

HANDBOOKS PREPARED UNDER THE DIRECTION OF THE
HISTORICAL SECTION OF THE FOREIGN OFFICE.—No. 149

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INTERNATIONAL RIVERS

BY

GEORGES KAECKENBEECK, B.C.L.

MEMBER OF THE LEGAL SECTION OF THE
INTERNATIONAL SECRETARIAT (LEAGUE OF NATIONS)

LONDON

PUBLISHED BY H. M. STATIONERY OFFICE.

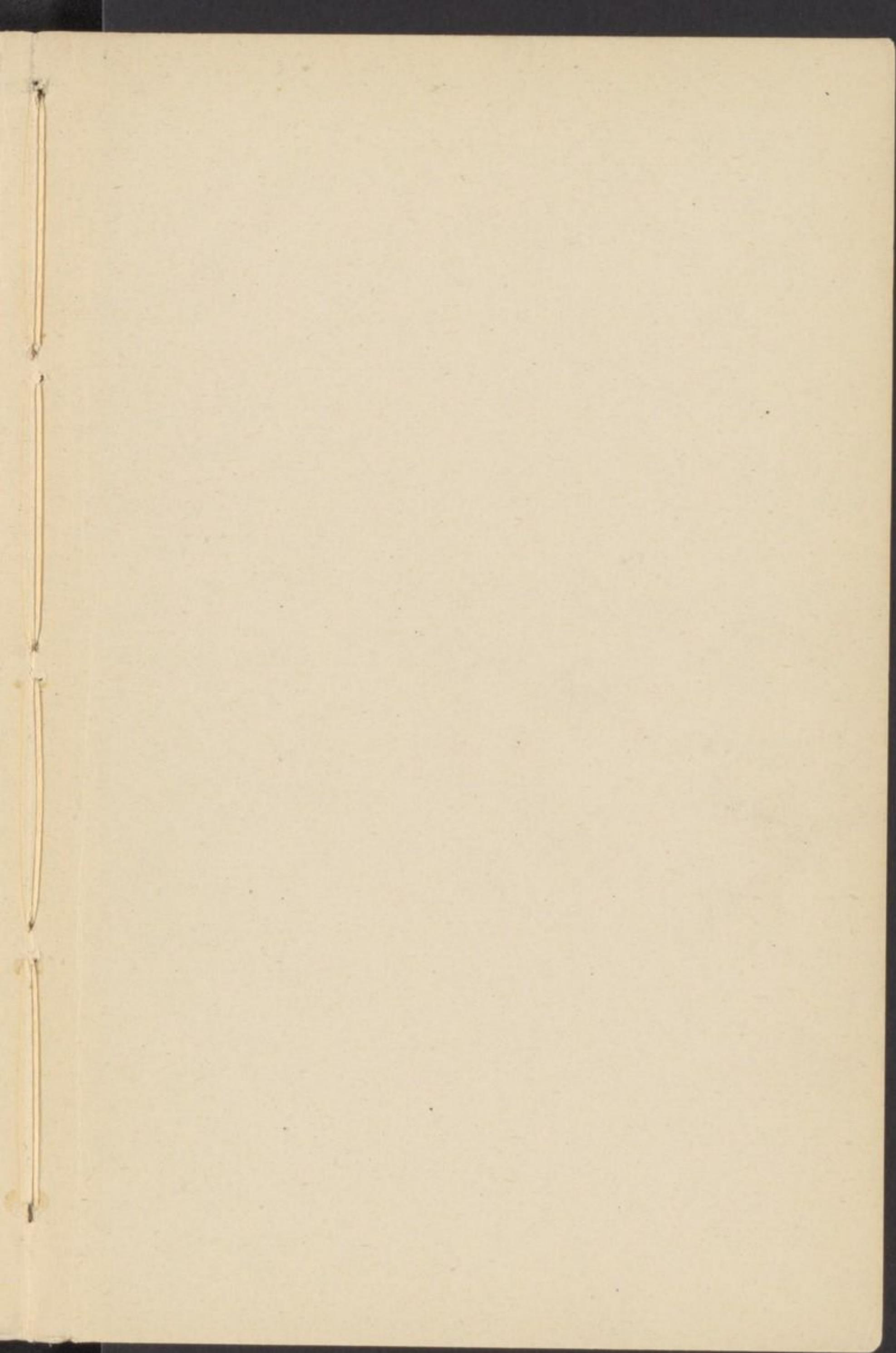
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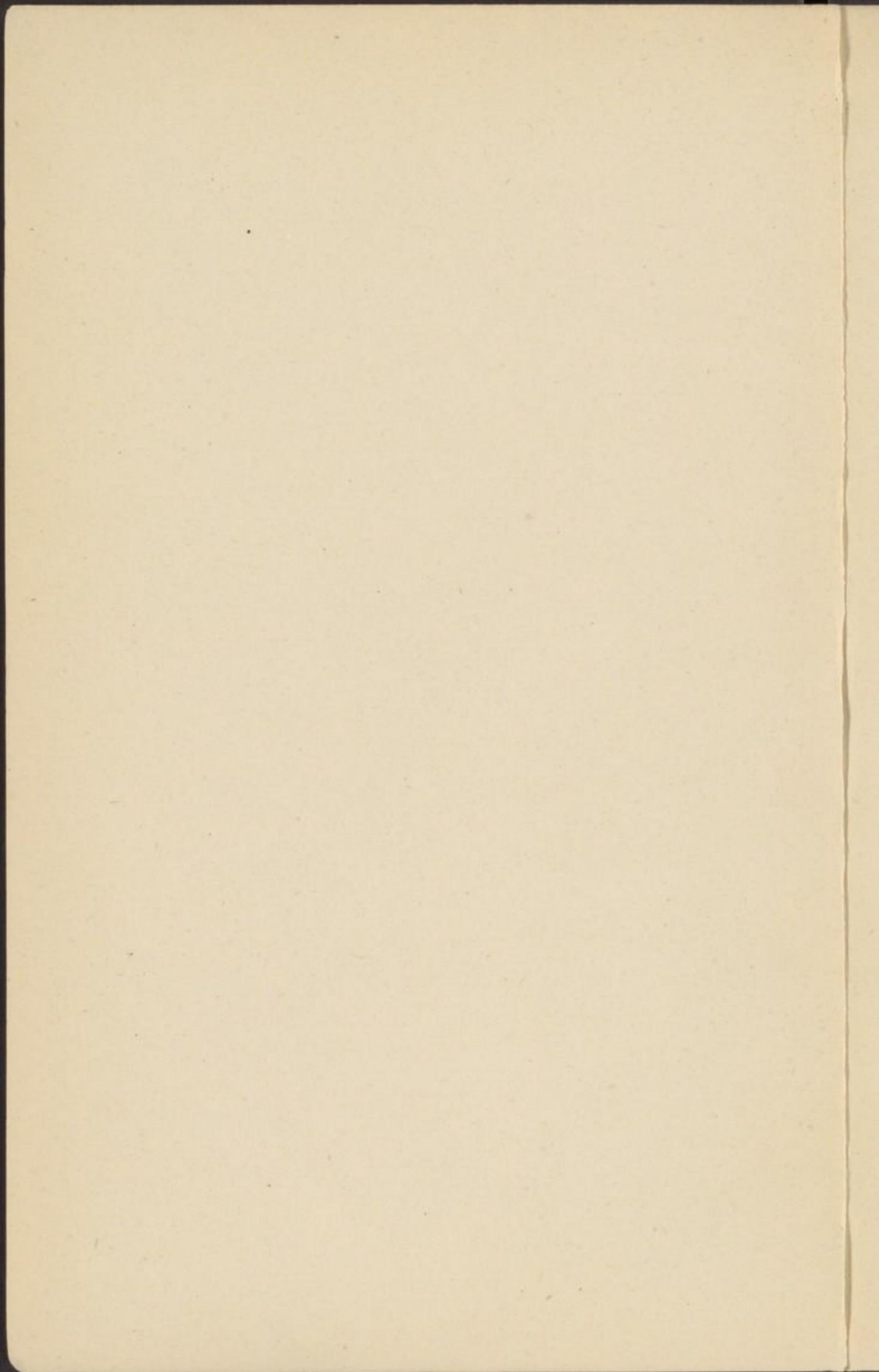


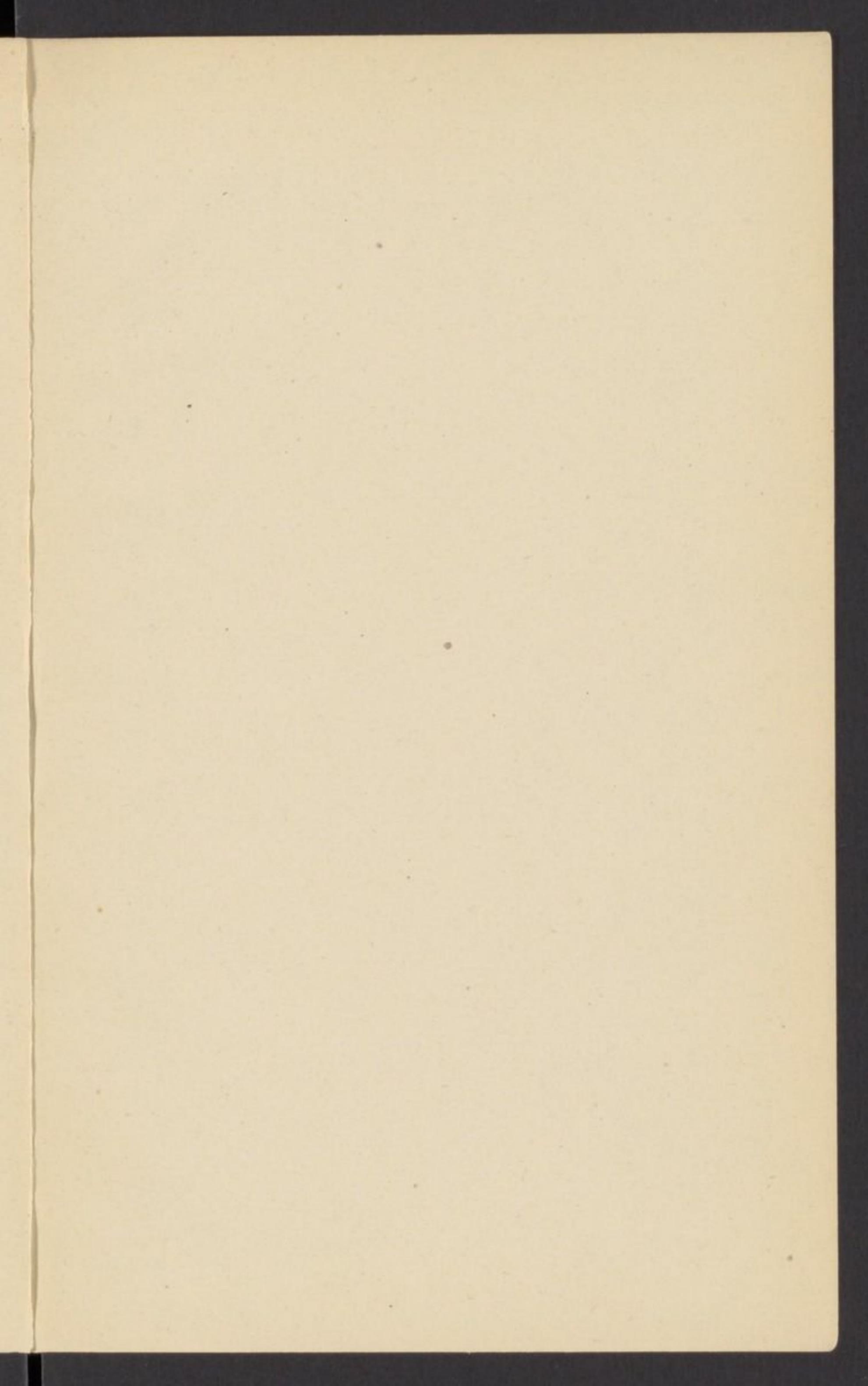


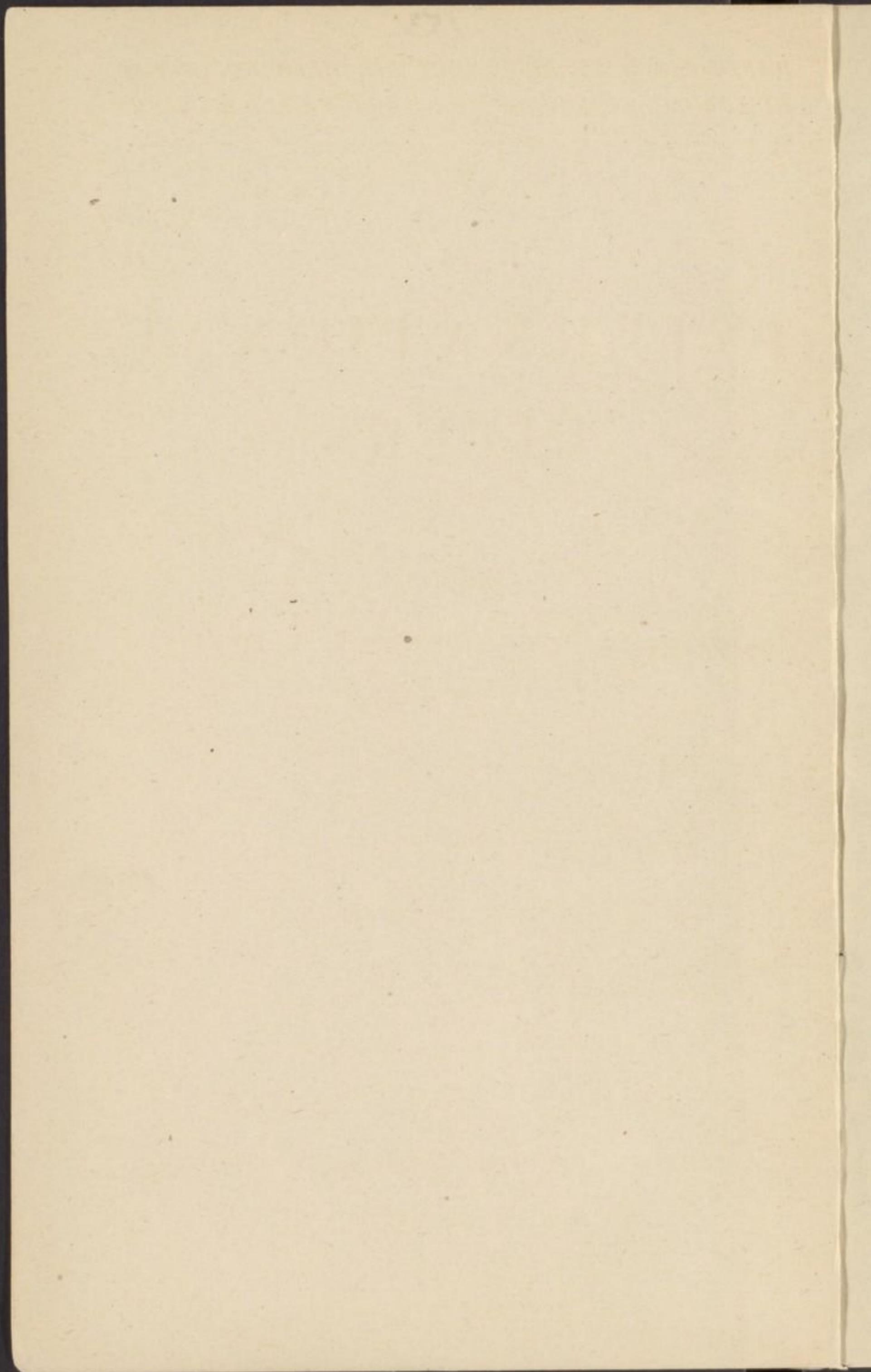
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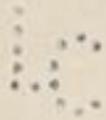
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EDITORIAL NOTE

IN the spring of 1917 the Foreign Office, in connexion with the preparation which they were making for the work of the Peace Conference, established a special section whose duty it should be to provide the British Delegates to the Peace Conference with information in the most convenient form—geographical, economic, historical, social, religious, and political—respecting the different countries, districts, islands, &c., with which they might have to deal. In addition, volumes were prepared on certain general subjects, mostly of an historical nature, concerning which it appeared that a special study would be useful.

