THE *ALABAMA* AND THE LAW

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IN 1862, during the American Civil War, a vessel, code No. 290 and later to be known as the *Alabama*, was built at Laird's yard in Birkenhead to the order of the Confederate government. The vessel sailed—without any official clearance—from Liverpool to Terceira in the Azores, where she was equipped and armed as a vessel of war, to prey, and to prey very effectively, upon Federal shipping, till she was sunk in the Channel in June 1864. In English and in international law the case raised important issues of contraband, neutrality, and belligerency—issues that could be ultimately settled only in the terms of the Treaty of Washington of 1871 and the Geneva Award of 1872. By all this, international law was considerably advanced. Yet it is not going too far to say that no incident, at least, no incident of comparable importance, has been so commonly misreported in the simple facts, or so commonly misunderstood in its wider significance.

In re-examining the *Alabama* case, I propose first, to state the general background and explain British and international law at that time; secondly, to recall the *Alabama* facts so far as they relate to Britain; thirdly to discuss these facts in the light of the law as it then was; and fourthly, to recount how the occasion was taken in the Washington Treaty to change the law. The state of the law at the time of the incident, and the particular manner in which this law was developed after, and in consequence of, the incident, justify a re-examination of the *Alabama* case, and it is precisely in these matters that the case is most commonly misunderstood.

I THE LAW OF CONTRABAND OF WAR, 1862

During a time of war between two sovereign states, the mere supply of contraband of war by a declared neutral state to either belligerent did not in the slightest degree constitute a breach of the declared neutrality. Thus in 1871—that is to say, at a time between the date of the *Alabama* incident (1862) and the Geneva Award (1872)—during the Franco-Prussian war, both Britain

and the United States of America exercised their undoubted rights under international law to sell materials to one side or the other, and held that these routine commercial transactions in no way affected their neutrality. Such supply itself was lawful: but the delivery was attended by the risk of seizure as prize of war, subject of course to adjudication in the (national) Prize Court. International law, however, required that the supply of such materials of war from a neutral territory should not develop into a military operation from a neutral base without incurring forfeiture of neutral status. For example, to supply, equip, fit out, man and arm from neutral territory any vessel or ship of war, would be to transform that territory into a base of military operations. The distinction between ships and other materials of war (such, for example, as cased small-arms, cased ammunition, tank spare-parts and so forth) is that these other materials must obviously wait until they come into belligerent territory before they can be used in war, but an armed vessel can itself wage war immediately it is clear of the port, and indeed within the port itself, for that matter. If this were not the state of international law today there would be nothing in legal theory to prevent China from ordering a ship from Liverpool, and Formosa one from Birkenhead, and the two of them fighting it out in the Mersey.

This sensible doctrine, however, of putting *armed*[1] vessels into a special category, did not extend, nor need it have extended, to *unarmed* vessels. Unarmed vessels were not distinguished from any other class of goods, whatever use the belligerent might intend to make of the vessels or goods once delivery had been effected. During the Crimean War delivery had been taken in European waters of certain U.S.A. vessels to be admittedly employed "in transporting troops, provisions and munitions of war to the principal seat of military operations", and the president of the United States had said, with specific reference to his country's supply of "neutral" shipping to Britain for warlike use against Russia, that this practice was "not interdicted either by the international or our municipal law, and therefore does not compromise our neutral relations" with either country. The American Civil War followed close on the heels of the Crimean War: only five years separated the end of the one and the beginning of the other.

