not now be addressed in the terms, more or less, which, were originally proposed by your Lordship, with such modifications as had since been agreed upon. He had observed that, although a clause had been inserted in the Treaty to the effect that Her Majesty's Government did not consider that the principles contained in the Three Rules were a part of International Law when the Alabama Claims arose, yet both Mr. Gladstone and Sir Stafford Northcote had in the debate on the Alabama indemnity of the 26th ultimo, declared that those Rules were not *ex post facto* law, but actually represented International Law at the time of the origin of the claims.

It would therefore, appear, if these were the opinions of Her Majesty's Government, that the two Governments were now even more in accord as to those three Rules than they were when the Treaty was signed. But however this might be, he thought it was high time that the correspondence upon the subject between the two Governments should be closed by Her Majesty's Government either refusing or consenting to join with that of the United States in addressing the invitation to the maritime Powers.

At this point I inquired whether, in the event of Her Majesty's Government considering the moment inopportune for taking such a step, the United States' Government intended to do so alone. Mr. Fish replied, that no decision had yet been reached upon that subject, "Perhaps it might, and perhaps it might not."

On my return home I found that the note to which Mr. Fish alluded as having not been answered, was one which he had addressed to Mr. Pakenham on the 3rd of November, 1871, transmitting copy of the proposed note to the maritime Powers with alterations in the margin suggested by Mr. Fish, which last document was forwarded to your Lordship in his despatch of November 7, 1871. A copy of the note to Mr. Pakenham I have now the honour to inclose.

With reference to Mr. Fish's assertion that reading to him a despatch from your Lordship and leaving a copy of it with him do not constitute an official communication of the contents of that despatch, I venture to suggest that, for the future, I be authorized, in such a case, either to address a note to him, transmitting a copy of the despatch, or to embody its contents in a note.

I have, &c.
(Signed) EDWD. THORNTON.

Inclosure in No. 16.

Mr. Fish to Mr. Pakenham.

Sir, *Department of State, Washington, November 3, 1871.*
WITH reference to the counter-draft of the note to be presented to the maritime Powers by the Representatives of the United States and England accredited to them, submitted by you to this Department on the 30th ultimo, I have the honour to inclose a counter-draft, in which are indicated in marginal notes the degree to which the proposed amendments are acceptable, and the further amendments now proposed by this Department.

I have, &c.
(Signed) HAMILTON FISH.

No. 17.

Earl Granville to General Schenck.

Sir, *Foreign Office, October 25, 1873.*
LORD TENTERDEN, who, in my absence, had the honour of receiving you at the Foreign Office on the 14th instant, has reported to me that you were so good as to express your unwillingness to put me to the inconvenience of coming to town as I had proposed, and proceeded to state to him the communication which you wished to make to me as follows:—

That Mr. Fish was anxious to recall the attention of Her Majesty's Government to the question of recommending to Foreign Powers the adoption of the Three Rules contained in the VIth Article of the Treaty of Washington.

This had come to a stand-still on a point of etiquette.

Mr. Fish had written an argumentative despatch, and had expected an equally formal reply. In the place of this he had merely received a copy of instructions addressed to Sir E. Thornton by Her Majesty's Government.

Mr. Fish did not look upon this as a sufficiently formal communication. He, however, did not conceal that, if a formal note in the sense of that instruction had been delivered to him, he would have been prepared to reconsider his former views, and to meet Her Majesty's Government in the sense they wished in regard to the wording in discussion.

You added that what Mr. Fish now really desired was that some progress should be made in submitting these rules to other Powers, as provided in the Treaty; and that, at all events, the matter should be brought to an issue in some way or other; that the Rules should be submitted with comment or without comment, or an agreement come to not to submit them at all; some action should be taken. It might not be believed that the other Powers would accept the Rules in the sense that had been attached to them. Nevertheless, something ought to be done.

It may prevent any further confusion on this matter if I recapitulate what has passed regarding it at Washington, as shown by the reports which I received from Sir E. Thornton.