The historical information was compiled by trained writers on historical subjects, who (in most cases) gave their services without any remuneration. For the geographical sections valuable assistance was given by the Intelligence Division (Naval Staff) of the Admiralty; and for the economic sections, by the War Trade Intelligence Department, which had been established by the Foreign Office. Of the maps accompanying the series, some were prepared by the above-mentioned department of the Admiralty, but the bulk of them were the work of the Geographical Section of the General Staff (Military Intelligence Division) of the War Office.

Now that the Conference has nearly completed its task, the Foreign Office, in response to numerous inquiries and requests, has decided to issue the books for public use, believing that they will be useful to students of history, politics, economics, and foreign affairs, to publicists generally and to business men and travellers. It is hardly necessary to say that some of the subjects dealt with in the series have not in fact come under discussion at the Peace Conference; but, as the books treating of them contain valuable information, it has been thought advisable to include them.

It must be understood that, although the series of volumes was prepared under the authority, and is now issued with the sanction, of the Foreign Office, that Office is not to be regarded as guaranteeing the accuracy of every statement which they contain or as identifying itself with all the opinions expressed in the several volumes ; the books were not prepared in the Foreign Office itself, but are in the nature of information provided for the Foreign Office and the British Delegation.

The books are now published, with a few exceptions, substantially as they were issued for the use of the Delegates. No attempt has been made to bring them up to date, for, in the first place, such a process would have entailed a great loss of time and a prohibitive expense ; and, in the second, the political and other conditions of a great part of Europe and of the Nearer and Middle East are still unsettled and in such a state of flux that any attempt to describe them would have been incorrect or misleading. The books are therefore to be taken as describing, in general, *ante-bellum* conditions, though in a few cases, where it seemed specially desirable, the account has been brought down to a later date.

G. W. PROTHERO,

*General Editor and formerly
Director of the Historical Section.*

January 1920.

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INTRODUCTION

§ 1. *National and International Rivers.*

(a) A navigable river which lies wholly within the territory of one State is described as *national*. Such a river forms part of the territory, and is, according to general opinion and practice, subject to the exclusive control of the territorial power, which, however, frequently concedes to other States, by convention or as a matter of comity or policy, a right of navigation for purposes of access to its ports.

(b) A river navigable from the sea, which flows through or along¹ the territory of two or more States² is described as *international*.

Between a national and an international river, there is thus this first great difference that, while the former is subject to the exclusive jurisdiction of one State, the latter is subject in parts to the several jurisdictions of the riparian States.³ In spite of this political

¹ When the international river separates the territories of two States it is called a *boundary* river; and the question then arises where—in default of special agreement—the line of demarcation of the jurisdiction of either State is presumed to be drawn (cf. *infra*, p. 47).

² For a somewhat different terminology, cf. Oppenheim, *International Law*, i, pp. 239–40. Professor Oppenheim's fourfold classification emphasizes the fact that free navigation has not yet been recognized on *all* rivers flowing through or along the territory of two or more States, while his definition of international rivers (§ 176), which requires free navigation for the merchantmen of all nations, reduces—when the special regulations are taken into account—the number of such rivers to a very small number indeed, as will appear from what follows (Part II).

³ For an illustration of the legal difference, cf. Moore, *Digest*, i, p. 626, quoting Mr. Rush.

division into sections, however, the river preserves its organic unity ; and, as it is in its physical entirety that the river is most eminently and perfectly an economic instrument, the coexistence over it of several jurisdictions with a natural tendency to exclusivism creates difficulties which place the question of international rivers among the thorniest problems of the Law of Nations.

§ 2. *Double character of questions relative to International Rivers.*

Whenever, in the case of an international river, a riparian State adopts a measure relative to such river or its use, not only are the effects of the measure felt by the State itself, but they necessarily react on the other riparian States and possibly even on non-riparian States. In other words the effects of the measure are double, being at the same time internal and external, or—to put it in another way—national and international. Such is at the present day the complexity of international relations and the intricate interdependence of the interests of all nations.

It was the awakening sense of this interdependence which, more than a century ago, brought the question of international rivers into prominence and led to a solution of the problem, which, though in some points defective and in others insufficient, has been the foundation of the law of international rivers—in Europe at least—ever since.

§ 3. *The problem of the opening up of International Rivers.*

On the practical side the problem raised by the existence of international rivers is dominated by the question : who may navigate an international river, and with what degree of freedom ?

(a) Here we must note at once that the States occupying the banks of an international river are mostly not in a state of natural equality. The State that holds the mouth of the river has a master-position which may enable it to deprive all the co-riparians of the most important advantage attaching to the vicinity of the river, viz. access to the sea. History shows that the comity of nations has not always succeeded in rendering impossible such ill treatment of neighbours (cf. *infra*, pp. 16, 26). In consequence, the first historical claims to free navigation aim mainly at obtaining access to the sea for the upper riparians. This, on grounds of reciprocity, implies the question of free navigation for all riparians on the whole river.

(b) But, even when an agreement opening the international river to all the riparian flags is arrived at, the upper riparians remain deprived of certain minor advantages which the Power possessing the mouth can enjoy. Their commerce cannot be carried on entirely by means of riparian vessels; and the question then arises of the extension of free navigation to the vessels of all nations. This extension, so soon as the interdependence of interests alluded to above is clearly recognized, is insisted upon by commercial oversea States even more than by the upper riparians themselves.¹ But the number of cases in which freedom of navigation exists for all flags on a footing of perfect equality is still very limited.

The whole problem, whatever the degree of completeness with which its solution is attempted, has fitly been described as 'the opening up of international rivers'.

¹ Cf. Note of Mr. Marcy, United States Secretary of State, to Mr. Trousdale, Minister to Brazil, August 8, 1853, concerning America's claim to free navigation on the Amazon—quoted in Moore, *Digest*, i, p. 642.

§ 4. *Scope and division of this work.*

The problem is eminently a practical one and has occupied statesmen and diplomatists much more than jurists. These, however, have never omitted to deal with the question, even before it was seriously discussed by diplomatists; and they have attempted to solve it by such juridical principles and notions as were at their disposal, but much more according to their own idea of what was fitting and right—a practice somewhat common with the writers on the Law of Nature and still held in honour by many leading publicists.

Whatever be the logical and juridical value of such doctrines and of the notions and principles on which they rest, they have exercised an undeniable influence in history, and are therefore entitled to the careful consideration even of the most 'positive' statesman. But they form only an introduction to the solution of the problem, which is to be found, not in the declaration of a rule of law, but in the agreement and constant practice of States.

This treatise therefore consists of two parts: one dealing with the main legal theories and principles; the other with the practice of States. From this double inquiry practical conclusions will be drawn.

PART I

LEGAL THEORIES AND PRINCIPLES

§ 5. *Mediaeval Particularism.*

The system from which we have to start is rooted in feudalism, under which public power passed into the hands of the feudal lords as a consequence of their proprietary right. Hence the private appropriation of things which ought never to have been so appropriated, and an intense particularism combined with the raising of numberless fiscal and other obstacles to the freedom of commerce and navigation.

The results were: (a) many fiscal extortions on the part of riparian lords or riparian towns, monopolies of boatmen, &c., which were highly prejudicial to every one; (b) as against foreigners, a right of closing the river at will, which was always claimed and sometimes exercised. This state of things long prevailed. It was attacked mainly on two grounds: (a) on that of incompatibility with the principles of Roman Law; (b) on that of incompatibility with the dictates of the Law of Nature.

§ 6. *Roman Law.*

Roman Law was not an international system; and it is only by analogy and in order to establish the juridical nature of rivers and the rights to which they may be subject, that resort is had to Roman Law.

(A) Juridical nature of *flumen*. *Flumen* has two meanings: it denotes the stream or current, or it denotes the whole river. (a) As *aqua profluens* it is a thing common to all (*Institutes*, ii. 1. 1). (b) Regarded

as a whole river it is *res publica jure gentium*, i. e. its use is open to all citizens (*Institutes*, ii. 1, §§ 2, 4); to ensure which use the State has a right of supervision and police, but no right of ownership as if it were a *res publica jure civitatis*.

(B) Practical distribution of rights.

(a) The public at large has the rights of navigation, fishing, and using the banks for all purposes ancillary to navigation.

(b) The State has the right of collecting a duty in compensation for expenses of police, repairs, &c.; and the right of undertaking works of canalization, damming, &c.

(c) The riparian owners have the right of diverting water (with authorization of the praetor); of appropriating an abandoned bed; of *alluvio*¹; of sharing islands newly formed; of undertaking works in the river (with special authorization and without prejudice to third parties' rights to damages).

(d) All these rights are protected, mostly by interdicts, but sometimes by other remedies (*Digest*, xliii. 8. 2, § 9).

§ 7. *Law of Nature.*

Though very variously defined and understood, the Law of Nature is characterized by the fact that, disregarding positive enactments, it boldly draws from reason and the nature of things conclusions which it asserts as binding, and superior to tradition and positive law. Historically, its influence has undeniably been great. It inspired the founders of International Law. But, as a source of law, it has now lost its former authority, though under the less ambitious titles of

¹ i. e. the right to appropriate any accession to the land by the gradual and momentarily imperceptible addition of matter by the action of the water. Cf. *Digest*, xli. 1. 7, 1.

equity, humanity, reason, common interest, &c., some of its arguments may still prevail.¹

Grotius and Vattel (two leading representatives of the school of Natural Law) have aimed at remedying the two grievances mentioned in § 5, viz. :

(a) The burdensome system of dues and tolls and other economic hindrances to navigation. See Grotius, ii. 2. 14 :

‘ . . . whatever taxes have no respect to the articles of merchandise cannot equitably be imposed on them. . . . But if, either to provide security for the merchandise, or for this along with other objects, a burthen fall on the country, a tax may be imposed on the merchandise, if it do not go beyond the measure of the cause. . . . ’²

(b) The practice of excluding foreigners from the navigation of the river.

They based their plea on two grounds. (1) They held certain views—now generally discarded—about a primitive system of community replaced by a system of private property. When this change occurred, a right of innocent passage must have been excepted and reserved (Grotius, ii. 2. 13 ; Vattel, i, § 104). (2) On the principle that ‘ things of which the use is inexhaustible, such as the sea and running water, cannot be so appropriated as to exclude others from using these elements in a manner which does not occasion a loss or inconvenience to the proprietor ’ (Grotius, ii. 2. 11 ; Vattel, ii, § 127), was made to rest the *jus utilitatis innoxiae* from which both Grotius and Vattel deduced the right of innocent passage on rivers. But, whereas Grotius saw in it a perfect right legally obligatory, Vattel considered it merely as an ‘ imperfect right ’ or right of imperfect obligation ;

¹ On the Continent a revival of the Law of Nature is noticeable. Cf. Charmont, *La Renaissance du droit naturel*, Montpellier, 1909.

² Whewell’s translation of the *De Jure Belli ac Pacis*. Cambridge, 1853.

forasmuch as the owner alone remains competent to decide whether the use of his property could cause him loss or inconvenience (Vattel, ii, § 128). However, he admits (ii, § 129) that, when the harmlessness of the use is not doubtful, refusal is tantamount to injury, and the party aggrieved may act accordingly. Of course it must be borne in mind that, to claim this right of passage, one must have a necessity or just cause for it.¹

The historical importance of this doctrine is shown (a) by the fact that many writers still base their commentaries on it and direct their main arguments to the question of the assertion or denial of the right of innocent passage on rivers; ² (b) by the various appeals to it made in history, e. g. in the Mississippi³ and the St. Lawrence controversies, and in the French decree of November 16, 1792, opening the Scheldt and the Meuse to free navigation.⁴

§ 8. *Sovereignty.*

In the meantime, with the historical and juristic aid of the idea of property and its application to the territory of a State, it had become possible for the old theorists to elaborate the principle of political sovereignty.⁵ From the exclusive character of property was thus deduced the exclusion of foreign States from interference with the territorial sovereignty.

This construction was, and still remains, the stronghold of the supporters of particularism. Vague as it

¹ Cf. Westlake, *International Law*, i, p. 144.

² See the opinions of accredited jurists tabulated from this point of view by Westlake, *op. cit.*, i, pp. 158-9.

³ Roman Law was also appealed to.

⁴ Kaeckenbeeck, *International Rivers*, § 16 and § 32.

⁵ F. von Holtendorff-Vietmansdorf, *Handbuch des Völkerrechts*, ii, p. 228. Berlin, 1885-90.

was, and susceptible of extensive and absolute interpretations, sovereignty was often made a cloak for quite unjustifiable demurrers and claims. Even when free navigation could no longer be denied, the broad principle which had been granted was often whittled away in the details of the regulations.¹ As examples, the attitude of Holland (Rhine) in 1816 (*infra*, p. 25) and (Scheldt) in 1832 (*infra*, p. 26), and the attitude of Austria (Danube) in 1858 (*infra*, p. 32),² may be mentioned.

Breaches were made in this too absolute construction: (a) on purely positive lines, by means of the notion of 'State servitudes'. This notion is derived by analogy from the Civil Law. Were sovereignty and property exactly the same thing the analogy might be good; but is it so? ³ And, even assuming that it were so, the class of so-called 'servitudes' with which we are concerned is that of 'necessary or natural servitudes'—i. e. in sound jurisprudence no servitudes at all, but simply normal limitations of the right of sovereignty.⁴ We may probably say that, under the name of State servitude, the right of innocent passage obtained a footing in positive law as a necessary limitation of the right of property-sovereignty of nations—a fact which shows

¹ Hence the necessity of not confining oneself to the clauses of treaties granting the general principle. The regulations of navigation and police must in every case be investigated.

