

SEAL FISHERIES OF THE BEHRING SEA.

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MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

*A letter from the Secretary of State submitting the official correspondence between the Government of the United States and the Government of Great Britain touching the seal fisheries of the Behring Sea since the 19th of July last.*

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JANUARY 6, 1891.—Referred to the Committee on Foreign Affairs.

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*To the House of Representatives :*

In further response to the resolution of the House of Representatives requesting me, if in my judgment not incompatible with the public interest, to furnish to the House the correspondence since March 4, 1889, between the Government of the United States and the Government of Great Britain touching the subjects in dispute in the Behring Sea, I transmit herewith a letter from the Secretary of State, which is accompanied by the correspondence which has taken place since my message of July 23, 1890.

BENJ. HARRISON.

EXECUTIVE MANSION,  
*January 5, 1891.*

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The PRESIDENT:

In response to your direction I submit herewith the official correspondence between the Government of the United States and the Government of Great Britain touching the seal fisheries of the Behring Sea since the 19th of July last.

I am, sir, with great respect, your obedient servant,  
JAMES G. BLAINE.

DEPARTMENT OF STATE,  
*Washington, January 5, 1891.*

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*Lord Salisbury to Sir Julian Pauncefote.*

No. 166.]

FOREIGN OFFICE, August 2, 1890.

SIR: I have received and laid before the Queen your dispatch No. 101 of the 1st ultimo, forwarding a copy of a note from Mr. Blaine, in which he maintains that the United States have derived from Russia rights of jurisdiction over the waters of Behring's Sea to a distance of 100 miles from the coasts transferred to them under the treaty of the 30th March, 1867.

In replying to the arguments to the contrary effect contained in my dispatch No. 106A of the 22d May, Mr. Blaine draws attention to certain expressions which I had omitted for the sake of brevity in quoting from Mr. Adams's dispatch of the 22d July, 1823. He contends that these words give a different meaning to the dispatch, and that the latter does not refute but actually supports the present claim of the United States. It becomes necessary, therefore, that I should refer in greater detail to the correspondence, an examination of which will show that the passage in question can not have the significance which Mr. Blaine seeks to give to it, that the words omitted by me do not in reality affect the point at issue, and that the view which he takes of the attitude both of Great Britain and of the United States towards the claim put forward by Russia in 1822 can not be reconciled with the tenor of the dispatches.

It appears from the published papers that in 1799 the Emperor, Paul I, granted by charter to the Russian-American Company the exclusive right of hunting, trade, industries, and discoveries of new land on the northwest coast of America, from Behring's Strait to the fifty-fifth degree of north latitude, with permission to the company to extend their discoveries to the south and to form establishments there, provided they did not encroach upon the territory occupied by other powers.

The southern limit thus provisionally assigned to the company corresponds, within 20 or 30 miles, with that which was eventually agreed upon as the boundary between the British and Russian possessions. It comprises not only the whole American coast of Behring's Sea, but a long reach of coast line to the south of the Alaskan peninsula as far as the level of the southern portion of Prince of Wales' Island.

The charter, which was issued at a time of great European excitement, attracted apparently little attention at the moment and gave rise to no remonstrance. It made no claim to exclusive jurisdiction over the sea, nor do any measures appear to have been taken under it to restrict the commerce, navigation, or fishery of the subjects of foreign nations. But in September, 1821, the Russian Government issued a fresh ukase, of which the provisions material to the present discussion were as follows:

SECTION 1. The pursuits of commerce, whaling, and fishing, and of all other industry, on all islands, ports, and gulfs, including the whole of the northwest coast of America, beginning from Behring's Strait to the 51st degree of northern latitude; also from the Aleutian Islands to the eastern coast of Siberia, as well as along the Kurile Islands from Behring's Strait to the south cape of the Island of Urap, viz, to 45° 50' northern latitude, are exclusively granted to Russian subjects.

SEC. 2. It is therefore prohibited to all foreign vessels not only to land on the coasts and islands belonging to Russia, as stated above, but also to approach them within less than 100 Italian miles. The transgressor's vessel is subject to confiscation, along with the whole cargo.

By this ukase the exclusive dominion claimed by Russia on the American continent was pushed some 250 miles to the south as far as

Vancouver Island, and notice was for the first time given of a claim to maritime jurisdiction which was regarded both in England and the United States as extravagant, or, to use Lord Stowell's description of it, "very unmeasured and insupportable."

Upon receiving communication of the ukase the British and United States' Governments at once objected both to the extension of the territorial claim and to the assertion of maritime jurisdiction. For the present I will refer only to the protest of the United States Government. This was made in a note from Mr. John Quincy Adams, then Secretary of State, to the Russian representative, dated the 25th February, 1822, which contains the following statement:

I am directed by the President of the United States to inform you that he has seen with surprise in this edict the assertion of a territorial claim on the part of Russia extending to the fifty-first degree of north latitude on this continent, and a regulation interdicting to all commercial vessels other than Russian, upon the penalty of seizure and confiscation, the approach upon the high seas within 100 Italian miles of the shores to which that claim is made to apply. The relations of the United States with His Imperial Majesty have always been of the most friendly character, and it is the earnest desire of this Government to preserve them in that state. It was expected, before any act which should define the boundary between the territories of the United States and Russia on this continent, that the same would have been arranged by treaty between the parties. To exclude the vessels of our citizens from the shore, beyond the ordinary distance to which the territorial jurisdiction extends, has excited still greater surprise.

This ordinance affects so deeply the rights of the United States and of their citizens that I am instructed to inquire whether you are authorized to give explanations of the grounds of right, upon principles generally recognized by the laws and usages of nations, which can warrant the claims and regulations contained in it.

The Russian representative replied at length, defending the territorial claim on grounds of discovery, first occupation, and undisturbed possession, and explaining the motive "which determined the Imperial Government to prohibit foreign vessels from approaching the northwest coasts of America belonging to Russia within the distance of at least 100 Italian miles. This measure," he said, "however severe it may at first view appear, is after all but a measure of prevention." He went on to say that it was adopted in order to put a stop to an illicit trade in arms and ammunition with the natives, against which the Russian Government had frequently remonstrated; and further on he observed:

I ought, in the last place, to request you to consider, sir, that the Russian possessions in the Pacific Ocean extend, on the northwest coast of America, from Behring's Strait to the fifty-first degree of north latitude, and on the opposite side of Asia and the islands adjacent, from the same strait to the forty-fifth degree. The extent of sea of which these possessions form the limits comprehends all the conditions which are ordinarily attached to *shut seas* ('mers fermées'), and the Russian Government might, consequently, judge itself authorized to exercise upon this sea the right of sovereignty, and especially that of entirely interdicting the entrance of foreigners. But it preferred only asserting its essential rights, without taking any advantage of localities.

To this Mr. Adams replied (30th March, 1822), pointing out that the only ground given for the extension of the Russian territorial claim was the establishment of a settlement, not upon the continent, but upon a small island actually within the limits prescribed to the Russian American Company in 1799, and he went on to say:

This pretension is to be considered not only with reference to the question of territorial right, but also to that prohibition to the vessels of other nations, including those of the United States, to approach within 100 Italian miles of the coasts. From the period of the existence of the United States as an independent nation their vessels have freely navigated those seas, and the right to navigate them is a part of that independence.

With regard to the suggestion that the Russian Government might have justified the exercise of sovereignty over the Pacific Ocean as a close sea, because it claims territory both on its American and Asiatic shores, it may suffice to say that the distance from shore to shore on this sea, in latitude  $51^{\circ}$  north, is not less than  $90^{\circ}$  of longitude, or 4,000 miles.

The Russian representative replied to this note, endeavoring to prove that the territorial rights of Russia on the northwest coast of America were not confined to the limits of the concession granted to the Russian American Company in 1799, and arguing that the great extent of the Pacific Ocean at the fifty-first degree of latitude did not invalidate the right which Russia might have to consider that part of the ocean as closed. But he added that further discussion of this point was unnecessary, as the Imperial Government had not thought fit to take advantage of that right.

The correspondence then dropped for a time, to be resumed in the following spring. But it is perfectly clear from the above that the privileges granted to the Russian American Company in 1799, whatever effect that may have had as regards other Russian subjects, did not operate to exclude American vessels from any part of the coast, and that the attempt to exclude them in 1821 was at once resisted. Further, that the Russian Government had no idea of any distinction between Behring's Sea and the Pacific Ocean, which latter they considered as reaching southward from Behring's Straits. Nor throughout the whole of the subsequent correspondence is there any reference whatever on either side to any distinctive name for Behring's Sea, or any intimation that it could be considered otherwise than as forming an integral part of the Pacific Ocean.

I now come to the dispatch from Mr. Adams to Mr. Middleton of the 22d of July, 1823, to which reference has before been made, and which it will be necessary to quote somewhat at length. After authorizing Mr. Middleton to enter upon a negotiation with the Russian ministers concerning the differences which had arisen from the ukase of the 4th (16th) September, 1821, Mr. Adams continues:

From the tenor of the ukase, the pretensions of the Imperial Government extend to an exclusive territorial jurisdiction from the forty-fifth degree of north latitude, on the Asiatic coast, to the latitude of  $51^{\circ}$  north on the western coast of the American continent; and they assume the right of interdicting the navigation and the fishery of all other nations to the extent of 100 miles from the whole of that coast.

The United States can admit no part of these claims. Their right of navigation and of fishing is perfect, and has been in constant exercise from the earliest times, after the peace of 1783, throughout the whole extent of the Southern Ocean, subject only to the ordinary exceptions and exclusions of the territorial jurisdictions, which, so far as Russian rights are concerned, are confined to certain islands north of the fifty-fifth degree of latitude, and have no existence on the continent of America.

Mr. Blaine has argued at great length to show that when Mr. Adams used these clear and forcible expressions he did not mean what he seemed to say; that when he stated that the United States "could admit no part of these claims," he meant that they admitted all that part of them which related to the coast north of the Aleutian Islands; that when he spoke of the Southern Ocean, he meant to except Behring's Sea; and that when he contended that the ordinary exceptions and exclusions of the territorial jurisdictions had no existence, so far as Russian rights were concerned, on the continent of America, he used the latter term not in a geographical but in a "territorial" sense, and tacitly excepted, by a very singular *petitio principii*, the Russian possessions. In order to carry out this theory, it is necessary for him also to assume that the negotiators in the course of the discussions made indiscriminate use of the term "northwest coast of America," with a variety

of signification which he admits to be "confusing, and, at certain points, apparently contradictory and irreconcilable."

The reputation of the American statesmen and diplomatists of that day for caution and precision affords of itself strong argument against such a view, and even if this had been otherwise, so forced a construction would require very strong evidence to confirm it. But a glance at the rest of the dispatch and at the other papers will show that the more simple interpretation of the words is the correct one. For Mr. Adams goes on to say:

The correspondence between M. Poletica and this Department contained no discussion of the principles or of the facts upon which he attempted the justification of the imperial ukase. This was purposely avoided on our part, under the expectation that the Imperial Government could not fail, upon a review of the measure, to revoke it altogether. It did, however, excite much public animadversion in this country, as the ukase itself had already done in England. I inclose herewith the North American Review for October, 1822, No. 37, which contains an article (page 370) written by a person fully master of the subject; and for the view of it taken in England I refer you to the fifty-second number of the Quarterly Review, the article upon Lieutenant Kotzebue's voyages. From the article in the North American Review it will be seen that the rights of discovery, of occupancy, and of uncontested possession alleged by M. Poletica are all without foundation in fact. \* \* \*

On reference to the last-mentioned article, it will be found that the writer states that:

A trade to the northwestern coast of America and the free navigation of the waters that wash its shores have been enjoyed as a common right by subjects of the United States and of several European powers without interruption for nearly forty years. We are by no means prepared to believe or admit that all this has been on sufferance merely, and that the *rights* of commerce and navigation in that region have been vested in Russia alone.

Further on he puts the question in the following manner (the italics are his own):

It is not, we apprehend, whether Russia has any settlements that give her territorial claims on the continent of America. This we do not deny. But it is *whether the location of those settlements and the discoveries of their navigators are such as they are represented to be; whether they entitled her to the exclusive possession of the whole territory north of 51° and to sovereignty over the Pacific Ocean beyond that parallel.*

These passages sufficiently illustrate Mr. Adams's meaning, if any evidence be required that he used plain language in its ordinary sense. Clearly he meant to deny that the Russian settlements or discoveries gave Russia any claim as of right to exclude the navigation or fishery of other nations from any part of the seas on the coast of America, and that her rights in this respect were limited to the territorial waters of certain islands of which she was in permanent and complete occupation.

Having distinctly laid down this proposition as regards the rights of the case, Mr. Adams went on to state what the United States were ready to agree to as a matter of conventional arrangement. He said:

With regard to the territorial claim separate from the right of traffic with the natives and from any system of colonial exclsions, we are willing to agree to the boundary line within which the Emperor, Paul, had granted exclusive privileges to the Russian-American Company, that is to say, latitude 55°.

If the Russian Government apprehend serious inconvenience from the illicit traffic of foreigners with their settlements on the northwest coast, it may be effectually guarded against by stipulations similar to those a draft of which is herewith subjoined, and to which you are authorized, on the part of the United States, to agree.

The draft convention was as follows:

#### DRAFT OF TREATY BETWEEN THE UNITED STATES AND RUSSIA.

ARTICLE I. In order to strengthen the bonds of friendship, and to preserve in future a perfect harmony and good understanding between the contracting parties, it is

agreed that their respective citizens and subjects shall not be disturbed or molested, either in navigating or in carrying on their fisheries in the Pacific Ocean or in the South Seas, or in landing on the coasts of those seas, in places not already occupied, for the purpose of carrying on their commerce with the natives of the country, subject, nevertheless, to the restrictions and provisions specified in the two following articles.

ART. II. To the end that the navigation and fishery of the citizens and subjects of the contracting parties, respectively, in the Pacific Ocean or in the South Seas may not be made a pretext for illicit trade with their respective settlements, it is agreed that the citizens of the United States shall not land on any part of the coast actually occupied by Russian settlements, unless by permission of the governor or commander thereof, and that Russian subjects shall, in like manner, be interdicted from landing without permission at any settlement of the United States on the said northwest coast.

ART. III. It is agreed that no settlement shall be made hereafter on the northwest coast of America by citizens of the United States, or under their authority, north, nor by Russian subjects, or under the authority of Russia, south, of the 55th degree of north latitude.

In an explanatory dispatch to Mr. Rush, the American minister in London, same date, Mr. Adams says:

The right of carrying on trade with the natives throughout the northwest coast they (the United States) can not renounce. With the Russian settlements at Kodiak, or at New Archangel, they may fairly claim the advantage of a free trade, having so long enjoyed it unmolested, and because it has been and would continue to be as advantageous at least to those settlements as to them. But they will not contest the right of Russia to prohibit the traffic, as strictly confined to the Russian settlement itself, and not extending to the original natives of the coast. \* \* \*

It is difficult to conceive how the term "northwest coast of America," used here and elsewhere, can be interpreted otherwise than as applying to the northwest coast of America generally, or how it can be seriously contended that it was meant to denote only the more westerly portion, excluding the more northwesterly part, because by becoming a Russian possession this latter had ceased to belong to the American continent.

Mr. Blaine states that when Mr. Middleton declared that Russia had no right of exclusion on the coasts of America between the fiftieth and sixtieth degrees of north latitude, nor in the seas which washed those coasts, he intended to make a distinction between Behring's Sea and the Pacific Ocean. But upon reference to a map it will be seen that the sixtieth degree of north latitude strikes straight across Behring's Sea, leaving by far the larger and more important part of it to the south, so that I confess it appears to me that by no conceivable construction of his words can Mr. Middleton be supposed to have excepted that sea from those which he declared to be free.

With regard to the construction which Mr. Blaine puts upon the treaty between the United States and Russia of the 17th April, 1824, I will only say that it is, as far as I am aware, an entirely novel one, that there is no trace of its having been known to the various publicists who have given an account of the controversy in treaties on international law, and that it is contrary, as I shall show, to that which the British negotiators placed on the treaty when they adopted the first and second articles for insertion in the British treaty of the 28th February, 1825. I must further dissent from his interpretation of Article VII of the latter treaty. That article gives to the vessels of the two powers "liberty to frequent all the inland seas, gulfs, havens, and creeks on the coast mentioned in Article III for the purpose of fishing and of trading with the natives." The expression "coast mentioned in Article III" can only refer to the first words of the article: "The line of demarcation between the possessions of the high contracting parties upon the coast of the continent and the island of America to the northwest shall be drawn,"

etc. That is to say, it included all the possessions of the two powers on the north west coast of America. For there would have been no sense whatever in stipulating that Russian vessels should have freedom of access to the small portion of coast which, by a later part of the article, is to belong to Russia. And as bearing on this point it will be noticed that Article VI, which has a more restricted bearing, speaks only of "the subjects of His Britannic Majesty" and of "the *line of coast described in Article III.*"

The stipulations of the treaty were formally renewed by articles inserted in the general treaties of commerce between Great Britain and Russia of 1843 and 1859. But Mr. Blaine states that—

The rights of the Russian-American Company which, under both ukases, included the sovereignty over the sea to the extent of 100 miles from the shores, were reserved by special clause in a separate and special article signed after the principal articles of the treaty had been concluded and signed.

Upon this I have to observe, in the first place, that the ukase of 1799 did not contain any mention whatever of sovereignty over the sea; secondly, that the context of the separate article is such as altogether to preclude the interpretation that it was meant to recognize the objectionable claim contained in the ukase of 1821. I will quote the article at length :

#### SEPARATE ARTICLE II.

It is understood in like manner that the exceptions, immunities, and privileges hereinafter mentioned shall not be considered as at variance with the principle of reciprocity which forms the basis of the treaty of this date, that is to say :

1. The exemption from navigation dues during the first three years which is enjoyed by vessels built in Russia and belonging to Russian subjects.
2. The exemptions of the like nature granted in the Russian ports of the Black Sea, the sea of Azof, and the Danube to such Turkish vessels arriving from ports of the Ottoman Empire situated on the Black Sea as do not exceed 80 lasts burden.
3. The permission granted to the inhabitants of the coast of the Government of Archangel to import duty free, or on payment of moderate duties, into ports of the said government dried or salted fish, as likewise certain kinds of furs, and to export therefrom, in the same manner, corn, rope and cordage, pitch, and ravenstuck.
4. The privilege of the Russian-American Company.
5. The privilege of the steam navigation companies of Lubeck and Havre; lastly,
6. The immunities granted in Russia to certain English companies, called "yacht clubs."

To suppose that under the simple words "the privilege of the Russian-American Company," placed in connection with the privilege of French and German steam navigation companies and the immunities of yacht clubs, it was intended to acknowledge a claim of jurisdiction against which Her Majesty's Government had formally protested as contrary to international law, and which it had avowedly been one of the main objects of the treaty of 1825 to extinguish, is a suggestion too improbable to require any lengthened discussion.

But Her Majesty's Government did not of course agree to the article without knowing what was the exact nature of the privileges thus excepted from reciprocity. They had received from the Russian ambassador, in December 1842, an explanatory memorandum on this subject, of which the following is the portion relating to the Russian-American Company:

#### IV.

La Compagnie Russe-Américaine a le privilège d'expédier francs de droits: de Cronstadt autour du monde et d'Ochotsk dans les Colonies Russes, les produits Russes ainsi que les marchandises étrangères dont les droits ont déjà été prélevés; de même d'importer au retour de ces Colonies les cargaisons de pelleteries et d'autres

produits de ces Colonies, sans payer aucun droit si d'après les lois générales il n'est pas établi d'impôt particulier intérieur sur les marchandises de pelleterie.

*Observation.*—D'après le Tarif en vigueur, l'importation des fourrures dans les ports de St.-Petersbourg et d'Archangel, de production Russe et sur des vaisseaux Russes, est admise sans droits.

It is surely incredible that if the privilege of the Russian-American Company did comprise a right of excluding vessels from approaching within 100 miles of the shore it should not even have been alluded to in this explanation.

Nor is it possible to agree in Mr. Blaine's view that the exclusion of foreign vessels for a distance of 100 miles from the coast remained in force pending the negotiations and in so far as it was not modified by the conventions. A claim of jurisdiction over the open sea, which is not in accordance with the recognized principles of international law or usage, may of course be asserted by force, but can not be said to have any legal validity as against the vessels of other countries, except in so far as it is positively admitted by conventional agreements with those countries.

I do not suppose that it is necessary that I should argue at length upon so elementary a point as that a claim to prohibit the vessels of other nations from approaching within a distance of 100 miles from the coast is contrary to modern international usage. Mr. Adams and Mr. Canning clearly thought in 1823 that the matter was beyond doubt or discussion.

The rule which was recognized at that time, and which has been generally admitted both by publicists and governments, limits the jurisdiction of a country in the open sea to a distance of 3 miles from its coasts, this having been considered to be the range of a cannon shot when the principle was adopted.

