HANDBOOKS PREPARED UNDER THE DIRECTION OF THE HISTORICAL SECTION OF THE FOREIGN OFFICE.—No. 28

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QUESTION OF THE SCHELDT

LONDON:
PUBLISHED BY H.M. STATIONERY OFFICE.

1920

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Editorial Note.

In the spring of 1917 the Foreign Office, in connection 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 enquiries 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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QUESTION OF THE SCHELDT

(A) HISTORY

Chronological Summary

1572 Flushing taken by the Sea Beggars.
1585 Antwerp surrenders to Parma.
1605 Maurice of Nassau takes Sluis.
1644-5 Frederick Henry captures Sas-van-Ghent and Hulst.
1648 Treaty of Münster. Dutch Flanders ceded to the States-General. Closure of the Scheldt.
1676 Peace of Nymegen. Closure of the Scheldt maintained.
1697 Peace of Ryswyck. Closure of the Scheldt maintained.
1713 Peace of Utrecht. Closure of the Scheldt maintained.
1748 Peace of Aix-la-Chapelle. Closure of the Scheldt maintained.
1784 Joseph II attempts to reopen the question.
1785 He fails. Treaty of Fontainebleau.
1792 Austrian Netherlands conquered by the French.
1795 Holland conquered by the French. Austrian Netherlands annexed by France. Scheldt declared free for commerce.
1814 Union of Holland and Belgium.
1830 Belgian revolt. King William I (of the Netherlands) closes the Scheldt.
1839 Treaty of Peace between Holland and Belgium. The Scheldt made free for commerce, subject to small dues.
1842-3 Further regulations agreed on by Holland and Belgium.
1863 Capitalisation of the Scheldt dues.
1891 Convention between Holland and Belgium.
1914 The Germans invade Belgium. The Scheldt closed by the Dutch.

(i) 1550—1815

The River Scheldt enters the sea by two mouths—the Eastern Scheldt and the Western Scheldt or Hondt. The Western Scheldt is the waterway which gives the port of Antwerp access to the ocean. The " question

of the Scheldt" arises from the fact that for the last forty miles of its course the Western Scheldt flows through Dutch territory. On the northern shore lie the Zeeland islands of South Beveland and Walcheren; on the southern, the strip of territory known as Dutch or Zeeland Flanders (Zeeuwsch Vlaanderen).

In the middle of the sixteenth century Antwerp had become the first seaport in the world. The revolt of the Netherlands and the capture of Antwerp by the Spaniards in 1585 brought ruin upon the town. Its most enterprising citizens fled to Holland and to England; and its access to the sea was cut off by the fleets of the Sea Beggars (*Gueux de Mer*), who had made Flushing (captured in 1572) their naval base. The trade of Antwerp was transferred to Amsterdam; and from the beginning of the seventeenth century the closing of the Scheldt, in the interest of Amsterdam and of Dutch trade generally, became a fixed aim of Dutch policy. The conquest of a strip of Flanders on the southern bank of the Western Scheldt was a means to this end. It was begun by the capture of Sluis[1] by Maurice of Nassau in 1605, and completed by his brother Frederick Henry, who in 1644 captured Sas van Ghent, closing the canalised River Lys connecting Ghent with the port of Terneuzen on the Scheldt, and in 1645 besieged and took Hulst, the capital of the Pays de Waes. By the Treaty of Münster (January 30, 1648) these conquests, forming a continuous band of territory along the left bank of the Western Scheldt, were ceded by the King of Spain to the States-General. Article XIV of the treaty declares:—

> "Les rivières de l'Escaut, comme aussi les canaux de Sas, Zwyn et autres bouches de mer y aboutissant, seront tenus clos du côté des Provinces Unies."

This closure of the Western Scheldt meant the ruin of Antwerp and the gradual decay of Belgian trade and industry. The action of the States-General in 1648 became henceforth the settled policy of the

[1] Then a seaport, now lying some miles inland.