² Cf., however, Austria's declaration with regard to the Mixed Commission of the Danube and the sovereignty of the interested States in 1883. See Kaeckenbeeck, *International Rivers*, §§ 17, 173.

³ See Westlake, *International Law*, i, pp. 84–8, including note.

⁴ Even in private law it is settled that servitudes are essentially exceptions to the normal order of things; and the classification of the *Code Napoléon* into 'servitudes naturelles', 'servitudes légales', and 'servitudes du fait de l'homme' has been strongly criticized (see, e. g., Colin and Capitant, *Cours de Droit civil français*, i, pp. 734–6). We agree with Caratheodory's contention: § 11, pp. 37–8 of his *Droit international concernant les grands cours d'eau*.

how justifiable and necessary in itself is the principle of free navigation on international rivers. (b) On less positive lines, some publicists and statesmen, without contesting the right of sovereignty, maintained that, like our individual rights, they were not absolute, boundless, irrespective of the rights of others, but that on the contrary they were susceptible of abuse. To claim exclusive rights over that which nature has conferred equally upon several States is an abuse of this kind. No rights of sovereignty can justify the creation by one State of a monopoly of an inexhaustible natural force to the detriment of all others.

These controversies and difficulties about sovereignty make it necessary to remark that, with respect to international rivers, although a solution taking no account of the rights of sovereignty of the riparian States can never be acceptable, sovereignty has, on the whole, very much less to do with the question than the numerous and pathetic appeals made to it by some nations would seem to indicate.

(a) It is clear that, as from the existence of an international river certain common interests *ipso facto* arise with respect to the use of such river, a co-operation of the riparian States for the regulation of such use can never infringe the sovereignty of any one of them.¹ Nor is it infringed by the participation of non-riparian Powers in a Congress or Conference for the determination of general principles applicable to the navigation of international rivers. But, in executive Commissions, the presence of non-riparian Powers may be objected to from the point of view of the sovereignty of the riparian States.

(b) Leaving sovereignty out of account, it has been sought—in vain—to extend to rivers (as prolongations

¹ Provided there is no *executive* predominance of one over the others. Cf § 21.

of the sea inland) the regime of the high seas.¹ Attempts have also been made to deal with international rivers as with straits.² But rivers do not connect seas. They ramify all over a territory, lead to the great cities, lay bare, so to speak, the very heart of a country. Further, they must be kept navigable and subjected to an effective police supervision. Sovereignty, necessary to protect the vital interests of the riparian countries, is also, generally, the most proper authority to undertake the policing and the necessary repairs and improvements of the river.

Nor does such a formula as that of Caratheodory³ solve the question by laying down that 'either as against each other, or as against third parties, the riparians can have no other rights than those deriving from the obligations which the vicinity of the river lays upon them'. For, when you ask what those obligations are, to which the rights of the riparians are to be correlative, you receive no better answer than this: 'Here, everything depends on the circumstances, on the topography, on a host of local accidents which science cannot foresee *a priori*, and which it might even be dangerous to try to determine beforehand.' If this formula is attractive, it is only on account of its emphasizing the existence of obligations as between States, and implicitly embodying the truth that the real foundation of International Law is the close interdependence of the interests of all nations and the solidarity which is the outcome of such interdependence.

¹ The difference between fresh water and salt water should not be overlooked.

² In one of the only cases in which the analogy was not obviously false (St. Lawrence) the claim failed.

³ *Droit international concernant les grands cours d'eau*, 1861.

§ 9. *Conventional System.*

If we have seen excellent reasons for recognizing and applying the principle of free navigation on international rivers, we have as yet found nothing which enables us to assert the existence of a right of free navigation. Indeed, no theoretical reasons and arguments can call such a right into existence, but only the actual practice of States.

Now, the practice of States started with claims of upper riparians to free access to the sea, based mainly on the Law of Nature and refused on grounds of sovereignty and positive law (Mississippi; St. Lawrence).¹ Then, under the pressure of circumstances, recourse was had to agreements and conventions; so that what could not be suffered as a matter of right was often granted as a matter of comity or policy or reciprocity. Thus a conventional system sprang up, which became the foundation of the law of international rivers. The more clearly the state of mutual interdependence in which nations live was perceived and felt, the more numerous and usual such conventions became. Whenever difficulties arose, a *modus vivendi* was established, as the only means of avoiding conflicts which a persistent refusal to yield to the necessities of the general interest would have rendered inevitable.

After some groping, it became clear that it was possible for States to adopt general rules applicable to all international rivers, while leaving details to be regulated with reference to special circumstances by the parties directly concerned. This scheme was partly realized by the Congress of Vienna; and the rules which were there elaborated—unfortunately they were not entirely unequivocal—were successively applied to

¹ The case of the Scheldt was slightly different, as in that case a treaty existed closing the river for ever to the upper riparians (see *The Scheldt*, No. 28 of this series).

most European rivers. In some cases they were much discussed and received various alterations and improvements. Nor were they confined to one continent.

Part II of this treatise sets forth this development in some detail : but a question of principle immediately arises, viz. ' May a customary rule be said to have originated in the conventional law of rivers ? ' It is known that the consensus of all civilized nations, repeatedly expressed or implied in a long succession of treaties, may become the source of rights independent of those very treaties. Thus, that a right of free navigation on international rivers will exist in the near future is beyond doubt. But does it exist now ?

The question, which can only be answered after careful consideration of the diplomatic documents and transactions, has been conveniently put by Mr. Roxburgh¹ as follows : ' Are States generally in the habit of granting such freedom to all nations under a conviction that they are by law bound to do so ? ' ²

Now, this is a question of fact, the answer to which largely depends on the interpretation of the documents, on the personal convictions of each jurist as to what amount of universality is required, what force certain reservations carry and how long they carry it, &c., &c.³ It is therefore no wonder that no agreement of opinion exists, and that, to take only two leading English jurists (Westlake and Hall), the one asserts, while the other denies, the right of free navigation.

¹ R. F. Roxburgh, *International Conventions and Third States*, London, 1917, p. 87.

² This conviction of a legal necessity or legal right as one of the essential elements of a custom (in contradistinction to a mere usage) has been particularly well brought into light by Oppenheim, *International Law*, i, p. 22.

³ As to Hall's notions on the ' Conventional law of Nations ', see his *International Law*, pp. 7 *sqq.* They certainly bear part of the responsibility for his conclusions referred to in this section.

Both authors start from a survey of the practice of States, which in Westlake is particularly comprehensive and noteworthy, and in Hall stops before the Conference of Berlin (1885); and while Hall declares that free navigation 'has not been established either by usage or by agreements binding all or most nations to its recognition as a right',¹ Westlake concludes

'that a sufficient consent of States exists to warrant the assertion that a right of navigation (of which the best statement is that made for the Danube by the Treaty of Paris in 1856) exists as an imperfect right² on the navigable rivers traversing or bounding the territories of more than one State'.³

A definitive conclusion is not possible at this stage of the present inquiry. But, whatever may be urged against the notion of imperfect right, it seems to us that, from the present point of view, Westlake is nearer the mark than Hall; and we believe that the weight of independent authority is in favour of Westlake's interpretation.

That the principle of free navigation for all is not of universal application is mainly due to the fact that oversea Powers have not always thought it worth their while to claim it;⁴ but, whenever a real interest has induced them to intervene, the right of navigation has been granted. And we submit that, wherever this right has been enjoyed, its withdrawal, even as against non-signatory Powers, would be resented as an infringe-

¹ Hall, *International Law*, 7th ed., p. 141.

² Not exactly in the same sense as Vattel (§ 7). Westlake means a right to the due enjoyment of which conventions are indispensable, but not therefore lacking every element of law or perfect right. The right is binding; only the details of its exercise—depending on circumstances which may vary in every case—are to be regulated by agreement. (Westlake, *Collected Papers*, p. 75.)

³ Westlake, *International Law*, i, p. 157.

⁴ Free navigation is besides very generally provided for in treaties of commerce, often in 'most-favoured-nation' clauses.

ment of right.¹ No discrimination between oversea nations could be suffered; and the only differentiation in treatment which in fact exists is that between riparians and non-riparians on some rivers. This distinction originated in 1815 (cf. *infra*, p. 20), but, as a matter of principle, was abolished in 1856 (*infra*, p. 30), although some applications of the former stricter rule have subsisted much longer.

¹ Cf. controversy between Great Britain and Portugal concerning the navigation of the Zambezi. (*Parliamentary Papers, Africa, No. 2 (1890). C. [5904], p. 43.*)

PART II

THE PRACTICE OF STATES; DEVELOPMENT
OF THE CONVENTIONAL SYSTEM

(A) THE CONGRESS OF VIENNA

§ 10. *Before the Congress of Vienna.*

The question of the opening up of international rivers arose in Europe at the end of the eighteenth century. Article XIV of the Treaty of Münster (1648) had for ever closed the Scheldt to the Belgic provinces. Joseph II made an effort to put an end to this iniquity, but in vain.¹ The French Revolution proved more irresistible than the will of the enlightened despot; and, by a decree of November 16, 1792, the Scheldt and the Meuse were declared open in the name of the Law of Nature. Nor did the French stop there; for in 1797-8, at the Congress of Rastatt, not content with the application of their doctrine to the Rhine, they startled the German diplomatists by stating the principle of admission of foreign flags with the consent of the contracting parties and by expressing the wish that the tributaries of the Rhine as well as the other great rivers of Germany should be open to French vessels.² This Congress, however, bore no direct fruits. But in 1804, when France acquired the left bank of the Rhine, it became necessary to organize the navigation for the common benefit of both Powers and to provide for a system of collection of tolls less burdensome than the existing one. A 'Convention on the Tolls of the Navigation

¹ Joseph II's controversy with the Dutch States-General is related by De Martens in his *Causes célèbres*, Cause viii.

² Engelhardt, *Nouvelle Revue historique*, 1889, pp. 82-3.

of the Rhine' was accordingly signed in Paris on August 15, 1804.¹ It considered the Franco-German part of the Rhine as common to both Empires in matters relating to navigation and commerce, and constituted a common administration for the collection of the tolls, the police of navigation, &c.

§ 11. *The Treaty of Paris, May 30, 1814.*

Among the menaces to the peace which they were assembled to ensure, the authors of the Treaty of Paris did not fail to include international rivers, which, giving rise to divergent interests, easily become the source of conflicts. To lay the foundations of a good understanding with regard to them became therefore one of the tasks of these peacemakers, who inserted the following Article (V) in their treaty :

'The navigation of the Rhine, from the point where it becomes navigable to the sea, and *vice versa*, shall be free, so that it can be interdicted to no one : and at the future Congress attention shall be paid to the establishment of the principles according to which the dues to be levied by the States bordering on the Rhine may be regulated, in the mode the most impartial and the most favourable to the commerce of all nations.

'The future Congress, with a view to facilitating the communication between nations, and continually rendering them less strangers to each other, shall likewise examine and determine in what manner the above provisions can be extended to other rivers which, in their navigable course, separate or traverse different States.'

The two sections correspond to two perfectly distinct ideas : the first indicates the bases of the understanding with regard to the Rhine ; the second provides for

¹ For the text of the Convention, De Martens, *Nouveau Recueil historique*, 2nd ed., viii. 261 *sqq.* ; Klüber, *Acten des Wiener Congresses*, iii. For an analysis, Kaeckenbeeck, *International Rivers*, §§ 35-42.

an inquiry into and settlement of the means of extending the solution fixed upon to other international rivers.

As to the bases of the understanding, they correspond to the probable causes of conflict, which are to be found in (i) exclusions from the navigation of the river; (ii) the fiscal policy of certain States. In consequence, Article V proclaims (1) that the navigation of the river shall be free and shall not be forbidden to any one;¹ (2) that the dues on navigation shall be regulated on the principle of strictest equality, and in the manner most favourable to the commerce of all nations.

§ 12. *Proceedings of the Congress of Vienna, 1815.*

Such was the problem, as it was presented to the plenipotentiaries of the Congress of Vienna. They entrusted the working out of its solution to a Committee of Navigation,² which, having decided to deal with the Rhine first of all, invited the plenipotentiaries of the riparian States of this river to attend.³

At the first sitting, the Duc de Dalberg presented a project agreeable to Article V of the Treaty of Paris and inspired mainly by the Convention of 1804. It created between the two Empires a sort of community with regard to commerce and navigation, in which it saw the most effectual means of ensuring freedom of navigation and satisfactorily settling the fiscal question. This project was accepted as the basis of discussion at the second sitting (Feb. 8). But, from the first, Prussia refused her assent to the principle of a com-

¹ On the interpretation of this clause, see Kaeckenbeeck, *International Rivers*, § 45. Both Great Britain and France have relied on this Article to support the claim of non-riparian Powers to free navigation.

² Consisting of the Duc de Dalberg (France), Baron von Humboldt (Prussia), Lord Clancarty (Great Britain), and Baron von Wessenberg (Austria).

³ Viz. Holland, Bavaria, Baden, Hesse-Darmstadt, and Nassau.

munity; and the French project based on it had practically been destroyed by the end of the fifth sitting, when Baron von Humboldt engaged to prepare a new draft.

Immediately after the presentation of the French project, Baron von Humboldt read a memorandum preparatory to the work of the Commission. While acknowledging that Article V of the Treaty of Paris 'is to be the basis of the work of the commission', Baron von Humboldt suggests that it is first of all necessary to consider 'the principles which the general interest of commerce make it expedient to adopt'. This is the starting-point. The connexion which exists between navigation and the general interest of commerce prepares the way for a confusion which will make it possible to distort the true scope and meaning of Article V while preserving its essential terms. Having thus, so to say, substituted the principle of the general interest of commerce for Article V of the Treaty of Paris, Baron von Humboldt, in order to reconcile the general interest of commerce with the interest of the riparian States, proceeds to reject the consequences of his principle unless the three following conditions are complied with: (i) that they should be agreed upon by the common consent of all the riparians; (ii) 'that no riparian State should be disturbed in the exercise of its rights of sovereignty, in respect to commerce and navigation, beyond the stipulations of this convention'; (iii) that every riparian State 'should be entitled to its share of the dues collected on navigation in proportion to the extent of its territory along the banks of the river'.

Under these three conditions, von Humboldt deems it possible to assent to:

(1) freedom of navigation; ¹

¹ He abstains from adding, in compliance with Article V, that the navigation shall not be forbidden to any one.

- (2) the abolition of staple duties (*droits d'étape*) ;
- (3) a uniform tariff of the dues to be collected ;
- (4) the reduction of the number of offices for their collection ;
- (5) the absolute separation of the collection of customs duties and of navigation dues ;
- (6) the appropriation of the receipts of dues to the works necessary to navigation ;¹
- (7) the unification of the police regulations ;
- (8) mutual engagements to provide, so far as possible, for the maintenance of free navigation even in case of war between the riparian States.²

Finally, Baron von Humboldt examines the means of extending these provisions to all international rivers (cf. *infra*, p. 23). His memorandum is a real explanatory introduction to the decisions of the Congress.