Wheaton, who may be regarded as a contemporary authority, equally respected in Europe and America, says:

The maritime territory of every State extends to the ports, harbors, bays, mouths of rivers, and adjacent parts of the sea inclosed by headlands belonging to the same State. The general usage of nations superadds to this extent of territorial jurisdiction a distance of a marine league, or as far as a cannon shot will reach from the shore along all the coasts of the State.

And again:

The rule of law on this subject is *terra dominium finitur ubi finitur armorum vis*; and since the introduction of fire-arms that distance has usually been recognized to be about 3 miles from the shore.

Chancellor Kent, who is inclined to advocate a more extended limit, still admits that—

According to the current of modern authority, the general territorial jurisdiction extends into the sea as far as cannon-shot will reach, and no farther; and this is generally calculated to be a marine league.

Calvo, one of the most recent text writers, makes a corresponding statement:

Les limites juridictionnelles d'un État embrassent non seulement son territoire, mais encore les eaux qui le traversent ou l'entourent, les ports, les baies, les golfes, les embouchures des fleuves et les mers enclavées dans son territoire. L'usage général des nations permet également aux États d'exercer leur juridiction sur la zone maritime jusqu'à 3 milles marins ou à la portée de canon de leurs côtes.

But I need scarcely appeal to any other authority than that of the United States Government itself.

In a note to the Spanish minister, dated the 16th December, 1862,



on the subject of the Spanish claim to a 6-mile limit at sea, Mr. Seward stated:\*

A third principle bearing on the subject is also well established, namely, that this exclusive sovereignty of a nation—thus abridging the universal liberty of the seas—extends no farther than the power of the nation to maintain it by force, stationed on the coast, extends. This principle is tersely expressed in the maxim "*terre dominium finitur ubi finitur armorum vis.*"

But it must always be a matter of uncertainty and dispute at what point the force of arms, exerted on the coast, can actually reach. The publicists rather advanced towards than reached a solution when they laid down the rule that the limit of the force is the range of a cannon ball. The range of a cannon ball is shorter or longer according to the circumstances of projection, and it must be always liable to change with the improvement of the science of ordnance. Such uncertainty upon a point of jurisdiction or sovereignty would be productive of many and endless controversies and conflicts. A more practical limit of national jurisdiction upon the high seas was indispensably necessary, and this was found, as the undersigned thinks, in fixing the limit at 3 miles from the coast. This limit was early proposed by the publicists of all maritime nations. While it is not insisted that all nations have accepted or acquiesced and bound themselves to abide by this rule when applied to themselves, yet three points involved in the subject are insisted upon by the United States:

1. That this limit has been generally recognized by nations;
2. That no other general rule has been accepted; and
3. That if any State has succeeded in fixing for itself a larger limit, this has been done by the exercise of maritime power, and constitutes an exception to the general understanding which fixes the range of a cannon shot (when it is made the test of jurisdiction) at 3 miles. So generally is this rule accepted, that writers commonly use the expressions of a range of cannon shot and 3 miles as equivalents of each other. In other cases, they use the latter expression as a substitute for the former.

And in a later communication on the same subject of the 10th August, 1863, he observes:

Nevertheless, it can not be admitted, nor indeed is Mr. Tassara understood to claim, that the mere assertion of a sovereign, by an act of legislation however solemn, can have the effect to establish and fix its external maritime jurisdiction. His right to a jurisdiction of 3 miles is derived, not from his own decree, but from the law of nations, and exists, even though he may never have proclaimed or asserted it by any decree or declaration whatsoever. He can not, by a mere decree, extend the limit and fix it at 6 miles, because, if he could, he could in the same manner and upon motives of interest, ambition, or even upon caprice, fix it at 10, or 20, or 50 miles without the consent or acquiescence of other powers which have a common right with himself in the freedom of all the oceans. Such a pretension could never be successfully or rightfully maintained.

The same principles were laid down in a note addressed to Sir E. Thornton by Mr. Fish, then Secretary of State, on the 22d January, 1875. Mr. Fish there stated:

We have always understood and asserted that pursuant to public law no nation can rightfully claim jurisdiction at sea beyond a marine league from the coast.

He then went on to explain the only two exceptions that were apparently known to him so far as the United States were concerned: Certain revenue laws which admitted the boarding of vessels at a distance of 4 leagues from the coast, which, he said, had never been so applied in practice as to give rise to complaint on the part of a foreign government; and a treaty between the United States and Mexico of 1848, in which the boundary line between the two States was described as beginning in the Gulf of Mexico 3 leagues from land. As regards this stipulation, he observed that it had been explained at the time that it could only affect the rights of Mexico and the United States, and was never intended to trench upon the rights of Great Britain or of any other power under the law of nations.

It would seem, therefore, that Mr. Fish was entirely unaware of the exceptional jurisdiction in Behring's Sea, which is now said to have

\* Wharton's International Law Digest, vol. i, §32.

been conceded by the United States to Russia from 1823 to 1867, transferred to the United States, so far as the American coast was concerned, only eight years before he wrote, and which would presumably be still acknowledged by them as belonging to Russia on the Asiatic shore. I must suppose that when Mr. Blaine states that "both the United States and Great Britain recognized, respected, obeyed" the ukase of 1821, in so far as it affected Behring's Sea, he has some evidence to go upon in regard to the conduct of his country which is unknown to the world at large, and which he has not as yet produced. But I must be allowed altogether to deny that the attitude of Great Britain was such as he represents, or that she ever admitted by act or by sufferance the extraordinary claim of maritime jurisdiction which that ukase contained.

The inclosed copies of correspondence, extracted from the archives of this office, make it very difficult to believe that Mr. Blaine has not been altogether led into error. It results from them that not only did Her Majesty's Government formally protest against the ukase on its first issue as contrary to the acknowledged law of nations, but that the Russian Government gave a verbal assurance that the claim of jurisdiction would not be exercised. In the subsequent negotiations great importance was attached to obtaining a more formal disavowal of the claim in the manner least hurtful to Russian susceptibilities but so as effectually to preclude its revival. And this security the British Government undoubtedly considered that both they and the United States had obtained by the conventions of 1824 and 1825.

Upon this point the instructions given by Mr. George Canning to Mr. Stratford Canning, when the latter was named plenipotentiary to negotiate the treaty of 1825, have a material bearing.

Writing under date of the 8th December, 1824, after giving a summary of the negotiations up to that date, he goes on to say—

It is comparatively indifferent to us whether we hasten or postpone all questions respecting the limits of territorial possession on the continent of America, but the pretensions of the Russian ukase of 1821, to exclusive dominion over the Pacific, could not continue longer unrepealed without compelling us to take some measure of public and effectual remonstrance against it.

You will, therefore, take care in the first instance to repress any attempt to give this change to the character of the negotiation, and will declare, without reserve, that the point to which alone the solicitude of the British Government and the jealousy of the British nation attach any great importance is the doing away (in a manner as little disagreeable to Russia as possible) of the effect of the ukase of 1821.

That this ukase is not acted upon, and that instructions have long ago been sent by the Russian Government to their cruisers in the Pacific to suspend the execution of its provisions is true, but a private disavowal of a published claim is no security against the revival of that claim; the suspension of the execution of a principle may be perfectly compatible with the continued maintenance of the principle itself.

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The right of the subjects of His Majesty to navigate freely in the Pacific can not be held as a matter of indulgence from any power. Having once been publicly questioned it must be publicly acknowledged.

We do not desire that any distinct reference should be made to the ukase of 1821, but we do feel it necessary that the statement of our right should be clear and positive, and that it should stand forth in the convention in the place which properly belongs to it as a plain and substantive stipulation, and not be brought in as an incidental consequence of other arrangements to which we attach comparatively little importance.

This stipulation stands in the grant of the convention concluded between Russia and the United States of America, and we see no reason why, upon similar claims, we should not obtain exactly the like satisfaction.

For reasons of the same nature we can not consent that the liberty of navigation through Behring's Straits should be stated in the treaty as a boon from Russia.

The tendency of such a statement would be to give countenance to those claims of

exclusive jurisdiction against which we, on our own behalf and on that of the whole civilized world, protest.

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It will of course strike the Russian plenipotentiaries that, by the adoption of the American article respecting navigation, etc., the provision for an exclusive fishery of 2 leagues from the coasts of our respective possessions falls to the ground.

But the omission is, in truth, immaterial.

The law of nations assigns the exclusive sovereignty of 1 league to each power off its own coasts without any specified stipulation, and though Sir Charles Bagot was authorized to sign the convention with the specific stipulation of 2 leagues in ignorance of what had been decided in the American convention at the time, yet after that convention has been some months before the world, and after the opportunity of reconsideration has been forced upon us by the act of Russia herself, we can not now consent, in negotiating *de novo*, to a stipulation which, while it is absolutely unimportant to any practical good, would appear to establish a contract between the United States and us to our disadvantage.

Mr. Stratford Canning, in his dispatch of the 1st March, 1825, inclosing the convention as signed, says :

With respect to Behring's Straits I am happy to have it in my power to assure you, on the joint authority of the Russian plenipotentiaries, that the Emperor of Russia has no intention whatever of maintaining any exclusive claim to the navigation of these straits or of the seas to the north of them.

These extracts show conclusively (1) that England refused to admit any part of the Russian claim asserted by the ukase of 1821 to a maritime jurisdiction and exclusive right of fishing throughout the whole extent of that claim, from Behring's Straits to the fifty-first parallel; (2) that the convention of 1825 was regarded on both sides as a renunciation on the part of Russia of that claim in its entirety, and (3) that though Behring's Straits was known and specifically provided for, Behring's Sea was not known by that name, but was regarded as part of the Pacific Ocean.

The answer, therefore, to the questions with which Mr. Blaine concludes his dispatch is that Her Majesty's Government have always claimed the freedom of navigation and fishing in the waters of Behring's Sea outside the usual territorial limit of 1 marine league from the coast; that it is impossible to admit that a public right to fish, catch seals, or pursue any other lawful occupation on the high seas can be held to be abandoned by a nation from the mere fact that for a certain number of years it has not suited the subjects of that nation to exercise it.

It must be remembered that British Columbia has come into existence as a colony at a comparatively recent date, and that the first considerable influx of population, some thirty years ago, was due to the discovery of gold, and did not tend to an immediate development of the shipping interest.

I have to request that you will communicate a copy of this dispatch, and of its inclosures, to Mr. Blaine. You will state that Her Majesty's Government have no desire whatever to refuse to the United States any jurisdiction in Behring's Sea which was conceded by Great Britain to Russia, and which properly accrues to the present possessors of Alaska in virtue of treaties or the law of nations; and that if the United States Government, after examination of the evidence and arguments which I have produced, still differ from them as to the legality of the recent captures in that sea, they are ready to agree that the question, with the issues that depend upon it, should be referred to impartial arbitration. You will in that case be authorized to consider, in concert with Mr. Blaine, the method of procedure to be followed.

I have, etc.,

SALISBURY.

[Inclosure 1.]

*Lord Londonderry to Count Lieven.*FOREIGN OFFICE, *January 18, 1822.*

The undersigned has the honor hereby to acknowledge the note addressed to him by Baron de Nicolai, of the 12th November last, covering a copy of an ukase issued by His Imperial Majesty the Emperor of all the Russias, and bearing date the 4th September, 1821, for various purposes therein set forth, especially connected with the territorial rights of his Crown on the northwestern coast of America bordering upon the Pacific and the commerce and navigation of His Imperial Majesty's subjects in the seas adjacent thereto.

This document, containing regulations of great extent and importance, both in its territorial and maritime bearings, has been considered with the utmost attention and with those favorable sentiments which His Majesty's Government always bears towards the acts of a State with which His Majesty has the satisfaction to feel himself connected by the most intimate ties of friendship and alliance, and having been referred for the report of those high legal authorities whose duty it is to advise His Majesty on such matters, the undersigned is directed, till such friendly explanations can take place between the two governments as may obviate misunderstanding upon so delicate and important a point, to make such provisional protest against the enactments of the said ukase as may fully serve to save the rights of His Majesty's Crown, and may protect the persons and properties of His Majesty's subjects from molestation in the exercise of their lawful callings in that quarter of the globe.

The undersigned is commanded to acquaint Count Lieven that, it being the King's constant desire to respect and cause to be respected by his subjects, in the fullest manner, the Emperor of Russia's just rights, His Majesty will be ready to enter into amicable explanations upon the interests affected by this instrument in such manner as may be most acceptable to His Imperial Majesty.

In the mean time, upon the subject of this ukase generally, and especially upon the two main principles of claim laid down therein, viz, an exclusive sovereignty alleged to belong to Russia over the territories therein described, as also the exclusive right of navigating and trading within the maritime limits therein set forth, His Britannic Majesty must be understood as hereby reserving all his rights, not being prepared to admit that the intercourse which is allowed on the face of this instrument to have hitherto subsisted on those coasts and in those seas can be deemed to be illicit; or that the ships of friendly powers, even supposing an unqualified sovereignty was proved to appertain to the Imperial Crown, in these vast and very imperfectly occupied territories could, by the acknowledged law of nations, be excluded from navigating within the distance of 100 Italian miles, as therein laid down, from the coast, the exclusive dominion of which is assumed (but as His Majesty's Government conceive in error) to belong to His Imperial Majesty, the Emperor of all the Russias.

LONDONDERRY.

[Inclosure 2.]

*Memorandum by the Duke of Wellington.—(September 11, 1822.)*

In the course of a conversation which I had yesterday with Count Lieven, he informed that he had been directed to give verbal explanations of the ukase respecting the northwestern coast of America. These explanations went, he said, to this, that the Emperor did not propose to carry into execution the ukase in its extended sense; that His Imperial Majesty's ships had been directed to cruise at the shortest possible distance from the shore in order to supply the natives with arms and ammunition, and in order to warn all vessels that that was his Imperial Majesty's dominion, and that His Imperial Majesty had besides given directions to his minister in the United States to agree upon a treaty of limits with the United States.

[Inclosure 3.]

*Mr. G. Canning to the Duke of Wellington.*FOREIGN OFFICE, *September 27, 1822.*

MY LORD DUKE: Your grace is already in possession of all that has passed, both here and at St. Petersburg, on the subject of the issue, in September of last year, by the Emperor of Russia, of an ukase, indirectly asserting an exclusive right of sovereignty from Behring's Straits to the fifty-first degree of north latitude on the west

coast of America, and to the forty-fifth degree north on the opposite coast of Asia, and (as a qualified exercise of that right) prohibiting all foreign ships, under pain of confiscation, from approaching within 100 Italian miles of those coasts. This ukase having been communicated by Baron Nicolai, the Russian chargé d'affaires at this court, to His Majesty's Government, was forthwith submitted to the legal authorities whose duty it is to advise His Majesty on such matters, and a note was in consequence addressed by the late Marquis of Londonderry to Count Lieven, the Russian ambassador, and also communicated to His Majesty's ambassador at St. Petersburg, protesting against the enactments of the said ukase, and requesting such amicable explanations as might tend to reconcile the pretensions of Russia in that quarter of the globe with the just rights of His Majesty's Crown and the interests of his subjects. As such explanations will probably be offered to your grace during the conferences about to take place at Vienna, I hasten to signify to you the King's commands as to the language which you will hold on the part of His Majesty upon this subject.

The opinions given in November and December last by Lord Stowell and by His Majesty's advocate-general (copies of which are already in your possession) will furnish you with the best legal arguments in opposition to the pretensions put forward in the Russian ukase; and as in both these opinions much stress is very properly laid upon the state of actual occupation of the territories claimed by Russia, and the different periods of time at which they were so occupied, I have obtained from the governor of the principal company of His Majesty's subjects trading in that part of the world the information of which your grace will find in the inclosed papers.

That information will enable you sufficiently to prove to the Russian minister not only that the point of prior discovery may be fairly disputed with Russia, but that the much more certain title of actual occupation by the agents and the trading servants of the Hudson's Bay Company extends at this moment to many degrees of higher latitude on the northwest coast of America than is claimed as the territory of Russia by the ukase in question.

Enlightened statesmen and jurists have long held as insignificant all titles of territory that are not founded on actual occupation, and that title is, in the opinion of the most esteemed writers on public law, to be established only by practical use.

With respect to the other points in the ukase which have the effect of extending the territorial rights of Russia over the adjacent seas to the unprecedented distance of 100 miles from the line of coast, and of closing a hitherto unobstructed passage, at the present moment the object of important discoveries for the promotion of general commerce and navigation, these pretensions are considered by the best legal authorities as positive innovations on the rights of navigation; as such they can receive no explanation from further discussion, nor can by possibility be justified. Common usage, which has obtained the force of law, has indeed assigned to coasts and shores an accessorial boundary to a short limited distance for the purposes of protection and general convenience, in no manner interfering with the rights of others and not obstructing the freedom of general commerce and navigation. But this important qualification the extent of the present claim entirely excludes, and when such a prohibition is, as in the present case, applied to a long line of coasts and also to intermediate islands in remote seas, where navigation is beset with innumerable and unforseen difficulties and where the principal employment of the fisheries must be pursued under circumstances which are incompatible with the prescribed courses, all particular considerations concur, in an especial manner, with the general principle in repelling such a pretension as an encroachment on the freedom of navigation and the unalienable rights of all nations.

I have, indeed, the satisfaction to believe, from a conference which I have had with Count Lieven on this matter, that upon these two points—the attempt to shut up the passage altogether, and the claim of exclusive dominion to so enormous a distance from the coast—the Russian Government are prepared entirely to waive their pretensions. The only effort that has been made to justify the latter claim was by reference to an article in the treaty of Utrecht, which assigns 30 leagues from the coast as the distance of prohibition. But to this argument it is sufficient to answer that the assumption of such a space was, in the instance quoted, by stipulation in a treaty, and one to which, therefore, the party to be affected by it had (whether wisely or not) given its deliberate consent. No inference could be drawn from that transaction in favor of a claim by authority against all the world.

I have little doubt, therefore, but that the public notification of the claim to consider the portions of the ocean included between the adjoining coasts of America and the Russian Empire as a *mare clausum*, and to extend the exclusive territorial jurisdiction of Russia to 100 Italian miles from the coast, will be publicly recalled; and I have the King's commands to instruct your grace further to require of the Russian minister (on the ground of the facts and reasonings furnished in this dispatch and its inclosures) that such a portion of territory alone shall be defined as belonging to Russia as shall not interfere with the rights and actual possessions of His Majesty's subjects in North America.

I am, etc.,

GEO. CANNING.

[Inclosure 4.]

*Memorandum on Russian Ukase of 1821.*

In the month of September 1821 His Imperial Majesty the Emperor of Russia issued an Ukase asserting the existence in the Crown of Russia of an exclusive right of sovereignty in the countries extending from Behring's Straits to the fifty-first degree of north latitude on the west coast of America, and to the forty-fifth degree of north latitude on the opposite coast of Asia; and, as a qualified exercise of that right of sovereignty, prohibiting all foreign vessels from approaching within one hundred Italian miles of those coasts.

After this Ukase had been submitted by the King's Government to those legal authorities whose duty it is to advise His Majesty on such matters, a note was addressed by the late Marquis of Londonderry to Count Lieven, the Russian Ambassador, protesting against the enactments of this Ukase, and requesting such amicable explanations as might tend to reconcile the pretensions of Russia in that quarter of the globe with the just rights of His Majesty's Crown and the interests of his subjects.

We object, first, to the claim of sovereignty as set forth in this Ukase; and, secondly, to the mode in which it is exercised.

The best writers on the laws of nations do not attribute the exclusive sovereignty, particularly of continents, to those who have first discovered them; and although we might on good grounds dispute with Russia the priority of discovery of these continents, we contend that the much more easily proved, more conclusive, and more certain title of occupation and use ought to decide the claim of sovereignty.

Now, we can prove that the English North-West Company and the Hudson's Bay Company have for many years established forts and other trading-stations in a country called New Caledonia, situated to the west of a range of mountains called Rocky Mountains, and extending along the shores of the Pacific Ocean from latitude 49° to latitude 60°.

This Company likewise possess factories and other establishments on Mackenzie's River, which falls into the Frazer River as far north as latitude 66° 30', from whence they carry on trade with the Indians inhabiting the countries to the west of that river, and who, from the nature of the country, can communicate with Mackenzie's River with more facility than they can with the posts in New Caledonia. Thus, in opposition to the claims founded on discovery, the priority of which, however, we conceive we might fairly dispute, we have the indisputable claim of occupancy and use for a series of years, which all the best writers on the laws of nations admit is the best-founded claim for territory of this description. Objecting, as we do, to this claim of exclusive sovereignty on the part of Russia, I might save myself the trouble of discussing the particular mode of its exercise as set forth in this Ukase. But we object to the sovereignty proposed to be exercised under this Ukase not less than we do to the claim of it. We cannot admit the right of any power possessing the sovereignty of a country to exclude the vessels of others from the seas on its coasts to the distance of 100 Italian miles. We must object likewise to the arrangements contained in the said Ukase conveying to private merchant ships the right to search in time of peace, etc., which are quite contrary to the laws and usages of nations and to the practice of modern times.