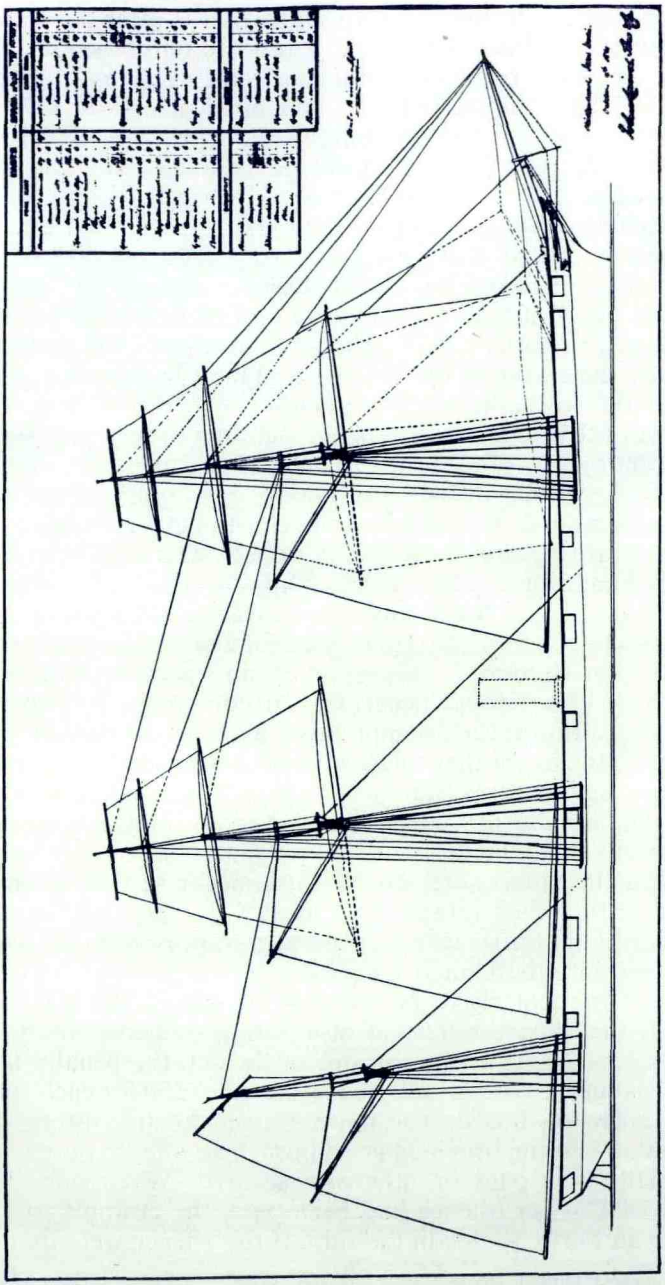
The North, moreover, could scarcely complain *on grounds*

[1] In the United States, the distinction was not "the extent and character of the preparations [arming]," but the *intent* with which the particular acts are done". Although "the principle is clear enough", in practice "the line may often be scarcely traceable". "The *intent* is all", but the "act is open to great suspicions and abuse". H. Wheaton, *International Law*, (1866), pp. 562-3 *n.*

of principle if Birkenhead built the *Alabama* for the South in 1862, for the North itself in July 1861—that is after the actual outbreak of hostilities—applied to Laird's to build them a ship "to be furnished complete, with guns and everything appertaining". The national law of the United Kingdom in this matter was contained in the Foreign Enlistment Act of 1819 (59 Geo. III, *cap.* 69, sec. 7). When Leathes said, that the *Alabama* case tested "the sufficiency of British legal provisions and executive action . . . under the eyes of the United States, who had perfected their own neutrality laws in 1818,[2] he apparently overlooked the fact that both the American act of 1818 and the British act of 1819 were drafted and passed at the same time to remedy the same mischief,[3] that is, the problem raised by the revolt of the Spanish Colonies in America. It is particularly to be noted that neither the British nor the American act sought to prevent the building of any ship for a belligerent by way of trade. The Foreign Enlistment Act sought to prevent, within British jurisdiction, two types of action. First, in Section 2, it prohibited the enlistment (without royal licence) of any natural-born British subject, as a soldier in any military operation in the service of any foreign state, or as a sailor or marine on board any ship of war or other ship fitted out or equipped or intended to be used for any warlike purposes. Secondly, in Section 7, it prohibited any person in British territory (without royal licence) from equipping, furnishing, fitting out, arming (or attempting or assisting to do so) any vessel with the intent that such vessel should be used to commit hostilities against any state with which this country was at peace. The act did not purport, however, to limit in any way the subject's undoubted right to supply materials, or even ships (provided the latter were not, at the time of supply, already "equipped furnished fitted out or armed" as ships of war) by way of ordinary trade, even to states at war, provided they were not at war with the United Kingdom.