Dutch, and was bitterly resented by the people of the Southern Netherlands as essentially selfish and unjustifiable; nor did the enforced acquiescence of their sovereigns in the renewal of this treaty-right in the subsequent treaties of Nymegen, Ryswyck, Utrecht, and Aix-la-Chapelle make it appear less hateful or oppressive. But there are two sides to every question; and, whatever may be the rights and wrongs which lie behind the grievance, it is necessary to point out that the Dutch seventeenth-century policy was not, as is so often asserted by Belgian writers, altogether selfish and unjustifiable.

The importance of the Scheldt has been, historically, national as well as international. Its estuary forms the home-waters of the Province of Zeeland; and that province has been connected with the adjoining Province of Holland from very early times by the closest bonds. It is, perhaps, scarcely realised how very largely the Dutch Republic owed its first existence and its later security and strength, as a great maritime Power, to these two sea-girt provinces. The position of Holland and Zeeland behind their water defences was that of an almost impregnable fortress and naval arsenal; and from their harbours came the ships and the seamen who, by their supremacy at sea, freed the United Provinces from the yoke of Spain, and carried Dutch commerce into every ocean. It was, therefore, not the mere selfish desire of cutting off the Spanish-Belgian port of Antwerp from access to the sea that led the States-General in 1648 to insist on the cession to them by Spain of the strip of territory, since known as Dutch Flanders, which had been conquered by their forces, so as to enable them effectually to hold as territorial waters the estuary of the Western Scheldt. Its closure meant the safeguarding of the Zeeland Islands, and more especially of Walcheren with its naval bases, against the danger of a sudden attack from the Spanish Netherlands.

So matters stood when, in August 1784, the Emperor Joseph II, who had visited in person his Belgian

dominions and was anxious to restore the prosperity of Antwerp, sent an ultimatum to the States-General demanding the opening of the Scheldt to commerce on pain of a declaration of war. The States refused. Threats were followed by action. Early in October 1784 two vessels, by order of Joseph, set sail, the one from Antwerp for the sea, the other from Ostend for Antwerp. Both vessels were seized by the Dutch naval forces in the Scheldt. The Emperor, on learning this, despatched an army of 60,000 men to invade Holland. Active French intervention, however, prevented the outbreak of hostilities; and finally, under the mediation of France, a treaty between the Emperor and the States-General was signed at Fontainebleau on November 8, 1785. That Joseph failed completely in his main object is plain from Article VII :—

> "Les mêmes Etats reconnaissent le droit de souveraineté absolue de l'Empereur sur toute la partie de l'Escaut depuis Anvers jusqu'au bout du pays de Saftingen, et renoncent à la perception et à la levée d'aucun péage et impôt dans cette partie de l'Escaut. Le reste du fleuve, depuis Saftingen à la mer, dont la souveraineté continuera d'appartenir aux Etats-généraux, sera tenu clos de leur côté, ainsi que les canaux de Sas, de Swin et autres bouches de mer y aboutissant, conformément au traité de Munster."

With the French Revolution the old order of things was for a time swept away. The French armies overran the Belgian Netherlands in 1792; and a Decree of the National Convention declared the navigation of the Scheldt free. The United Provinces were in their turn conquered early in 1795, and became known as the Batavian Republic. The Republic was compelled by a treaty, dated May 16, 1795, to conclude an offensive and defensive alliance with France. By this treaty Dutch Flanders was surrendered, a French garrison placed in Flushing, and the Scheldt declared free for commerce. By a Decree of the National Convention on October 1, 1795, the Austrian Netherlands were annexed by France; and Dutch Flanders was incorporated in the department of Deux-Nèthes, of which Antwerp was the capital. This annexation was recog-

nised by Austria in the Treaty of Campo Formio (October 17, 1797).

In 1806 Napoleon transformed the Batavian Republic into the Kingdom of Holland, with his brother Louis as King. Disputes arose between the brothers, and Louis, finding his position of subservience unendurable, abdicated in July 1810. A week later an Imperial Decree announced: "la Hollande est réunie à l'Empire." The Scheldt thus became throughout its whole course a French river; and the waterway from Antwerp to the sea was no longer closed.