VERONA, October 17, 1822.

To Count NESSELRODE.

WELLINGTON.

[Inclosure 5.—Mémoire Confidential.]

*Count Nesselrode to the Duke of Wellington.*

VERONE, le 11 (23) Novembre, 1822.

Le Cabinet de Russie a pris en mûre considération le Mémoire Confidential que M. le Duc de Wellington lui a remis le 17 Octobre dernier, relativement aux mesures adoptées par Sa Majesté l'Empereur, sous la date du (4) 16 Septembre, 1821, pour déterminer l'étendue des possessions Russes sur la côte nord-ouest de l'Amérique, et pour interdire aux vaisseaux étrangers l'approche de ces possessions jusqu'à la distance de 100 milles d'Italie.

Les ouvertures faites à ce sujet au Gouvernement de Sa Majesté Britannique par le Comte de Lieven au moment où cette Ambassadeur allait quitter Londres doivent déjà avoir prouvé que l'opinion que le Cabinet de St. James avait conçue des mesures dont il s'agit n'était point fondée sur une appréciation entièrement exacte des vues de Sa Majesté Impériale.

La Russie est loin de méconnaître que l'usage et l'occupation constituent la plus solide des titres d'après lesquels un Etat puisse réclamer des droits de souveraineté sur

une portion quelconque du continent. La Russie est plus loin encore d'avoir voulu outrepasser arbitrairement les limites que ce titre assigne à ses domaines sur la côte nord-ouest de l'Amérique, ou ériger en principe général de droit maritime les règles qu'une nécessité purement locale l'avait obligée de poser pour la navigation étrangère dans le voisinage de la partie de cette côte qui lui appartient.

C'était au contraire parce qu'elle regardait ces droits de souveraineté comme légitimes, et parce que des considérations impérieuses tenaient à l'existence même du commerce qu'elle fait dans les parages de la côte nord-ouest de l'Amérique, la forçant à établir un système de précautions devenues indispensables, qu'elle a fait paraître l'oukase du (4) 16 Septembre, 1821.

La Russie serait toujours prête à faire part des motifs qui en justifient les dispositions ; mais pour le moment elle se bornera aux observations suivantes :—

M. le Duc de Wellington affirme, dans son Mémoire Confidentiel du 17 Octobre, que des établissements Anglais, appartenant à deux Compagnies, celle de la Baye de Hudson et celle du Nord-Ouest, se sont formés dans une contrée appelée la Nouvelle Calédonie, qui s'étend le long de la côte de l'Océan Pacifique, depuis le 49° jusqu'au 60° degré de latitude septentrionale.

La Russie ne parlera point des établissements qui peuvent exister-entre le 49° et le 51° parallèle ; mais quant aux autres, elle n'hésite pas de convenir qu'elle en ignore jusqu'à présent l'existence, pour autant au moins qu'ils toucheraient l'Océan Pacifique.

Les cartes Anglaises même les plus récentes et les plus détaillées n'indiquent absolument aucune des stations de commerce mentionnées dans le Mémoire du 17 Octobre, sur la côte même de l'Amérique, entre le 51° et le 60° degré de latitude septentrionale.

D'ailleurs, depuis les expéditions de Behring et de Tchirikoff, c'est-à-dire depuis près d'un siècle, des établissements Russes ont pris, à partir du 60° degré, une extension progressive, qui dès l'année 1799 les avait fait parvenir jusqu'au 55° parallèle, comme le porte la première charte de la Compagnie Russe-Américaine, charte qui a reçu dans le temps une publicité officielle, et qui n'a motivé aucune protestation de la part de l'Angleterre.

Cette même charte accordait à la Compagnie Russe le droit de porter ses établissements vers le midi au delà du 55° degré de latitude septentrionale, pourvu que de tels accroissements de territoire ne pussent donner motif de réclamation à aucune Puissance étrangère.

L'Angleterre n'a pas non plus protesté contre cette disposition ; elle n'a pas même réclamé contre les nouveaux établissements que la Compagnie Russe-Américaine a pu former au sud du 55° degré, en vertu de ce privilège.

La Russie était donc pleinement autorisée à profiter d'un consentement qui, pour être tacite, n'en était pas moins solennel, et à déterminer pour bornes de ses domaines le degré de latitude jusqu'auquel la Compagnie Russe avait étendu ses opérations depuis 1799.

Quoiqu'il en soit, et quelque force que ces circonstances prêtent aux titres de la Russie, Sa Majesté Impériale ne dévia point dans cette conjuncture du système habituel de sa politique.

Le premier de ses vœux sera toujours de prévenir toute discussion, et de consolider de plus en plus les rapports d'amitié et de parfaite intelligence qu'elle se félicite d'entretenir avec la Grande Bretagne.

En conséquence l'Empereur a chargé son Cabinet de déclarer à M. le Duc de Wellington (sans que cette déclaration puisse préjudicier en rien à ses droits, si elle n'était point acceptée) qu'il est prêt à fixer, au moyen d'une négociation amicale, et sur la base des convenances mutuelles, les degrés de latitude et de longitude que les deux Puissances regarderont comme dernières limites de leurs possessions et de leurs établissements sur la côte nordouest de l'Amérique.

Sa Majesté Impériale se plaît à croire que cette négociation pourra se terminer sans difficulté à la satisfaction réciproque des deux États ; et le Cabinet de Russie peut assurer dès à présent M. le Duc de Wellington que les mesures de précaution et de surveillance qui seront prises alors sur la partie Russie de la côte d'Amérique se trouveront entièrement conformes aux droits dérivant de la souveraineté, ainsi qu'aux usages établis entre nations, et qu'aucune plainte légitime ne pourra s'élever contre elles.

[Inclosure 6.]

*The Duke of Wellington to Mr. G. Canning.*

VERONA, November 28, 1822.

SIR : I inclose the copy of a confidential memorandum which I gave to Count Nesselrode on the 17th October, regarding the Russian Ukase, and the copy of his answer.

I have had one or two discussions with Count Lieven upon this paper, to which I

object, as not enabling His Majesty's Government to found upon it any negotiation to settle the questions arising out of the Ukase, which have not got the better of these difficulties; and I inclose you the copy of a letter which I have written to Count Lieven, which explains my objections to the Russian "Mémoire Confidentiel." This question, then, stands exactly where it did. I have not been able to do anything upon it.

I have, &c.

WELLINGTON.

[Inclosure 7.]

*The Duke of Wellington to Count Lieven.*

VERONA, November 28, 1822.

M. LE COMTE, Having considered the paper which your Excellency gave me last night, on the part of his Excellency Count Nesselrode, on the subject of our discussions on the Russian Ukase, I must inform you that I can not consent, on the part of my Government, to found on that paper the negotiation for the settlement of the question which has arisen between the two Governments on this subject.

We object to the ukase on two grounds: (1) That His Imperial Majesty assumes thereby an exclusive sovereignty in North America, of which we are not prepared to acknowledge the existence or the extent; upon this point, however, the memoir of Count Nesselrode does afford the means of negotiation; and my government will be ready to discuss it, either in London or St. Petersburg, whenever the state of the discussions on the other question arising out of the ukase will allow of the discussion.

The second ground on which we object to the ukase is that His Imperial Majesty thereby excludes from a certain considerable extent of the open sea vessels of other nations. We contend that the assumption of this power is contrary to the law of nations; and we can not found a negotiation upon a paper in which it is again broadly asserted. We contend that no power whatever can exclude another from the use of the open sea; a power can exclude itself from the navigation of a certain coast, sea, etc., by its own act or engagement, but it can not by right be excluded by another. This we consider as the law of nations; and we can not negotiate upon a paper in which a right is asserted inconsistent with this principle.

I think, therefore, that the best mode of proceeding would be that you should state your readiness to negotiate upon the whole subject, without restating the objectionable principle of the ukase which we can not admit.

I have, etc.

WELLINGTON.

[Inclosure 8.]

*The Duke of Wellington to Mr. G. Canning.*

VERONA, November 29, 1822.

SIR: Since I wrote to you yesterday I have had another conversation with the Russian minister regarding the ukase. It is now settled that both the memorandums which I inclosed to you should be considered as *non avenues*, and the Russian ambassador in London is to address you a note in answer to that of the late Lord Londonderry, assuring you of the desire of the Emperor to negotiate with you upon the whole question of the Emperor's claims in North America, reserving them all if the negotiation should not be satisfactory to both parties.

This note will then put this matter in a train of negotiation, which is what was wished.

I have, etc.,

WELLINGTON.

[Inclosure 9.]

*Count Lieven to Mr. G. Canning.*

A la suite des déclarations verbales que le Soussigné, Ambassadeur Extraordinaire et Plénipotentiaire de Sa Majesté l'Empereur de toutes les Russies, a faites au Ministère de Sa Majesté Britannique, le Cabinet de St. James a dû se convaincre que si des objections s'étaient élevées contre le Règlement publié au nom de Sa Majesté



L'Empereur de toutes les Russies sous la date du 4 (16) Septembre 1821, les mesures ultérieures adoptées par Sa Majesté Impériale ne laissent aucun doute sur la pureté de ses vues et sur le désir qu'elle aura toujours de concilier ses droits et ses intérêts avec les intérêts et les droits des Puissances auxquelles l'unissent les liens d'une amitié véritable et d'une bienveillance réciproque.

Avant de quitter Vérone, le Soussigné a reçu l'ordre de donner au Gouvernement de Sa Majesté Britannique une nouvelle preuve des dispositions connues de l'Empereur, en proposant à son Excellence M. Canning, Principal Secrétaire d'Etat de Sa Majesté Britannique pour les Affaires Étrangères, sans que cette proposition puisse porter atteinte aux droits de Sa Majesté Impériale, si elle n'est pas acceptée, que de part et d'autre la question de droit strict soit provisoirement écartée, et que tous les différends auxquels a donné lieu le Règlement dont il s'agit, s'applanissent par un arrangement amical fondé sur le seul principe des convenances mutuelles et qui serait négocié à St.-Pétersbourg.

L'Empereur se flatte que Sir Charles Bagot ne tardera point à recevoir les pouvoirs et les instructions nécessaires à cet effet, et que la proposition du Soussigné achèvera de démontrer au Gouvernement de Sa Majesté Britannique combien Sa Majesté Impériale souhaite qu'aucune divergence d'opinion ne puisse subsister entre la Russie et la Grande-Bretagne, et que le plus parfait accord continue de présider à leurs relations.

Le Soussigné, etc.,

LIEVEN.

LONDRES, le 19 (31) Janvier 1823.

[Inclosure 10.]

*Mr. G. Canning to Sir C. Bagot.*

No. 1.]

FOREIGN OFFICE, February 5, 1823.

SIR: With respect to my dispatch No. 5 of the 31st December last, transmitting to your excellency the copy of an instruction addressed to the Duke of Wellington, as well as a dispatch from his grace dated Verona, the 29th November last, both upon the subject of the Russian ukase of September, 1821, I have now to inclose to your excellency the copy of a note which has been addressed to me by Count Lieven, expressing His Imperial Majesty's wish to enter into some amicable arrangement for bringing this subject to a satisfactory termination, and requesting that your excellency may be furnished with the necessary powers to enter into negotiations for that purpose with His Imperial Majesty's ministers at St. Petersburg.

I avail myself of the opportunity of a Russian courier (of whose departure Count Lieven has only just apprised me) to send this note to your excellency, and to desire that your excellency will proceed to open the discussion with the Russian minister upon the basis of the instruction to the Duke of Wellington.

I will not fail to transmit to your excellency full powers for the conclusion of an agreement upon this subject, by a messenger whom I will dispatch to you as soon as I shall have collected any further information which it may be expedient to furnish to your excellency, or to found any further instruction upon that may be necessary for your guidance in this important negotiation.

I am, etc.,

GEO. CANNING.

[Inclosure 11.]

*Mr. Lyall to Mr. G. Canning.—(Received November 24.)*

SHIPOWNERS' SOCIETY, NEW BROAD STREET, November 19 1823.

SIR: In the month of June last you were pleased to honor me with an interview on the subject of the Russian ukase prohibiting foreign vessels from touching at or approaching the Russian establishments along the northwest coast of America therein mentioned, when you had the goodness to inform me that a representation had been made to that government, and that you had reason to believe that the ukase would not be acted upon; and very shortly after this communication I was informed, on what I considered undoubted authority, that the Russian Government had consented to withdraw that unfounded pretension.

The committee of this society being about to make their annual report to the shipowners at large, it would be satisfactory to them to be able to state therein that official

advices have been received from St. Petersburg that the ukase had been annulled; and should that be the case, I have to express the hope of the committee to be favored with a communication from you to that effect.

I have, etc.,

GEORGE LYALL,  
*Chairman of Shipowners' Committee.*

[Inclosure 12.]

*Lord F. Conyngham to Mr. Lyall.*

FOREIGN OFFICE, *November 26, 1823.*

SIR: I am directed by Mr. Secretary Canning to acknowledge the receipt of your letter of the 19th instant, expressing a hope that the ukase of September, 1821, had been annulled.

Mr. Canning can not authorize me to state to you in distinct terms that the ukase has been annulled, because the negotiation to which it gave rise is still pending, embracing as it does many points of great intricacy as well as importance.

But I am directed by Mr. Canning to acquaint you that orders have been sent out by the court of St. Petersburg to their naval commanders calculated to prevent any collision between Russian ships and those of other nations, and in effect suspending the ukase of September, 1821.

I am, etc.,

F. CONYNGHAM.

[Inclosure 13.—Extract.]

*Mr. G. Canning to Sir C. Bagot.*

FOREIGN OFFICE, *January 20, 1824.*

A long period has elapsed since I gave your excellency reason to expect additional instructions for your conduct in the negotiation respecting the Russian ukase of 1821.

That expectation was held out in the belief that I should have to instruct you to combine your proceedings with those of the American minister, and the framing such instructions was, of necessity, delayed until Mr. Rush should be in possession of the intentions of his Government upon the subject.

It remains, therefore, only for me to direct your Excellency to resume your negotiation with the court of St. Petersburg at the point at which it was suspended in consequence of the expected accession of the United States, and to endeavor to bring it as speedily as possible to an amicable and honorable conclusion.

The question at issue between Great Britain and Russia are short and simple. The Russian ukase contains two objectionable pretensions: first, an extravagant assumption of maritime supremacy; secondly, an unwarranted claim of territorial dominion.

As to the first, the disavowal of Russia is, in substance, all that we could desire. Nothing remains for negotiation on that head but to clothe that disavowal in precise and satisfactory terms. We would much rather that those terms should be suggested by Russia herself than have the air of pretending to dictate them. You will, therefore, request Count Nesselrode to furnish you with his notion of such a declaration on this point as may be satisfactory to your Government. That declaration may be made the preamble of the convention of limits.

[Inclosure 14.]

*Mr. G. Canning to Sir C. Bagot.*

No. 29.—Extract.]

FOREIGN OFFICE, *July 24, 1824.*

The "projet" of a convention which is inclosed in my No. 26 having been communicated by me to Count Lieven, with a request that his excellency would note any points in it upon which he conceived any difficulty likely to arise, or any expla-

nation to be necessary, I have received from his excellency the memorandum a copy of which is herewith inclosed.

Your excellency will observe that there are but two points which have struck Count Lieven as susceptible of any question; the first, the assumption of the base of the mountains, instead of the summit, as the line of boundary; the second the extension of the right of navigation of the Pacific to the sea beyond Behring's Straits.

\* \* \* \* \*

As to the second point, it is perhaps, as Count Lieven remarks, new. But it is to be remarked, in return, that the circumstances under which this additional security is required will be new also.

By the territorial demarcation agreed to in this "projet" Russia will become possessed, in acknowledged sovereignty, of both sides of Behring's Straits.

The power which could thing of making the Pacific a *mare clausum* may not un-naturally be supposed capable of a disposition to apply the same character to a strait comprehended between two shores, of which it becomes the undisputed owner. But the shutting up of Behring's Straits, or the power to shut them up hereafter, would be a thing not to be tolerated by England.

Nor could we submit to be excluded, either positively or constructively, from a sea in which the skill and science of our seamen has been and is still employed in enterprises interesting not to this country alone but the whole civilized world.

The protection given by the convention to the American coasts of each power may (if it is thought necessary) be extended in terms to the coasts of the Russian Asiatic territory; but in some way or other, if not in the form now presented, the free navigation of Behring's Straits, and of the seas beyond them, must be secured to us.

[Inclosure 15.]

*Mr. G. Canning to Mr. S. Canning.*

No. I.—Extract.]

FOREIGN OFFICE, December 8, 1824.

His Majesty having been graciously pleased to name you his plenipotentiary for concluding and signing with the Russian Government a convention for terminating the discussions which have arisen out of the promulgation of the Russian ukase of 1821, and for settling the respective territorial claims of Great Britain and Russia on the northwest coast of America, I have received His Majesty's commands to direct you to repair to St. Petersburg for that purpose, and to furnish you with the necessary instructions for terminating the long-protracted negotiation.

The correspondence which has already passed upon this subject has been submitted to your perusal. And I inclose you a copy—

1. Of the "projet" which Sir Charles Bagot was authorized to conclude and sign some months ago, and which we had every reason to expect would have been entirely satisfactory to the Russian Government.

2. Of a "contre-projet" drawn up by the Russian plenipotentiaries, and presented to Sir Charles Bagot at their last meeting before Sir Charles Bagot's departure from St. Petersburg.

3. Of a dispatch from Count Nesselrode, accompanying the transmission of the "contre-projet" to Count Lieven.

In that dispatch, and in certain marginal annotations upon the copy of the "projet," are assigned the reasons of the alterations proposed by the Russian plenipotentiaries.

In considering the expediency of admitting or rejecting the proposed alterations, it will be convenient to follow the articles of the treaty in the order in which they stand in the English "projet."

You will observe in the first place that it is proposed by the Russian plenipotentiaries entirely to change that order, and to transfer to the latter part of the instrument the article which has hitherto stood first in the "projet."

To that transposition we can not agree, for the very reason which Count Nesselrode alleges in favor of it, viz, that the "economic," or arrangement of the treaty, ought to have reference to the history of the negotiation.

The whole negotiation grows out of the ukase of 1821.

So entirely and absolutely true is this proposition, that the settlement of the limits of the respective possessions of Great Britain and Russia on the northwest coast of America was proposed by us only as a mode of facilitating the adjustment of the difference arising from the ukase, by enabling the court of Russia, under cover of the more comprehensive arrangement, to withdraw, with less appearance of concession, the offensive pretensions of that edict.

It is comparatively indifferent to us whether we hasten or postpone all questions respecting the limits of territorial possession on the continent of America; but the pretensions of the Russian ukase of 1821 to exclusive dominion over the Pacific could not continue longer unrepealed without compelling us to take some measure of public and effectual remonstrance against it.

You will therefore take care, in the first instance, to repress any attempt to give this change to the character of the negotiation; and will declare without reserve that the point to which alone the solicitude of the British Government and the jealousy of the British nation may attach any great importance is the doing away (in a manner as little disagreeable to Russia as possible) of the effect of the ukase of 1821.

That this ukase is not acted upon, and that instructions have been long ago sent by the Russian Government to their cruisers in the Pacific to suspend the execution of its provisions, is true; but a private disavowal of a published claim is no security against the revival of that claim; the suspension of the execution of a principle may be perfectly compatible with the continued maintenance of the principle itself, and when we have seen in the course of this negotiation that the Russian claim to the possession of the coast of America down to latitude 59° rests, in fact, on no other ground than the presumed acquiescence of the nations of Europe in the provisions of a ukase published by the Emperor Paul in the year 1800, against which it is affirmed that no public remonstrance was made, it becomes us to be exceedingly careful that we do not, by a similar neglect on the present occasion, allow a similar presumption to be raised as to an acquiescence in the ukase of 1821.

The right of the subjects of His Majesty to navigate freely in the Pacific can not be held as matter of indulgence from any power. Having once been publicly questioned, it must be publicly acknowledged.

We do not desire that any distinct reference should be made to the ukase of 1821; but we do feel it necessary that the statement of our right should be clear and positive, and that it should stand forth in the convention in the place which properly belongs to it as a plain and substantive stipulation, and not be brought in as an incidental consequence of other arrangements to which we attach comparatively little importance.

This stipulation stands in the front of the convention concluded between Russia and the United States of America; and we see no reason why, upon similar claims, we should not obtain exactly the like satisfaction.

For reasons of the same nature we can not consent that the liberty of navigation through Behring's Straits should be stated in the treaty as a boon from Russia.

The tendency of such a statement would be to give countenance to those claims of exclusive jurisdiction against which we, on our own behalf and on that of the whole civilized world, protest.

No specification of this sort is found in the convention with the United States of America; and yet it can not be doubted that the Americans consider themselves as secured in the right of navigating Behring's Straits and the sea beyond them.