What is particularly to be noted is the redress the law provided. If the offence were that of enlisting soldiers, sailors or marines contrary to the provisions of the act, the penalty laid down was (in the case of sailors, for example) £50 for each such person taken on board. The powers given to the customs to seize and detain the ship held good in such an offence only until the penalty was paid or otherwise secured. When once the penalty of £50 per offence had been paid, the customs would have no authority to detain the ship. If the offence were that of

[2] *Cambridge Modern History*, Vol. XII, pp. 19-20.
[3] 3 *Hansard*, CCVI, 1835.



By courtesy of the National Archives and Records Service, Washington, D.C.

Plate 26. THE *ALABAMA*

"equipping furnishing or fitting out" a ship of war, the vessel with all fittings and stores on board was forfeit, and in accordance with Sections 6-7 was to be prosecuted and condemned as though for a breach of any of the laws of customs.

II WHAT OCCURRED ON MERSEYSIDE

On 23 June 1862, the U.S.A. Minister in London, C. F. Adams, wrote to Lord Russell, the British foreign secretary about a certain Confederate privateer, the *Florida* alias *Oreto*, which had been built at the yard of W. C. Miller & Sons in Liverpool, had cleared ostensibly for Palermo, but instead had proceeded to Nassau in the Bahamas where her armament was completed. The Federal minister also said that he had information that there was being built at Laird's yard in Birkenhead another and more powerful vessel, which all available information showed was intended for the Confederate service. A copy of the correspondence was sent to the board of customs,[4] who forwarded it to the Custom House Liverpool, calling for a report. The customs surveyor at Liverpool, Edward Morgan, reporting on 28 June, after correcting the information in certain respects, *might* have said—but did not—that he already knew much more about what was going on in Liverpool than the Federal government did. The customs had all the time had free access to Laird's yard, and there had been no attempt of any sort on the part of the builders to disguise what they were doing. The vessel—code No. 290 (she was not yet known as *Alabama*)—was 211 feet 6 inches in length and 21 feet 8 inches broad. She had a depth of 17 feet 8 inches and a gross tonnage of 682 31/100 tons. A current report that she was being built for a foreign government was not denied by Laird's, but no guns or gun-carriages had in fact been fitted.

On the basis of this report the customs solicitor[5] advised the board of commissioners that no offence had been committed, with which opinion the board concurred, but reported to the treasury that the customs at Liverpool would continue to watch the vessel. The foreign secretary communicated the substance of this to the Federal minister. On 9 July, Thomas Dudley, the Federal consul at Liverpool, informed Samuel Price Edwards, the collector of customs there, that on taking over his consul-

[4] What follows below relating to Liverpool is quoted from the customs records (Customs Library, 490). See also Parliamentary Papers, Commons, 125/1863—"The *Alabama*. Copy of or extracts from the Correspondence. . . ."

[5] The actual official giving this advice was James O'Dowd (although Felix Hamel concurred), afterwards author of the 55-page pamphlet *The Law and Facts of the Case of the "Alabama"* (1873).

Liverpool 28th June 1862.

Sir,

I most respectfully beg to report, that the Vessel to which these papers refer has not escaped the notice of the Customs Officers, but, as yet, nothing has transpired concerning her which appeared to demand a Special report.—

The Officers have at all times free accesss to the building yards of the Messrs Laird at Birkenhead, where the said Vessel is now lying, and, there has been no attempt on the part of her builders to disguise, what is most apparent to all, that She is intended for a Ship-of-war.-

Agreeably with your directions I have personally inspected her and find, that she is rightly described in the communication of the U.S. Consul, except, that her Engines are not on the oscillating principle. Her dimensions are as follows. Length 211.6 - Breadth 31.8 Depth 17.8. and her gross tonnage, by the present rule of admeasurement is 682 31/100 Tons.—

She has several powder cannisters on board but neither guns or carriages, as yet.