Other memoranda were also read ; many observations were made concerning technical points ; and the numerous acquired rights, interests, and privileges alleged served to render the task of the Commission increasingly difficult and intricate, and to obscure the clear directions of Article V.

§ 13. *Free navigation for all flags or for riparians only ?*

Although the words of Article V : 'de telle sorte qu'elle [i. e. la navigation] ne puisse être interdite à personne', were reproduced in the Duc de Dalberg's project, Lord Clancarty proposed a still more explicit wording : viz.

'Le Rhin . . . sera entièrement libre au commerce et à la navigation de toutes les nations de manière qu' . . . il ne puisse, sous ces deux rapports, être interdit à personne . . .'

¹ The surplus to be dealt with in accordance with condition (iii) above.

² Most of these principles, von Humboldt himself observes, are to be found in the Convention of 1804—'a very good piece of work, the utility of which has been proved by experience.'

This was emphatic, perhaps too much so for Baron von Humboldt, who, having subordinated the principle of free navigation to the general interest of commerce, seems to have seized the opportunity of trying, while preserving the words of Article V, to obliterate their true meaning by means of the interpolation: 'sous le rapport du commerce.' His wording is at least equivocal.¹

Lord Clancarty protested, and again proposed his amendment.

'But the other members of the commission were of opinion that there were no grounds for making this amendment "vu que la rédaction de M. le baron de Humboldt ne semble pas s'éloigner des dispositions du traité de Paris" which had for their object merely the preservation of the navigation from such impediments as a conflict between the riparian States could bring about, and not the granting to all subjects of non-riparian States an equal right of navigation with that enjoyed by the subjects of the riparian States and in return for which there would be no reciprocity.'²

Unfortunately, this decision, taken by diplomatists who, at the time, thought of nothing but the Rhine, was to be the basis of Article CIX of the Final Act of the Congress of Vienna, which was applicable to all international rivers.

¹ It runs: 'The navigation of the Rhine . . . shall be entirely free, and shall not, in respect to commerce, be prohibited to any one. . . .'

² Protocol of seventh Conference (March 3). This interpretation of Article V runs counter to the very terms of the Article. To fix the degree of authority it possesses, one must remember: (1) the composition of the Commission (*supra*); (2) that out of the four delegates of the Congress, two—the British and the French—opposed it. The fact that the French plenipotentiary soon ceased to insist is explained by reference to his instructions, which saw in free navigation with moderate dues only an equivalent for the possession of the riparian provinces which France had renounced. Kaeckenbeeck, *International Rivers*, § 53.

§ 14. *The Navigation of the Rhine.*

The discussions of the Commission of Navigation resulted, first, in the adoption of thirty-two Articles concerning the navigation of the Rhine.¹

The Article concerning the right of navigation (Article I) was that proposed by Baron von Humboldt, with the equivocal restriction *sous le rapport du commerce*. Articles II, III, IV provided for a fixed, uniform, and invariable system of dues and uniform police regulations for the whole river, and, so far as circumstances might permit, for its tributaries. These dues were to be collected in twelve offices by each riparian State separately (Articles V, VI). In addition to the judicial authorities of 'first instance' attached to each of these twelve offices, each State had to establish a tribunal of 'second instance'. Appeals might be brought to such tribunals or to the Central Commission (Articles VIII, IX).

The Central Commission, composed of delegates from the riparian Powers and sitting once or twice a year, was meant to preserve unity and uniformity (Articles X, XI). It had to exercise a kind of general supervision and to attend to the general interests of navigation and commerce (Article XVI). The decisions of its members—mere agents of the riparian States—were not binding upon the States without their consent (Article XVII).

As a permanent authority, there were to be one chief inspector and three sub-inspectors (Articles XII, XIII, XIV, XVIII) whose duties were to organize the police of navigation, see to the execution of the Regulations, send reports to the Central Commission, and inform it of the state and defects of navigation, &c. (Articles XV, XVI). Certain dues and all monopolies were

¹ For an analysis and comparison with von Humboldt's memorandum, see Kaeckenbeeck, *International Rivers*, §§ 55-64.

suppressed (Articles XIX, XXI). The farming-out of the dues retained (Articles III, IV, XX) was prohibited (Article XXIV). Customs duties and navigation dues were absolutely distinct (Article XXII). Free navigation was to be maintained even in case of war; and the boats and officials in the service of the tolls were to enjoy the privileges of neutrality (Article XXVI). Finally, detailed Regulations were to be drawn up and approved by riparian Governments; not until this was done, was the new order of things to commence (Articles XXVII, XXXII).

§ 15. *The Navigation of other Rivers.*

The second part of the Commission's task was, according to Article V of the Treaty of Paris, the extension of the more general of these rules to the other international rivers. Special Articles concerning the Neckar, the Main, the Moselle, the Meuse, and the Scheldt were adopted. But as Baron von Humboldt remarked in his memorandum, it was impossible to conclude for all the other great European rivers Conventions similar to the one in thirty-two Articles concerning the Rhine.

'However', he went on, 'a considerable advance might be made towards the general freedom of river navigation by inviting the Powers who should sign the Final Act of the Congress to pledge themselves to conclude with each other, and with other Powers, arrangements respecting the freedom of navigation of those rivers within their territories which are common to other States, in the same manner as it is the usage to stipulate in treaties of peace for the conclusion of treaties of commerce. In order to obviate the vagueness which might render this pledge illusory, the Powers should also be invited to declare, in a positive and obligatory manner, that the general principles previously stated [i. e. Nos. 1 to 8, enumerated § 12] should form the basis of the arrangements to be thus concluded. . . .'

The Committee of Navigation followed this sugges-

tion, and Articles CVIII–CXVI of the Final Act were brought into being.

Article CVIII provided that

‘the Powers whose territories are separated or traversed by the same navigable river engage to regulate, by common consent, everything regarding its navigation. For this purpose, they will name Commissioners, who shall assemble at latest six months after the termination of the Congress and shall adopt the following principles as the bases of their proceedings’.

Article CIX, concerning freedom of navigation in general, ran as follows :

‘The navigation of the rivers referred to in the preceding Article, along their whole course, from the point where each of them becomes navigable to its mouth, shall be entirely free, and shall not, so far as commerce is concerned, be prohibited to any one ; due regard, however, being had to the Regulations to be established with respect to its police ; which Regulations shall be alike for all and as favourable as possible to the commerce of all nations.’

The other Articles concerning the nature, tariff, and collection of dues, the police regulations, the works of repair, &c., are given in Appendix II.

The subsequent discussions which have attended the application of these general principles have mostly turned upon the interpretation of Article CIX. Fortunately, although the applications were numerous, the discussions of principles were not ; and any one who has followed in some detail the history of the Rhine, the Scheldt, the Danube, and the Congo, finds nothing but repetitions of what he knows in the history of other rivers. Even confining our attention to these rivers, we clearly perceive three stages in the development of the principles : the first characterized by the regime of the Rhine in 1831 ; the second introduced on the Danube by the Treaty of Paris (1856) ; the third

being the result of the discussions of fourteen Powers assembled in Berlin in 1885 to regulate the navigation of the Congo.

(B) APPLICATIONS OF THE PRINCIPLES OF THE
CONGRESS OF VIENNA

(i) THE RHINE, THE SCHELDT, THE ELBE, THE WESER,
THE RIVERS AND CANALS OF POLAND, THE PO

§ 16. *The Rhine.*

The definite Regulations provided for at the Vienna Congress were delayed by the attitude of Holland, who asserted that her sovereignty extended without restriction over the territorial sea even when its waters are mixed with those of the Rhine, and that the Leck alone was to be deemed the continuation of the Rhine;¹ while the other Powers² contended that under the name 'Rhine' the Congress of Vienna had 'comprised the whole course of the river with all its branches and mouths in the Netherlands, without distinction'.³ The question of principle was reserved, but Holland finally consented to regard the Leck and the Waal as the continuation of the Rhine, and agreed to open other channels to navigation in case these two should cease to give access to the sea (Article III). The Regulation of Mainz (1831) thus arrived at, is a typical example of the restrictive interpretation of the principles of Vienna. The navigation of the Rhine is open only to vessels owned by subjects of the riparian States and belonging to the navigation of the Rhine, i. e. whose masters or captains possess a licence which

¹ This had been decided at the eighth sitting of the Committee of Navigation at the Congress of Vienna.

² Viz. Prussia, Bavaria, Hesse-Darmstadt, France, Baden.

³ Preamble, Convention of Mainz, March 31, 1831: Hertslet, *Collection of Treaties*, x, p. 471.

can only be granted to subjects of the riparian States (Articles III and XLII).

This Regulation was replaced in 1868 by the Regulation of Mannheim, Article I of which declared the navigation of the Rhine free to the ships of all nations. This voluntary change of attitude is very noticeable, in spite of the qualifications which the principle suffers in practice.¹

The Prussian Law on shipping-dues (1911) deserves special attention, as it involves international questions.²

§ 17. *The Scheldt.*

In compliance with Article III (secret) of the Treaty of Paris (1814),³ two Articles concerning the free navigation of the Scheldt were inserted in Annex 16 of the Final Vienna Act (1815). However, when the Belgian revolution broke out (1830), the Dutch hastened to revive Article XIV of the Treaty of Münster and closed the Scheldt. Objected to by the Great Powers, the measure was revoked (January 20, 1831).

At the Conferences of London (1830-32), the Belgian plenipotentiaries insisted on subjecting the pilotage, buoying, police, and repairs of the river from Antwerp to the sea to the joint supervision of both States. This Holland indignantly declared to be derogatory to her rights of sovereignty and contrary to the first principles of the Law of Nations;⁴ but the Powers

¹ On these qualifications and other details of the Regulation, see Kaeckenbeeck, *International Rivers*, §§ 83-8. As their result, there coexist on the Rhine a national treatment and an international treatment.

² Cf. Engelhardt, in *Revue de Droit international*, xvii, pp. 109 and 609.

³ 'The freedom of navigation of the Scheldt shall be established upon the same principle which regulates the navigation of the Rhine in the fifth article of the present Treaty.'

⁴ Annex A and B of Protocol 53, January 4, 1832.

pointed out that, 'when a matter is regulated by Conventions, it is to be judged solely with reference to such Conventions'; that, in determining the clauses necessary effectually to ensure freedom of navigation on the Scheldt, the Conference was acting in conformity with the public legislation of Europe; and that Holland's sovereignty had been respected, since the definite Regulations were left to subsequent negotiations between the two parties.¹

After lengthy negotiations, and after the right of levying tolls had been granted to the Dutch, Article IX of the Treaty of London (April 19, 1839) was assented to. In addition to the application of Articles CVIII-CXVII of the Final Act of Vienna, it stipulated for the supervision in common of pilotage and buoying, and of the keeping of the channel in good repair below Antwerp. Such supervision was to be exercised by delegates appointed by the two States; the two Governments engaged to preserve the navigability of the channels of the Scheldt and its mouths, and to place and maintain the necessary beacons and buoys each in its part of the river; the dues of pilotage were to be moderate, fixed in common, and the same for the vessels of all nations (implying the right for the ships of all nations to navigate the Scheldt). The subjects of both nations had equal rights of fishing on the whole river. Finally, in case the channels contemplated should become impracticable, the Dutch Government engaged to open other channels, equally good and safe, to navigation.²

¹ Not only had Holland spoken of her right of closing the Scheldt, but for want of proper attention to the buoys and beacons the navigation of the river was becoming difficult. If the lower course of the river had remained under exclusive Dutch control a little negligence would have sufficed to deprive the upper riparians of the full benefit of their rights. (Cf. Annex D of Protocol 53.)

² State Papers, xxvii, pp. 994-5.

The tolls reserved for Holland were bought up by Belgium in 1863, with the help of contributions from 21 nations and free towns.¹

The principal regulations were made in 1843.²

§ 18. *The Elbe.*

On May 18, 1815, Prussia and Saxony signed an agreement to apply the principles of the Congress of Vienna to the Elbe (Article XVII, Annex 4, of the Final Act of the Congress of Vienna).

On June 23, 1821, Prussia, Austria, Saxony, Hanover, Denmark (acting for Holstein and Lauenburg), Mecklenburg-Schwerin, Anhalt-Bernburg, Coethen and Dessau, and the free town of Hamburg agreed:³

1. That the navigation of the Elbe should be entirely free with respect to commerce; but the coasting trade between riparian States was reserved to riparian subjects (Article I).

2. That all privileges and many dues and tolls should be suppressed, a general navigation due being collected in fourteen toll-houses (Articles II, III, VII, XVI).

The Stade or Brunshausen tolls, however, were reserved (Article XV); but this reservation itself was gradually swept away.⁴

The Weser.

On September 10, 1823, Prussia, Hanover, Hesse-Cassel, Brunswick, Oldenburg, Lippe, and the free city

¹ State Papers, liii, pp. 8-19.

² Text in Murhard, *Nouveau Recueil* (1843), v, pp. 294 *sqq.* For more details generally, and especially on the subject of the waterways connecting Belgium with the Rhine, and on war buoing on the Scheldt, see Kaeckenbeeck, *International Rivers*, §§ 89-97.

³ State Papers, viii. 953 *sqq.*

⁴ For details, see Kaeckenbeeck, *International Rivers*, Appendix I.

of Bremen, in order to apply the principles of the Congress of Vienna to the Weser, decided, in an Act of Navigation at Minden:¹

1. That the navigation of the Weser should be entirely free with regard to commerce, except that the coasting trade was reserved to the subjects of the riparian States (Article I).

2. That all exclusive privileges—with two exceptions—all duties of staple and of breaking cargo, and the former dues should be abolished (Articles II, III, XIV); new dues, shared by the riparian States, being stipulated for (Article XV).

The Rivers and Canals of Poland.

Article XIV of the Final Act of Vienna related to the free navigation of the rivers and canals of the former Kingdom of Poland according to principles set forth in two treaties made in Vienna (May 3, 1815) between Austria and Russia (Annex I of Final Act), and between Russia and Prussia (Annex II): viz. navigation could not be forbidden to any of the inhabitants of the Polish provinces.

This led to arrangements between Prussia and Russia on December 7–19, 1818;² and between Russia and Austria on August 5–17, 1818.³

The Po.

Article XCVI of the Final Act of Vienna provided for the application to the Po of the principles of the Congress of Vienna. A Commission was therefore appointed. It proceeded by stages, and did not reach a definitive solution until July 3, 1849, when a Convention signed in Milan by Austria and the Duchies

¹ De Martens and Saalfeld, *Nouveau Recueil*, vi, part I, pp. 301 sqq.

² De Martens, *Traités conclus par la Russie*, vii, p. 331.