(ii) 1815—1839

The fall of Napoleon freed the Netherlands from the French yoke; and, by the preliminary Treaty of Paris (May 30, 1814) and the definitive Treaty of Vienna (May 31, 1815), the Dutch and Belgic Provinces were united to form the Kingdom of the Netherlands under the sovereignty of King William I, head of the House of Orange-Nassau. During the fifteen years that the Union lasted there could be no question of the closing of the Scheldt.

The Belgian revolt of 1830 raised, however, all the old questions of the sovereign rights of Holland over the Western Scheldt once more. King William forthwith closed the river. The London Conference of the Five Powers, anxious to bring about a cessation of hostilities, ordered (November 4, 1830) a withdrawal of the Dutch and Belgian troops within their respective frontiers

> "derrière la ligne qui séparait, avant l'époque du traité du 30 mai, 1814, les possessions du Prince Souverain des Provinces-Unies de celles qui ont été jointes à son territoire pour former le royaume des Pays-Bas, par le dit Traité de Paris et par ceux de Vienne et de Paris de l'année 1815."

This language was at once seized upon by the Belgians, who contended that Dutch Flanders had been annexed by the French Government to Belgium, and on May 30, 1814, was part of the department of Deux-Nèthes. This contention was decisively rejected by

the Conference, the reply being that in the period before the treaty of May 30, 1814, Belgium was not a State and had no independent existence. To avoid all misunderstanding, the Protocol dated January 20, 1831 (which served as the basis for the proposed Treaty of the XVIII Articles of June 26, 1831), defined the boundary of Holland as that of the former Republic of the United Provinces in the year 1790. Thus Holland was confirmed in its possession of Dutch Flanders and of both banks of the Western Scheldt. This same Protocol of January 20 likewise affirmed:—

> "Il est entendu que les dispositions de l'Acte général du Congrès de Vienne, relatives à la libre navigation des fleuves et rivières navigables, sont appliquées aux rivières et aux fleuves qui traversent les deux contrées."

King William accepted this Protocol as furnishing a basis of separation, and he therefore clearly accepted this Article relating to the Scheldt and the waters which flowed into it, such as the Lys Canal from Ghent to Terneuzen.

The Treaty of the XXIV Articles, which (November 15, 1831) replaced that of the XVIII Articles, settled the conditions of separation between Holland and Belgium, though, for causes explained elsewhere,[1] its actual signature was delayed until April 19, 1839. Article IX of this treaty, relating to the Scheldt, was, however, in 1839 expanded, and finally stood thus:—

> "(§ 1) Les dispositions des Articles 108 jusqu'à 117 inclusivement de l'Acte général du Congrès de Vienne, relatives à la libre navigation des fleuves et rivières navigables, seront appliquées aux fleuves et rivières navigables qui séparent ou traversent à la fois le territoire belge et le territoire hollandais.
>
> "(§ 2) En ce qui concerne spécialement la navigation de l'Escaut et de ses embouchures, il est convenu que le pilotage et le balisage, ainsi que la conservation des passes de l'Escaut en aval d'Anvers, seront soumis à

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[1] See Belgium, No. 26 of this Series, pp. 55 *et seq.*

une surveillance commune, et que cette surveillance commune sera exercée par des commis nommés à cet effet de part et d'autre. Des droits de pilotage modérés seront fixés d'un commun accord, et ces droits seront les mêmes pour les navires de toutes les nations. . . .

" (§ 3) Il sera perçu par le Gouvernement des Pays-Bas, sur la navigation de l'Escaut et de ses embouchures, un droit unique de florin 1·50 par tonneau, savoir florin 1·12 pour les navires qui, arrivant de la pleine mer, remonteront l'Escaut occidental pour se rendre en Belgique, ou par le canal de Terneuse, et de florin 0·38 par tonneau des navires qui, arrivant de la Belgique par l'Escaut ou par le canal de Terneuse, descendront l'Escaut occidental pour se rendre dans la pleine mer. . . Les navires se rendant d'Anvers à Terneuse et *vice versa* ou faisant dans le fleuve même le cabotage ou la pêche (ainsi que l'exercice de celle-ci sera réglé en conséquence du § 6 ci-après) ne seront assujettis à aucun droit.