The current report of that Vessel is that, she has been built for a foreign Government — and that is not denied by the Messrs. Laird with whom I have communicated upon the subject, but, they do not appear disposed to reply to any question with reference to the destination of the Vessel after she leaves this Port — and we have no other reliable source of information. —

It will be in your recollection, that the current report of the gun boat "Orita" was, that she had been built for a foreign Government, which Vessel recently left this Port, under the British Flag, without any Guns or ammunition on board, as previously reported. —

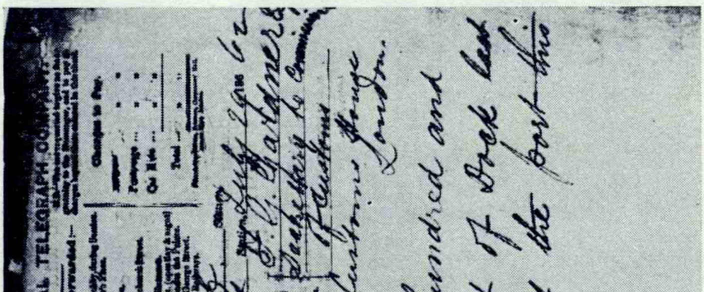
I beg to add that any further information that may be obtained, concerning the Vessel referred to, will be immediately reported, agreeably with your directions. —

Very Respectfully

E. Morgan Jr

By courtesy of the Board of Commissioners of H.M. Customs & Excise

Plate 27. LETTER FROM THE SURVEYOR IN LIVERPOOL, 28 June 1862
The originals of this letter and of the one printed as Plate 29 are slightly defective at the right hand edge. For the sake of clear reproduction the missing parts of certain words have been written on the photographs from which the blocks were made.



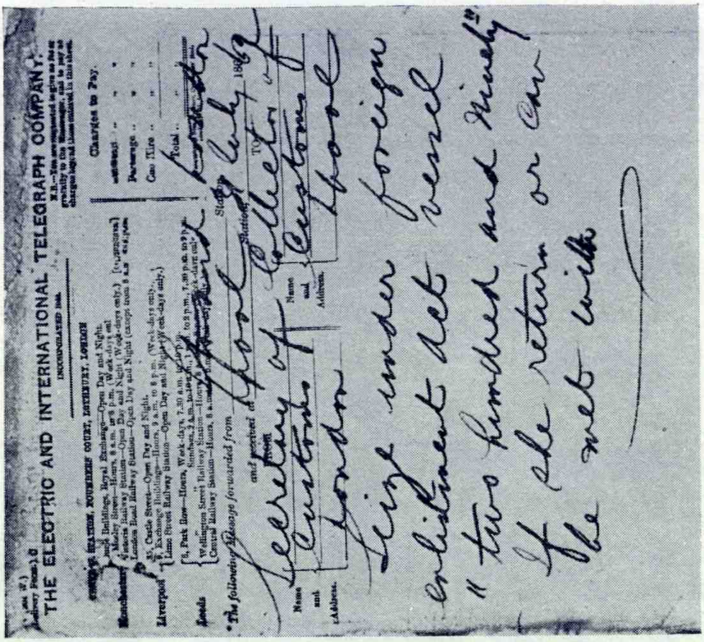
THE ELECTRIC AND INTERNATIONAL TELEGRAPH COMPANY.

The following Message forwarded from Liverpool and received at ... July 29 1862

From: Edward Morgan, Collector, 10 Water St

To: S. G. Gardner, Secretary to Commissioners of Customs, Lower Thames Street, London.

The vessel No two hundred and ninety came out of Dock last night and left the port this morning



THE ELECTRIC AND INTERNATIONAL TELEGRAPH COMPANY.

The following Message forwarded from London ... 31st July 1862

From: Secretary of Customs, London

To: Collector of Customs, Liverpool

Seize under foreign enlistment Act vessel "two hundred and ninety" if she return or can be met with

Plate 28. EXCHANGE OF TELEGRAMS 29 AND 31 JULY 1862

By courtesy of the Board of Commissioners of H.M. Customs and Excise

ship the year before he had been warned that two gunboats were being fitted out at Liverpool for the Confederate government, the *Oreto* and the one now under construction. The *Oreto* had in fact gone, via Nassau, into Confederate service, and the presence of Confederate agents now in Liverpool made it perfectly obvious that the other vessel also—*No. 290*—was likewise intended for the Confederates. The collector of customs at Liverpool replied to the consul next day that the facts alleged were not disputed by the builders, but even if true were in no way contrary to law. At the same time he reported the facts of the case to the board in London, confirmed that no guns and no gun-carriages had been fitted, and commented that in his view Laird's were not likely to do anything to infringe any of the provisions of the Foreign Enlistment Act, either by arming a ship for a foreign power, or by being a party to the enlistment of British nationals.