On the 29th of April he informed me unofficially that Mr. Fish had asked him whether he knew what Her Majesty's Government intended to do with reference to the agreement which had been come to by the VIth Article of the Treaty of May 8, 1871, that the Three Rules contained therein should be brought to the knowledge of other maritime Powers, who should be invited to accede to them. He replied that he had received no recent instructions upon the subject, nor had he any knowledge of the intention of Her Majesty's Government with regard to those Rules; but he reminded Mr. Fish that the last step taken was his delivering to him a copy of a despatch from me, dated December 23, 1871, in which I had brought forward some arguments against the use of the word "open" in the note to be addressed to the maritime Powers. Mr. Fish then told Sir E. Thornton that he thought some of my arguments were well worthy of consideration. Sir E. Thornton observed that he had not yet been favoured with Mr. Fish's final decision upon the matter for transmission to me.

Mr. Fish then said that, very soon after Sir E. Thornton had given him the copy of my despatch, there arose the discussion about the indirect claims, when, for a long period, it seemed possible that the Treaty might fail to be carried out at all. Indeed, so much time had elapsed that he did not know whether the views of Her Majesty's Government might still be the same with regard to the wording of the note to be addressed to the different Powers. He begged Sir E. Thornton, however, to write to me privately, and to say to me that he thought it was the duty of the two Governments to fulfil the engagement which they had jointly taken in the Treaty; it was very possible that some of the maritime Powers might refuse to accept those Rules; indeed, there had already been some indications that this would be the case. Still he thought that the two nations could not, without loss of dignity, fail to carry out the engagement which they had taken by the Treaty, by bringing to the notice of other maritime Powers the Three Rules, and asking them to adopt them. He begged him to assure me that, he wished to co-operate with me in the most cordial and friendly manner in this affair, and that if Her Majesty's Government should still desire the suppression of the word "open," the United States' Government would be ready to consider it with a view to meeting my wishes or to making some modification which might suit both Governments.

On the 22nd of May I replied that I had considered this statement of his conversation with Mr. Fish on the submission of the Three Rules to the maritime Powers.

The question had become much more complicated since the interruption, in consequence of the indirect claims, of the correspondence.

He would have seen from the debates in Parliament how impossible it was for Her Majesty's Government to lay the Rules without comment before other nations for their acceptance; and even if Her Majesty's Government were ready to do so, the United States and themselves would be met at once by the question, "Are you yourselves agreed upon the meaning of the Rules to which you ask our assent?"

He might, however, tell Mr. Fish that I had had the same intimation as had reached him, as to the probable rejection of the Three Rules by the Great Powers.

I was nevertheless ready carefully to consider any suggestions he could make with regard to the mode of submitting these Rules to the maritime Powers in the manner most

agreeable to the dignity of the two countries and the probable success of the steps to be taken.

He might also tell him that I attached particular importance to the assurance which he gave of cordial and friendly co-operation with Her Majesty's Government in this matter; that he would meet with perfect reciprocity on their part; and that much would depend on the belief entertained by other nations that the two Governments are acting in accord.

On the 10th of June Sir E. Thornton reported that he had taken an opportunity, when he went to the State Department on the 5th of that month, to communicate to Mr. Fish the substance of my above-mentioned letter.

Mr. Fish expressed himself as much disappointed that I would not consent to submit the Three Rules to the maritime Powers, even at the risk of their being rejected. He said that during the Geneva Arbitration a very different interpretation had been given to the Rules by the Counsel on each side, as it might best seem to suit the interests of the Government for which they were pleading; this was always the case in matters of litigation; very various opinions upon the same subject had likewise been expressed by the press of both countries, as well as in Parliament in England; he did not, however, believe that there was any very important difference of opinion between the two Governments as to the meaning of the Rules, or indeed any upon which they could not come to any agreement.

On the 29th of June I received from Sir E. Thornton a despatch dated the 14th of that month, in which he stated that, during a visit which he paid to the State Department on the 12th, Mr. Fish had asked him when he was going to answer his last note relating to the communication of the Three Rules to the maritime Powers which had remained without a reply. Sir E. Thornton answered that he did not quite understand to what note he alluded, as he did not remember any to which a reply had not been returned, and was, on the contrary, of opinion that it was Mr. Fish who had not communicated to him the decision at which the Government of the United States had arrived with regard to the omission of the word "open" in the note to the maritime Powers which had been suggested by Her Majesty's Government.