³ *Ibid.*, iv, 61, No. 108.

of Parma and Modena provided for free navigation for all without any burden.

The regime thus created was confirmed in 1859 (Treaty of Zürich, November 10), and lasted until 1866, when the Po became a national river. The principle of free navigation for all, however, has not ceased to be applied.

(ii) THE DANUBE

§ 19. *The Treaty of Paris (1856).*

The Congress of Vienna had not concerned itself with the Danube, since Turkey had not yet been admitted to the European State system. Not until the morrow of the Crimean War were the interests of Europe so asserted as to impose the complete opening of that river. This was done by the Powers at the Congress of Paris, where the two following clauses were accepted as preliminaries :

‘The freedom of the Danube and of its mouths shall be effectually secured by European institutions, in which the contracting Powers shall be equally represented, without prejudice to the special position of the riparian Powers, which shall be settled upon the principles established by the Act of the Congress of Vienna on the subject of river navigation.

‘Each of the contracting Powers shall have the right of stationing one or two light vessels of war at the mouth of the river for the purpose of insuring the execution of the regulations relative to the liberty of the Danube.’

At the fifth sitting of the Congress of Paris (March 6, 1856) Count Walewski (France) presented a draft ; but, from the first, a divergence of opinion had arisen as to whether the attention of the Congress was to be confined to the Lower Danube, as Austria wished, or extended to the whole course of the river, as Great Britain and France demanded. In the end Austria yielded, with the proviso that the application of the

principles to the Upper Danube should 'be combined with the engagements previously taken *bona fide* by the riparian Powers'. Amendments to Count Walewski's draft were accordingly proposed; and five Articles resulted which were to become Articles XV-XIX of the treaty of peace.¹

Article XV expressly stipulates for the application of the principles established in 1815 by the Congress of Vienna to the Danube and its mouths; and the contracting Powers declare 'that this arrangement henceforth forms a part of the public law of Europe, and is placed under their guarantee'.

Article XVI, § 2, determining what dues may be levied, stipulates 'that, in this respect, as in every other, the flags of all nations shall be treated on the footing of perfect equality'.

From these two Articles it appears as though, by common consent, the Great Powers had recognized the binding character in Europe of Articles CVIII-CXVII of the Final Act of the Treaty of Vienna, and declared themselves for good and all in favour of the wider interpretation of Article CIX.²

In addition, two Commissions are created:

(a) A European Commission,³ consisting of delegates from Austria, France, Great Britain, Prussia, Russia,

¹ Kaeckenbeeck, *International Rivers*, §§ 109-124. See the text of the Articles in Appendix III, p. 62.

² Austria, however, denied this in 1858, and attempted to narrow the interpretation of the Articles of 1856 by referring to the restrictive interpretation of the Articles of 1815. See Kaeckenbeeck, *op. cit.*, §§ 135-6.

³ The expression 'European syndicate' had been used first, but Prince Gortchakoff declared that, if the word 'syndicate' implied the exercise of any right of sovereignty whatever, he could not assent to it. 'European commission' is used in the definitive wording. See, on the Preliminaries of the Treaty of Paris (1856), Kaeckenbeeck, *International Rivers*, §§ 99-106.

Sardinia, and Turkey, and entrusted with the execution of the works necessary to render the mouths of the Danube navigable by removing all impediments. It was to be temporary, and it could levy dues, at a reasonable rate, to cover its expenses.

(b) A Riparian (Riverain) Commission, consisting of delegates from Austria, Bavaria, the Sublime Porte, and Württemberg, and entrusted with the preparation of Regulations and the improvement and maintenance of the navigability of the river. It was to be permanent, and was to take up the functions of the European Commission on its dissolution.

§ 20. *The Act of Navigation (1857), the Public Act (1865), and the Treaty of London (1871).*

In fact, while the European Commission never ceased to exist, the Riparian Commission endured but a short time. The Regulations which it elaborated in 1857 were rejected in 1858 by France and England as contrary to the spirit of the treaties.¹ Some concessions were made by the riparian States and embodied in six additional Articles;² but they were insufficient, and no agreement was reached. Soon after this the sittings of the Riparian Commission were discontinued.

The work of the European Commission, on the other hand, was so much appreciated, that the plenipotentiaries of the Powers extended the duration of the Commission and decided to endow it with a kind of

¹ For an analysis of the controversy see Kaeckenbeeck, *International Rivers*, §§ 126-40. For the complete text of the Act of Navigation, see *Parliamentary Papers: Turkey*, No. 29 (1878) [C. 2006], No. 6. The principal objections of the Powers were levelled at the differential treatment of riparians and non-riparians, the monopoly of the coasting trade by the former, the omission of the tributaries, and the vagueness of the provisions relative to quarantine.

² *Parliamentary Papers* [C. 2006], No. 9.

Charter or Public Act determining its rights and duties.¹ The Commission has authority over the mouths of the Danube to design and carry out all necessary works, to levy dues to cover its expenses, to enact binding Regulations and supervise the navigation; and it enjoys the benefit of neutrality in time of war. The Public Act was ratified in 1866, as was also the Regulation annexed to it and applicable to the navigation of the Lower Danube.²

By the Treaty of London (March 13, 1871) the duration of the Commission was again prolonged; and the benefit of neutrality granted to the establishments and personnel of the European Commission was confirmed.

§ 21. *The Congress of Berlin (June 13 to July 13, 1878) and its Results.*

The Russo-Turkish War of 1877 brought about further modifications of the Danubian regime.³

1. Rumania is represented in the European Commission (Article LIII).

2. The Powers of the European Commission extend as far as Galatz (Article LIII).

3. The European Commission is entirely independent of the territorial authority (Article LIII).

4. The European Commission is to make, with the delegates of the riparian States, regulations for the section between the Iron Gates and Galatz (Article LV).

5. The execution of the works at the Iron Gates

¹ Public Act, signed at Galatz, November 2, 1865: see *Parliamentary Papers* [C. 2006], No. 11.

² Revised in 1870, 1879, and 1911. The latter is in De Martens, *Nouveau Recueil Général*, ed. Triepel, 3rd ser., ix, 1^{re} livraison, 1916

³ On the preliminaries and the preparation of the draft, see Kaeckenbeeck, *International Rivers*, §§ 147-53. In fact, the Austrian proposition presented by Baron Haymerle was adopted with slight alterations.

and the cataracts is entrusted to Austria-Hungary (Article LVII).

As a consequence of section 3, the Public Act of 1865 was revised and its modifications were embodied in an Additional Act (1881). According to it the European Commission became a kind of 'juristic person of Public International Law'. It appoints, pays, and dismisses its functionaries, who are chosen without distinction of nationality and take an oath of allegiance to the Commission. Disputes are settled in its name. It exercises financial control, undertakes works on the river without reference to the territorial authorities, possesses ships and a recognized flag; and its property, works, and staff enjoy the benefits of neutrality.

Sections 4 and 5 were the result of Austria's political tentative with regard to the section between the Iron Gates and Galatz. Article LV led to the presentation of an Austrian project recommending the creation of a Mixed Commission in which Austria-Hungary—though a non-riparian of that section—should have by right the presidential chair and the casting vote.

Two other projects were opposed to it: (a) the 'Projet Barrère', which maintained the idea of a mixed commission, but of one which was to consist of a Rumanian, a Bulgarian, and a Serbian delegate, an Austrian president, and—to obviate the casting vote—one of the members of the European Commission, appointed in turn for six months, according to the alphabetical order of the countries represented. (b) The Rumanian counter-proposition, which proposed a 'supervising' Commission of delegates from the three riparian States and of two members of the European Commission. The 'Projet Barrère', slightly modified, prevailed; but Rumania has hitherto refused to recognize the Mixed Commission.

§ 22. *The Treaty of London (1883).*

The Conference of London, held in February and March 1883,¹ had to deal with :

1. The prolongation of the powers of the European Commission—for 21 years as from April 24, 1883—and afterwards renewable every three years by *reconduction tacite* (Article II).

2. The extension of its powers to Braïla (Article I).

3. The adoption and application to the section between the Iron Gates and Braïla of the Regulation of 1882, made in virtue of Article LV of the Treaty of Berlin of 1878 (Article VII).²

But other questions forced themselves on the attention of the plenipotentiaries.

(a) Rumania requested to be 'called upon to decide directly and equally with the other Powers on all questions relative to the European Commission'; and Serbia requested to be admitted to the Conference. The Conference decided to 'invite Rumania and Serbia in order to consult and hear them', but not, as the German representative put it, *en maîtresses de maison*.³ Serbia accepted; Rumania declined and made most solemn reservations, declaring the decisions not binding upon her.

(b) Russia declared her intention of resuming all her authority over the Kilia branch of the Danube (Articles III, IV, V, VI).

§ 23. *The Results.*

The net results of these diplomatic transactions were :

1. The confirmation of the liberal interpretation of Article CIX of the Final Act of the Congress of Vienna.

¹ *British and Foreign State Papers*, lxxiv, pp. 20 and 1231.

² A dead letter, owing to the opposition of Rumania.

³ The Conference also decided that Bulgaria might submit observations to the Conference through the Turkish Ambassador.

2. The establishment on the Danube of a plurality of regimes instead of the unity aimed at by the Congress of Vienna.

3. Disregard of the sovereign rights of the riparian States of the Lower Danube.

4. The maintenance and confirmation of an institution altogether exceptional and at first only provisional, viz. the European Commission.

(iii) THE CONFERENCE OF BERLIN (1884-5)

§ 24. *Proceedings of the Conference.*

The Conference of Berlin, attended by the plenipotentiaries of fourteen Powers,¹ had for its objects the three following points :

1. Freedom of commerce in the basin and mouth of the Congo.

2. Free navigation for all flags on the Congo and the Niger.

3. Definition of the formalities necessary for effective new occupations.

The principle of free navigation was looked upon as an essential adjunct of commercial freedom. Thus it is that, in the Declaration relative to freedom of commerce, we find the following Article (II) :

‘ All flags, without distinction of nationality, shall have free access to the whole of the coast-line of the territories above enumerated, to the rivers there running into the sea, to all the waters of the Congo and its affluents, including the lakes, and to all the ports situate on the banks of those waters, as well as to all canals which may in future be constructed with intent to unite the water-courses or lakes within the entire area of the territories described in Article I. Those trading under

¹ Germany, Austria-Hungary, Belgium, Denmark, Spain, the United States of America, France, Great Britain, Italy, the Netherlands, Portugal, Russia, Sweden and Norway, and Turkey.

such flags may engage in all sorts of transport and carry on the coasting trade by sea and river, as well as boat traffic, on the same footing as if they were subjects.'

Article III forbids all differential dues on vessels as well as on merchandise.

These general principles find their complement and application in the Acts of Navigation of the Congo and the Niger. A German draft proposal for these two rivers was jointly presented at the fourth sitting; but, at the instance of the British plenipotentiary, the two rivers were dealt with separately. Owing to their technicalities, the two drafts¹ were referred for examination and discussion to a committee, which in turn referred them to a sub-committee² which introduced various modifications. The two texts were then, after long deliberations, adopted by the committee and submitted to the Conference along with a remarkable report by Baron Lamermont (Annex to Prot. 5).

§ 25. *Act of Navigation for the Congo.*³

Article I provides for the free navigation of the Congo and all its branches and outlets by the merchantmen of all flags with the most perfect equality. No privileges can be conceded. These rules are part and parcel of International Law.

By Article II no tolls or imposts can be levied, but only such dues as have the character of an equivalent for services rendered. No differentiation is allowed.

The regime of the Congo is extended by Article III to all its tributaries, and to all streams, lakes, and

¹ i. e. the German draft for the Congo and a draft of an Act of Navigation for the Niger proposed by the British Ambassador.

² Consisting of M. Kusserow (Germany), Baron Lamermont (Belgium), M. Engelhardt (France), Mr. Crowe (Great Britain), and M. Cordeiro (Portugal), to whom were added M. Banning and Sir Travers Twiss.

³ For the whole text with full commentary, see Kaeckenbeeck, *International Rivers*, §§ 188-265.

canals of the conventional basin ; and by Article IV to the roads, railways, and lateral canals designed to supplement the use of the river where non-navigable.

Article V institutes an International Commission, the members, agents, offices, and archives of which Article VI declares inviolable. Articles VII, VIII, IX, and X provide for its constitution and powers ; but, as a matter of fact, it has never been constituted at all. This Commission was to draw up the Regulations, see that they are complied with, and punish infractions ; to decide what works are necessary and carry them out, fix the tariffs of pilotage and dues, superintend the quarantine establishment, and appoint its own personnel ; it might have recourse to the war vessels of signatory Powers, make loans, and provide for technical and administrative expenses. On the sections of the river held by a sovereign Power, the International Commission was to concert its action with the riparian authorities.

Finally, Article XIII provides for the maintenance of free navigation on the Congo, its tributaries, and the territorial waters opposite to its mouths in time of war. Traffic is similarly to remain free on the roads, railways, lakes, and canals assimilated to the regime of the river. Only the transport of contraband is excepted. All the works and establishments created in pursuance of the Act, as well as the permanent staff, enjoy the benefits of neutrality.¹

§ 26. *The Act of Navigation and International Law.*

The question next arises : how far does this Act of Navigation represent the principles of International

¹ The Act of Navigation of the Niger is substantially the same ; only, instead of an International Commission, the two riparian Powers, Great Britain and France, co-operate in adopting Regulations securing freedom of navigation for all flags and protecting foreign merchants in the same manner as their own subjects.

Law? The preamble proposed by the sub-committee is enlightening as to this. It ran:

'The Congress of Vienna having established by Articles CVIII—CXVI of its Final Act the general principles which regulate the free navigation of the navigable water-courses separating or traversing several States, and these principles, completed by Articles XV and XVI of the Treaty of Paris of March 30, 1856, having, by the fact of their more and more extended application to a great number of rivers of Europe and of America and especially to the Danube, passed into the domain of public law, the Powers whose plenipotentiaries have assembled in Conference at Berlin have resolved to apply them equally to the Congo, and to its affluents as well as to the waters which are assimilated to them . . .'

The preamble was not, however, adopted as such, for objections came from two quarters:

(a) From the American plenipotentiary, who denied that a European Congress could 'regulate, directly or indirectly, the rights applicable to American jurisdiction'.

(b) From the Russian plenipotentiary, who particularly objected to the words: 'and especially to the Danube'. He insisted that the Danube regulations were—owing to the European Commission—an exceptional application of the principles of the Treaty of Vienna, necessitated by exceptional circumstances.¹ In the same way, the principles of the Act of Navigation being exceptional for the same reason, its application should be limited to the region with which the Conference has dealt. The best proof of the regime of the Congo being exceptional, he added, 'is the fact that the Niger is subjected to an absolutely different regime'.²

¹ Viz. the necessity of carrying out works which the riparian States had no means of executing.

² This shows well enough that the objections are only levelled at the system of international commissions, for on no other point is there a material difference between the regime of the Niger and that of the Congo.