On 21 July the Federal consul presented himself at the Custom House Liverpool attended by a solicitor and selected "witnesses". Certain depositions were sworn before the collector of customs relating to various other Confederate blockade runners—the *Oreto*, *Sunter* and *Annie Childs*—as well as the *290*, and the consul demanded the arrest of the *290*. The collector of customs forwarded the affidavits the same day to his board in London, together with a letter marked *Immediate*.[6] There was still no evidence, he said, of "arming or equipping" (although Passmore's affidavit pointed to enlistment which involved only a money penalty), but he requested instructions "by telegraph . . . as the ship appears to be ready for sea". The board of customs and their solicitors concurred. If any move were made to arm the vessel the surveyor of customs superintending Laird's yard would effect an arrest. If the Federal consul, or any other interested person, came into possession of evidence upon which an indictment could be based, proving that enlistments had in fact taken place contrary to the terms of the Foreign Enlistment Act, he could lay the evidence before a court, and if the master were convicted, the ship would be arrested as security for the fine, but would be released as soon as the fine had been paid or otherwise secured. The board of customs reported developments to the treasury the same day, and suggested that the government might like to take the opinion of the attorney general or solicitor general, particularly with regard to Passmore and enlistment.

So far, the evidence produced fell short of proving either of

[6] The word *Immediate* is, for some reason or other, not included in the Parliamentary Papers.

Surveyors Office July 30/62

Sir,

Referring to the Steamer, built by the Messrs Laird, which is suspected to be a Gun Boat intended for some Foreign Govt., I beg to state that, since the date of my last report concerning her she has been lying in the Birkenhead docks fitting for sea and receiving on board coals and provisions for her crew

She left the dock on the evening of the 28th inst. — anchored for the night in the Mersey, abreast the Canning dock, and proceeded out of the river on the following morning, ostensibly on a trial trip from which she has not returned. —

I visited the Tug "Hercules this morning as she lay at the Landing Stage at Woodside and strictly examined her holds & other parts of the Vessel - She had nothing of a suspicious character on board - no guns - no ammunition or any

thing appertaining thereto.— A considerable number of persons, male and female, were on deck some of whom admitted to me that they were a portion of the crew and were going to join the "Gun Boat."—

I have only to add that, your instructions to keep a strict watch on the said Vessel have been carried out and I write in the fullest confidence, that she left this port without any part of her armament on board— She had not as much as a signal gun or musket.—

It is said that she cruised off Port Logan, last night, which, as you are aware is some fifty miles from this Port—

Very Respectfully

R Morgan

Jun

By courtesy of the Board of Commissioners of H.M. Customs & Excise

Plate 29. LETTER FROM THE SURVEYOR IN LIVERPOOL
30 July 1862

the two vital points, namely arming or enlisting. It was, however, quite open to the Federal consul to take the evidence to the local court, when the justice, if satisfied, would issue a warrant. But it would be a warrant not to arrest the ship, but the offender.[7] Instead the consul demanded that the customs themselves should arrest the ship, presumably outside the working of court procedure. It would, of course, be altogether improper for the customs (or anybody else for that matter) to have powers to arrest any ship or person, except as an authorised step in a legal process.

On 28 July, the custom authorities again informed the Federal solicitor that in the circumstances they themselves had no power to interfere with the ship, but that all the facts had been placed before the government. On 30 July the consul at Liverpool stated at the Custom House that the ship had left port the day before—ostensibly on her trials, that the tug *Hercules* was now at the Woodside landing-stage with men and materials for gun-carriages on board, intended to be carried out to the ship, and that the tug had in fact already put a quantity of arms on board. The consul pressed for action to be taken to prevent, as he said, "this flagrant violation of neutrality".

The surveyor of customs promptly reported that the information was false. The ship *No. 290*, he wrote, had

> "left the dock on the evening of the 28th inst.—anchored for the night in the Mersey, abreast the Canning dock, and proceeded out of the river on the following morning, ostensibly on a trial trip from which she has not returned.
>
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>
> I have only to add that your instructions to keep a strict watch on the said vessel have been carried out, and I write in the fullest confidence, that she left this port without any part of her armament on board—she has not as much as a signal gun or musket."