It can not be expected that England should receive as a boon that which the United States hold as a right so unquestionable as not to be worth recording.

Perhaps the simplest course, after all, will be to substitute, for all that part of the "projet" and "contre-projet" which relates to maritime rights, and to navigation, the first two articles of the convention already concluded by the court of St. Petersburg with the United States of America, in the order in which they stand in that convention.

Russia can not mean to give to the United States of America what she withholds from us, nor to withhold from us anything that she has consented to give to the United States.

The uniformity of stipulations *in pari materia* gives clearness and force to both arrangements, and will establish that footing of equality between the several contracting parties which it is most desirable should exist between three powers whose interest come so nearly in contact with each other in a part of the globe in which no other power is concerned.

This, therefore, is what I am to instruct you to propose at once to the Russian minister as cutting short an otherwise inconvenient discussion.

This expedient will dispose of Article I of the "Projet," and of Articles V and VI of the "Contre-Projet."

The next articles relate to the territorial demarcation.

With regard to the port of Sitka or New Archangel, the offer came originally from Russia, but we are not disposed to object to the restriction which she now applies to it.

We are content that the port shall be open to us for ten years, provided only that if any other nation obtains a more extended term, the like term shall be extended to us also.

We are content also to assign the period of ten years for the reciprocal liberty of

access and commerce with each other's territories, which stipulation may be best stated precisely in the terms of Article IV of the American convention.

These, I think, are the only points in which alterations are required by Russia, and we have no other to propose.

A "projet," such as it will stand according to the observations of this dispatch, is inclosed, which you will understand as furnished to you as a guide for the drawing up of the convention; but not as prescribing the precise form of words, nor fettering your discretion as to any alterations, not varying from the substance of these instructions.

It will, of course, strike the Russian plenipotentiaries that by the adoption of the American article respecting navigation, etc., the provision for an exclusive fishery of two leagues from the coasts of our respective possessions falls to the ground.

But the omission is, in truth, immaterial. The law of nations assigns the exclusive sovereignty of one league to each power off its own coasts, without any specific stipulation, and though Sir Charles Bagot was authorized to sign the convention with the specific stipulation of two leagues, in ignorance of what had been decided in the American convention at the time, yet, after that convention has been some months before the world, and after the opportunity of reconsideration has been forced upon us by the act of Russia herself, we can not now consent, in negotiating *de novo*, to a stipulation which, while it is absolutely unimportant to any practical good, would appear to establish a contract between the United States and us to our disadvantage.

Count Nesselrode himself has frankly admitted that it was natural that we should expect, and reasonable that we should receive, at the hands of Russia, equal measure in all respects with the United States of America.

It remains only, in recapitulation, to remind you of the origin and principles of this whole negotiation.

It is not, on our part, essentially a negotiation about limits. It is a demand of the repeal of an offensive and unjustifiable arrogation of exclusive jurisdiction over an ocean of unmeasured extent; but a demand qualified and mitigated in its manner, in order that its justice may be acknowledged and satisfied without soreness or humiliation on the part of Russia.

We negotiate about territory to cover the remonstrance upon principle.

But any attempt to take undue advantage of this voluntary facility we must oppose. If the present "projet" is agreeable to Russia, we are ready to conclude and sign the treaty. If the territorial arrangements are not satisfactory, we are ready to postpone them, and to conclude and sign the essential part—that which relates to navigation alone, adding an article stipulating to negotiate about territorial limits hereafter.

But we are not prepared to defer any longer the settlement of that essential part of the question; and if Russia will neither sign the whole convention nor that essential part of it, she must not take it amiss that we resort to some mode of recording, in the face of the world, our protest against the pretensions of the ukase of 1821, and of effectually securing our own interests against the possibility of its future operations.

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[Inclosure 16.]

*Mr. S. Canning to Mr. G. Canning.—(Received March 21.)*

No. 15.]

ST. PETERSBURG, February 17 (March 1), 1825.

SIR: By the messenger Latchford I have the honor to send you the accompanying convention between His Majesty and the Emperor of Russia respecting the Pacific Ocean and northwest coast of America, which, according to your instructions, I concluded and signed last night with the Russian plenipotentiaries.

The alterations which, at their instance, I have admitted into the "projet," such as I presented it to them at first, will be found, I conceive, to be in strict conformity with the spirit and substance of His Majesty's commands. The order of the two main subjects of our negotiation, as stated in the preamble of the convention, is preserved in the articles of that instrument. The line of demarcation along the strip of land on the northwest coast of America, assigned to Russia, is laid down in the convention agreeably to your directions, notwithstanding some difficulties raised on this point, as well as on that which regards the order of the articles, by the Russian plenipotentiaries.

The instance in which you will perceive that I have most availed myself of the latitude afforded by your instructions to bring the negotiation to a satisfactory and prompt conclusion is the division of the third article of the new "projet," as it stood

when I gave it in, into the third, fourth, and fifth articles of the convention signed by the plenipotentiaries.

This change was suggested by the Russian plenipotentiaries, and at first it was suggested in a shape which appeared to me objectionable; but the articles, as they are now drawn up, I humbly conceive to be such as will not meet with your disapprobation. The second paragraph of the fourth article had already appeared parenthetically in the third article of the "project," and the whole of the fourth article is limited in its signification and connected with the article immediately preceding it by the first paragraph.

With respect to Behring Strait, I am happy to have it in my power to assure you, on the joint authority of the Russian plenipotentiaries, that the Emperor of Russia has no intention whatever of maintaining any exclusive claim to the navigation of those straits, or of the seas to the north of them.

It can not be necessary, under these circumstances, to trouble you with a more particular account of the several conferences which I have held with the Russian plenipotentiaries, and it is but justice to state that I have found them disposed, throughout this latter stage of the negotiation, to treat the matters under discussion with fairness and liberality.

As two originals of the convention prepared for His Majesty's Government are signed by the plenipotentiaries, I propose to leave one of them with Mr. Ward for the archives of the embassy.

I have, etc.,

STRATFORD CANNING.

*Mr. Blaine to Sir Julian Pouncefote.*

DEPARTMENT OF STATE,  
Washington, December 17, 1890.

SIR: Your note of August 12, which I acknowledged on the 1st of September, inclosed a copy of a dispatch from the Marquis of Salisbury, dated August 2, in reply to my note of June 30.

The considerations advanced by His Lordship have received the careful attention of the President, and I am instructed to insist upon the correctness and validity of the position which has been earnestly advocated by the Government of the United States, in defense of American rights in the Behring Sea.

Legal and diplomatic questions, apparently complicated, are often found, after prolonged discussion, to depend on the settlement of a single point. Such, in the judgment of the President, is the position in which the United States and Great Britain find themselves in the pending controversy touching the true construction of the Russo-American and Anglo-Russian treaties of 1824 and 1825. Great Britain contends that the phrase "Pacific Ocean," as used in the treaties, was intended to include, and does include, the body of water which is now known as the Behring Sea. The United States contends that the Behring Sea was not mentioned, or even referred to, in either treaty, and was in no sense included in the phrase "Pacific Ocean." If Great Britain can maintain her position that the Behring Sea at the time of the treaties with Russia of 1824 and 1825 was included in the Pacific Ocean, the Government of the United States has no well-grounded complaint against her. If, on the other hand, this Government can prove beyond all doubt that the Behring Sea, at the date of the treaties, was understood by the three signatory Powers to be a separate body of water, and was not included in the phrase "Pacific Ocean," then the American case against Great Britain is complete and undeniable.

The dispute prominently involves the meaning of the phrase "northwest coast," or "northwest coast of America." Lord Salisbury assumes that the "northwest coast" has but one meaning, and that it includes the whole coast stretching northward to the Behring Straits. The contention of this Government is that by long prescription the "northwest coast" means the coast of the Pacific Ocean, south of the Alaskan Peninsula, or south of the sixtieth parallel of north latitude; or, to define it still more accurately, the coast, from the northern border of the Spanish possessions, ceded to the United States in 1819, to the point where the Spanish claims met the claims of Russia, viz, from 42° to 60° north latitude. The Russian authorities for a long time assumed that 59° 30' was the exact point of latitude, but subsequent adjustments fixed it at 60°. The phrase "northwest coast," or "northwest coast of America," has been well known and widely recognized in popular usage in England and America from the date of the first trading to that coast, about 1784.\* So absolute has been this prescription that the distinguished historian Hubert Howe Bancroft has written an accurate history of the northwest coast, which, at different times, during a period of seventy-five years, was the scene of important contests between at least four great powers. To render the understanding explicit, Mr. Bancroft has illustrated the northwest coast by a carefully prepared map. The map will be found to include precisely the area which has been steadily maintained by this Government in the pending discussion. (For map, see opposite page.)

\* The same designation obtained in Europe. As early as 1803, in a map published by the Geographic Institute at Weimar, the coast from Columbia River (49°) to Cape Elizabeth (60°) is designated as the "Nörd West Kuste."

The phrase "northwest coast of America" has not infrequently been used simply as the synonym of the "northwest coast," but it has also been used in another sense as including the American coast of the Russian possessions as far northward as the straits of Behring. Confusion has sometimes arisen in the use of the phrase "northwest coast of America," but the true meaning can always be determined by reference to the context.

The treaty between the United States and Russia was concluded on the 17th of April, 1824, and that between Great Britain and Russia was concluded February 28, 1825. The full and accurate text of both treaties will be found in inclosure A. The treaty between the United States and Russia is first in the order of time, but I shall consider both treaties together. I quote the first articles of each treaty, for, to all intents and purposes, they are identical in meaning, though differing somewhat in phrase.

The first article in the American treaty is as follows:

ARTICLE I. It is agreed that, in any part of the great ocean, commonly called the Pacific Ocean or South Sea, the respective citizens or subjects of the high contracting powers shall be neither disturbed nor restrained, either in navigation or in fishing, or in the power of resorting to the coasts, upon points which may not already have been occupied, for the purpose of trading with the natives, saving always the restrictions and conditions determined by the following articles.

The first article in the British treaty is as follows:

ARTICLE I. It is agreed that the respective subjects of the high contracting parties shall not be troubled or molested, in any part of the ocean, commonly called the Pacific Ocean, either in navigating the same, in fishing therein, or in landing at such parts of the coast as shall not have been already occupied, in order to trade with the natives, under the restrictions and conditions specified in the following articles.

Lord Salisbury contends that—

*The Russian Government had no idea of any distinction between Behring Sea and the Pacific Ocean, which latter they considered as reaching southward from Behring Straits. Nor throughout the whole of the subsequent correspondence is there any reference whatever on either side to any distinctive name for Behring's Sea, or any intimation that it could be considered otherwise than as forming an integral part of the Pacific Ocean.*

The Government of the United States cordially agrees with Lord Salisbury's statement that throughout the whole correspondence connected with the formation of the treaties there was no reference whatever by either side to any distinctive name for Behring Sea, and for the very simple reason which I have already indicated, that the negotiation had no reference whatever to the Behring Sea, but was entirely confined to a "strip of land" on the northwest coast and the waters of the Pacific Ocean adjacent thereto. For future reference I call special attention to the phrase "strip of land."

I venture to remind Lord Salisbury of the fact that Behring Sea was, at the time referred to, the recognized name in some quarters, and so appeared on many authentic maps several years before the treaties were negotiated. But, as I mentioned in my note of June 30, the same sea had been presented as a body of water separate from the Pacific Ocean for a long period prior to 1825. Many names had been applied to it, but the one most frequently used and most widely recognized was the Sea of Kamschatka. English statesmen of the period when the treaties were negotiated had complete knowledge of all the geographical points involved. They knew that on the map published in 1784 to illustrate the voyages of the most eminent English navigator of the eighteenth century the "Sea of Kamschatka" appeared in absolute contradistinction



tion to the "Great South Sea" or the Pacific Ocean. And the map, as shown by the words on its margin, was "prepared by Lieut. Henry Roberts under the immediate inspection of Captain Cook."

Twenty years before Captain Cook's map appeared, the London Magazine contained a map on which the Sea of Kamschatka was conspicuously engraved. At a still earlier date—even as far back as 1732—Gvosdef, surveyor of the Russian expedition of Shestakof in 1730 (who, even before Behring, sighted the land of the American continent), published the sea as bearing the name of Kamschatka. Muller, who was historian and geographer of the second expedition of Behring in 1741, designated it as the Sea of Kamschatka, in his map published in 1761.

I inclose a list of a large proportion of the most authentic maps published during the ninety years prior to 1825 in Great Britain, in the United States, the Netherlands, France, Spain, Germany, and Russia—in all 105 maps—*on every one of which* the body of water now known as Behring Sea was plainly distinguished by a name separate from the Pacific Ocean. On the great majority it is named the Sea of Kamschatka, a few use the name of Behring, while several other designations are used. The whole number, aggregating, as they did, the opinion of a large part of the civilized world, distinguished the sea, no matter under what name, as altogether separate from the Pacific Ocean. (See inclosure B.)

Is it possible, that with this great cloud of witnesses before the eyes of Mr. Adams and Mr. George Canning, attesting the existence of the Sea of Kamschatka, they would simply include it in the phrase "Pacific Ocean" and make no allusion whatever to it as a separate sea, when it was known by almost every educated man in Europe and America to have been so designated numberless times? Is it possible that Mr. Canning and Mr. Adams, both educated in the Common Law, could believe that they were acquiring for the United States and Great Britain the enormous rights inherent in the Sea of Kamschatka without the slightest reference to that sea or without any description of its metes and bounds, when neither of them would have paid for a village house lot unless the deed for it should recite every fact and feature necessary for the identification of the lot against any other piece of ground on the surface of the globe? When we contemplate the minute particularity, the tedious verbiage, the duplications and the reduplications employed to secure unmistakable plainness in framing treaties, it is impossible to conceive that a fact of this great magnitude could have been omitted from the instructions written by Mr. Adams and Mr. G. Canning, as secretaries for foreign affairs in their respective countries—impossible that such a fact could have escaped the notice of Mr. Middleton and Count Nesselrode, of Mr. Stratford Canning and Mr. Poletica, who were the negotiators of the two treaties. It is impossible, that in the Anglo-Russian treaty Count Nesselrode, Mr. Stratford Canning, and Mr. Poletica could have taken sixteen lines to recite the titles and honors they had received from their respective sovereigns, and not even suggest the insertion of one line, or even word, to secure so valuable a grant to England as the full freedom of the Behring Sea.

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There is another argument of great weight against the assumption of Lord Salisbury that the phrase "Pacific Ocean," as used in the first article of both the American and British treaties, was intended to include the waters of the Behring Sea. It is true that by the treaties with

the United States and Great Britain, Russia practically withdrew the operation of the Ukase of 1821 from the waters of the northwest coast on the Pacific Ocean, but the proof is conclusive that it was left in full force over the waters of the Behring Sea. Lord Salisbury can not have ascertained the value of the Behring Sea to Russia, when he assumed that in the treaties of 1824 and 1825 the Imperial Government had, by mere inclusion in another phrase, with apparent carelessness, thrown open all the resources and all the wealth of those waters to the citizens of the United States and to the subjects of Great Britain.

Lord Salisbury has perhaps not thought it worth while to make any examination of the money value of Alaska and the waters of the Behring Sea at the time the treaties were negotiated and in the succeeding years. The first period of the Russian-American Company's operations had closed before the Ukase of 1821 was issued. Its affairs were kept secret for a long time, but are now accurately known. The money advanced for the Capital stock of the Company at its opening in 1799 amounted to 1,238,746 rubles. The gross sales of furs and skins by the company at Kodiak and Canton from that date up to 1820 amounted to 20,024,698 rubles. The net profit was 7,685,000 rubles for the twenty-one years—over 620 per cent. for the whole period, or nearly 30 per cent. per annum.

Reviewing these facts, Bancroft, in his "History of Alaska," a standard work of exhaustive research, says:

We find this powerful *monopoly* firmly established in the favor of the Imperial Government, many nobles of high rank and several members of the Royal family being among the share-holders.

And yet Lord Salisbury evidently supposes that a large amount of wealth was carelessly thrown away by the Royal family, the nobles, the courtiers, the capitalists, and the speculators of St. Petersburg in a phrase which merged the Behring Sea in the Pacific Ocean. That it was not thrown away is shown by the transactions of the Company for the next twenty years!

The second period of the Russian-American Company began in 1821 and ended in 1841. Within that time the gross revenues of the company exceeded 61,000,000 rubles. Besides paying all expenses and all taxes, the company largely increased the original capital and divided 8,500,000 rubles among the share-holders. These dividends and the increase of the stock showed a profit on the original capital of 55 per cent. per annum for the whole twenty years—a great increase over the first period. It must not be forgotten that during sixteen of these twenty years of constantly increasing profits, the treaties, which, according to Lord Salisbury, gave to Great Britain and the United States equal rights with Russia in the Behring Sea, were in full force.

The proceedings which took place when the second period of the Russian-American Company was at an end are thus described in Bancroft's "History of Alaska:":

\* \* \* "In the variety and extent of its operations," declare the members of the Imperial Council, "no other company can compare with it. In addition to a commercial and industrial monopoly, the Government has invested it with a portion of its own powers in governing the vast and distant territory over which it now holds control. A change in this system would now be of doubtful benefit. *To open our ports to all hunters promiscuously would be a death blow to the fur trade*, while the Government, having transferred to the company the control of the colonies, could not now resume it without great expense and trouble, and would have to create new financial resources for such a purpose."

The Imperial Council, it will be seen, did not hesitate to call the Russian-American Company a *monopoly*, which it could not have been if Lord Salisbury's construction of the treaty was correct. Nor did the Council feel any doubt that to open the ports of the Behring Sea "to all hunters promiscuously would be a death blow to the fur trade."

Bancroft says further:

\* \* \* This opinion of the Imperial Council, together with a charter defining the privileges and duties of the company, was delivered to the Czar and received his signature on the 11th of October, 1844. The new charter did not differ in its main features from that of 1821, though the boundary was, of course, changed in accordance with the English and American treaties. None of the company's rights were curtailed, and the additional privileges were granted of trading with certain ports in China and of shipping tea direct from China to St. Petersburg.

The Russian-American company was thus chartered for a third period of twenty years, and at the end of the time it was found that the gross receipts amounted to 75,770,000 rubles, a minor part of it from the tea trade. The expenses of administration were very large. The shareholders received dividends to the amount of 10,210,000 rubles—about 900 per cent. for the whole period, or 45 per cent. per annum on the original capital. At the time the third period closed, in 1862, the Russian Government saw an opportunity to sell Alaska, and refused to continue the charter of the company. Agents of the United States had initiated negotiations for the transfer of Alaska as early as 1859. The company continued, practically, however, to exercise its monopoly until 1867, when Alaska was sold by Russia to the United States. The enormous profits of the Russian-American Company in the fur trade of the Behring Sea continued under the Russian flag for more than forty years after the treaties of 1824 and 1825 had been concluded. And yet Lord Salisbury contends that during this long period of exceptional profits from the fur trade Great Britain and the United States had as good a right as Russia to take part in these highly lucrative ventures.

American and English ships in goodly numbers during this whole period annually visited and traded on the Northwest coast on the Pacific Ocean. And yet, of all these vessels of the United States and Great Britain, not one ever sought to disturb the fur fisheries of the Behring Sea or along its coasts, either of the continent or of the islands. So far as known, it is believed that neither American nor English ships ever attempted to take one fur seal at the Pribyloff Islands or in the open waters of the Behring Sea during that period. The 100-mile limit was for the preservation of all these fur animals, and this limit was observed for that purpose by all the maritime nations that sent vessels to the Behring waters.

Can any one believe it to be possible that the maritime, adventurous, gain-loving people of the United States and of Great Britain could have had such an inviting field open to them for forty years and yet not one ship of either nation enter the Behring Sea to compete with the Russian-American Company for the inordinate profits which had flowed so steadily and for so long a period into their treasury from the fur trade? The fact that the ships of both nations refrained, during that long period, from taking a single fur seal inside the shores of that sea is a presumption of their lack of right and their recognized disability so strong that, independently of all other arguments, it requires the most authentic and convincing evidence to rebut it. That English ships did not enter the Behring Sea to take part in the catching of seals is not all that can be said. Her acquiescence in Russia's power over the seal

fisheries was so complete that during the forty years of Russia's supremacy in the Behring Sea (that followed the treaties of 1824-'25) it is not believed that Great Britain even made a protest, verbal or written, against what Bancroft describes as the "Russian monopoly."

A certain degree of confusion and disorganization in the form of the government that had existed in Alaska was the inevitable accompaniment of the transfer of sovereignty to the United States. The American title was not made complete until the money, specified as the price in the treaty, had been appropriated by Congress and paid to the Russian minister by the Executive Department of the Government of the United States. This was effected in the latter half of the year 1868. The acquired sovereignty of Alaska carried with it by treaty "all the rights, franchises, and privileges" which had belonged to Russia. A little more than a year after the acquisition, the United States transferred certain rights to the Alaska Commercial Company over the seal fisheries of Behring Sea for a period of twenty years. Russia had given the same rights (besides rights of still larger scope) to the Russian-American Company for three periods of twenty years each, without a protest from the British Government, without a single interference from British ships. For these reasons this Government again insists that Great Britain and the United States recognized, respected, and obeyed the authority of Russia in the Behring Sea; and did it for more than forty years after the treaties with Russia were negotiated. It still remains for England to explain why she persistently violates the same rights when transferred to the ownership of the United States.