PART III

CONCLUSIONS

(i) § 27. THE ASSENT OF THE CIVILIZED WORLD.

We have thus seen the principle of free navigation for all flags clearly proclaimed by the peacemakers of 1814 (Treaty of Paris, Article V), obscured in the Final Act of the Congress of Vienna (Article CIX, which was applied sometimes in its more liberal and sometimes in its more restricted sense), strongly re-asserted in 1856 by the Treaty of Paris, and finally encountering no opposition at all in 1885 at the Conference of Berlin where the representatives of fourteen Powers were assembled.

Since that date, among other facts, the Institute of International Law, in 1887, declared the making of agreements regulating the free navigation of international rivers obligatory (cf. *infra*, p. 46); and, in 1899, in their award in the British-Venezuelan boundary dispute, the arbitrators decided 'that in time of peace the rivers Amakuru and Barima shall be open to navigation by the merchant ships of all nations . . .'¹ From all this, it seems clear that the principle is now generally admitted as a principle of International Law. A consideration of a few salient facts and official utterances—the evolution, so to speak, of the attitude and views of the principal States with regard to the question under review—makes still more evident the growing consciousness of the civilized world on this point.

¹ De Martens, *Nouveau Recueil Général*, 2nd series, xxix, p. 587.

Germany.

The evolution is as clearly marked as possible. In 1815 the equivocal attitude of the German States bordering the Rhine led to a regrettable ambiguity in the Final Act of the Congress of Vienna; and, in the application of its principles to the Rhine and other German rivers, the restrictive interpretation prevailed.

In 1856, however, and without prejudice to the interpretation of the Final Act of the Congress of Vienna, Germany upheld the wider interpretation of the Treaty of Paris, as against Austria.

In 1868 Germany abandoned her particularistic attitude by proclaiming, in Article I of the Regulation of Mannheim, the principle of freedom of navigation on the Rhine for the ships of all nations.

Finally, in 1885, Bismarck, as chairman of the Conference of Berlin, declared that

‘the Congress of Vienna, by proclaiming freedom of navigation on the rivers which flow through the territories of several States, sought to prevent any monopoly of the advantages inherent in a water-course’. ‘This principle’, he added, ‘has passed into International Law, both in Europe and in America . . .’

Austria.

The fluctuations in Austria's attitude are to be understood simply by reference to her political interest. When she imposed on Parma and Modena the application of the principles of the Congress of Vienna to the Po, these principles were most widely interpreted. When it proved impossible to confine the Treaty of Paris (1856), as Austria wished, to the Lower Danube, Austria upheld the strictest interpretation both of the principles of the Congress of Vienna and of the Treaty of Paris. From that time her attitude has always been that

most suitable to the extension of her hegemony over the Danubian States.

Great Britain.

In her dispute with the United States of America, Great Britain consistently refused to recognize a *right* of free navigation by natural law. For her the question was purely a matter for conventions. At the same time it appears to be, on the whole, in the interest of Great Britain to support the principle of the free commercial navigation of international rivers by the flags of all nations.

In Europe, at the Congress of Vienna (1815), Lord Clancarty insisted on a clear recognition of freedom of navigation for *all nations*; and in 1856 and 1858 Great Britain was foremost in upholding the most liberal interpretation of the principles of the Congress of Vienna and of the Treaty of Paris.

In 1885, at the Berlin Conference, the British plenipotentiary declared, on the question of free navigation, that 'the question for practical consideration will be, in the opinion of H.M.'s Government, not so much the acceptance of the general principles as the mode of their application'.

In 1888, in the Shiré-Zambezi controversy, Great Britain's attitude seems to have been founded on the recognition of a right of navigation even apart from treaty.¹

¹ See Kaeckenbeeck, *International Rivers*, Appendix III, where the controversy is set forth in detail. After an agreement establishing a *modus vivendi* (Nov. 14, 1890) and a Portuguese Decree opening the Zambezi and Shiré to all flags in accordance with the principles established on the Niger in 1885, the Treaty of Lisbon was signed on June 11 and ratified on July 3, 1891 (*Parliam. Papers*, Portugal No. 1 (1891) [Cd. 6375]). Art. XII of this treaty provides for freedom of navigation for all flags and free transit over waterways and landways; while Art. XIII provides for absolute

France.

Foremost in declaring international rivers open to all, France has always upheld the most liberal views in the great International Congresses.

Italy.

When the Po became a national river, Italy did not close it to foreign flags; and in 1885 she suggested the opening up of national as well as international rivers.

Russia.

In face of Count Kapnist's reservations at the Conference of Berlin (1885), it is important to recall that in 1883, when Russia resumed her authority over the Kilia mouth of the Danube, the principle of free navigation was not questioned, Russia having proclaimed that 'it could no longer be in question, either to-day or ever; either here or anywhere else'. In fact, the reservations were mainly directed against the system of international commissions.

United States of America.

The United States of America also made in 1885 some reservations, which might easily be misapprehended, and did not sign the General Act. But the reservations were aimed at the operation of the Treaties of Vienna and Paris, which cannot bind America; and these reservations contain no denial of the right of free navigation. Otherwise the attitude of the United States is clear and consistent. They

equality of treatment for the subjects and flags of Great Britain and Portugal, excludes all exclusive privileges and fiscal extortions, &c., and stipulates that 'any questions arising out of the provisions of this Article shall be referred to a joint commission and, in case of disagreement, to arbitration'.

have always contended for a right of free navigation based on the Law of Nature.

The St. Lawrence controversy is enlightening in this respect. With regard to the Amazon, a note of Mr. Marcy, Secretary of State, to Mr. Trousdale, Minister to Brazil, August 8, 1853, shows the position unmistakably:

‘This right’, Mr. Marcy said, ‘is not derived from treaty stipulations—it is a natural one—as much so as that to navigate the ocean, the common highway of nations.’

And further on, we read:

‘We claim for this continent [the American continent] the same privileges which nearly forty years ago were arranged by common consent and have ever since been applicable to the navigable waters of Europe. The regulations adopted by the Allied Sovereigns at the Congress of Vienna in 1815 on this subject were but the recognition of the Law of Nations in regard to the use of navigable rivers passing through different realms.’

Imbued with such principles, the United States Government, in dealing with South American States, has on many occasions used persuasion, threats, or compulsion to obtain free navigation.

§ 28. *Conclusions.*

Whether the survey which has been made is sufficient to authorize the assertion that a right of free navigation exists, is left for the reader to determine for himself. On our part, we have anticipated our conclusion at the end of § 9 (*supra*, p. 14). The definitive settlement of the question cannot be accomplished in any way so well as by the decision of an International Congress resuming the task of the Congress of Vienna and improving upon its achievements.

Two fundamental principles, requiring emphatic recognition, stand out clearly: (1) Commercial navigation is free for all flags, 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. Will they settle everything directly through the agency of their Foreign Offices or through that of functionaries appointed for the purpose? This course is most in accordance with a radical and absolute conception of State sovereignty, but highly unpractical and dangerous. Or, on the other hand, will the riparian Powers give up their individual sovereign rights over the river in favour of a *condominium*? This is very unlikely, and, besides, goes farther than is necessary, and is hardly consistent with legal principle.

The plan which has obtained most favour from statesmen and jurists is that of providing the river with a special administration, including representatives of all the riparian countries; the administrators being on an equal footing, and having, as a body, 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 commerce, does away with the danger of friction resulting from the immediate contact of officials and departments biassed 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 sovereignty. Finally, it has the sanction of authority and practice, which neither of the other two extreme systems can be said to have.

In any case, it must be remembered that the great

difficulty will always lie less in the acceptance of the general principles than in the settlement of the details of their application. In this respect a thorough study of the more important Regulations of navigation is of the greatest importance.¹ Here, however, it will be sufficient to reproduce, with a commentary, the Standard Regulation elaborated by the Institute of International Law in 1887. It is an excellent source of inspiration for all who are called upon to inquire into the most appropriate rules to be applied to the navigation of international rivers.

The stipulation of Art. XIII of the Treaty of Lisbon (n. 1, p. 42) that 'any questions arising out of the provisions of . . . shall be referred to a joint commission and, in case of disagreement, to arbitration' might usefully be adapted to any general Regulation.

(ii) STANDARD REGULATION

(a) *General Provisions*

§ 1. *Compulsory Agreement.*

'Article I.—The riparian States of a navigable river are obliged, in the general interest, to regulate, by common agreement, everything relating to the navigation of such river.'

Cf. *supra*, p. 24, the wording of Article CVIII of the Final Act of the Congress of Vienna. For the simple engagement to regulate navigation by common agreement, the present Article substitutes the obligation of doing so in the general interest.

§ 2. *Navigable Affluents.*

'Article II.—The navigable affluents of international rivers are, in every respect, subject to the same regime as the rivers whose tributaries they are, in conformity with the agreement concluded between the riparian States, and with the present Regulation.'

¹ The most important are analysed or summarized in Kaeckenbeeck, *International Rivers*, part II.

Cf. wording of Article CX of the Final Act of the Congress of Vienna (see Appendix II). It applies the rules for the collection of dues and for river police to international affluents, with a reservation. The present Article extends in every case the whole regime of the river to all its navigable affluents, whether national or international, exactly as does Article III of the Act of Navigation of the Congo.

§ 3. *The principle of free navigation.*

‘Article III.—The navigation on the whole course of international rivers, from the point where each of them becomes navigable, to the sea, is entirely free, and cannot, as regards commerce, be forbidden to any flags.’

Cf. Article CIX of Vienna (*supra*, p. 24), and preliminary discussions, pp. 20–23.¹

§ 4. *Boundary rivers.*

‘The boundary line of the States separated by the river is marked by the *Thalweg*, that is to say, by the middle line of the channel.’

This is an unsatisfactory definition of *Thalweg*, as the *Thalweg* is not necessarily the ‘middle line’. The *Thalweg*, or, for greater precision, *l'axe du Thalweg*, is the uninterrupted line determined by the deepest places in the bed. The presumption that the line of demarcation of sovereignties is the *Thalweg* may be rebutted by the existence of a special convention or by immemorial possession.²

§ 5. *Equal treatment for all.*

‘Article IV.—The subjects and flags of all nations are in every respect on the footing of perfect equality.’

¹ The liberal interpretation of Article CIX is exemplified by the cases of the Scheldt and the Po. The Treaty of Paris (1856) decided for good in its favour (Articles XV and XVI); see above, pp. 26, 29.

² In case of contest between two branches, the one whose *Thalweg* is deepest is the ‘*Thalweg branch*’. This solves the questions relative to islands. On boundary rivers, more generally, see Westlake, *International Law*, i, pp. 141–2.

No distinction shall be made between the subjects of riparian States and those of non-riparian States.'

To admit of differential treatment is to open the door to abuse. The principle of the Article was enunciated most clearly in 1856 in Article XVI of the Treaty of Paris, and in 1885 in Articles I and IV of the Act of Navigation of the Congo.

§ 6. *Navigation dues.*

'Article V.—The navigation dues levied on international rivers shall have, for their exclusive object, that of covering the cost of the works for the improvement of these rivers and of the maintenance of their navigability in general.'

Cf. Article IV of the Vienna Regulations (1815) and the amendment proposed by Lord Clancarty.¹

§ 7. *Free navigation for neutrals in time of war.*

'Article VI.—In time of war, the navigation of international rivers shall be free for the flags of neutral nations, subject to such restrictions as may be imposed by the force of circumstances.' (Cf. *supra*, p. 58.)

In their endeavour to secure freedom of navigation even in time of hostilities, the Conference of Berlin went farther than this, by keeping the Congo and its affluents, &c., open to the ships of all nations, whether neutral or belligerent, for the purposes of trade; the only exception being in case of transport of contraband of war (Article XIII, Act of Navigation, *supra*, p. 38). It may be asked, however, how far this has stood the test of practice in this war.

§ 8. *Protection of establishments and personnel in time of war.*

'Article VII.—All the works and establishments created in the interest of navigation, notably the offices for the collection of dues, and their safes, as also the staff permanently in the service of these establishments, are placed under the safeguard of permanent neutrality,

¹ Kaeckenbeeck, *International Rivers*, § 56 and note.

and shall, in consequence, be respected and protected by the belligerent States.'

The Article reproduces almost word for word Article XIII § 4 of the Act of Navigation of the Congo (1885). A similar provision existed in the Convention on the Tolls of the Rhine (1804), Article CXXXI, and was reproduced by the Congress of Vienna in the Rhine Regulations, 1815, Article XXVI.

(b) *Particular Provisions.*

§ 9. *Coasting trade.*

'Article VIII.—Any sailing vessel or steamer, without distinction of nationality, is free to carry passengers or goods, or to tow other vessels between all the ports situated along international rivers.

'Foreign vessels, whether fluvial or sea-going, shall not be admitted to the regular exercise of small coasting trade (*petit cabotage*), i. e. the continuous and exclusive traffic between ports of the same riparian State, except in virtue of a special authorization by that State.'

The Article rightly distinguishes between *grand et petit cabotage*. The States which endeavour to reserve the *grand cabotage* to their own subjects disregard the principle of the equal treatment of riparians and non-riparians. This does not seem to be the case with regard to *petit cabotage*. By reserving the right to regulate it, each riparian State only ensures the existence and development of local transport necessary to its prosperity and perhaps even to its existence. This reservation does not materially infringe the principle which the treaties intended to establish.

The reservation of the coasting trade to the riparians was one of the principal objections of Great Britain and France to the Act of Navigation of the Danube of 1857 (Article VIII).

Article I of the Act of Navigation of the Congo (1885) prohibits even the reservation of the small coasting trade.

§ 10. *Free transit.*

‘ Article IX.—Vessels and goods in transit on international rivers are not subject to any transit duty, whatever their origin or destination.’ (Completed by Article XX, § 2, cf. *supra*, p. 52.)

The same provision occurs in Article VII of the Regulation of the Navigation between the Iron Gates and Braïla annexed to the Treaty of London (1883), and in Article II, § 3, of the Act of Navigation of the Congo. Article VII of the Regulation of Mannheim (1868) declares the transit of merchandise on the Rhine free from Basle to the sea.

§ 11. *Prohibited duties and tolls.*

‘ Article X.—The navigation of international rivers is exempt from staple dues, port dues (*échelle*), storehouse dues (*dépôt*), compulsory breaking bulk or forced harbour dues. No tolls, whether maritime or fluvial, shall be levied.’

The same provision is in the Act of Navigation of the Congo, Article II, § 2.

Cf. Article CXIV of the Final Act of the Congress of Vienna (Appendix II).

The tolls reserved on the Scheldt in 1839 were bought up in 1863 (cf. *supra*, p. 28). A convention of the same year reduced the Elbe tolls to one ; and in 1870, Article I of a treaty between Austria and the North German Confederation put an end to this and provided that henceforth no tolls should be levied except for the use of special appliances designed for the facilitation of traffic.¹

§ 12. *Permissible dues and duties.*

‘ Article XI.—There may be levied dues or duties having the character of a reimbursement for the actual use of harbour establishments, such as cranes, weighing machines, wharves, and warehouses.’

