

To which Mr. Phillips replied, "What about the treaty?" The engineer is reported to have said: "Damn the treaty!" Upon which Mr. Phillips thus descants:

"Damn the treaty." After all, this was but putting tersely what Bismarck had said at greater length in his *Reflections*: "No treaty can guarantee the degree of zeal and the amount of force that will be devoted to the discharge of obligations when the private interest of those who lie under them no longer reinforces the text and its earliest interpretation." It was only illustrating once more Immanuel Kant's objection to international law as "a word without substance (*ein Wort ohne Sache*), since it depends upon treaties which contain in the very act of their conclusion the reservation of their breach."

"Damn the treaty." It is the principle of the old diplomacy—*Salus populi suprema lex*—applied in the interests of the new nationalism. It would not have shocked the master-builders of modern Europe, Bismarck, or Cavour, or the Balkan Allies. In this bitter competition of the nations which has replaced the old rivalry of kings there would seem to be as little room for nice distinctions of morality as in the bitter competition of modern commerce. Business is business, and, in the long run, might is right.

STATUS OF THE DECLARATION OF LONDON

The Declaration of London,¹ signed on February 26, 1909, at London as a result of a long and careful deliberation, was meant to serve a two-fold purpose: first, to supply the law on disputed questions which was to be applied by the judges of the International Court of Prize, under Article 7 of the convention creating this international institution, and at the same time, to put and to express in clear, precise language the agreement which the Powers participating in the conference had reached upon certain principles of maritime warfare. Although the Declaration was drafted by representatives of only ten Powers (Germany, the United States, Austria-Hungary, Spain, France, Great Britain, Italy, Japan, the Netherlands, and Russia), it was believed that after ratification by them the reasonableness and wisdom of its provisions would secure its acceptance by the nations at large not represented in the conference. It was clearly the intention of its framers that it should regulate the conduct of nations in future war, certainly the conduct of those nations whose representatives had drafted it. This hope was not without foundation, because, although the Declaration had not been ratified, Italy proclaimed it on October 13, 1912, as the rule of conduct during the war in which she was then engaged with Turkey, and Turkey, although not

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represented at the conference, likewise proclaimed it on the same day, October 13, 1912, as measuring its rights and duties during the war with Italy, in so far as they were defined in the Declaration of London. But the present war has blasted the hopes of the framers, if they entertained such hopes, and likewise the hopes of those who believe that the Declaration as a whole was an acceptable statement of certain of the rules of maritime warfare, and that its formulation marked a progress in the development of international law. Nor does the disappointment felt in many quarters rest here. It was believed by the proposers of the Prize Court at the Second Hague Conference, namely, Germany, the United States, France, and Great Britain, that an International Court of Prize would be established in the very near future at The Hague, and that there would thus be called into being an international institution which would sit as a court of appeal upon decisions of national prize courts and thus decide, in accordance with accepted principles of international law, questions which in the past have perplexed foreign offices and brought nations to the verge of hostilities. It is unnecessary at this time and in this place to point out the services which an International Court of Prize would render, not merely to neutrals, but to belligerents, during the present unfortunate war. It has not been created. Three of its joint proposers are at war. The fourth is fortunately a neutral. What services the court would have rendered will never be known, not at least for some time to come, and the world loses the example of a great and beneficent institution, testing the actions of nations by the judicial interpretation and application of principles of law.

A word may, however, be said about the history of the Declaration, because, if it had been ratified by the Powers participating in the London Naval Conference, at which it was negotiated, it is reasonable to believe that the court would have been instituted for which it was to supply the law on certain points. Great Britain called the conference for this purpose and invited nine maritime Powers. The conference met on December 4, 1908, and adjourned on February 26, 1909, leaving the Declaration as the monument of its labors. Great Britain justified its call of the conference by the fact that public opinion was opposed to the institution of the court without a clear understanding as to the law to be applied. Unfortunately the Declaration of London, signed by the British delegates and accepted by the British Government, did not satisfy public opinion. A prize bill incorporating the provisions of the Prize Court Convention and the Declaration of London passed the House of Com-

mons on December 7, 1911, but was thrown out by the House of Lords on December 12, 1911. It is unnecessary to state in detail the reasons, although it may be said that the objections centered around the articles of the Declaration dealing with contraband. It would no doubt have been possible for the British Government to reach an agreement with the participating Powers as to the modifications necessary to overcome the scruples of public opinion. This appears not to have been done. Ratifications of the Declaration were, by Article 67, to be deposited in London, and by Article 65 the Declaration was to be treated as a whole and not to be separated. As Great Britain was not in a position to ratify, it was natural that the other Powers would wait until Great Britain had ratified, especially after the experience with the Prize Court Convention.