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The second article of the American treaty is as follows:

ARTICLE II. With a view of preventing the rights of navigation and of fishing exercised upon the Great Ocean by the citizens and subjects of the high contracting powers from becoming the pretext for an illicit trade, it is agreed that the citizens of the United States shall not resort to any point where there is a Russian establishment, without the permission of the governor or commander; and that, reciprocally, the subjects of Russia shall not resort, without permission, to any establishment of the United States upon the northwest coast.

The second article of the British treaty is as follows:

ARTICLE II. In order to prevent the right of navigation and fishing, exercised upon the Ocean by the subjects of the high contracting parties, from becoming the pretext for an illicit commerce, it is agreed that the subjects of His Britannic Majesty shall not land at any place where there may be a Russian establishment, without the permission of the governor or commandant; and, on the other hand, the Russian subjects shall not land, without permission, at any British establishment on the Northwest coast.

In the second articles of the treaties it is recognized that both the United States and Great Britain have establishments on the "northwest coast," and, as neither country ever claimed any territory north of the sixtieth parallel of latitude, we necessarily have the meaning of the northwest coast significantly defined in exact accordance with the American contention.

An argument, altogether historical in its character, is of great and, I think, conclusive force touching this question. It will be remembered that the treaty of October 20, 1818, between the United States and

Great Britain comprised a variety of topics, among others, in article 3, the following:

It is agreed, that any country that may be claimed by either party on the northwest coast of America, westward of the Stony Mountains, shall, together with its harbors, bays, and creeks, and the navigation of all rivers within the same, be free and open, for the term of ten years from the date of the signature of the present convention, to the vessels, citizens, and subjects of the two powers; it being understood, that this agreement is not to be construed to the prejudice of any claim, which either of the two high contracting parties may have to any part of the said country, nor shall it be taken to affect the claims of any other power or state to any part of the said country; the only object of the high contracting parties, in that respect, being to prevent disputes and differences amongst themselves.

While this article placed upon a common basis for ten years the rights of Great Britain and America on the northwest coast, it made no adjustment of the claims of Russia on the north, or of Spain on the south, which are referred to in the article as "any other power or state." Russia had claimed down to latitude 55° under the Ukase of 1799. Spain had claimed indefinitely northward from the forty-second parallel of latitude. But all the Spanish claims had been transferred to the United States by the treaty of 1819, and Russia had been so quiet until the Ukase of 1821 that no conflict was feared. But after that Ukase a settlement, either permanent or temporary, was imperatively demanded.

The proposition made by Mr. Adams which I now quote shows, I think, beyond all doubt, that the dispute was wholly touching the northwest coast on the Pacific Ocean. I make the following quotation from Mr. Adams' instruction to Mr. Middleton, our Minister at St. Petersburg, on the 22d of July, 1823:

By the treaty of the 22d of February, 1819, with Spain the United States acquired all the rights of Spain north of latitude 42°; and by the third article of the convention between the United States and Great Britain of the 20th of October, 1818, it was agreed that any country that might be claimed by either party on the Northwest coast of America, westward of the Stony Mountains, should, together with its harbors, bays, and creeks, and the navigation of all rivers within the same, be free and open, for the term of ten years from that date, to the vessels, citizens, and subjects of the two powers, without prejudice to the claims of either party or of any other state.

*You are authorized to propose an article of the same import for a term of ten years from the signature of a joint convention between the United States, Great Britain, and Russia.*

Instructions of the same purport were sent by the same mail to Mr. Rush, our Minister at London, in order that the proposition should be completely understood by each of the three Powers. The confident presumption was that this proposition would, as a temporary settlement, be acceptable to all parties. But before there was time for full consideration of the proposition, either by Russia or Great Britain, President Monroe, in December, 1823, proclaimed his famous doctrine of excluding future European colonies from this continent. Its effect on all European nations holding unsettled or disputed claims to territory, was to create a desire for prompt settlement, so that each Power could be assured of its own, without the trouble or cost of further defending it. Great Britain was already entangled with the United States on the southern side of her claims on the northwest coast. That agreement she must adhere to, but she was wholly unwilling to postpone a definite understanding with Russia as to the northern limit of her claims on the northwest coast. Hence a permanent treaty was desired, and in both treaties the "ten-year" feature was recognized—in the seventh article of the British treaty and in the fourth article of the American treaty.

But neither in the correspondence nor in the personal conferences that brought about the agreement, was there a single hint that the settlement was to include any thing else whatever than the northwest coast on the Pacific Ocean, south of the sixtieth parallel of north latitude.

Fortunately, however, it is not necessary for the United States to rely on this suggestive definition of the northwest coast, or upon the historical facts above given. It is easy to prove from other sources that in the treaty between the United States and Russia the coast referred to was that which I have defined as the "northwest coast" on the Pacific Ocean south of 60° north latitude, or, as the Russians for a long time believed it, 59° 30'. We have in the Department of State the originals of the protocols between our minister at St. Petersburg, Mr. Henry Middleton, and Count Nesselrode, of Russia, who negotiated the treaty of 1824. I quote, as I have quoted in my note of June 30, a memorandum submitted to Count Nesselrode by Mr. Middleton as part of the fourth protocol:

Now, it is clear, according to the facts established, that neither Russia nor any other European power has the right of dominion upon the continent of America between the fiftieth and sixtieth degrees of north latitude.

Still less has she the dominion of the adjacent maritime territory, or of the sea which washes these coasts, a dominion which is only accessory to the territorial dominion.

Therefore, she has not the right of exclusion or of admission on these coasts, nor in these seas, which are free seas.

The right of navigating all the free seas belongs, by natural law, to every independent nation, and even constitutes an essential part of this independence.

The United States have exercised navigation in the seas, and commerce upon the coasts above mentioned, from the time of their independence; and they have a perfect right to this navigation and to this commerce, and they can only be deprived of it by their own act or by a convention.

Mr. Middleton declares that Russia had not the right of dominion "*upon the continent of America between the fiftieth and sixtieth degrees of north latitude.*" Still less has she the dominion of "*the adjacent maritime territory or the sea which washes these coasts.*" He further declares that Russia had not the "*right of exclusion or of admission on these coasts, nor in these seas, which are free seas*"—that is, the coasts and seas between the fiftieth and sixtieth degrees of north latitude *on the body of the continent.*

The following remark of Mr. Middleton deserves special attention:

The right of navigating all the *free seas* belongs, by natural law, to every independent nation, and even constitutes an essential part of this independence.

This earnest protest by Mr. Middleton, it will be noted, was against the Ukase of Alexander which proposed to extend Russian sovereignty over the Pacific Ocean as far south as the fifty-first degree of latitude, at which point, as Mr. Adams reminded the Russian minister, that ocean is 4,000 miles wide. It is also to be specially noted that Mr. Middleton's double reference to "*the free seas*" would have no meaning whatever if he did not recognize that freedom on certain seas had been restricted. He could not have used the phrase if he had regarded all seas in that region as "*free seas.*"

In answer to my former reference to these facts (in my note of June 30), Lord Salisbury makes this plea:

Mr. Blaine states that when Mr. Middleton declared that Russia had no right of exclusion on the coasts of America between the fiftieth and sixtieth degrees of north latitude, nor in the seas which washed those coasts, he intended to make a distinction between Behring's Sea and the Pacific Ocean. But on reference to a map it will be

seen that the sixtieth degree of north latitude strikes straight across Behring's Sea, leaving by far the larger and more important part of it to the south; so that I confess it appears to me that by no conceivable construction of his words can Mr. Middleton be supposed to have excepted that sea from those which he declared to be free.

If His Lordship had examined his map somewhat more closely, he would have found my statement literally correct. When Mr. Middleton referred to "the continent of America between the fiftieth and sixtieth degrees of north latitude," it was impossible that he could have referred to the coast of Behring Sea, for the very simple reason that the fiftieth degree of latitude is altogether south of the Behring Sea. The fact that the sixtieth parallel "strikes straight across the Behring Sea" has no more pertinence to this discussion than if His Lordship had remarked that the same parallel passes through the Sea of Okhotsk, which lies to the west of Behring Sea, just as the arm of the North Pacific lies to the east of it. Mr. Middleton was denying Russia's dominion upon a continuous line of coast upon the continent between two specified points and over the waters washing that coast. There is such a continuous line of coast between the fiftieth and sixtieth degrees on the Pacific Ocean; but there is no such line of coast on the Behring Sea, even if you measure from the southernmost island of the Aleutian chain. In a word, the argument of Lord Salisbury on this point is based upon a geographical impossibility. [See illustrative map on opposite page.]

But, if there could be any doubt left as to what coast and to what waters Mr. Middleton referred, an analysis of the last paragraph of the fourth protocol will dispel that doubt. When Mr. Middleton declared that "*the United States have exercised navigation in the seas, and commerce upon the coasts, above mentioned, from the time of their independence,*" he makes the same declaration that had been previously made by Mr. Adams. That declaration could only refer to the north west coast as I have described it, or, as Mr. Middleton phrases it, "the continent of America between the fiftieth and sixtieth degrees of north latitude."

Even His Lordship would not dispute the fact that it was upon this coast and in the waters washing it that the United States and Great Britain had exercised free navigation and commerce continuously since 1784. By no possibility could that navigation and commerce have been in the Behring Sea. Mr. Middleton, a close student of history, and experienced in diplomacy, could not have declared that the United States had "exercised navigation" in the Behring Sea, and "commerce upon its coasts," *from the time of their independence*. As matter of history, there was no trade and no navigation (except the navigation of explorers) by the United States and Great Britain in the Behring Sea in 1784, or even at the time these treaties were negotiated.

Captain Cook's voyage of exploration and discovery through the waters of that sea was completed at the close of the year 1778, and his "Voyage to the Pacific Ocean" was not published in London until five years after his death, which occurred at the Sandwich Islands on the 14th of February, 1779. The Pribyloff Islands were first discovered, one in 1786 and the other in 1787. Seals were taken there for a few years afterwards by the Lebedef Company, of Russia, subsequently consolidated into the Russian-American Company; but the taking of seals on those islands was then discontinued by the Russians until 1803, when it was resumed by the Russian-American Company.

At the time these treaties were negotiated there was only one settlement, and that of Russians, on the shores of the Behring Sea, and the only trading vessels which had entered that sea were the vessels of the Russian Fur Company. Exploring expeditions had, of course, entered.

It is evident, therefore, without further statement, that neither the vessels of the United States nor of Great Britain nor of any other power than Russia had traded on the shores of Behring Sea prior to the negotiations of these treaties. No more convincing proof could be adduced that these treaties had reference solely to the waters and coasts of the continent south of the Alaskan peninsula—simply the "Pacific Ocean" and the "northwest coast" named in the treaties.

The third article of the British treaty, as printed in the British State papers, is as follows:

The line of demarkation between the possessions of the high contracting parties, upon the coast of the continent, and the islands of America to the northwest, shall be drawn in the manner following:

Commencing from the southernmost point of the island called Prince of Wales Island, which point lies in the parallel of  $54^{\circ} 40'$  north latitude, and between the one hundred and thirty-first and the one hundred and thirty-third degree of west longitude (meridian of Greenwich), the said line shall ascend to the north along the channel called Portland Channel, as far as the point of the continent where it strikes the fifty-sixth degree of north latitude; from this last-mentioned point, the line of demarkation shall follow the summit of the mountains situated parallel to the coast, as far as the point of intersection of the one hundred and forty-first degree of west longitude (of the same meridian); and, finally, from the said point of intersection the said meridian line of the one hundred and forty-first degree, in its prolongation as far as the Frozen Ocean, shall form the limit between the Russian and the British possessions on the continent of America to the northwest.

It will be observed that this article explicitly delimits the boundary between British America and the Russian possessions. This delimitation is in minute detail from  $54^{\circ} 40'$  to the northern terminus of the coast known as the northwest coast. When the boundary line reaches that point (opposite  $60^{\circ}$  north latitude) where it intersects the one hundred and forty-first degree of west longitude, all particularity of description ceases. From that point it is projected directly Northward for 600 or 700 miles without any reference to coast line, without any reference to points of discovery or occupation (for there were none in that interior country), but simply on a longitudinal line as far north as the Frozen or Arctic Ocean.

What more striking interpretation of the treaty could there be than this boundary line itself? It could not be clearer if the British negotiators had been recorded as saying to the Russian negotiators:

"Here is the northwest coast to which we have disputed your claims—from the fifty-first to the sixtieth degree of north latitude. We will not, in any event, admit your right south of  $54^{\circ} 40'$ . From  $54^{\circ} 40'$  to the point of junction with the one hundred and forty-first degree of west longitude we will agree to your possession of the coast. That will cover the dispute between us. As to the body of the continent above the point of intersection at the one hundred and forty-first degree of longitude, we know nothing, nor do you. It is a vast unexplored wilderness. We have no settlements there, and you have none. We have, therefore, no conflicting interests with your Government. The simplest division of that territory is to accept the prolongation of the one hundred and forty-first degree of longitude to the Arctic Ocean as the boundary. East of it the territory shall be British. West of it the territory shall be Russian."

And it was so finally settled.

Article 4 of the Anglo-Russian treaty is as follows:

With reference to the line of demarkation laid down in the preceding article it is understood:

First. That the island called Prince of Wales Island shall belong wholly to Russia.



Second. That wherever the summit of the mountains which extend in a direction parallel to the coast, from the fifty-sixth degree of north latitude to the point of intersection of the one hundred and forty-first degree of west longitude, shall prove to be at the distance of more than 10 marine leagues from the ocean, the limit between the British possessions and the line of coast which is to belong to Russia, as above mentioned, shall be formed by "a line parallel to the windings of the coast, and which shall never exceed the distance of 10 marine leagues therefrom."

The evident design of this article was to make certain and definite the boundary line along the line of coast, should there be any doubt as to that line as laid down in article 3. It provided that the boundary line, following the windings of the coast, should never be more than ten marine leagues therefrom.

The fifth article of the treaty between Great Britain and Russia reads thus:

It is moreover agreed, that no establishment shall be formed by either of the two parties within the limits assigned by the two preceding articles to the possessions of the other. Consequently, British subjects shall not form any establishment either upon the coast, or upon the border of the continent, comprised within the limits of the Russian possessions, as designated in the two preceding articles; and, in like manner, no establishment shall be formed by Russian subjects beyond the said limits.

The plain meaning of this article is that neither party shall make settlements within the limits assigned by the third and fourth articles to the possession of the other. Consequently, the third and fourth articles are of supreme importance as making the actual delimitations between the two countries and forbidding each to form any establishments within the limits of the other.

The sixth article of Russia's treaty with Great Britain is as follows:

It is understood that the subjects of His Britannic Majesty, from whatever quarter they may arrive, whether from the ocean or from the interior of the continent, shall forever enjoy the right of navigating freely, and without any hindrance whatever, all the rivers and streams which, in their course toward the Pacific Ocean, may cross the line of demarkation upon the line of coast described in article 3 of the present convention.

The meaning of this article is not obscure. The subjects of Great Britain, whether arriving from the interior of the continent or from the ocean, shall enjoy the right of navigating freely all the rivers and streams which, in their course to the Pacific Ocean, *may cross the line of demarkation upon the line of coast described in article three.* As is plainly apparent, the coast referred to in article three is the coast south of the point of junction already described. Nothing is clearer than the reason for this provision. A *strip of land*, at no point wider than ten marine leagues, running along the Pacific Ocean from 54° 40' to 60° (320 miles by geographical line, by the windings of the coast three times that distance) was assigned to Russia by the third article. Directly to the east of this strip of land, or, as might be said, behind it, lay the British possessions. To shut out the inhabitants of the British possessions from the sea by this *strip of land* would have been not only unreasonable, but intolerable, to Great Britain. Russia promptly conceded the privilege, and gave to Great Britain the right of navigating all rivers crossing that strip of land from 54° 40' to the point of intersection with the one hundred and forty-first degree of longitude. Without this concession the treaty could not have been made. I do not understand that Lord Salisbury dissents from this obvious construction of the sixth article, for, in his dispatch, he says that the article has a "restricted bearing," and refers only to "the *line of coast described in article three*" (the italics are his own)—and the only line of coast described in article three is the coast from 54° 40' to 60°. There is no

description of the coast above that point stretching along the Behring Sea from latitude 60° to the straits of the Behring.

The seventh article of the Anglo-Russian treaty, whose provisions have led to the principal contention between the United States and Great Britain, is as follows:

It is also understood, that for the space of ten years from the signature of the present convention the vessels of the two powers, or those belonging to their respective subjects, shall mutually be at liberty to frequent, without any hindrance whatever, all the inland seas, the gulfs, havens, and creeks on the coast mentioned in article 3, for the purposes of fishing and of trading with the natives.

In the judgment of the President the meaning of this article is altogether plain and clear. It provides that for the space of ten years the vessels of the two powers should *mutually* be at liberty to frequent all the inland seas, etc., "*on the coast mentioned in article 3, for the purpose of fishing and trading with the natives.*" Following out the line of my argument and the language of the article, I have already maintained that this privilege could only refer to the coast from 54° 40' to the point of intersection with the one hundred and forty-first degree of west longitude; that, therefore, British subjects were not granted the right of frequenting the Behring Sea.

Denying this construction, Lord Salisbury says:

I must further dissent from Mr. Blaine's interpretation of article 7 of the latter treaty (British). That article gives to the vessels of the two powers "liberty to frequent all the inland seas, gulfs, havens, and creeks on the coast mentioned in article 3, for the purpose of fishing and of trading with the natives." The expression "coast mentioned in article 3" can only refer to the first words of the article, "the line of demarkation between the possessions of the high contracting parties upon the coast of the continent and the islands of America to the northwest shall be drawn," etc.; that is to say, it included all the possessions of the two powers on the Northwest coast of America. For there would have been no sense whatever in stipulating that Russian vessels should have freedom of access to the small portion of coast which, by a later part of the article, is to belong to Russia. And, as bearing on this point, it will be noticed that article 6, which has a more restricted bearing, speaks only of "the subjects of His Britannic Majesty" and of "the line of coast described in article 3."

It is curious to note the embarrassing intricacies of His Lordship's language and the erroneous assumption upon which his argument is based. He admits that the privileges granted in the sixth article to the subjects of Great Britain are limited to "the coast described in article 3 of the treaty." But when he reaches the seventh article, where the privileges granted are limited to "the coast mentioned in article 3 of the treaty," His Lordship maintains that the two references do not mean the same coast at all. The *coast described* in article 3 and the *coast mentioned* in article 3 are therefore, in His Lordship's judgment, entirely different. The "*coast described* in article 3" is limited, he admits, by the intersection of the boundary line with the one hundred and forty-first degree of longitude, but the "*coast mentioned* in article 3" stretches to the straits of Behring.

The third article is, indeed, a very plain one, and its meaning can not be obscured. Observe that the "line of demarkation" is between the possessions of both parties *on the coast* of the continent. Great Britain had no possessions on the coast-line above the point of junction with the one hundred and forty-first degree, nor had she any settlements above 60° north latitude. South of 60° north latitude was the only place where Great Britain had possessions on the coast-line. North of that point her territory had no connection whatever with the coast either of the Pacific Ocean or the Behring Sea. It is thus evident that the only coast referred to in article 3 was this *strip of land* south of 60° or 59° 30'.

The preamble closes by saying that the line of demarkation between the possessions on the coast "shall be drawn in the manner following,"

viz: From Prince of Wales Island, in  $54^{\circ} 40'$ , along Portland Channel and the summit of the mountains parallel to the coast *as far as their intersection with the one hundred and forty-first degree of longitude*. After having described this line of demarkation between the possessions of both parties on the coast, the remaining sentence of the article shows that, "finally, from the said point of intersection, the said meridian line \* \* \* shall form the limit between the Russian and British possessions on the continent of America." South of the point of intersection the article describes a *line of demarkation* between possessions on the coast; north of that point of intersection the article designates a meridian line as *the limit* between possessions on the continent. The argument of Lord Salisbury appears to this Government not only to contradict the obvious meaning of the seventh and third articles, but to destroy their logical connection with the other articles. In fact, Lord Salisbury's attempt to make two coasts out of the one coast referred to in the third article is not only out of harmony, with the plain provisions of the Anglo-Russian treaty, but is inconsistent with the preceding part of his own argument.

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These five articles in the British treaty (the third, fourth, fifth, sixth, and seventh) are expressed with an exactness of meaning which no argument can change or pervert. In a later part of my note I shall be able, I think, to explain why the Russian Government elaborated the treaty with Great Britain with greater precision and at greater length than was employed in framing the treaty with the United States. It will be remembered that between the two treaties there was an interval of more than ten months—the treaty with the United States being negotiated in April, 1824, and that with Great Britain in February, 1825. During that interval something occurred which made Russia more careful and more exacting in her negotiations with Great Britain than she had been with the United States. What was it?