¹ For details on the Elbe tolls, see Kaeckenbeeck, *International Rivers*, § 307.

In fact we deal here with remuneration for services.

The same provision is in the Act of Navigation of the Congo, Article II.

In earlier regulations the clause : 'no dues based solely on the fact of navigation can be levied on vessels and their cargoes', was sometimes found. See Regulation of Mannheim, 1868, Article III ; Treaty of Paris (1856), Article XV ; Regulation of Navigation between Iron Gates and Braïla (1883), Article II.

' Article XIII.—The harbour dues for the actual use of cranes, weighing machines, &c. . . ., as also the dues for pilotage, lighthouse, lighting and buoying, destined to cover the technical and administrative expenses incurred in the interest of navigation shall be determined by tariffs officially published in all the ports of international rivers.'

' Article XIV.—The tariffs above mentioned shall be drawn up by the "mixed commission" of the riparian States.'

' Article XV.—The tariffs shall not involve any differential treatment.'

' Article XVI.—The tariffs of the dues mentioned in Article XIII shall be calculated on the cost of construction and maintenance of the local establishments, and according to the tonnage of the vessels as indicated in the ships' papers.' (Cf. Article XXXIX, *infra*, p. 58.)

§ 13. Customs, &c.

It has repeatedly been stipulated that customs duties have nothing in common with navigation dues. See Convention on Rhine tolls (1804), Article XLI ; Memorandum of Baron von Humboldt to the Committee of Navigation of the Vienna Congress ; Article CXIX of the Final Act of the Congress of Vienna.

The practical question is how to prevent the Customs from interfering with navigation, without prejudice to the measures for the prevention of smuggling. Hence the following provisions :

' Article XII.—The customs duties, *octroi* duties, or

taxes on consumable articles established by the riparian States shall not in any way hinder navigation.'

'Article XVII.—The riparian States may not levy customs duties on merchandise in transit on international rivers, except when it is to be introduced into the territory of these States.'

'Article XIX.—Vessels proceeding on their voyage and provided with the prescribed papers may not be stopped under any pretext by the customs officers of the riparian States, if the two banks belong to different States.'

The Regulations for the Navigation between the Iron Gates and Braïla (1883) provide (Article VI) that customs duties can only be collected with respect to merchandise unloaded on the banks. They explain: 'The customs boundaries shall everywhere follow the banks of the river, without ever crossing them. It results therefrom that vessels, transports, rafts, &c., as long as they navigate or anchor on the river without making any commercial transaction with the banks, are entirely outside the sphere of action of the customs.'

'Article XX.—Vessels entering into a part of an international river where the two banks belong to the same State, have to pay the customs duties imposed by the local tariff upon merchandise imported into the territory of that State.

'Goods in transit are only subject to the placing of seals and to the custody of customs officers.'

'Article XVIII.—Vessels are not allowed to unload their cargoes, either wholly or in part, except in ports and other places on the banks provided with a custom-house, save in case of necessity (*force majeure*).'

The creation of free ports (*ports francs*) or free warehouses might be recommended. Such warehouses are particularly necessary where maritime navigation generally stops or where natural obstacles render transshipment or unloading necessary. For example, on the Rhine, Regulation of Mannheim (1868); on the Meuse and on the waterways connecting the Western Scheldt with the Meuse, Treaty of Limits, November 5, 1842.

§ 14. *Police regulations.*

‘ Article XXI.—The riparian States shall agree among themselves upon a body of police regulations destined to regulate the use of the river in the special interest of security and public order.’

This provision is necessary for the unification of the fluvial regime. The necessity of uniformity in this respect had been insisted upon at the Vienna Congress in Baron von Humboldt’s memorandum. Police Regulations are provided for by Articles CX and CXVI (see Appendix II) of the Final Act of the Congress of Vienna ; by Article XV, § 2 of the Treaty of Paris (1856) ; by Article VII of the Act of Navigation of the Congo (1885).

§ 15. *Quarantine.*

‘ Article XXIII.—Quarantine establishments shall be created, by the initiative of the riparian States, at the mouths of international rivers ; control is to be exercised over vessels both when they enter and when they leave the river.

‘ Sanitary control over vessels, while they are navigating the river (*dans le cours de la navigation fluviale*), is exercised on the basis of the special provisions established by the riparian commissions.’

The riparian States have of course the right to take sanitary measures of protection ; but it is intolerable to see the exercise (or abuse) of this right rendering illusory the principle of equal treatment of riparians and non-riparians, as was attempted in the Act of Navigation of the Danube (1857), to which the Powers refused their assent.

A general quarantine establishment at the mouth of a river, and placed under the joint control of all the riparian States, is in every case to be recommended. Cf. Article XII of the Act of Navigation of the Congo.

§ 16. *The use of the stream.*

Regulations have not hitherto generally dealt with the question of the use of the stream for industrial and agricultural purposes. It is, however, indispensable to forbid (1) the

injurious pollution of the water, notably by the evacuation of industrial waste ; (2) such drawing of water, for hydraulic exploitation, &c., as may influence the course or navigability of the river ; (3) the construction of works or weirs which might cause inundations in the territory of a co-riparian ; (4) and, generally, all interference which may cause modifications of the actual condition of the waterway, except by the common agreement of all the riparians.

This question was examined by the *Institut de Droit international* at the Madrid Conference (1911).¹

§ 17. *Works for the maintenance and improvement of the navigability.*

Here, also, the common agreement of the co-riparians is desirable to ensure unity of action and uniformity of technical schemes.

A riparian State must never lose sight of the fact that it is not alone concerned, but must take into consideration the interests of its co-riparians. In the Rhine Regulation of 1815, the Central Commission and the inspectors were meant to preserve the necessary unity in this as in other respects. The Regulation of Mannheim (1868) has good provisions concerning the necessity of agreement as to hydrotechnical works (Article XXIX). The Convention of Bucarest 3/15 December, 1866, as modified on 18 Feb./2 March 1895, provides in Article XI that 'the works of improvement of the Pruth shall be executed according to a general plan for the whole of its navigable course'.

For very extensive works, the expedient of the European Commission of the Danube has incontestably produced good results.²

Bridges must be so built as not to hinder navigation.³

Concerning the four Articles which follow, it might be asked whether it would not be preferable to require common agree-

¹ See Kaeckenbeeck, *International Rivers*, § 295.

² Cf. preamble of Public Act of 1865, *Parliamentary Papers* [C. 2006], No. 11.

³ Yet, in spite of a provision to that effect (Regulation of Mannheim, Article XXX), the German administration is said to hamper the development of the ports above Strassburg by means of iron bridges falling short of the proper height, pontoon bridges, &c. See G. Vallotton, in *Revue de Droit International*, 2^{me} série, xv, p. 279.

ment beforehand in most cases, instead of the provisions of Article XXVI. This would be in conformity with Article XXX (1), according to which the riparian Commission designates and provides for the execution of the works indispensable for improving and developing the navigability of the river.

‘ Article XXIV.—The works necessary to ensure the navigability of international rivers, are to be undertaken either directly by the [riparian] States or on the initiative of the riparian Commissions.’

‘ Article XXV.—Each riparian State shall be free to take such steps as it may think necessary to maintain and improve, at its own expense, the navigability of the sections of international rivers subject to its sovereignty.’

‘ Article XXVI.—In every case, it shall be forbidden to undertake works which may modify the actual condition of the common waterway (*modifier l'économie des eaux communes*) or impede its navigation, and against which the other riparians have protested.’

‘ Article XXXVIII.—Each riparian State appoints the engineers charged with supervising the maintenance and improvement of the section of the river subject to its sovereignty.’

§ 18. *The executive authorities.*

‘ Article XXVII.—The authorities set over the navigation of international rivers are: (1) the authorities of the riparian States; (2) the riparian Commission, composed of the delegates of the sovereign States.’

§ 19. *Rights of sovereignty.*

‘ Article XXVIII.—Each riparian State retains its sovereign rights over the sections of international rivers subject to its sovereignty, within the limits laid down by the stipulations of this Regulation and by the Treaties and Conventions.’ (Cf. *supra*, p. 8.)

§ 20. *Riparian Commission.*

‘ Article XXIX.—The riparian Commission arrives at its decisions by a majority of votes. In case of equality, the president has the casting vote.

‘ However, a vote does not bind the States whose representatives form the minority, if, beforehand, the delegates of these States have formally objected to the execution of the measure proposed.’

‘ Article XXX.—The riparian Commission is a permanent authority over international rivers; it has the following functions :

‘ (1) to designate the works indispensable for improving and developing the navigability of the rivers, and cause them to be executed ;

‘ (2) to draw up and put in force the tariffs of navigation and other dues mentioned in Articles XIII to XVIII ;

‘ (3) to elaborate the regulations for river police ;

‘ (4) to watch over the maintenance in good condition of the works, and the strict observance of the provisions of these international regulations ;

‘ (5) to appoint the chief inspector of the navigation of the international river.’

Cf. Article CVIII (Appendix II) of the Final Act of the Congress of Vienna and the Rhine Regulations of 1815, Articles X, XI, XVI, XVII (*supra*, p. 22).

International Commissions are to preserve an exceptional character.

§ 21. *The Inspectors.*

‘ Article XXXI.—The Chief Inspector exercises his functions as the organ of the riparian Commission and under its direction. He exercises his authority over all flags without distinction.’

‘ Article XXXII.—The Chief Inspector watches over the application of this international regulation and of

the river regulation, and supervises the police of navigation.

‘ Article XXXIII.—This functionary has the right, in the performance of his duty, directly to demand the assistance of the military posts or of the local riparian authorities.’ (See Article XXXVI.)

‘ Article XXXIV.—The local inspectors, the quarantine officials and the employees of the offices for the collection of dues are appointed by each riparian State ; but they perform their duties under the orders of the Chief Inspector, and have, like him, an international character.’

Cf. Articles XII, XV, and XVI of the Rhine Regulations of 1815 (*supra*, p. 22). Recourse to armed vessels is provided for in the regulation of the European Commission for the Lower Danube, Article XXI ; and in the Act of Navigation of the Congo, Article IX.

§ 22. *Tribunals.*

‘ Article XXXVI.—The Chief Inspector pronounces, in first instance, the penalties to be inflicted for infractions of the regulations of navigation and police.’

‘ Article XXII.—Special tribunals of navigation, or the ordinary courts existing in the riparian countries, shall, on appeal, be competent to adjudge the penalties (*connaîtront, en appel, des pénalités*) for infractions of the police regulations established on a footing of perfect equality for all vessels, without any distinction of nationality whatever.’

This provision is qualified and completed by Article XXXVII. It emphasizes the principle of equality of treatment for all flags.

‘ Article XXXVII.—Appeals against his (i. e. the Chief Inspector’s) judgements must be brought either before a tribunal of navigation created for that purpose, or before a local court specially designated by each riparian State, or before the riparian Commission.’

The inconvenience of leaving the settlement of disputes to a central administrative authority has been pointed out, such an authority being at the same time a party and the judge. (See Article XXXV.)

Cf. Articles VIII and IX of the Rhine Regulations of 1815 (*supra*, p. 22).

§ 23. *Mutual agreements for nominations.*

‘ Article XXXV.—Two or more riparian States may make mutual agreements for the nomination of the same delegate to the riparian Commission or of the same local inspector, or of the employees of the offices for the collection of dues, of the quarantine officials, of the judges of the tribunals, &c. . . .’

§ 24. *Measurement of tonnage.*

‘ Article XXXIX.—The Powers shall fix by common agreement the system of measuring river and sea-going vessels for the purpose of ascertaining their tonnage (*le système de mesurage et de jaugeage pour l'évaluation de la capacité des bâtiments fluviaux et maritimes*), this system being obligatory for all nations.’

M. Ed. Engelhardt proposes as unit the English ton, and as method of measurement the system of Moorson as described in the Merchant Shipping Act of 1854.

§ 25. *Floating property in time of war.*

‘ Article XL.—In case of war between the riparian States, all property afloat on an international river, without distinction between neutral and enemy property, shall be accorded similar protection to that granted to enemy property in case of war on land (*sera traité suivant l'analogie de la protection de la propriété ennemie en cas de guerre sur terre*).’

PART IV. APPENDIX

I

AMERICAN RIVERS ¹1. *Mississippi.*

The controversy between the United States of America and Spain led to the treaty of San Lorenzo el Real on October 27, 1799 (*State Papers*, viii p. 540), providing for freedom of navigation. But in 1819 the Mississippi passed entirely under American jurisdiction.

2. *St. Lawrence.*

The controversy between the United States and Great Britain began in 1824. The former contended for a natural right of navigation; the latter denied it. (*American State Papers*, Foreign Relations, vi, pp. 757-8; British reply in *State Papers*, xix, p. 1075.)

No arrangement was reached until 1854, when free navigation for the citizens of the United States was provided for as a temporary and revocable privilege, by the Treaty of Washington, of June 5 of that year. In the Treaty of Washington of May 8, 1871, the word privilege is repeatedly used, but the navigation is *for ever* to be free, for purposes of commerce, to the citizens of the United States.

3. *Amazon and tributaries.*

The controversy originated in a protest of the United States ² against the policy of Brazil, which claimed the right to forbid access to the river to foreign vessels, notably to those of the United States. Persuasion failing, threats were resorted to, but years elapsed before the Brazilian Government decreed the opening to the vessels of all nations, as from September 7, 1867, of the navigation of the Amazon as far as the Brazilian frontiers; of the Tocantin, as far as Cametá; of the Topazoz,

¹ For more details, see Kaeckenbeeck, *International Rivers*, Appendix II.

² Great Britain and France joined their protests to those of the United States.

as far as Santarem ; of the Madeira, as far as Borda, and of the Rio Negro, as far as Manaos. The San Francisco, as far as Penedo, was also opened to free navigation.

4. *River Plate and tributaries.*

In 1852 a decree permitted the navigation of the Parana and Uruguay to merchant vessels of all nationalities (*State Papers*, xlii, p. 1313). In 1853, July 10, by identical treaties between Argentina and Great Britain, France, and the United States of America, the navigation of the Parana and Uruguay was declared free to the merchant vessels of all nations, even in time of war. (Hertslet, *Commercial Treaties*, ix, p. 191.)

II

ARTICLES CVIII TO CXVI OF THE FINAL ACT OF THE CONGRESS OF VIENNA

Article CVIII.—Les puissances, dont les Etats sont séparés ou traversés par une même rivière navigable, s'engagent à régler, d'un commun accord, tout ce qui a rapport à la navigation de cette rivière. Elles nommeront, à cet effet, des commissaires qui se réuniront au plus tard six mois après la fin du Congrès, et qui prendront pour base de leurs travaux les principes établis dans les articles suivans.