If one realizes the dependence of a vessel at that period, upon a signal-gun or musket for purposes of communication, one can appreciate how punctilious was the *Alabama's* compliance with the law. The *Alabama*, then left her berth on 28 July, and the river on the 29th, and was later heard to be cruising off Angelsey.

In the meantime Adams, the United States minister in London, approached the foreign secretary about the additional evidence of enlistment, obtained from the "man named Passmore". This man had said that "it had been proposed to him by the captain of the vessel *290* that he should go to sea with him and make war on the commerce of the United States".

[7] 59 Geo. III, cap. 69, sec. 3.

This was the "additional evidence" that had been forwarded to the law officers of the crown. The law officers considered it, and on 29 July said that there was now sufficient *prima facie* evidence at least to warrant testing it in the courts.[8] The customs in London at once sent telegrams to Liverpool and Cork; the telegraph offices in Beaumaris and Holyhead were already closed and telegrams to these two ports had to wait until the following day. As a matter of fact, the Federal man-of-war *Tuscarora* was already cruising to intercept *No. 290*, but the latter after coaling in Port Lynas went north-about into the Atlantic and thence to Terceira in the Azores. There the vessel *Bahamas*, which had cleared from Liverpool earlier with nineteen cases of munitions consigned ostensibly to Nassau, put a number of heavy guns on the *Alabama*, as she now was called. From Terceira the *Alabama* put out on her romantic career during which she sank no less than seventy ships before she herself was sunk off Cherbourg on 19 June 1864.

III THE LAW OBSERVED

In the face of the report of 30 July from Morgan, the surveyor of customs at Liverpool, that "she had not as much as a signal gun or musket" on board, it is clear that no case could have been sustained at the time when *No. 290* actually left Liverpool—as distinct from the time when she left the Azores—that she was *already* "armed equipped or fitted out" as a vessel of war. Everything to the contrary was idle rumour. Notwithstanding all the controversy that later surrounded the *Alabama* case, this fact cannot be denied. The only other offence that could be imputed against her or her master under the law as it then stood, was that of "enlistment". Here the facts are more controversial. But even if the Federal interests had established in a court of law—and they themselves never made any attempt to do so—that "enlistment" had in fact been made, the vessel could have been legally detained only so long as the penalty of £50 per offence remained unpaid or unsecured. When paid or secured the vessel must have gone free. As the solicitor general said in the House of Commons the act was never intended to prohibit such dealings, even in vessels intended to be ships of war. The *Alabama* might have been *intended* to be a ship of war, and *intended* to be delivered to the orders of a foreign government at war, but so long as that government was not at war with the United Kingdom and so long as the vessel was not actually armed *when she left Liverpool*, there was no offence in either

[8] 3 Hansard, CCVI, 1831-32.

English law or international law. As Lord Palmerston, the prime minister, said in Parliament after the solicitor general's speech just quoted, everything done in this country with regard to the *Alabama* was strictly in accordance with the law—in accordance, that is to say, with the law *as it then was*. The prime minister, speaking with all the responsibility the occasion demanded, emphasised that a vessel could not be seized upon mere gossip. Under the Foreign Enlistment Act of 1819 "evidence on oath confirming a just suspicion" must be produced. There must be "a deposition upon oath, and that deposition must be made upon *facts* that will stand examination before a court of law". He concluded, "She sailed from this country unarmed, and not properly fitted out for war, and she received her armament equipment and crew in a foreign port. Her condition at that time, that is when at Liverpool, would not have justified seizure".[9] The prime minister's summing up stated the British government's case completely and concisely.