" (§ 4) La branche de l'Escaut oriental . . . étant employée à la navigation entre Anvers et le Rhin, celle-ci ne pourra être grevée, dans tout son cours, de droits ou péages plus élevés que ceux qui sont perçus, d'après le tarif de Mayence, du 31 mars, 1831, sur la navigation de Gorcum jusqu'à la pleine mer, en proportion des distances.

" (§ 5) Il est également convenu que la navigation des eaux intermédiaires entre l'Escaut et le Rhin, pour arriver d'Anvers au Rhin, et *vice versa*, restera réciproquement libre, et qu'elle ne sera assujettie qu'à des péages modérés, qui seront les mêmes pour le commerce des deux pays.

" (§ 6) Des commissaires se réuniront de part et d'autre à Anvers, dans le délai d'un mois, tant pour arrêter le montant définitif et permanent de ces péages, qu'afin de convenir d'un règlement général pour l'exécution du présent Article et d'y comprendre l'exercice du droit de pêche et du commerce de pêcherie dans toute l'étendue de l'Escaut, sur le pied d'une parfaite réciprocité et égalité en faveur des sujets des deux pays."

This Article represented probably as fair a compromise between the claims of the two countries in regard to the navigation of the Scheldt as the Conference of London, acting as a Court of Arbitration, could devise.

The settlement of 1839 practically removed all the disabilities which pressed so heavily on Antwerp and Belgian trade and industries during the seventeenth

and eighteenth centuries. Nevertheless, as already stated, public opinion in Belgium was not, and is not, reconciled. By the treaty of April 19, 1839 (a treaty imposed upon Holland and Belgium by the Great Powers, and placed under their guarantee) complete freedom of commerce was established upon the Scheldt, the Scheldt being declared an international river, subject to the stipulations of Articles CVIII-CXVII of the General Act of the Congress of Vienna, *i.e.*, placed on the same footing as the Rhine, the Neckar, the Main, and the Moselle. This was supplemented by the further treaties and regulations of 1842 and 1843 between Holland and Belgium, which resulted in the appointment of a Board of Control, consisting of an equal number of Dutch and Belgian commissioners, with the right of regulating and supervising all matters connected with the placing of lighthouses and buoys, pilotage, dredging, and safe navigation. A small toll, payable to the Dutch Government by all vessels using the river, was a recognition of the territorial rights of the riverain Power.

(iii) 1839—1914

No sooner, however, had the treaty of 1839 been signed, imposing dues upon all ships (excepting those of Holland) passing up and down the Western Scheldt, than the Belgian Parliament passed a law (June 5, 1839) sanctioning the repayment of these dues by the Belgian State. The capitalisation by Denmark of the Sound dues in 1856 suggested to Belgium the capitalisation of the Scheldt dues; and, as these were charged on tonnage, it was easy to assess what proportion should be borne by each country that used the Scheldt. The Dutch Government, on being approached, was quite ready to negotiate for the removal of charges which were troublesome to collect; and a treaty was concluded on May 12, 1863. The assent of Great Britain and the other Powers interested was obtained to the arrangement proposed by Belgium, that the Belgian Government

should pay one-third of the 17,141,640 florins indemnity to Holland, and that the other States should contribute according to their tonnage. The navigation on the Scheldt thus became entirely free, to the great benefit of the port of Antwerp.

Attention must be drawn to Article IV of the treaty of 1863:—

> "Il est entendu que la capitalisation du péage ne portera aucune atteinte aux engagements qui résultent pour les deux États des traités en vigueur en ce qui concerne l'Escaut."