The United States Senate, on February 15, 1911, advised and consented to the ratification of the Prize Court Convention and the additional protocol depriving it, in so far as the United States was concerned, of its character as a court of appeal. On April 24, 1912, the Senate advised and consented to the ratification of the Declaration of London. The attitude of the other Powers is not definitely known; but France incorporated its provisions in its Instructions for the Application of International Law in case of War, issued on December 19, 1912, and Germany likewise incorporated its provisions in the Prize Ordinance drafted September 30, 1912, and issued on August 3, 1914. The action of Great Britain, however, blocked the deposit of ratifications. Shortly after the outbreak of the present unfortunate war the United States, it is understood, sounded the belligerents as to their willingness to promulgate the Declaration of London during the existence of the war, and it is understood that Germany and Austria-Hungary agreed to promulgate it and to be bound by its provisions, upon condition of reciprocity. Great Britain, France, and Russia expressed their willingness to promulgate the Declaration with certain modifications concerning contraband, which they believed essential to their interests. This could only be taken as a conditional offer, in view of Article 65, requiring the Declaration to be accepted as a whole. After some negotiation the United States withdrew its suggestion, and belligerents and neutrals are alike thrown back upon international law as it stood before the Declaration. The three governments, it is understood, have, however, promulgated the Declaration with certain modifications concerning contraband. This is not, however, to be regarded as an acceptance of it, but rather as a statement of the law which they intend to apply in matters maritime, with reference to

the Declaration as a handy and convenient codification of the principles of law which they intend to apply. It is perhaps too much to say that the Declaration is thus a dead letter, but it is unfortunate, from the standpoint of certainty, that it cannot apply to the present war, and that the action of the belligerents will not be tested by an international court, judicially and impartially determining and applying its principles to the many and complicated cases which are sure to arise during present hostilities.

EGYPT A BRITISH PROTECTORATE

On December 17, 1914, the British press bureau made the following announcement:

His Britannic Majesty's Principal Secretary of State for Foreign Affairs give notice that, in view of the state of war arising out of the action of Turkey, Egypt is placed under the protection of his Majesty and will henceforth constitute a British Protectorate.

The suzerainty of Turkey over Egypt is thus terminated and his Majesty's Government will adopt all measures necessary for the defence of Egypt and the protection of its inhabitants and interests.

The King has been pleased to approve the appointment of Lieutenant-Colonel Sir Arthur Henry McMahon, G. C. V. O., K. C. I. E., C. I. S., to be his Majesty's High Commissioner for Egypt.¹

There are many reasons why Great Britain should desire to establish its control in Egypt, although it contents itself with the establishment of a protectorate, leaving Egypt to the Egyptians in so far as internal administration is concerned. One is that Egypt is on the highway to India, and as many years ago as 1844 Kinglake, in his brilliant and fascinating narrative of experience in the East, *Eothen*, prophesied that the sphinx would one day calmly look down upon the British firmly established in Egypt. This was before the Suez Canal, whose construction made it seem most essential to British statesmen to control Egypt. The acquisition of a majority share of stock in the canal by Disraeli in 1875 was a step toward control of Egypt, and the rebellion of Arabi Pasha in 1881, which led to the intervention of Great Britain, the suppression of the rebellion by force, and the occupation of the country made the realization of the prophecy merely a matter of time. It is true that Mr. Gladstone, on behalf of Great Britain, stated that British troops would be withdrawn when the country could safely be evacuated; but it was generally felt and understood that the occupation was likely to be permanent.

¹ See the *London Gazette*, Nos. 29,010, 29,011, 29,012.