Article CIX.—La navigation dans tout le cours des rivières indiquées dans l'article précédent, du point où chacune d'elles devient navigable jusqu'à son embouchure, sera entièrement libre, et ne pourra, sous le rapport du commerce, être interdite à personne ; bien entendu, que l'on conformera aux réglemens relatifs à la police de cette navigation, lesquels seront conçus d'une manière uniforme pour tous, et aussi favorables que possible au commerce de toutes les nations.

Article CX.—Le système qui sera établi, tant pour la perception des droits que pour le maintien de la police, sera, autant que faire se pourra, le même pour tout le cours de la rivière, et s'étendra aussi, à moins que des circonstances particulières ne s'y opposent, sur ceux de ses embranchements et confluens qui dans leur cours navigable, séparent ou traversent différens Etats.

Article CXI.—Les droits sur la navigation seront fixés d'une manière uniforme, invariable, et assez indépendante de la qualité différente des marchandises pour ne pas rendre nécessaire un examen détaillé de la cargaison autrement que pour

cause de fraude et de contravention. La quotité de ces droits, qui, en aucun cas, ne pourront excéder ceux existans actuellement, sera déterminée par les circonstances locales, qui ne permettent guère d'établir une règle générale à cet égard. On partira, néanmoins, en dressant le tarif, du point de vue d'encourager le commerce, en facilitant la navigation, et l'octroi établi sur le Rhin pourra servir d'une norme approximative.

Le tarif une fois réglé, il ne pourra plus être augmenté que par un arrangement commun des Etats riverains, ni la navigation grévée d'autres droits quelconques, outre ceux fixés dans le règlement.

Article CXII.—Les bureaux de perception, dont on réduira autant que possible le nombre, seront fixés par le règlement, et il ne pourra s'y faire ensuite aucun changement que d'un commun accord, à moins qu'un des Etats riverains ne voulut diminuer le nombre de ceux qui lui appartiennent exclusivement.

Article CXIII.—Chaque Etat riverain se chargera de l'entretien des chemins de halage qui passent par son territoire, et des travaux nécessaires pour la même étendue dans le lit de la rivière, pour ne faire éprouver aucun obstacle à la navigation. Le règlement futur fixera la manière dont les Etats riverains devront concourir à ces derniers travaux, dans le cas où les deux rives appartiennent à différens gouvernements.

Article CXIV.—On n'établira nulle part des droits d'étape, d'échelle ou de relâche forcée. Quant à ceux qui existent déjà, ils ne seront conservés qu'en tant que les Etats riverains, sans avoir égard à l'intérêt local de l'endroit ou du pays où ils sont établis, les trouveroient nécessaires ou utiles à la navigation et au commerce en général.

Article CXV.—Les douanes des Etats riverains n'auront rien de commun avec les droits de navigation. On empêchera par des dispositions réglementaires, que l'exercice des fonctions des douaniers ne mette pas des entraves à la navigation, mais on surveillera par une police exacte sur la rive, toute tentative des habitans de faire la contrebande à l'aide des bateliers.

Article CXVI.—Tout ce qui est indiqué dans les articles précédens, sera déterminé par un règlement commun, qui renfermera également tout ce qui auroit besoin d'être fixé ultérieurement. Le règlement une fois arrêté ne pourra être changé que du consentement de tous les Etats riverains, et ils auront soin de pourvoir à son exécution d'une manière convenable et adaptée aux circonstances et aux localités.

III

ARTICLES OF THE TREATY OF PARIS (1856)
RELATIVE TO THE NAVIGATION
OF THE DANUBE

Article XV.—L'acte du Congrès de Vienne ayant établi les principes destinés à régler la navigation des fleuves qui séparent ou traversent plusieurs Etats, les Puissances contractantes stipulent entre elles qu'à l'avenir ces principes seront également appliqués au Danube et à ses embouchures. Elles déclarent que cette disposition fait désormais partie du droit public de l'Europe et la prennent sous leur garantie.

La navigation de Danube ne pourra être assujettie à aucune entrave ni redevance qui ne serait pas expressément prévue par les stipulations contenues dans les articles suivants. En conséquence, il ne sera perçu aucun péage basé uniquement sur le fait de la navigation du fleuve, ni aucun droit sur les marchandises qui se trouvent à bord des navires. Les règlements de police et de quarantaine à établir pour la sûreté des Etats séparés ou traversés par ce fleuve seront conçus de manière à favoriser, autant que faire se pourra, la circulation des navires. Sauf ces règlements, il ne sera apporté aucun obstacle, quel qu'il soit, à la libre navigation.

Article XVI.—Dans le but de réaliser les dispositions de l'article précédent, une commission dans laquelle la France, l'Autriche, la Grande-Bretagne, la Prusse, la Russie, la Sardaigne et la Turquie seront chacune représentées par un délégué, sera chargée de désigner et de faire exécuter les travaux nécessaires, depuis Isaccea, pour dégager les embouchures du Danube, ainsi que les parties de la mer y avoisinantes, des sables et autres obstacles qui les obstruent afin de mettre cette partie du fleuve et les dites parties de la mer dans les meilleures conditions possibles de navigabilité.

Pour couvrir les frais de ces travaux, ainsi que les établissements ayant pour objet d'assurer et de faciliter la navigation aux Bouches du Danube, des droits fixes, d'un taux convenable, arrêtés par la Commission à la majorité des voix, pourront être prélevés, à la condition expresse que, sous ce rapport comme sous tous les autres, les pavillons de toutes les nations seront traités sur le pied d'une parfaite égalité.

Article XVII.—Une commission sera établie et se composera

des délégués de l'Autriche, de la Bavière, de la Sublime Porte et du Württemberg (un pour chacune de ces puissances), auxquels se réuniront les commissaires des trois Principautés danubiennes, dont la nomination aura été approuvée par la Porte. Cette commission, qui sera permanente, 1° élaborera les règlements de navigation et de police fluviale; 2° fera disparaître les entraves, de quelque nature qu'elles puissent être, qui s'opposent encore à l'application au Danube des dispositions du traité de Vienne; 3° ordonnera et fera exécuter les travaux nécessaires sur tout le parcours du fleuve; et, 4° veillera, après la dissolution de la Commission Européenne, au maintien de la navigabilité des embouchures du Danube et des parties de la mer y avoisinantes.

Article XVIII.—Il est entendu que la Commission Européenne aura rempli sa tâche et que la Commission riveraine aura terminé les travaux désignés dans l'article précédent, sous les nos 1 et 2, dans l'espace de deux ans. Les puissances signataires réunies en Conférence, informées de ce fait, prononceront, après en avoir pris acte, la dissolution de la Commission Européenne et, dès lors, la Commission riveraine permanente jouira des mêmes pouvoirs que ceux dont la Commission Européenne aura été investie jusqu'alors.

Article XIX.—Afin d'assurer l'exécution des règlements qui auront été arrêtés d'un commun accord, d'après les principes ci-dessus énoncés, chacune des Puissances contractantes aura le droit de faire stationner en tout temps deux bâtiments légers aux embouchures du Danube.

IV

ARTICLES OF THE TREATY OF BUCAREST (1918) RELATIVE TO THE NAVIGATION OF THE DANUBE

Article 24.—Roumania shall conclude a new Danube Navigation Act with Germany, Austria-Hungary, Bulgaria and Turkey, settling the various rights on the Danube from the point where it becomes navigable, with due regard to the provisions set forth below under (a) to (d) and with the stipulation that the provisions under (b) should apply equally for all parties to the Danube Act. Negotiations regarding the new Danube Navigation Act shall begin in Munich as soon as possible after the ratification of the Treaty of Peace.

(a) Under the designation of 'The Danube Estuary Commission', the European Danube Commission shall be maintained as a permanent institution with the powers, privileges and obligations hitherto appertaining to it, for the river from Braïla downwards, inclusive of the port of that name.

(1) The Commission shall henceforth consist solely of representatives of States situate on the Danube or the European coasts of the Black Sea.

(2) The Commission's authority shall extend, from Braïla downwards, to all arms and mouths of the Danube and the adjoining parts of the Black Sea. All orders issued by the Commission in respect of the Sulina arm of the river shall also apply to those arms, or part of an arm, with which the Commission has hitherto not been competent or exclusively competent to deal.

(b) Roumania shall guarantee free navigation on the Roumanian Danube, including its harbours, to ships of the other contracting parties. Roumania shall levy no tolls for navigation only on the ships or rafts of the contracting parties and the cargoes thereof; neither shall Roumania in future levy any dues or imposts on the river save those permitted by the new Danube Navigation Act.

(c) The Roumanian *ad valorem* duty of one-half per cent. on goods imported into and exported from that country's ports shall be abolished when the new Danube Navigation Act comes into force and as soon as Roumania shall have introduced duties (in accordance with the new Danube Navigation Act) for the use of public institutions connected with shipping and the transport of goods, but not later than five years after the ratification of the present Treaty of Peace. Goods and rafts arriving on the Danube for further transit shall not be subject to a traffic tax in Roumania in respect of such transit.

(d) The Cataract and Iron Gates sections to which the provisions of Article VI of the Treaty of London of 13th March, 1871 and Article LVII of the Treaty of Berlin of 13th July, 1878 relate, comprise the sections of the river from the 'O' in 'Neldova' to Turn-Severin, in their entire breadth from one bank to the other, including all arms of the river and all islands lying between them.

The obligations with regard to maintenance of navigability throughout the Cataract and Iron Gates sections, taken over by Austria-Hungary in accordance with the provisions as

referred to in Par. 1 of this Article and transferred to Hungary, as also the special privileges which accrued to Hungary thereunder, shall therefore apply to those sections of the Danube more particularly described in Par. 1 hereof. The States bordering this part of the river shall grant to Hungary all the facilities which this State may require for the purpose of the river works to be carried out by it.

Article 25.—Until the Danube Estuary Committee meets, Roumania shall regularly administer the entire property of the European Danube Commission in its possession, and safeguard it from damage. Immediately after the signature of the Treaty of Peace a Commission, consisting of at least two representatives of each of the contracting parties, shall satisfy itself as to the condition of the material held in safe custody by Roumania. A special agreement shall be concluded with regard to Roumania's obligation to immediate temporary surrender of such material.

Article 26.—Germany, Austria-Hungary, Bulgaria, Turkey and Roumania shall be entitled to keep warships in the Danube. These may navigate down-stream as far as the sea, and upstream as far as the upper frontier of the territory of their respective States. They must not, however, hold any communication with the shore of another State, or put in there except in case of *force majeure*, unless the consent of the State in question is obtained through diplomatic channels. The Powers represented on the Danube Estuary Commission shall have the right to maintain two light warships each, as guardships, at the mouth of the Danube. These may put in as far up as Braila without special authority.

All rights and privileges appertaining to warships shall be enjoyed by the warships mentioned in Pars. 1 and 2 hereof, in the harbours and waters of the Danube.

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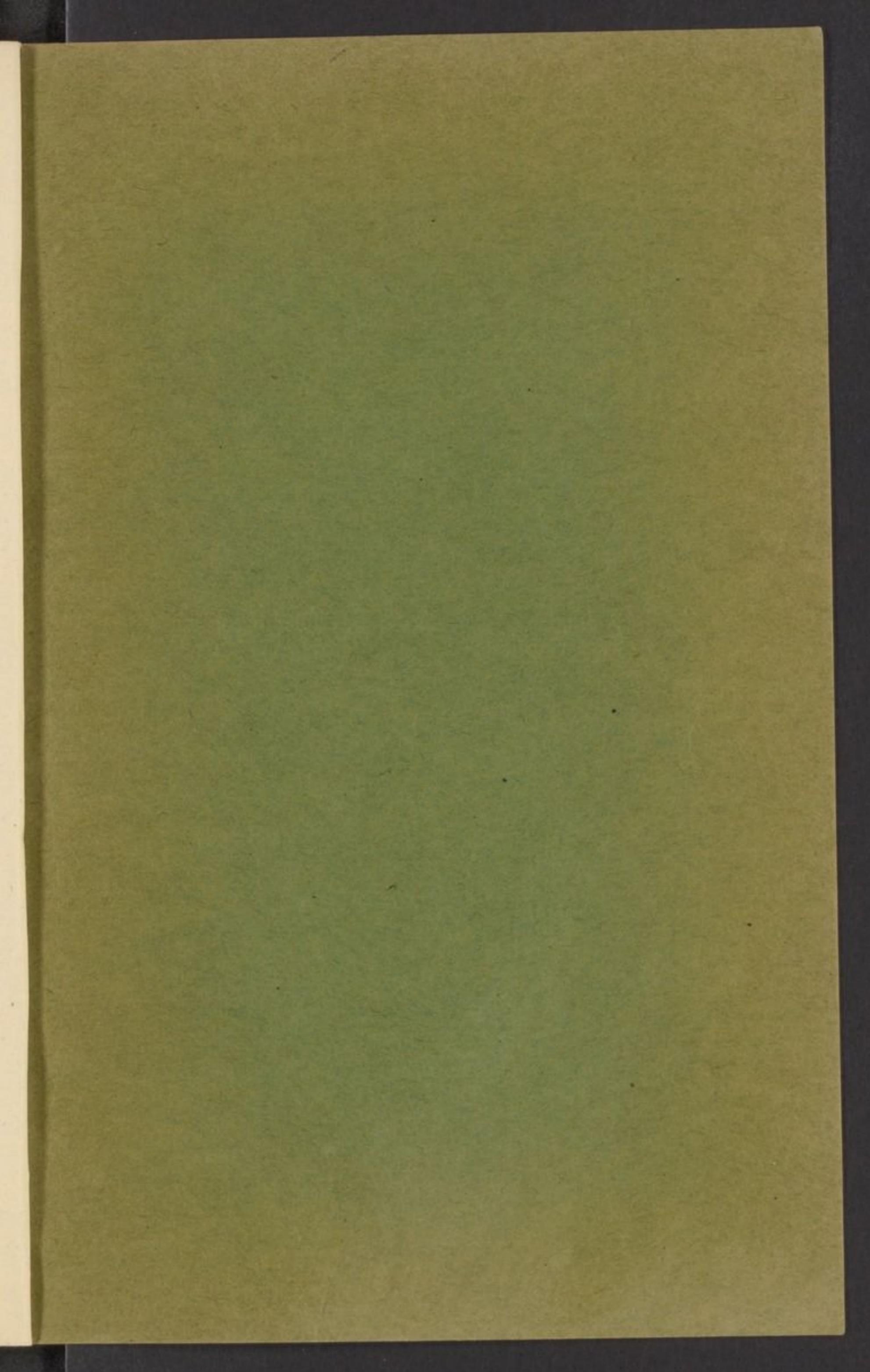
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MAPS

The course of the Danube, from Ulm to the Black Sea, showing the 'Regimes of Navigation', is illustrated by a special map (G.S.G.S., Nos. 2889, 2889 a) on the scale of 1 : 3,000,000, issued by the War Office in connexion with this series, November 1918.

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