IV THE *ALABAMA* AND THE TREATY OF WASHINGTON

During the next few years the situation was quite paradoxical. Public opinion in the Northern States was incensed against Britain, the more so when the North emerged victorious in the Civil War. Britain as one of the leading maritime powers had long taken the line that international law would really have to do something to abolish, limit or control commerce-raiding, privateering and semi-piratical preying upon unarmed shipping. On the other hand, the United States, at least at one time, had made a very good thing out of it. Although she had condemned the British privateers of the Napoleonic and American wars, she exploited the position for all it was worth a few years later when Spain was in trouble with her American colonies. Spain complained bitterly that her shipping was being interfered with not only by her own rebellious colonies, but also by the U.S.A. "pirates"; thirty vessels—specifically named—"the property of American citizens and belonging to ports in the Union, were then preying upon Spanish commerce notwithstanding that Spain was a country with which the U.S.A. was then *in a state of peace*".[10]

Thus, to oversimplify somewhat the post-*Alabama* situation it can be said that Britain, one of the first maritime nations in

[9] *Ibid*, CLXX, 47, 91-2.

[10] In the treaty of 22 February 1819, which included *inter alia* the cession of Florida, Spain specifically renounced any claim in respect of these 'unlawful seizures at sea' (art. ix).

the world and with the most to lose, thought that preying on belligerent shipping was definitely wrong, and that something should be done internationally to limit the practice of commerce-raiding. Yet Britain was now manoeuvred by circumstances into a position of defending the *Alabama*, the most famous commerce-raider, because on the text of English law the incident was technically blameless. On the other hand, the United States of America, who had made the most out of the nefarious practice, now complained bitterly—but complained on the principle involved, because the technicalities this time were against her. We cannot deal here with the additional Federal complaint that Britain had recognised the Confederates as belligerents. We must confine ourselves to the complaint about the *Alabama*, *Florida* and *Shenandoah* and the other raiders, of which, of course, the *Alabama* became by far the most famous.

Cutting right across the *Alabama* story, however, was the 1868 decision in the United Kingdom to appoint a royal commission to consider what changes, if any, ought to be made in the law to make it more efficient and to bring it into full conformity with international obligations.[11] Incidentally, it is worth noting that as early as 1863 certain Liverpool ship-owners had suggested some amendments to the Foreign Enlistment Act of 1819.[12] The 1869 commission, however, in its report went some way beyond—the attorney-general said, "far beyond"—the actual obligations of international law as it then existed. It made "a very important addition", namely, that for the future the penalties in law should be extended to apply "not merely to arming and equipping" a vessel, "but also to the building".[13]

By now, however, a new and critical situation had arisen in Europe. In the Franco-German war, with the belligerent and neutral coasts so very much closer than the coasts concerned in the American Civil War, Britain was gravely perturbed lest any similar incident should entangle her in the continental hostilities. In August 1870, therefore, Parliament passed a new Foreign Enlistment Act (33-4 Vic., *cap.* 90), repealing that of 1819 and embodying the recommendations of the royal commission of 1869. This new act—adopted unilaterally, be it noted—expressed Britain's view of the form international law should take. It prohibited any British subject building, equipping or despatching any ship—whether armed or not—with intent or

[11] 3 Hansard, CCVI, 1898.
[12] Parliamentary Papers, 1863 [3200] LXXII, 563; *Lords' Journals* XCV, 511; 3 Hansard, CLXXI, 1434.
[13] 3 Hansard, CCIII, 1367-8.

knowledge, or even "having reasonable cause to believe" that she would later be employed in any military or naval service of any foreign state at that time at war with any state at that time at peace with the United Kingdom. "In this act Britain was assuming an obligation no neutral nation had as yet assumed".[14]

Meantime, the dispute over the *Alabama* still continued. Negotiations had lasted nearly a decade, and at length Britain suggested that the case should go to arbitration. The U.S.A. at first refused, naturally enough, on the grounds that "the principles which should govern the arbitrators in the consideration of the facts should be first agreed". Obviously, it was anticipated that it would be part of the British case that there had been no offence against the law *as it then stood.* Here, clearly, was the opportunity to make just that advance in international law with regard to the doctrine of neutrality, that a great maritime power such as Britain most sought. Discussions, however, dragged on through 1870. Pollock rightly says they were rude and ill-mannered on both sides—like a "wrangle of a couple of country lawyers over a partnership quarrel".[15]