It is only necessary to quote the third and fourth articles of the American treaty to prove that less attention was given to their consideration than was given to the formation of the British treaty with Russia. The two articles in the American treaty are as follows:

ARTICLE III.—It is moreover agreed that, hereafter there shall not be formed by the citizens of the United States, or under the authority of the said States, any establishment upon the northwest coast of America, nor in any of the islands adjacent, to the north of  $54^{\circ} 40'$  of north latitude; and that, in the same manner, there shall be none formed by Russian subjects, or under the authority of Russia, south of the same parallel.

ART. IV.—It is, nevertheless, understood that during a term of ten years, counting from the signature of the present convention, the ships of both powers, or which belong to their citizens or subjects, respectively, may reciprocally frequent, without any hindrance whatever, the interior seas, gulfs, harbors, and creeks, upon the coast mentioned in the preceding article, for the purpose of fishing and trading with the natives of the country.

It will be noted that in the British treaty four articles, with critical expression of terms, take the place of the third and fourth articles of the American treaty, which were evidently drafted with an absence of the caution on the part of Russia which marked the work of the Russian plenipotentiaries in the British negotiation.

From some cause, not fully explained, great uneasiness was felt in certain Russian circles, and especially among the members of the Russian-American Company, when the treaty between Russia and the United States was made public. The facts leading to the uneasiness were not accurately known, and from that cause they were exaggerated.

The Russians who were to be affected by the treaty were in doubt as to the possible extent implied by the phrase "northwest coast of America," as referred to in the third and fourth articles. The phrase, as I have before said, was used in two senses, and they feared it might have such a construction as would carry the American privilege to the straits of Behring. They feared, moreover, that the uncertainty of the coast referred to in article 3 might, by construction adverse to Russia, include the Behring Sea among the seas and gulfs mentioned in article four. If that construction should prevail, not only the American coast, but the coast of Siberia and the Aleutian coasts might also be thrown open to the ingress of American fishermen. So great and genuine was their fright that they were able to induce the Russian Government to demand a fresh discussion of the treaty before they would consent to exchange ratifications.

It is easy, therefore, to discern the facts which caused the difference in precision between the American and British treaties with Russia, and which at the same time give conclusive force to the argument steadily maintained by the Government of the United States. These facts have thus far only been hinted at, and I have the right to presume that they have not yet fallen under the observation of Lord Salisbury. The President hopes that after the facts are presented the American contention will no longer be denied or resisted by Her Majesty's Government.

Nearly eight months after the Russo-American treaty was negotiated, and before the exchange of ratifications had yet taken place, there was a remarkable interview between Secretary Adams and the Russian minister. I quote from Mr. Adams's diary, December 6, 1824:

6th, Monday.—Baron Tuyl, the Russian minister, wrote me a note requesting an immediate interview, in consequence of instructions received yesterday from his Court. He came, and, after intimating that he was under some embarrassment in executing his instructions, said that the Russian-American Company, upon learning the purport of the northwest coast convention concluded last June by Mr. Middleton, were extremely dissatisfied (*a jels de hauts cris*), and, by means of their influence, had prevailed upon his Government to send him these instructions upon two points. One was that he should deliver, upon the exchange of the ratifications of the convention, an explanatory note purporting that the Russian Government did not understand that the convention would give liberty to the citizens of the United States to trade on the coast of Siberia and the Aleutian Islands. The other was to propose a modification of the convention, by which our vessels should be prohibited from trading on the northwest coast north of latitude 57°. With regard to the former of these points he left with me a minute in writing.

With this preliminary statement Baron Tuyl, in accordance with instructions from his Government, submitted to Mr. Adams the following note:

#### EXPLANATORY NOTE FROM RUSSIA.

Explanatory note to be presented to the Government of the United States at the time of the exchange of ratifications, with a view to removing with more certainty all occasion for future discussions; by means of which note it will be seen that the *Aleutian Islands, the coasts of Siberia, and the Russian Possessions in general on the northwest coast of America to 59° 30' of north latitude* are positively excepted from the liberty of hunting, fishing, and commerce stipulated in favor of citizens of the United States for ten years.

This seems to be only a natural consequence of the stipulations agreed upon, for the coasts of Siberia are washed by the Sea of Okhotsk, the Sea of Kamschatka, and the Icy Sea, and not by the South Sea mentioned in the first article of the convention of April 5-17 [1824]. The *Aleutian Islands* are also washed by the Sea of Kamschatka, or Northern Ocean.

It is not the intention of Russia to impede the free navigation of the Pacific Ocean. She would be satisfied with causing to be recognized, as well understood and placed beyond all manner of doubt, the principle that beyond 59° 30' no foreign vessel can approach her coasts and her islands, nor fish or hunt within the distance of two marine leagues. This will not prevent the reception of foreign vessels which have been damaged or beaten by storm.

The course pursued by Mr. Adams, after the Russian note had been submitted to him, is fully told in his diary, from which I again quote:

I told Baron Tuyl that we should be disposed to do every thing to accommodate the views of his Government that was in our power, but that a modification of the convention *could* be made no otherwise than by a new convention, and that the construction of the convention as concluded belonged to other departments of the Government, for which the Executive had no authority to stipulate. \* \* \* I added that the convention would be submitted immediately to the Senate; that if any thing affecting its construction, or, still more, modifying its meaning, were to be presented on the part of the Russian Government before or at the exchange of the ratifications, it must be laid before the Senate, and could have no other possible effect than of starting doubts, and, perhaps, hesitation, in that body, and of favoring the views of those, if such there were, who might wish to defeat the ratification itself of the convention. \* \* \* If, therefore, he would permit me to suggest to him what I thought would be his best course, it would be to wait for the exchange of the ratifications, and make it purely and simply; that afterwards, if the instructions of his Government were imperative, he might present the note, to which I now informed him what would be, in substance, my answer. It necessarily could not be otherwise. But, if his instructions left it discretionary with him, he would do still better to inform his Government of the state of things here, of the purport of our conference, and of what my answer must be if he should present the note. I believed his Court would then deem it best that he should not present the note at all. *Their apprehension had been excited by an interest not very friendly to the good understanding between the United States and Russia. Our merchants would not go to trouble the Russians on the coast of Siberia, or north of the fifty seventh degree of latitude, and it was wisest not to put such fancies into their heads.* At least the Imperial Government might wait to see the operation of the convention before taking any further step, and *I was confident they would hear no complaint resulting from it.* If they should, then would be the time for adjusting the construction or negotiating a modification of the convention. \* \* \*

The Russian minister was deeply impressed by what Mr. Adams had said. He had not before clearly perceived the inevitable effect if he should insist on presenting the note in the form of a demand. He was not prepared for so serious a result as the destruction or the indefinite postponement of the treaty between Russia and the United States, and Mr. Adams readily convinced him that at the exchange of ratifications no modification of the treaty could be made. The only two courses open were, first, to ratify; or, second, to refuse, and annul the treaty. Mr. Adams reports the words of the minister in reply:

The Baron said that these ideas had occurred to himself; that he had made this application in pursuance of his instructions, but he was aware of the distribution of powers in our Constitution and of the incompetency of the Executive to adjust such questions. He would therefore wait for the exchange of the ratifications without presenting his note, and reserve for future consideration whether to present it shortly afterwards or to inform his Court of what he has done and ask their further instructions upon what he shall definitely do on the subject. \* \* \*

As Baron Tuyl surrendered his opinions to the superior judgment of Mr. Adams, the ratifications of the treaty were exchanged on the 11th day of January, and on the following day the treaty was formally proclaimed. A fortnight later, on January 25, 1825, Baron Tuyl, following the instructions of his Government, filed his note in the Department of State. Of course, his act at that time did not affect the text of the treaty; but it placed in the hands of the Government of the United States an unofficial note which significantly told what Russia's construction of the treaty would be if, unhappily, any difference as to its meaning should arise between the two governments. But Mr. Adams's friendly intimation removed all danger of dispute, for it conveyed to Russia the assurance that the treaty, as negotiated, contained, in effect, the provisions which the Russian note was designed to supply. From that time until Alaska, with all its rights of land and water, was transferred to the United States—a period of forty-three years—no act or word on the part of either government ever impeached the full validity

of the treaty as it was understood both by Mr. Adams and by Baron Tuyl at the time it was formally proclaimed.

While these important matters were transpiring in Washington, negotiations between Russia and England (ending in the treaty of 1825) were in progress in St. Petersburg. The instructions to Baron Tuyl concerning the Russian-American treaty were fully reflected in the care with which the Anglo-Russian treaty was constructed, a fact to which I have already adverted in full. There was, indeed, a possibility that the true meaning of the treaty with the United States might be misunderstood, and it was therefore the evident purpose of the Russian Government to make the treaty with England so plain and so clear as to leave no room for doubt and to baffle all attempts at misconstruction. The Government of the United States finds the full advantage to it in the caution taken by Russia in 1825, and can therefore quote the Anglo-Russian treaty, with the utmost confidence that its meaning can not be changed from that clear, unmistakable text, which, throughout all the articles, sustains the American contention.

The "explanatory note" filed with this Government by Baron Tuyl is so plain in its text that, after the lapse of sixty six years, the exact meaning can neither be misapprehended nor misrepresented. It draws the distinction between the Pacific Ocean and the waters now known as the Behring Sea so particularly and so perspicuously that no answer can be made to it. It will bear the closest analysis in every particular. "It is not the intention of Russia to impede the free navigation of the Pacific Ocean!" This frank and explicit statement shows with what entire good faith Russia had withdrawn, in both treaties, the offensive Ukase of Alexander, so far as the Pacific Ocean was made subject to it. Another avowal is equally explicit, viz, that "the coast of Siberia, the northwest coast of America to  $59^{\circ} 30'$  of north latitude [that is, down to  $59^{\circ} 30'$ , the explanatory note reckoning from north to south], and the Aleutian Islands are positively excepted from the liberty of hunting, fishing, and commerce stipulated in favor of citizens of the United States for ten years." The reason given for this exclusion is most significant in connection with the pending discussion, namely, that the coasts of Siberia are washed by the Sea of Okhotsk, the Sea of Kamtschatka, and the Icy Sea, and not by the "South Sea" [Pacific Ocean] mentioned in the first article of the convention of April 5-17, 1824. The Aleutian Islands are also washed by the Sea of Kamtschatka, or Northern Ocean (Northern Ocean being used in contradistinction to South Sea or Pacific Ocean). The liberty of hunting, fishing, and commerce, mentioned in the treaties, was therefore confined to the coast of the Pacific Ocean south of  $59^{\circ} 30'$  both to the United States and Great Britain. It must certainly be apparent now to Lord Salisbury that Russia never intended to include the Behring Sea in the phrase "Pacific Ocean." The American argument on that question has been signally vindicated by the official declaration of the Russian Government.

In addition to the foregoing, Russia claimed jurisdiction of two marine leagues from the shore in the Pacific Ocean, a point not finally insisted upon in either treaty. The protocols, however, show that Great Britain was willing to agree to the two marine leagues, but the United States was not; and, after the concession was made to the United States, Mr. G. Canning insisted upon its being made to Great Britain also.

In the interview between the American Secretary of State and the Russian minister, in December, 1824, it is worth noting that Mr. Adams believed that the application made by Baron Tuyl had its origin "in the apprehension of the Court of Russia which had been caused by an

interest not very friendly to the good understanding between the United States and Russia." I presume no one need be told that the reference here made by Mr. Adams was to the Government of Great Britain; that the obvious effort of the British Government at that time was designed to make it certain that the United States should not have the power in the waters and on the shores of Behring Sea which, *Lord Salisbury now argues, had undoubtedly been given both to the United States and Great Britain by the treaties.*

It is to be remembered that Mr. Adams's entire argument was to quiet Baron Tuyl with the assurance that the treaty already negotiated was, in effect, just what the Russian Government desired it to be by the incorporation of the "explanatory note" of which Baron Tuyl was the bearer. Mr. Adams was not a man to seize an advantage merely by cunning construction of language, which might have two meanings. He was determined to remove the hesitation and distrust entertained for the moment by Russia. He went so far, indeed, as to give an assurance that American ships would not go above 57° north latitude (Sitka), and he did not want the text of the treaty so changed as to mention the facts contained in the explanatory note, because, speaking of the hunters and the fishermen, it "was wisest not to put such fancies into their heads."

It is still further noticeable that Mr. Adams, in his sententious expression, spoke of the treaty in his interview with Baron Tuyl as "the northwest coast convention." This closely descriptive phrase was enough to satisfy Baron Tuyl that Mr. Adams had not taken a false view of the true limits of the treaty and had not attempted to extend the privileges granted to the United States a single inch beyond their plain and honorable intent.

The three most confident assertions made by Lord Salisbury, and regarded by him as unanswerable, are, in his own language, the following:

(1) That England refused to admit any part of the Russian claim asserted by the Ukase of 1821 of a maritime jurisdiction and exclusive right of fishing throughout the whole extent of that claim, from Behring Straits to the fifty-first parallel.

(2) That the Convention of 1825 was regarded on both sides as a renunciation on the part of Russia of that claim in its entirety.

(3) That, though Behring Straits were known and specifically provided for, Behring Sea was not known by that name, but was regarded as a part of the Pacific Ocean.

The explanatory note of the Russian Government disproves and denies in detail these three assertions of Lord Salisbury. I think they are completely disproved by the facts recited in this dispatch, but the explanatory note is a specific contradiction of each one of them.

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The "inclosures" which accompanied Lord Salisbury's dispatch, and which are quoted to strengthen his arguments, seem to me to sustain, in a remarkable manner, the position of the United States. The first inclosure is a dispatch from Lord Londonderry to Count Lieven, Russian minister at London, dated Foreign Office, January 18, 1822. The first paragraph of this dispatch is as follows:

The undersigned has the honor to acknowledge the note addressed to him by Baron de Nicolai of the 12th of September last, covering a copy of a Ukase issued by his imperial master, Emperor of all the Russias, bearing date 4th September, 1821, for various purposes therein set forth, especially connected with the territorial rights of his Crown on the northwest coast of America bordering on the Pacific Ocean, and the commerce and navigation of His Imperial Majesty's subjects in the seas adjacent thereto.

It is altogether apparent that this dispatch is limited to the withdrawal of the provisions of the Ukase issued by the Emperor Alexander, especially connected with *the territorial rights on the northwest coast bordering on the Pacific Ocean*. Evidently Lord Londonderry makes no reference, direct or indirect, to the Behring Sea. The whole scope of his contention, as defined by himself, lies outside of the field of the present dispute between the British and American governments. This Government heartily agrees with Lord Londonderry's form of stating the question.

The Duke of Wellington was England's representative in the Congress of Verona, for which place he set out in the autumn of 1822. His instructions from Mr. G. Canning, British secretary of foreign affairs, followed the precise line indicated by Lord Londonderry in the dispatch above quoted. This is more plainly shown by a "memorandum on the Russian Ukase" delivered by the Duke on the 17th of October to Count Nesselrode, Russia's representative at Verona. The Duke was arguing against the Ukase of Alexander as it affected British interests, and his language plainly shows that he confined himself to the "northwest coast of America bordering on the Pacific Ocean." To establish this it is only necessary to quote the following paragraph from the Duke's memorandum, viz :

Now, we can prove that the English Northwest Company and the Hudson's Bay Company have for many years established forts and other trading places in a country called New Caledonia, situated to the west of a range of mountains called the Rocky Mountains and extending along *the shores of the Pacific Ocean* from latitude 49° to latitude 60° north.

The Duke of Wellington always went directly to the point at issue, and he was evidently not concerning himself about any subject other than the protection of the English territory south of the Alaskan peninsula and on the northwest coast *bordering on the Pacific Ocean*. England owned no territory on the coast north of the Alaskan peninsula, and hence there was no reason for connecting the coast above the peninsula in any way with the question before the Congress. Evidently the Duke did not, in the remotest manner, connect the subject he was discussing with the waters or the shores of the Behring Sea.

The most significant and important of all the inclosures is No. 12, in which Mr. Stratford Canning, the British negotiator at St. Petersburg, communicated, under date of March 1, 1825, to Mr. G. Canning, minister of Foreign Affairs, the text of the treaty between England and Russia. Some of Mr. Stratford Canning's statements are very important. In the second paragraph of his letter he makes the following statement :

The line of demarkation along the *strip of land* on the northwest coast of America, assigned to Russia, is laid down in the convention agreeably to your directions.

After all, then, it appears that the "strip of land," to which we have already referred more than once, was reported by the English plenipotentiary at St. Petersburg. This clearly and undeniably exhibits the field of controversy between Russia and England, even if we had no other proof of the fact. It was solely on the northwest coast bordering on the Pacific Ocean, and not in the Behring Sea at all. It is the same *strip of land* which the United States acquired in the purchase of Alaska, and runs from 54° 40' to 60° north latitude—the same *strip of land* which gave to British America, lying *behind* it, a free access to the ocean.



Mr. Stratford Canning also communicated, in his letter of March 1, the following:

With respect to Behring's Straits, I am happy to have it in my power to assure you, on the joint authority of the Russian plenipotentiaries, that *the Emperor of Russia has no intention whatever of maintaining any exclusive claim to the navigation of those straits or of the seas to the north of them.*

This assurance from the Emperor of Russia is of that kind where the power to give or to withhold is absolute. If the treaty of 1825 between Great Britain and Russia had conceded such rights in the Behring waters as Lord Salisbury now claims, why was Sir Stratford Canning so "happy" to "have it in his power to assure" the British foreign office, on "the authority of two Russian plenipotentiaries," that "the Emperor had no intention of maintaining an exclusive claim to the navigation of the Behring Straits," or of the "seas to the north of them." The *seas to the south of the straits* were most significantly not included in the Imperial assurance. The English statesmen of that day had, as I have before remarked, attempted the abolition of the Ukase of Alexander only so far as it affected the coast of the Pacific Ocean from the fifty-first to the sixtieth degree of north latitude. It was left in full force on the shores of the Behring Sea. There is no proof whatever that the Russian Emperor annulled it there. That sea, from east to west, is 1,300 miles in extent; from north to south it is 1,000 miles in extent. The whole of this great body of water, under the Ukase, was left open to the world, except a strip of 100 miles from the shore. But with these 100 miles enforced on all the coasts of the Behring Sea it would be obviously impossible to approach the straits of Behring, which were less than 50 miles in extreme width. If enforced strictly, the Ukase would cut off all vessels from passing through the straits to the Arctic Ocean. If, as Lord Salisbury claims, the Ukase had been withdrawn from the entire Behring coast, as it was between the fifty-first and sixtieth degrees on the Pacific coast, what need would there have been for Mr. Stratford Canning, the English plenipotentiary, to seek a favor from Russia in regard to passing through the straits into the Arctic Ocean, where scientific expeditions and whaling vessels desired to go?

I need not review all the inclosures; but I am sure that, properly analyzed, they will all show that the subject-matter touched only the settlement of the dispute on the northwest coast, from the fifty-first to the sixtieth degree of north latitude. In other words, they related to the contest which was finally adjusted by the establishment of the line of 54° 40', which marked the boundary between Russian and English territory at the time of the Anglo-Russian treaty, as to-day it marks the line of division between Alaska and British Columbia. But that question in no way touched the Behring Sea; it was confined wholly to the Pacific Ocean and the Northwest coast.

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Lord Salisbury has deemed it proper, in his dispatch, to call the attention of the Government of the United States to some elementary principles of international law touching the freedom of the seas. For our better instruction he gives sundry extracts from Wheaton and Kent—our most eminent publicists—and, for further illustration, quotes from the dispatches of Secretaries Seward and Fish, all maintaining the well known principle that a nation's jurisdiction over the sea is limited

to three marine miles from its shore line. Commenting on these quotations, His Lordship says :

A claim of jurisdiction over the open sea which is not in accordance with the recognized principles of international law or usage may, of course, be asserted by force, but can not be said to have any legal validity as against the vessels of other countries, except in so far as it is positively admitted in conventional agreements with those countries.