It then appeared that Mr. Fish was referring to a note addressed by him to Mr. Pakenham of the 3rd of November, 1871, inclosing a counter-draft. Sir E. Thornton reminded Mr. Fish that, in January 1872, he had read to Mr. Fish my despatch of the 23rd of November, 1871, giving reasons for the omission of the word "open," and had delivered to him a copy of that despatch at his request. Mr. Fish denied that this was an official communication, and maintained that his note to Her Majesty's Legation was the last official communication upon the subject of the note to the maritime Powers and that it had remained unanswered. Sir E. Thornton expressed his opinion that the reading of my despatch and the delivery of a copy of it were acts quite as official as the transmission of a note. Mr. Fish thought not, and added that, if Sir E. Thornton would address to him a note embodying the contents of my despatch, it was very possible that the Government of the United States might agree to the omission of the word "open." Sir E. Thornton replied that he could not now take such a step without receiving express instructions, for Mr. Fish must be aware that the circumstances of the case were very much changed owing to the discussion which had taken place at Geneva and in England, in Parliament and out of it, as to the interpretation of the Three Rules; but he was convinced that Her Majesty's Government would be ready to consider any suggestions which he might think proper to make as to the mode in which those Rules should be presented to the maritime Powers, and which might be most in accordance with the dignity of the two Governments and might best contribute to the acceptance of the Rules.

Mr. Fish said that, as the two Governments had given it out to the world that they would recommend the adoption of the Rules to other Powers, it appeared undignified to abstain longer from doing so; and urged, after some remarks upon declarations made in Parliament which seemed to him to show a closer agreement between the two Governments on the relation of the Rules to acknowledged International Law than had existed previously, that the correspondence upon the subject should be closed, by Her Majesty's Government either refusing or consenting to join with that of the United States in addressing the invitation to maritime Powers.

On the 5th of July I wrote to Sir E. Thornton that he seemed to have given my message with perfect correctness to Mr. Fish, and there were no grounds to infer from it that I declined submitting the Three Rules to other Powers.

I added that, before I had received his despatch, you had spoken to me on the subject, and said that Mr. Fish was under the impression that we owed him a reply on the question of the submission of the Three Rules. On my telling you the state of the question, you

replied that the misunderstanding probably arose from Sir E. Thornton not having given a copy of the despatch, although he might have read it, to Mr. Fish; and that when afterwards I explained to you what Mr. Fish's complaint was, you seemed to doubt the explanation, admitting that the communication of my despatch was an answer, and a mode of answering which you had often adopted, and that you had said that you would telegraph to Mr. Fish for an explanation.

I observed to Sir E. Thornton that I waited for this explanation before answering his last despatch.

Any delay in my proceeding further in the correspondence arose from subsequent conversations with you, in which you stated that, up to the time of them, you had received no answer from Mr. Fish.

The opinion of the Foreign Office is entirely in accord with that which you yourself held as to the sufficiency of such an official communication of a despatch.

I recur to this point merely for the purpose of clearing away any misapprehension of my position in the matter.

I quite agree with Mr. Fish that it is expedient that the two Governments should decide on the course they will pursue with regard to the submission of the Three Rules to the maritime Powers.

Her Majesty's Government would think it necessary to accompany such a submission with a comment, and they could not in such comment adopt all the principles laid down by the Tribunal of Geneva. This determination they have already made known in public, and it is probably known to the Government of the United States; but Her Majesty's Government are not at present acquainted with the views of the Government of the United States in this matter.

Both Governments agree that it is probable that all the maritime Powers would not accept the Three Rules. Such a refusal would lose much of its importance if the two Governments could agree on the mode in which the two Governments could, with most dignity as regarded themselves, and with the greatest advantage for the future, make the submission.

Her Majesty's Government would give careful consideration to anything suggested on this head by the Government of the United States, in the hope of coming to a satisfactory conclusion.

I am, &c.
(Signed) GRANVILLE.

No. 18.

Earl Granville to Sir E. Thornton.

Sir, *Foreign Office, October 25, 1873.*
I INCLOSE, for your information, copy of a letter, as marked in the margin,* on the subject of the submission of the Three Rules contained in the VIth Article of the Treaty of Washington to the maritime Powers.

I am, &c.
(Signed) GRANVILLE.

No. 19.

Mr. Moran to Earl Granville.—(Received October 29.)

