International rivers, a monograph based on diplomatic documents

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INTERNATIONAL RIVERS.

A MONOGRAPH
BASED ON DIPLOMATIC DOCUMENTS.

BY

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WITH AN INTRODUCTORY NOTE

BY

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IN DEEP GRATITUDE AND LASTING FRIENDSHIP,

THIS MONOGRAPH

IS

Dedicated

TO

G. E. UNDERHILL, M.A.,

FELLOWS AND TUTOR OF MAGDALEN COLLEGE, OXFORD.
PREFACE.

The author wishes to introduce this work neither as a system, nor as a string of reflections suggested by experience and practice, but simply as an attempt to bring together and connect such information—scattered in numberless documents—as may be of value to statesmen, diplomatists and students of International Law, with regard to the questions raised by the existence of International rivers.

The attitude which he has endeavoured to take is essentially objective, and as impartial as the inevitable limitations of human nature permit. He sincerely believes that if he is at all biassed, it can only be in favour of a true and loyal international spirit, and in opposition to national egoism and bad faith, the mischievous workings of which he has but too often beheld with dismay.

The author is among those who, impressed by the horrors of the present War, but too young, inexperienced, or diffident to attempt to banish war from the world at one swoop, feel, however, that the removal of every likely cause of quarrel or dispute is a gain for the cause of peace and a boon for the world.

International rivers are among the bones of con-
tention of mankind; and just as after the Napoleonic wars the problem received its first general solution—prompted by the desire of establishing a durable if not permanent peace—it is hoped that it may, after this gigantic convulsion, receive an improved solution, less equivocal and more in keeping with the modern improvements in the means of transport and the development of international commerce. While the questions of the Danube, of the Scheldt, of the Polish rivers and perhaps of the Rhine will have to be re-considered, why not create a new committee of navigation to improve upon, and complete, the work of the Committee of Navigation of the Congress of Vienna? A number of experiments, which extend over more than a century and have not been confined to the Continent of Europe, are available as a store of experience.

It is that store of experience which has been collected and compressed into this volume, not, as Bacon complainingly remarks of many books, "in a sort as may be soonest believed and not easiliest examined," but with the object of bringing together the materials whence knowledge can be gathered rather than of imposing conclusions without giving the premises. This method may disappoint the general reader, who requires a theory to espouse and not facts and data to examine; but it cannot fail to be welcome to all who desire to make up their own minds as to what is true and good, and to achieve practical results.

Whenever, without unduly increasing the bulk or hopelessly impairing the clearness of the work, the
author could let official documents speak for themselves, he has never failed to do so. Although he consulted many books, he has made but little use of them, but from treaties, conventions, regulations, protocols, &c. the quotations and borrowings abound. Official translations have been used when available, but they have mostly been collated with the authoritative texts, and altered in a great many cases.

Two questions, which in some respects might with advantage be distinguished, have been necessarily dealt with together in this work, viz. (a), that of the opening up of an international river to the flags of all nations equally; (b) that of the administrative arrangements between the riparian governments for the unification of the régime of the river, its supervision, the construction of the necessary works, &c. In fact, the two questions are indissolubly connected, as the reader will easily convince himself when he meets with cases in which, freedom of navigation for all flags having been proclaimed, the arrangements between the riparian governments nevertheless resulted in making the proclamation purely illusory.

This shows that, if an International Congress attempts to deal with the question of international rivers, it will have to grapple with many technical problems for which a close collaboration of experts and jurists is requisite. The work will not in any case be satisfactorily performed by simply framing a beautiful proposition signed and sealed by a score of governments, be it ever so free from the plague of amendments and reservations.
When this is borne in mind the main difficulties in the way of framing general principles arise from the existence of the rights of sovereignty of the riparian States (rights which must never be needlessly encroached upon), and from the variety of circumstances and localities, which is so great that often what is perfectly sufficient on one river is nugatory on another, while what is expedient in one case may elsewhere be intolerable. These difficulties, however, do not seem insurmountable.

The Congress of Vienna (1815), which did not possess the fund of experience which is available to us, confined itself to propounding general principles in accordance with which a certain unification in the régime of each river should be achieved by the common agreement of the riparian governments. No mode of co-operation was imposed. History shows that, in fact, several modes have been imagined and applied at different times with different results. In one respect the most thorough had been applied to the Rhine by the Convention of Paris as early as August 15th, 1804: it considered the river as common to France and Germany in matters relating to navigation and commerce; and it endowed the river with a common administration of an elaborate character. On the same river, in 1831, an entirely different system prevailed, viz., that of the assimilation of the ships of the upper riparians to those of the lower riparians in point of treatment, while each government preserved its full rights of sovereignty over its part of the river. Tolerable when the lower riparian country itself
possesses the greatest interest in the navigability of the river and in the cheapness of the traffic, such a system offers no security when the most important maritime port belongs to the upper riparian. In consequence, a different system was resorted to on the Scheldt in 1839, which is characterized by a dual supervision exercised by commissaries from Holland and Belgium. On the Danube, on the other hand, the striking feature is the existence of a European Commission which, in the first instance, was meant to be a European Syndicate representing the interests of navigation. Intended at first as a temporary expedient, this exceptional institution was repeatedly prolonged for political reasons and as the only guarantee against the particularism and schemes of hegemony, now of Russia and now of Austria, on the Danube. Finally, the most general—and commendable—system is that of a Riparian Commission.

However bewildering this diversity of modes of co-operation may appear at first sight, it is submitted that it is not impossible to form a common principle applicable to all particular cases with the variations which may be necessitated by the differences in circumstances and localities.

From a general point of view the two principles which require most emphatic recognition are—

(1) Commercial navigation is free for all flags on the footing of perfect equality, and all particular regulations inconsistent with this freedom are ipso facto invalid.

(2) No fiscal exactions are permissible beyond (a) a
reasonable contribution payable by passing ships towards the expenses necessary to maintain and improve the navigability of the river; and (b) a reasonable compensation for the use of special appliances.

These principles being admitted, it remains to organize the administrative co-operation of the riparian States. Shall they settle everything directly either through the agency of their Foreign Offices, or through that of functionaries appointed for the purpose? This of course is most in accordance with a radical and absolute conception of State sovereignty, but it is highly unpractical and dangerous. Or, on the other hand, shall the riparian Powers give up their individual sovereign rights over the river in favour of a condominium? This is very unlikely, is hardly consistent with legal principle, and, besides, goes further than is necessary.

The most commendable plan is that of providing the river with a special administration, including representatives of all the riparian countries on an equal footing, and having a certain degree of autonomy in ordinary matters concerning the navigation and upkeep of the river. Such an administration, having primarily in view the interests of the river, of navigation and of commerce, mostly does away with the danger of friction resulting from the immediate contact of officials and departments biased by their national and particularistic points of view. It does not, like the establishment of a condominium on the river, encroach upon the vital right of self-protection of every State or necessitate a sharing of