The United States, having the most extended sea-coast of all the nations of the world, may be presumed to have paid serious attention to the laws and usages which define and limit maritime jurisdiction. The course of this Government has been uniformly in favor of upholding the recognized law of nations on that subject. While Lord Salisbury's admonitions are received in good part by this Government, we feel justified in asking His Lordship if the Government of Great Britain has uniformly illustrated these precepts by example, or whether she has not established at least one notable precedent which would justify us in making greater demands upon Her Majesty's Government touching the Behring Sea than either our necessities or our desires have ever suggested? The precedent to which I refer is contained in the following narrative :

Napoleon Bonaparte fell into the power of Great Britain on the 15th day of July, 1815. The disposition of the illustrious prisoner was primarily determined by a treaty negotiated at Paris on the 2d of the following August between Great Britain, Russia, Prussia, and Austria. By that treaty "the custody of Napoleon is specially intrusted to the British Government." The choice of the place and of the measures which could best secure the prisoner were especially reserved to His Britannic Majesty. In pursuance of this power, Napoleon was promptly sent by Great Britain to the island of St. Helena as a prisoner for life. Six months after he reached St. Helena the British Parliament enacted a special and extraordinary law for the purpose of making his detention more secure. It was altogether a memorable statute, and gave to the British governor of the island of St. Helena remarkable powers over the property and rights of other nations. The statute contains eight long sections, and in the fourth section assumes the power to exclude ships of any nationality, not only from landing on the island, but forbids them "to hover within 8 leagues of the coast of the island." The penalty for hovering within 8 leagues of the coast is the forfeiture of the ship to His Majesty the King of Great Britain, on trial to be had in London, and the offense to be the same as if committed in the county of Middlesex. This power was not assumed by a military commander, pleading the silence of law amid the clash of arms; nor was it conferred by the power of civil Government in a crisis of public danger. It was a Parliamentary enactment in a season of profound peace that was not broken in Europe by war among the great Powers for eight and thirty years thereafter. [See inclosure C.]

The British Government thus assumed exclusive and absolute control over a considerable section of the South Atlantic Ocean, lying directly in the path of the world's commerce, near the capes which mark the southernmost points of both hemispheres, over the waters which for centuries had connected the shores of all continents, and afforded the commercial highway from and to all the ports of the world. The body of water thus controlled, in the form of a circle nearly 50 miles in diameter, was scarcely less than 2,000 square miles in extent; and whatever ship dared to tarry or hover within this area might, regardless of its nationality, be forcibly seized and summarily forfeited to the British King.

The United States had grave and special reasons for resenting this peremptory assertion of power by Great Britain. On the 3d day of July, 1815, a fortnight after the battle of Waterloo and twelve days before Napoleon became a prisoner of war, an important commercial treaty was concluded at London between the United States and Great Britain. It was the sequel to the Treaty of Ghent, which was concluded some six months before, and was remarkable, not only from the character of its provisions, but from the eminence of the American negotiators—John Quincy Adams, Henry Clay, and Albert Gallatin. Among other provisions of this treaty relaxing the stringent colonial policy of England was one which agreed that American ships should be admitted and hospitably received at the island of St. Helena. Before the ratifications of the treaty were exchanged, in the following November, it was determined that Napoleon should be sent to St. Helena. England thereupon declined to ratify the treaty unless the United States should surrender the provision respecting that island. After that came the stringent enactment of Parliament forbidding vessels to hover within 24 miles of the island. The United States was already a great commercial power. She had 1,400,000 tons of shipping; more than five hundred ships bearing her flag were engaged in trade around the capes. Lord Salisbury has had much to say about the liberty of the seas, but these five hundred American ships were denied the liberty of the seas in a space 50 miles wide in the South Atlantic Ocean by the express authority of Great Britain.

The act of Parliament which asserted this power over the sea was to be in force as long as Napoleon should live. Napoleon was born the same year with Wellington, and was therefore but forty-six years of age when he was sent to St. Helena. His expectation of life was then as good as that of the Duke, who lived until 1852. The order made in April, 1816, to obstruct free navigation in a section of the South Atlantic might, therefore, have been in force for the period of thirty-six years, if not longer. It actually proved to be for five years only. Napoleon died in 1821.

It is hardly conceivable that the same nation which exercised this authority in the broad Atlantic over which, at that very time, eight hundred millions of people made their commercial exchanges, should deny the right of the United States to assume control over a limited area, for a fraction of each year, in a sea which lies far beyond the line of trade, whose silent waters were never cloven by a commercial prow, whose uninhabited shores have no port of entry and could never be approached on a lawful errand under any other flag than that of the United States. Is this Government to understand that Lord Salisbury justifies the course of England? Is this Government to understand that Lord Salisbury maintains the right of England, at her will and pleasure, to obstruct the highway of commerce in mid-ocean, and that she will at the same time interpose objections to the United States exercising her jurisdiction beyond the 3-mile limit, in a remote and unused sea, for the sole purpose of preserving the most valuable fur seal fishery in the world, from remediless destruction?

If Great Britain shall consider that the precedent set at St. Helena of obstruction to the navigable waters of the ocean is too remote for present quotation, I invite her attention to one still in existence. Even to-day, while Her Majesty's Government is aiding one of her colonies to destroy the American seal fisheries, another colony, with her consent, has established a pearl fishery in an area of the Indian Ocean, 600 miles

wide. And so complete is the assumption of power that, according to Sir George Baden Powell, a license fee is collected from the vessels engaged in the pearl fisheries in the open ocean. The asserted power goes to the extent of making foreign vessels that have procured their pearls far outside the 3-mile limit pay a heavy tax when the vessels enter an Australian port to land cargoes and refit. Thus the foreign vessel is hedged in on both sides, and is bound to pay the tax under British law, because, as Sir George Baden-Powell intimates, the voyage to another port would probably be more expensive than the tax. I quote further from Sir George to show the extent to which British assumption of power over the Ocean has gone:

The right to charge these dues and to exercise this control *outside the 3-mile limit* is based on an act of the Federal Council of Australasia, which (Federal Council act, 1885, section 15) enacts that the council shall have legislative authority, *inter alia*, *in respect of fisheries in Australian waters outside territorial limits*. In 1889 this council passed an act to "regulate the pearl shell and *beche de mer* fisheries in Australian waters adjacent to the colony of Western Australia." In 1888 a similar act had been passed, dealing with the fisheries in the seas adjacent to Queensland (on the east coast).

I am directed by the President to say that, on behalf of the United States, he is willing to adopt the text used in the act of Parliament to exclude ships from hovering nearer to the island of St. Helena than eight marine leagues, or he will take the example cited by Sir George Baden-Powell, where, by permission of Her Majesty's Government, control over a part of the ocean 600 miles wide is to-day authorized by Australian law. The President will ask the Government of Great Britain to agree to the distance of twenty marine leagues—within which no ship shall hover around the islands of St. Paul and St. George, from the 15th of May to the 15th of October of each year. This will prove an effective mode of preserving the seal fisheries for the use of the civilized world—a mode which, in view of Great Britain's assumption of power over the open ocean, she can not with consistency decline. Great Britain prescribed eight leagues at St. Helena; but the obvious necessities in the Behring Sea will, on the basis of this precedent, justify twenty leagues for the protection of the American seal fisheries.

The United States desires only such control over a limited extent of the waters in the Behring Sea, for a part of each year, as will be sufficient to insure the protection of the fur seal fisheries, already injured, possibly, to an irreparable extent by the intrusion of Canadian vessels, sailing with the encouragement of Great Britain and protected by her flag. The gravest wrong is committed when (as in many instances is the case) American citizens, refusing obedience to the laws of their own country, have gone into partnership with the British flag and engaged in the destruction of the seal fisheries which belong to the United States. So general, so notorious, and so shamelessly avowed has this practice become that last season, according to the report of the American consul at Victoria, when the intruders assembled at Ounalaska on the 4th of July, previous to entering Behring Sea, the day was celebrated in a patriotic and spirited manner by the American citizens, who, at the time, were protected by the British flag in their violation of the laws of their own country.

With such agencies as these, devised by the Dominion of Canada and protected by the flag of Great Britain, American rights and interests have, within the past four years, been damaged to the extent of millions of dollars, with no corresponding gain to those who caused the loss. From 1870 to 1890 the seal fisheries—carefully guarded and pre-

served—yielded one hundred thousand skins each year. The Canadian intrusions began in 1836, and so great has been the damage resulting from their destruction of seal life in the open sea surrounding the Pribyloff Islands, that in 1890 the Government of the United States limited the Alaska Company to sixty thousand seals. But the company was able to secure only twenty one thousand seals. Under the same evil influences that have been active now for five seasons the seal fisheries will soon be utterly destroyed. Great Britain has been informed, advised, warned over and over again, of the evil effects that would flow from her course of action; but, against testimony that amounts to demonstration, she has preferred to abide by personal representations from Ottawa, by reports of commissioners who examined nothing and heard nothing, except the testimony of those engaged in the business against which the United States has earnestly protested. She may possibly be convinced of the damage if she will send an intelligent commissioner to the Pribyloff Islands.

In general answer to all these facts, Great Britain announces that she is willing to settle the dispute by arbitration. Her proposition is contained in the following paragraph, which I quote in full:

I have to request that you will communicate a copy of this dispatch, and of its inclosures, to Mr. Blaine. You will state that Her Majesty's Government have no desire whatever to refuse to the United States any jurisdiction in Behring Sea which was conceded by Great Britain to Russia, and which properly accrues to the present possessors of Alaska in virtue of treaties or the law of nations; and that, if the United States Government, after examination of the evidence and arguments which I have produced, still differ from them as to the legality of the recent captures in that sea, they are ready to agree that the question, with the issues that depend upon it, should be referred to impartial arbitration. You will in that case be authorized to consider, in concert with Mr. Blaine, the method of procedure to be followed.

In his annual message, sent to Congress on the first of the present month, the President, speaking in relation to the Behring Sea question, said :

The offer to submit the question to arbitration, as proposed by Her Majesty's Government, has not been accepted, for the reason that the form of submission proposed is not thought to be calculated to assure a conclusion satisfactory to either party.

In the judgment of the President, nothing of importance would be settled by proving that Great Britain conceded no jurisdiction to Russia over the seal fisheries of the Behring Sea. It might as well be proved that Russia conceded no jurisdiction to England over the River Thames. By doing nothing in each case every thing is conceded. In neither case is anything asked of the other. "Concession," as used here, means simply *acquiescence* in the rightfulness of the title, and that is the only form of concession which Russia asked of Great Britain or which Great Britain gave to Russia.

The second offer of Lord Salisbury to arbitrate, amounts simply to a submission of the question whether any country has a right to extend its jurisdiction more than one marine league from the shore? No one disputes that, as a rule; but the question is whether there may not be exceptions whose enforcement does not interfere with those highways of commerce which the necessities and usage of the world have marked out. Great Britain, when she desired an exception, did not stop to consider or regard the inconvenience to which the commercial world might be subjected. Her exception placed an obstacle in the highway between continents. The United States, in protecting the seal fisheries, will not interfere with a single sail of commerce on any sea of the globe.

It will mean something tangible, in the President's opinion, if Great Britain will consent to arbitrate the real questions which have been

under discussion between the two Governments for the last four years. I shall endeavor to state what, in the judgment of the President, those issues are:

First. What exclusive jurisdiction in the sea now known as the Behring Sea, and what exclusive rights in the seal fisheries therein, did Russia assert and exercise prior and up to the time of the cession of Alaska to the United States?

Second. How far were these claims of jurisdiction as to the seal fisheries recognized and conceded by Great Britain?

Third. Was the body of water now known as the Behring Sea included in the phrase "Pacific Ocean," as used in the Treaty of 1825 between Great Britain and Russia; and what rights, if any, in the Behring Sea were given or conceded to Great Britain by the said treaty?

Fourth. Did not all the rights of Russia as to jurisdiction, and as to the seal fisheries in Behring Sea east of the water boundary, in the treaty between the United States and Russia of March 30, 1867, pass unimpaired to the United States under that treaty?

Fifth. What are now the rights of the United States as to the fur seal fisheries in the waters of the Behring Sea outside of the ordinary territorial limits, whether such rights grow out of the cession by Russia of any special rights or jurisdiction held by her in such fisheries or in the waters of Behring Sea, or out of the ownership of the breeding islands and the habits of the seals in resorting thither and rearing their young thereon and going out from the islands for food, or out of any other fact or incident connected with the relation of those Seal Fisheries to the territorial possessions of the United States?

Sixth. If the determination of the foregoing questions shall leave the subject in such position that the concurrence of Great Britain is necessary in prescribing regulations for the killing of the fur seal in any part of the waters of Behring Sea, than it shall be further determined: First, how far, if at all, outside the ordinary territorial limits it is necessary that the United States should exercise an exclusive jurisdiction in order to protect the seal for the time living upon the islands of the United States and feeding therefrom? Second, whether a closed season (during which the killing of seals in the waters of Behring Sea outside the ordinary territorial limits shall be prohibited) is necessary to save the seal fishing industry, so valuable and important to mankind, from deterioration or destruction? And, if so, third, what months or parts of months should be included in such season, and over what waters it should extend?

The repeated assertions that the Government of the United States demands that the Behring Sea be pronounced *mare clausum*, are without foundation. The Government has never claimed it and never desired it. It expressly disavows it. At the same time the United States does not lack abundant authority, according to the ablest exponents of International law, for holding a small section of the Behring Sea for the protection of the fur seals. Controlling a comparatively restricted area of water for that one specific purpose is by no means the equivalent of declaring the sea, or any part thereof, *mare clausum*. Nor is it by any means so serious an obstruction as Great Britain assumed to make in the South Atlantic, nor so groundless an interference with the common law of the sea as is maintained by British authority to-day in the Indian Ocean. The President does not, however, desire the long

postponement which an examination of legal authorities from Ulpian to Phillimore and Kent would involve. He finds his own views well expressed by Mr. Phelps, our late minister to England, when, after failing to secure a just arrangement with Great Britain touching the seal fisheries, he wrote the following in his closing communication to his own Government, September 12, 1888:

Much learning has been expended upon the discussion of the abstract question of the right of *mare clausum*. I do not conceive it to be applicable to the present case.

Here is a valuable fishery, and a large and, if properly managed, permanent industry, the property of the nations on whose shores it is carried on. It is proposed by the colony of a foreign nation, in defiance of the joint remonstrance of all the countries interested, to destroy this business by the indiscriminate slaughter and extermination of the animals in question, in the open neighboring sea, during the period of gestation, when the common dictates of humanity ought to protect them, were there no interest at all involved. And it is suggested that we are prevented from defending ourselves against such depredations because the sea at a certain distance from the coast is free.

The same line of argument would take under its protection piracy and the slave trade when prosecuted in the open sea, or would justify one nation in destroying the commerce of another by placing dangerous obstructions and derelicts in the open sea near its coasts. There are many things that can not be allowed to be done on the open sea with impunity, and against which every sea is *mare clausum*; and the right of self-defense as to person and property prevails there as fully as elsewhere. If the fish upon the Canadian coasts could be destroyed by scattering poison in the open sea adjacent with some small profit to those engaged in it, would Canada, upon the just principles of international law, be held defenseless in such a case? Yet that process would be no more destructive, inhuman, and wanton than this.

If precedents are wanting for a defense so necessary and so proper, it is because precedents for such a course of conduct are likewise unknown. The best international law has arisen from precedents that have been established when the just occasion for them arose, undeterred by the discussion of abstract and inadequate rules.

I have the honor to be, sir, with the highest consideration, your obedient servant,

JAMES G. BLAINE.

[Inclosure A.]

CONVENTION\* BETWEEN THE UNITED STATES AND RUSSIA RELATIVE TO NAVIGATION, FISHING, AND TRADING IN THE PACIFIC OCEAN AND TO ESTABLISHMENTS ON THE NORTHWEST COAST.

Concluded April 17, 1824; ratifications exchanged at Washington January 11, 1825; proclaimed January 12, 1825.

In the name of the Most Holy and Invisible Trinity.

The President of the United States of America and His Majesty the Emperor of all the Russias, wishing to cement the bonds of amity which unite them, and to secure between them the invariable maintenance of a perfect concord, by means of the present convention, have named as their Plenipotentiaries to this effect, to wit:

The President of the United States of America, Henry Middleton, a citizen of said States, and their Envoy Extraordinary and Minister Plenipotentiary near his Imperial Majesty; and His Majesty the Emperor of all the Russias, his beloved and faithful Charles Robert Count of Nesselrode, actual Privy Counsellor, Member of the Council of State, Secretary of State directing the administration of Foreign Affairs, actual Chamberlain, Knight of the Order of St. Alexander Nevsky, Grand Cross of the Order of St. Wladimir of the first class, Knight of that of the White Eagle of Poland, Grand Cross of the Order of St. Stephen of Hungary, Knight of the Orders of the Holy Ghost and St. Michael, and Grand Cross of the Legion of Honor of France, Knight Grand Cross of the Orders of the Black and of the Red Eagle of Prussia, of the Annunciation of Sardinia, of Charles III of Spain, of St. Ferdinand and of Merit of Naples, of the Elephant of Denmark, of the Polar Star of Sweden, of the Crown of Württemberg, of the Guelphs of Hanover, of the Belgic Lion, of Fidelity of Baden, and of St. Constantine of Parma; and Pierre de Poletica, actual Counsellor of State, Knight of the Order of St. Anne of the first class, and Grand Cross of the Order of St. Wladimir of the second;

\* Translation from the original, which is in the French language.

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

## ARTICLE I.

It is agreed that, in any part of the Great Ocean, commonly called the Pacific Ocean, or South Sea, the respective citizens or subjects of the high contracting Powers shall be neither disturbed nor restrained, either in navigation or in fishing, or in the power of resorting to the coasts, upon points which may not already have been occupied, for the purpose of trading with the natives, saving always the restrictions and conditions determined by the following articles.

## ARTICLE II.

With a view of preventing the rights of navigation and of fishing exercised upon the Great Ocean by the citizens and subjects of the high contracting Powers from becoming the pretext for an illicit trade, it is agreed that the citizens of the United States shall not resort to any point where there is a Russian establishment, without the permission of the governor or commander ; and that, reciprocally, the subjects of Russia shall not resort, without permission, to any establishment of the United States upon the Northwest coast.

## ARTICLE III.

It is moreover agreed that, hereafter, there shall not be formed by the citizens of the United States, or under the authority of the said States, any establishment upon the northwest coast of America, nor in any of the islands adjacent, to the north of fifty-four degrees and forty minutes of north latitude ; and that, in the same manner, there shall be none formed by Russian subjects, or under the authority of Russia, south of the same parallel.

## ARTICLE IV.

It is, nevertheless, understood that during a term of ten years, counting from the signature of the present convention, the ships of both Powers, or which belong to their citizens or subjects respectively, may reciprocally frequent, without any hindrance whatever, the interior seas, gulfs, harbors, and creeks, upon the coast mentioned in the preceding article, for the purpose of fishing and trading with the natives of the country.

## ARTICLE V.

All spirituous liquors, fire-arms, other arms, powder, and munitions of war of every kind, are always excepted from this same commerce permitted by the preceding article ; and the two Powers engage, reciprocally, neither to sell, nor suffer them to be sold, to the natives by their respective citizens and subjects, nor by any person who may be under their authority. It is likewise stipulated that this restriction shall never afford a pretext, nor be advanced, in any case, to authorize either search or detention of the vessels, seizure of the merchandise, or, in fine, any measures of constraint whatever towards the merchants or the crews who may carry on this commerce ; the high contracting Powers reciprocally reserving to themselves to determine upon the penalties to be incurred, and to inflict the punishments in case of the contravention of this article by their respective citizens or subjects.

## ARTICLE VI.

When this convention shall have been duly ratified by the President of the United States, with the advice and consent of the Senate, on the one part, and, on the other, by His Majesty the Emperor of all the Russias, the ratifications shall be exchanged at Washington in the space of ten months from the date below, or sooner if possible.

In faith whereof the respective Plenipotentiaries have signed this convention, and thereto affixed the seals of their arms.

Done at St. Petersburg the 17-5 April, of the year of Grace one thousand eight hundred and twenty-four.

[SEAL.]

[SEAL.]

[SEAL.]

HENRY MIDDLETON.

Le Comte CHARLES DE NESSELRODE.

PIERRE DE POLETICA.



## CONVENTION BETWEEN GREAT BRITAIN AND RUSSIA.

*Signed at St. Petersburg, February 28-16, 1825; presented to Parliament May 16, 1825.*

In the name of the Most Holy and Undivided Trinity.

His Majesty the King of the United Kingdom of Great Britain and Ireland, and His Majesty the Emperor of all the Russias, being desirous of drawing still closer the ties of good understanding and friendship which unite them, by means of an agreement which may settle, upon the basis of reciprocal convenience, different points connected with the commerce, navigation, and fisheries of their subjects on the Pacific Ocean, as well as the limits of their respective possessions on the Northwest coast of America, have named Plenipotentiaries to conclude a convention for this purpose, that is to say: His Majesty the King of the United Kingdom of Great Britain and Ireland, the Right Honorable Stratford Canning, a member of his said Majesty's Most Honorable Privy Council, etc., and His Majesty the Emperor of all the Russias, the Sieur Charles Robert Count de Nesselrode, His Imperial Majesty's Privy Councillor, a member of the Council of the Empire, Secretary of State for the department of Foreign Affairs, etc., and the Sieur Pierre de Poletica, His Imperial Majesty's Councillor of State, etc. Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and signed the following articles:

I.—It is agreed that the respective subjects of the high contracting Parties shall not be troubled or molested, in any part of the ocean, commonly called the Pacific Ocean, either in navigating the same, in fishing therein, or in landing at such parts of the coast as shall not have been already occupied, in order to trade with the natives, under the restrictions and conditions specified in the following articles.