My Lord, *Legation of the United States, London, October 27, 1873.*
I HAVE the honour to acknowledge the receipt, late on Saturday evening the 25th instant, of the despatch which your Lordship addressed that day to General Schenck, on the question of recommending to foreign Powers the adoption of the Three Rules contained in the VIth Article of the Treaty of Washington, of the 8th of May, 1871; and I beg to inform you, that I shall forward a copy of this communication to the Honourable Hamilton Fish, Secretary of State of the United States, by Thursday's steamer.

I shall also send a copy to General Schenck, in France, for his information.

I have, &c.
(Signed) BENJAMIN MORAN.

No. 20.

*Mr. Moran to Earl Granville.—(Received November .)**Legation of the United States, London,
November 1, 1873.*

My dear Lord Granville,

REFERRING to the visit which you did me the honour to pay me this morning, I now return, as requested, the original Memorandum which you then left with me, touching your letter to General Schenck of the 25th ultimo; and I beg to say that I shall send copies of this Memorandum to Mr. Fish and General Schenck to-day.

I am, &c.

(Signed) BENJAMIN MORAN.

Inclosure in No. 20.

*Memorandum.**Foreign Office, November 1, 1873.*

I DID not mean that Her Majesty's Government would in any way propose to fix (without the full concurrence of the Government of the United States) any particular interpretation of the Rules or any part of them, but they would think it necessary to guard themselves against any inference which might possibly be drawn from some parts of the Geneva award: that consequences are involved in the Rules which they have never intended.

(Signed) GRANVILLE.

No. 21.

Earl Granville to Sir E. Thornton.

Sir,

Foreign Office, November 3, 1873.

WITH reference to my despatch of the 25th ultimo, I have to acquaint you that I saw Mr. Moran on the 1st instant, and, speaking of my letter to General Schenck of the 25th of October, I said that I did not feel sure that I had made it sufficiently obvious that I did not mean that Her Majesty's Government would in any way propose to fix (without the full concurrence of the Government of the United States) any particular interpretation of the Rules, or any part of them, but they would think it necessary to guard themselves against any interference which might possibly be drawn from some parts of the Geneva Award, that consequences are involved in the Rules which they never intended.

With regard to this observation, Mr. Moran thought the meaning was obvious in my letter.

I am, &c.

(Signed) GRANVILLE.

No. 22.

Earl Granville to Sir E. Thornton.

Sir,

Foreign Office, February 18, 1874.

I SPOKE to-day to General Schenck on the subject of the presentation of the Three Rules in the Treaty of Washington, concerning which I had just received a despatch from you, and I said that, although now it was of no practical bearing, I was glad to tell him what had been the opinion of Her Majesty's Government, and what I should have said to him some time ago, if his absence from England had not prevented my having an earlier opportunity of doing so.

I regretted that there had been any appearance of dissentiment on the subject between the two Governments, as they were both agreed that it would be better to submit the Rules.

Our desire had only been to do so in the manner most consistent with the dignity of

both countries, and in the way least likely to create the jealousy which was to be apprehended from other countries.

I assumed that the word "open" would disappear from the Rule respecting arms; and stated that the propositions communicated by the Arbitrators at Geneva could not be passed by.

In my opinion, however, it was not desirable to make any comment upon those propositions further than that both Governments should, in submitting the Rules, decline to admit any construction put on them by others.

It also appeared desirable, with regard to the maritime Powers, to state, in submitting the Three Rules for their acceptance, that the Rules embody what, according to recent American statements of the view entertained in the United States, was international law before they were made, and that, although Great Britain did not accede to this proposition, yet we held them to express what we had thought it fit to embody in our own municipal law, and to endeavour to carry into effect through the action of that law, at a time when the Rules did not exist. It would remain for inference, that they do not constitute the innovation which some other Powers might think there was to be found in them.

General Scheñck said that, while he was not instructed or authorized to discuss or determine the form of any identic note which might be agreed on for presenting the Three Rules to the other Powers, yet it seemed to him that they ought to be submitted, and he thought his Government would be inclined to submit them pure and simple without gloss or comment by the two Governments, and without accepting or insisting on any construction or interpretation of them given by others.

I did not in present circumstances think it desirable to prolong the conversation.

I am, &c.
(Signed) GRANVILLE.

NORTH AMERICA. No. 1 (1874).

CORRESPONDENCE with the Government of the
United States respecting the Communication to
other Governments of the Rules of the Treaty of
Washington.

*Presented to both Houses of Parliament by Command
of Her Majesty. 1874.*

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