Representatives met in Washington in February 1871. In the instructions to the British commissioners it was suggested that the Joint High Commission might settle the rules governing a neutral's duty, and that the contracting parties might then embody these rules into a treaty, as the law to be applied to the case. Thus might we gain "a concurrence with us in certain declarations of the principles and rules of international law which shall guide us for the future".[16] These principles were finally expressed in three new rules in the Washington Treaty of 1871.[17] The very first of these rules prohibited for the future not only the building of a ship "with intent or in order that such ship shall be employed in the service of any foreign state" (the terms of the British Foreign Enlistment Act of 1819), but also the building of any vessel which there is "reasonable ground to believe is intended to cruise or to carry on war against a power with which it is at peace".[18] (very much the terms of the Foreign Enlistment Act of 1870). The Treaty added an important clause which applied to the building and clearance of raiders and other similar vessels, although as yet not armed. The exact words of the Treaty were: "Also to use like diligence to prevent the departure from jurisdiction of any vessel having

[14] *Ibid*, 1552.
[15] *Cambridge Modern History*, Vol. XII, p. 720.
[16] 3 Hansard, CCVI, 1897.
[17] E. Hertslett, *Treaties and Conventions . . . Commerce & Navigation*, Vol. XIII (1877), pp. 970-86.
[18] Article VI, Rule First (Hertslett p. 973).

been specifically adapted in whole or in part within such jurisdiction, to wartime use".[19]

The Treaty thus prohibited for the future not only the departure of any *armed* vessel, but also "any vessel adapted in whole or in part, to warlike use". For example, to go back to the *Alabama*, although the *Alabama* was not at the time of her departure "fitted out, armed or equipped" for war, no one had ever made any secret of the fact that she was obviously "pierced for guns", that is to say, she was "adapted in whole or *in part* to warlike use".

There were other provisions in the Treaty. For example, in time of war belligerents were forbidden to make use of a neutral port or neutral water as a base of naval operations against the enemy. Those interested in the history of international law will not need to be reminded that the first of the Washington Rules of 1871 was adopted in 1907 as article 8 of the Hague Convention. This, quite incidentally, is the reason why in December 1939 the German battleship *Admiral Graf Spee*, which had taken refuge in Montevideo, had to sail from the neutral harbour and be sunk.

In the course of the Washington Treaty negotiations in 1871, Britain made a remarkable concession to American opinion, which had been greatly incensed about the *Alabama* affair. Although Britain insisted upon writing it into the treaty that she naturally did not agree that these new rules were "a statement of the principles of international law" as in force at the actual time of the *Alabama* incident, yet in order "to evince its desire of strengthening friendly relations between the two countries", and its desire to make "satisfactory provision for the future", the British government conceded that in deciding the question at issue the matter should go to arbitration, and that the arbitrators "should assume that Her Majesty's Government had undertaken to act upon the principles set forth in these rules".[20] This is to say that for diplomatic reasons, Britain found it expedient to allow the *Alabama* case, in common with the *Florida* and *Shenandoah* cases, to go for arbitration on the basis of a code of rules not in fact in force at the time. It is obvious that on this assumption, Britain would be found to be at fault, at least in the case of the *Alabama*.

There was of course some parliamentary opposition[21] to such *ex post facto* provisions, to arbitrating otherwise than "by

[19] *Ibid*, Rule Third (Hertslett, p. 973).
[20] Art. VI (Hertslett, pp. 973-4).
[21] 3 Hansard CCVI, 1823, ff., and Lords Journals, CIII, 343 (The Treaty of Washington Act—35-36 Vic, *cap.* 45—relates more specifically to matters of the fisheries *etc.*).

reference to the law of nations and the municipal law of the United Kingdom existing and in force at the period". By the *ex post facto* application of these rules the Geneva Arbitration Tribunal became little more than a board to assess damages. By the Award of 1872, therefore, although the court found in favour of Britain in the case of all the ships except the *Alabama, Florida* and *Shenandoah,* it found against Britain in respect of the *Shenandoah* after she left Melbourne, and against Britain in respect of the *Florida* and *Alabama*. The compensation awarded was no less than 15,500,000 gold dollars.

Even this was considered not too dear a bargain, for Britain had thereby secured "an acknowledgment of certain great rules as rules of International Law for the future".[22] The real interest and significance of the *Alabama* lies in the fact that it led directly to the reform of national and international law concerning commerce raiders, and concerning the doctrine of belligerency and neutrality in time of war.

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[22] 3 Hansard, CCVI, 1896.