II.—In order to prevent the right of navigating and fishing, exercised upon the ocean by the subjects of the high contracting Parties, from becoming the pretext for an illicit commerce, it is agreed that the subjects of His Britannic Majesty shall not land at any place where there may be a Russian establishment, without the permission of the Governor or Commandant; and, on the other hand, that Russian subjects shall not land, without permission, at any British establishment on the Northwest coast.

III.—The line of demarkation between the possessions of the high contracting Parties, upon the coast of the continent, and the islands of America to the Northwest, shall be drawn in the manner following:

Commencing from the southernmost point of the island called *Prince of Wales* Island, which point lies in the parallel of fifty-four degrees forty minutes, north latitude, and between the one hundred and thirty-first and the one hundred and thirty-third degree of west longitude (Meridian of Greenwich), the said line shall ascend to the north along the channel called *Portland Channel*, as far as the point of the continent where it strikes the fifty-sixth degree of north latitude; from this last-mentioned point, the line of demarkation shall follow the summit of the mountains situated parallel to the coast, as far as the point of intersection of the one hundred and forty-first degree of west longitude (of the same meridian); and, finally, from the said point of intersection, the said meridian line of the one hundred and forty-first degree, in its prolongation as far as the Frozen Ocean, shall form the limit between the Russian and British Possessions on the continent of America to the Northwest.

IV.—With reference to the line of demarkation laid down in the preceding article it is understood:

First. That the island called *Prince of Wales* Island shall belong wholly to Russia.

Second. That wherever the summit of the mountains which extend in a direction parallel to the coast, from the fifty-sixth degree of north latitude to the point of intersection of the one hundred and forty-first degree of west longitude, shall prove to be at the distance of more than ten marine leagues from the ocean, the limit between the British Possessions and the line of coast which is to belong to Russia, as above mentioned, shall be formed by a line parallel to the windings of the coast, and which shall never exceed the distance of ten marine leagues therefrom.

V.—It is moreover agreed, that no establishment shall be formed by either of the two parties within the limits assigned by the two preceding articles to the possessions of the other; consequently, British subjects shall not form any establishment either upon the coast, or upon the border of the continent comprised within the limits of the Russian Possessions, as designated in the two preceding articles; and, in like manner, no establishment shall be formed by Russian subjects beyond the said limits.

VI.—It is understood that the subjects of His Britannic Majesty, from whatever quarter they may arrive, whether from the ocean, or from the interior of the continent, shall forever enjoy the right of navigating freely, and without any hindrance whatever, all the rivers and streams which, in their course towards the Pacific Ocean,

may cross the line of demarkation upon the line of coast described in article three of the present convention.

VII.—It is also understood, that, for the space of ten years from the signature of the present convention, the vessels of the two Powers, or those belonging to their respective subjects, shall mutually be at liberty to frequent, without any hindrance whatever, all the inland seas, the gulfs, havens, and creeks on the coast mentioned in article three for the purposes of fishing and of trading with the natives.

VIII.—The port of Sitka, or Novo Archangelsk, shall be open to the commerce and vessels of British subjects for the space of ten years from the date of the exchange of the ratifications of the present convention. In the event of an extension of this term of ten years being granted to any other Power, the like extension shall be granted also to Great Britain.

IX.—The above-mentioned liberty of commerce shall not apply to the trade in spirituous liquors, in fire-arms, or other arms, gunpowder or other warlike stores; the high contracting Parties reciprocally engaging not to permit the above-mentioned articles to be sold or delivered, in any manner whatever, to the natives of the country.

X.—Every British or Russian vessel navigating the Pacific Ocean, which may be compelled by storms or by accident, to take shelter in the ports of the respective Parties, shall be at liberty to refit therein, to provide itself with all necessary stores, and to put to sea again, without paying any other than port and light-house dues, which shall be the same as those paid by national vessels. In case, however, the master of such vessel should be under the necessity of disposing of a part of his merchandise in order to defray his expenses, he shall conform himself to the regulations and tariffs of the place where he may have landed.

XI.—In every case of complaint on account of an infraction of the articles of the present convention, the civil and military authorities of the high contracting Parties, without previously acting or taking any forcible measure, shall make an exact and circumstantial report of the matter to their respective courts, who engage to settle the same, in a friendly manner, and according to the principles of justice.

XII.—The present convention shall be ratified, and the ratifications shall be exchanged at London, within the space of six weeks, or sooner if possible.

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

Done at St. Petersburg, the 28-16th day of February, in the year of our Lord one thousand eight hundred and twenty-five.

[L. S.]  
[L. S.]  
[L. S.]

STRATFORD CANNING.  
THE COUNT DE NESSELRODE.  
PIERRE DE POLETICA.

[Inclosure B.]

*List of maps, with designation of waters now known as the Behring Sea, with date and place of publication.*

[In these maps the waters south of Behring Sea are variously designated as the Pacific Ocean, Ocean Pacifique, Stilles Meer; the Great Ocean, Grande Mer, Grosse Ocean; the Great South Sea, Grosse Süd Sea, Mer du Süd. And they are again further divided, and the northern part designated as North Pacific Ocean, Partie du Nord de la Mer du Süd, Partie du Nord de la Grande Mer, Grand Ocean Boreal, Nördlicher Theil des Grossen Süd Meers, Nördlicher Theil des Stillen Meers, Nördliche Stille Meers, etc. In all the maps, however, the Pacific Ocean, under one of these various titles, is designated separate from the sea.]

Description of map.	Designation of waters now known as Behring Sea.	Where published.	Date.
Accurate Charte von Nord Amerika, from the best sources.	Sea of Anadir .....	.....	(*)
Map made under direction of Mikhael Gvozdof, surveyor of the Shestakof expedition in 1730.	Kamtschatskisches Meer ...	St. Petersburg....	1743
Mappe Monde, by Lowitz .....	Mare Andiricum .....	Berlin .....	1740
Geographical Atlas of the Russian Empire, Alexander Vostchinine.	Kamtschatka or Beaver Sea..	St. Petersburg....	1748
Carte De L'isle de Ieso, corrected to date, by Phillippe Buache, academy of sciences and geographer to the king.	Mer de Kamtschatka.....	Paris .....	1754
Müller's map of the discoveries by the Russians on the northwest coast of America, prepared for the Imperial Academy of Sciences.	Sea of Kamtschatka.....	St. Petersburg....	1758

\* Unknown.

List of maps, with designation of waters now known as the Behring Sea, etc.—Continued.

Description of map.	Designation of waters now known as Behring Sea.	Where published.	Date.
D'Auville's map of the western hemisphere.	Sea of Anadir .....	Paris .....	1761
Map of Hemisphere Septentrional by Count Redfern, published by Royal Academy of Sciences.	Mer Dermant .....	Berlin .....	1762
Map published in the London Magazine.	Sea of Kamschatka .....	London .....	1764
Map by S. Bellin, engineer of the Royal Academy.	Sea of Kamschatka .....	...do .....	1766
Nouvelle Carte des decouvertes par les vaisseaux Russiens aux cotes inconnues de l'Amérique Sept'le; Müller.	Mer de Kamschatka and Mer d'Anadir.	Amsterdam .....	1766
Jeffery's American Atlas, printed by R. Sayers and J. Bennett.	Sea of Kamschatka and Sea of Anadir.	London .....	1768-'72
Road map from Paris to Tobolsken .....	Sea of Kamschatka .....	Paris .....	1769
Bowles's Atlas; map of the world .....	Sea of Anadir .....	London .....	1770
Map of the eastern part of the Russian territory, by J. Trusscott.	Mare Kamschatkiensae .....	St. Petersburg .....	1771
Map of the new northern archipelago, in J. von Staehlin Storcksburg's account of the northern archipelago lately discovered by the Russians in the seas of Kamschatka and Anadir.	Sea of Kamschatka and Sea of Anadir.	London .....	1774
Samuel Dunn's map of North America ...	Sea of Anadir .....	...do .....	1774
Chart of Russian discoveries from the map published by the Imperial Academy of St. Petersburg (Robert Sayer, print seller), published as the act directs.	Sea of Kamschatka .....	...do .....	1775
Jeffery's atlas; chart containing part of icy Sea and adjacent coasts of Asia and America, published 1775, according to act of Parliament, by Sayer and Bennett.	Sea of Kamschatka .....	...do .....	1776
Jeffery's atlas; chart of the "Russian discoveries," from map published by Imperial Academy of Sciences; published by Robert Sayer, March 2, 1775.	.. do .....	.. do .....	1776
Atlas, Thomas Jeffery's (geographer to King), American; chart containing the coasts of California, New Albion, and the Russian discoveries to the north.	...do .....	...do .....	1776
Map in the French Encyclopedia .....	...do .....	Paris .....	1777
Schmidt's atlas .....	...do .....	.. do .....	1777
Jeffery's atlas .....	.. do .....	London .....	1778
Carte der Entdekungen Zivischen Siberia und America to the year 1780.	Kamtschatkische Meer .....	...do .....	1780
Map of the new discoveries in the Eastern Ocean.	Kamtchatka or Beaver Sea ..	St. Petersburg ..	1781
St. Petersburg atlas .....	Sea of Kamschatka .....	...do .....	1782
Halbkugel der Erde, by Bode .....	Kamschatka Sea .....	Berlin .....	1783
Chart of the northwest coast of America and the northeast coast of Asia, prepared by Lieut. Henry Roberts, under the immediate inspection of Captain Cook; published by William Faden.	Sea of Kamschatka .....	London .....	1784
Map of the Empire of Russia and Tartary, by F. L. Gulsefeld.	Kamtchatkische oder Biber Meer.	Nuremberg .....	1786
Map of discoveries made by the Russians and by Captain Cook; Alexandre Vilbrech.	Sea of Kamtchatka .....	St. Petersburg .....	1787
Dunn's atlas; map of the world.	Sea of Kamschatka .....	London .....	1788
D'Auville's atlas; map of the world, with improvements, prepared for J. Harrison, as the act directs.	...do .....	...do .....	1788
Meares's Voyages; chart of northwest coast of America.	Sea of Kamschatka .....	...do .....	1790
Chart of the world, exhibiting all the new discoveries to the present time, with the tracts of the most distinguished navigators from the year 1700, carefully collected from the best charts, maps, voyages, etc., extant, by A. Arrowsmith, geographer, "as the act directs."	...do .....	...do .....	1790
Chart of the Great Ocean or South Sea, conformable to the account of the voyage of discovery of the French frigates <i>La Boussole</i> and <i>l'Astrolable</i> ; La Prouse.	Sea of Kamtschatka .....	Paris .....	1791

*List of maps, with designation of waters now known as the Behring Sea, etc.—Continued.*

Description of map.	Designation of waters now known as Behring Sea.	Where published.	Date.
Karte des Nordens von America; G. Forster.	Kamschatka Sea .....	Berlin .....	1791
Greenough's map in Wilkinson's atlas . . .	Sea of Kamschatka .....	London .....	1791
Map of the northeastern part of Siberia, the Frozen Sea, the Eastern Ocean, and northwestern coasts of America, indicating Billings's expedition.	Kamtchatka Sea .....	St. Petersburg . . .	1791
Arrowsmith's map of the world .....	Sea of Kamtchatka .....	London .....	1794
Charte von America, F. L. Gulsefeld. . . . .	Kamschatkisches Meer . . . . .	Nurnberg .....	1796
Atlas of Mathew Carey; map of the world, from the best authorities, and map of Russian Empire in Europe and Asia.	Sea of Kamtchatka .....	Philadelphia .....	1796
Chart of North America, by J. Wilkes, "as act directs."	...do .....	London .....	1796
Halbkugel der Erde .....	Kamschatka Sea .....	Nuremberg .....	1797
Charte von North Amerika, by F. L. Gulsefeld.	Kamschatkisches Meer .....	Nurnberg .....	1797
C. F. Delmarche's atlas; Mappemonde, by Robert du Vaugondy, including new discoveries of Captain Cook.	Sea of Kamtschatka .....	Paris .....	1797
La Perouse's chart of the Great Ocean or South Sea, conformable to the discoveries of the French frigates <i>La Boussole</i> and <i>l'Astrolabe</i> , published in conformity with the decrees of the French National Assembly, 1791, translated and printed by J. Johnson.	...do .....	London .....	1798
W. Heather's marine atlas .....	Sea of Kamtchatka .....	...do .....	1799
Greenough's atlas; map by Vibrecht, entitled "Carte de la Cote Norda Ouest de l'Amérique Septentrionale," and showing the discoveries of the Russians, and Portlock and Dickson.	Mer de Kamtchatka .....	Edinburgh .....	1800
Wilkinson's general atlas; a new Mercator's chart, drawn from the latest discoveries.	Sea of Kamtchatka .....	London .....	1800
Map of the world; Graberg .....	Bacino di Bering.	Geneva .....	1802
Map magazine, composed according to the latest observations of foreign navigators, corrected to 1802.	Beaver Sea or Sea of Kamtchatka.	St. Petersburg .....	1802
Map of "Meer von Kamtschatka," with the routes of Capt. Jos. Billings and Mart. Sauer, drawn by Fred. Gotze, to accompany report of Billings's Russian official visit to Aleutia and Alaska.	Meer von Kamtschatka .....	Weimar .....	1803
Atlas des Ganzen Erdkreises, by Christian Gottlieb Reichard.	Meer von Kamtchatka .....	...do .....	1803
Arrowsmith's general atlas .....	Sea of Kamtchatka .....	London .....	1804
Map of Savrilia Sarytcheff's journey in the Northeast Sea.	Sea of Kamschatka .....	Leipsic .....	1805
Jedediah Morse's map of North America.	...do .....	Boston .....	1805
Robert Wilkinson's general atlas; new Mercator's chart.	Sea of Kamtchatka .....	London .....	1807
Atlas of the Russian Empire, adopted by the general direction of schools.	Kamtchatka or Beaver Sea..	St. Petersburg .....	1807
General map of the travels of Captain Golovnin.	Kamtchatka Sea .....	...do .....	1807-9
Map in Carey's atlas .....	Sea of Kamtschatka .....	London .....	1808
Lieutenant Roberts's chart, improved to date.	...do .....	...do .....	1808
Mappemonde in atlas of Malte-Brun .....	Bassin de Behring .....	Paris .....	1809
Dunn's atlas .....	Sea of Kamtschatka .....	London .....	1810
Karte des Grossen Oceans, usually the South Sea; Sotzmann.	Kamschatkisches Meer .....	Hamburg .....	1810
Chart von Amerika; Streits .....	Sea of Kamtchatka .....	Weimar .....	1810
Arrowsmith's map of North America .....	Sea of Kamtschatka .....	London .....	1811
Map of the world in Pinkerton's atlas .....	Sea of Kamtschatka .....	...do .....	1812
Map by Lapie .....	Basin du Nord .....	Paris .....	1812
"Carte d'Amérique redigee apres celle d'Arrowsmith en four planches et soumise aux observations astronomiques de M. de Humboldt," by Champion.	Bassin de Behring .....	...do .....	1813
Map of Oceania, or the fifth part of the world, including a portion of America and the coasts of Asia, by H. Brúé.	Bassin du Nord .....	...do .....	1814
Neele's general atlas; Samuel and George Neele.	Sea of Kamtchatka .....	London .....	1814
Chart von America; Geographic Institute.*	Meer von Kamtchatka .....	Weimar .....	1814

\*This chart also designates the coast from Columbia River (49°) to Cape Elizabeth (60°) as the "Nord-West Kuste."

List of maps, with designation of waters now known as Behring Sea, etc.—Continued.

Description of map.	Designation of waters now known as Behring Sea.	Where published.	Date.
Map of the world, by von Krusenstern...	Meer von Kamschatka .....	St. Petersburg ...	1815
Encyprotype de l'Amerique Septentrionale, by Brué.	Basin du Nord .....	Paris .....	1815
Smith's general atlas.	Sea of Kamtschatka .....	London .....	1815
Allgemeinewelt charte, with voyage of Krusenstern.	Sea of Kamtschatka .....	do .....	1815
Grande Atlas Universel, edited by Chez Desray; Mappemonde, by Goujon, geographer.	Bassin du Nord .....	Paris .....	1816
Atlas elementaire, by Lapie et Poirson.	Bassin du Nord ou de Bering.	do .....	1816
Amerique Septentrionale et Meridionale; Lapie.	Mer de Bering ou Bassin du Nord.	do .....	1817
Map in Thompson's atlas.	Sea of Kamtschatka .....	Edinburgh .....	1817
Fielding Lucas's atlas.	do .....	Baltimore .....	1817
Reichard and von Haller's German atlas.	Sea of Kamtschatka .....	Weimar .....	1818
Map in Greenough's atlas.	Sea of Kamtschatka .....	Edinburgh .....	1818
John Pinkerton's modern atlas.	do .....	Philadelphia .....	1818
Map engraved by Kirkwood & Sons.	Sea of Kamtschatka .....	Edinburgh .....	1819
Chart of the Russian and English discoveries in the North Pacific Ocean, by Capt. James Burney, F. R. S.	Sea of Kamtschatka .....	London .....	1819
Carte Generale de l'Amerique; De Lamarche.	Mer de Bering ou Bassin du Nord.	Paris .....	1819
Carte d'Amerique Sept'le et Merid'le; Hennon.	Bassin du Nord .....	do .....	1820
Chart of Alaska, by J. K. Eyries and Malte-Brun.	Behring Sea .....	do .....	1821
Chart of the Arctic Ocean and North America, by Lapie.	do .....	Weimar .....	1821
Carte Generale du Globe; Brué.	Mehr de Behring .....	Paris .....	1821
Mappemonde; Tardieu.	Mer de Behring .....	do .....	1821
Atlas of La Vigne; M. Carey.	Sea of Kamtschatka .....	Philadelphia .....	1821
Atlas Universel of A. H. Brué.	Mer de Bering .....	Paris .....	1822
Mappemonde; Herrison.	Mer de Behring .....	do .....	1823
Map to illustrate the voyage of Kotzebue.	Sea of Kamtschatka .....	St. Petersburg .....	1823
Fielding Lucas's Atlas.	do .....	Philadelphia .....	1823
do.	do .....	Baltimore .....	1823
Amerique Septentrionale; Lapie.	Mer de Behring .....	Paris .....	1824
Atlas Classique et Universel, by M. Lapie.	Mer de Behring ou Bassin du Nord.	Paris .....	1824
Anthony Finley's Atlas.	Sea of Kamtschatka .....	Philadelphia .....	1824
Atlas of Buchon; cartes des Possessions Russes.	Bassin du Nord .....	Paris .....	1825
Map in Butler's Atlas.	Sea of Kamtschatka .....	London .....	1825
Atlas Historico de Le Sage.	Mer de Bering .....	Paris .....	1829

[Inclosure C.]

Section 4 of "An act for regulating the intercourse with the island of St. Helena during the time Napoleon Bonaparte shall be detained there, and for indemnifying persons in the cases therein mentioned (11th April, 1816)."

SECTION 4. *And be it further enacted* That it shall and may be lawful for the governor, or, in his absence, the deputy-governor of the said island of St. Helena, by all necessary ways and means, to hinder and prevent any ship, vessel or boat from repairing to, trading, or touching at said island, or having any communication with the same, and to hinder and prevent any person or persons from landing upon the said island from such ship, vessel or boats and to seize and detain all and every person and persons that shall land upon the said island from the same; and all such ships, vessels or boats (except as above excepted) as shall repair to, or touch at the said island, or shall be found hovering within 8 leagues of the coast thereof, and which shall or may belong, in the whole or in part, to any subject or subjects of His Majesty, or to any person or persons owing allegiance to His Majesty, shall and are hereby declared to be forfeited to His Majesty, and shall and may be seized and detained, and brought to England, and shall and may be prosecuted to condemnation by His Majesty's attorney-general, in any of His Majesty's courts of record at Westminster, in such manner and form as any ship, vessel or boat may be seized, detained or prosecuted for any breach or violation of the navigation or revenue laws of this country; and the offense for which such ship, vessel or boat shall be proceeded against shall and may be laid and charged to have been done and committed in the county of Middlesex; and if any ship, vessel or boat, not belonging in the whole or in part to

any person or persons the subject or subjects of or owing allegiance to His Majesty, his heirs and successors, shall repair to or trade or touch at the said island of St. Helena, or shall be found hovering within 8 leagues of the coast thereof, and shall not depart from the said island or the coast thereof when and so soon as the master or other person having the charge and command thereof shall be ordered so to do by the governor or lieutenant-governor of the said island for the time being, or by the commander of His Majesty's naval or military force stationed at or off the said island for the time being, (unless in case of unavoidable necessity or distress of weather), such ship or vessel shall be deemed forfeited, and shall and may be seized and detained and prosecuted in the same manner as is hereinbefore enacted as to ships, vessels or boats of or belonging to any subject or subjects of His Majesty.