The Dutch Government inserted this Article lest the abolition of the Scheldt dues should be held to impair their claim to full sovereignty over the Western Scheldt. Certain Belgian speakers and writers have argued that a *condominium* was established by the treaty of 1839 and the subsequent treaty of 1842, but the Belgian Government have always abstained from putting forward such a claim. It should have been put forward officially, if at all, at the time of drawing up, in May 1843, the elaborate series of regulations for carrying into effect Articles IX-X of the treaty of 1839 and of cap. ii, §§ 1, 2, 3, 4 of the treaty of 1842; but this was not done. On the contrary, such expressions are found as cap. ii, § 33, "les eaux néerlandaises"; cap. iv, § 10, "si les navires sont destinés pour Anvers, il sera loisible au Gouvernement néerlandais de les faire accompagner sur son territoire d'un garde de santé." The admission of these phrases implies that the Belgian Government recognised the Western Scheldt or Hondt between Bath and the sea as Dutch "water-territory."

The only occasion on which the question of co-sovereignty was raised was in a controversy which arose as to the right of the Dutch to construct a dyke for the railway from Flushing to Rosendael, which the Belgians held to be a hindrance to navigation. The Belgian Foreign Minister in the course of this controversy made the following claim (1851):—

> "En acceptant les traités, les Pays-Bas ont fait des concessions et fixé des limites à leur souveraineté . . . ce qui

était dans le principe une concession de la Hollande est devenu un droit de la Belgique, les exceptions sont devenues la règle, les obligations exceptionnelles constituent réellement un abandon partiel du droit de souveraineté . . . les traités de 1815, 1839 et 1842 ont créé au profit de la Belgique une servitude réelle à laquelle les Pays-Bas se sont soumis et dont ils ne peuvent s'affranchir sans un consentement mutuel."

The Dutch reply was that no such limitation of sovereignty was to be found in the treaties named :—

" Si l'on admet que les Pays-Bas ont, par les engagements pris envers la Belgique, restreint leurs droits de souveraineté, cette restriction doit être expressément constatée par les traités."

The limiting conditions, in fact, were, in the treaties of 1815 and 1839, expressly stated to be those imposed by Articles CVIII to CXVII of the General Act of the Congress of Vienna relating to the free navigation of navigable rivers and streams; and the XXIV Articles of November 15, 1831 (which became the definitive treaty of April 19, 1839) simply applied to the Scheldt the regulations which the Convention of Mayence (March 31, 1831) had drawn up for the navigation of the Rhine in conformity with the General Act of the Congress of Vienna. The imposing of such regulations and limiting conditions, therefore, no more impaired the sovereignty of Holland over the Western Scheldt than they impaired the sovereignty over the Rhine of the various States through which it flowed. In other words, the " servitude " imposed by Article IX of the treaty of 1839 converted the Western Scheldt into an international waterway for commerce in normal times of peace, but in no wise restricted the full sovereignty of Holland over this " water-territory " in time of war. The insertion of Article XIV in the treaty of 1839—

" Le port d'Anvers, conformément aux stipulations de l'Article XV du Traité de Paris du 30 mai, 1814, continuera d'être uniquement un port de commerce "—

would be meaningless except on this interpretation. Indeed, it has been held to be more than doubtful

whether the presence in these treaties of that word *uniquement* did not debar the Belgians from making Antwerp an "entrenched camp" (see below).

On March 25, 1891, a Convention was signed between Holland and Belgium concerning the placing of buoys and lights in the river; and the Dutch Government agreed not to remove such buoys or lights "without the consent of Belgium." But in an additional Article, signed on November 30, it was stipulated that this Agreement "does not contemplate (*ne vise pas*) the case of war or the eventual danger of war." That Belgium signed this additional Article without raising any objection may be taken as a convincing proof that the Belgian Government did not dissent from the Dutch view that full sovereignty over the Western Scheldt reverted to Holland in time of war. Such an admission does not, however, imply that official Belgium is satisfied with the existing state of things, or that the grievances of which complaint is made are not recognised as legitimate.

These grievances may be briefly stated as follows: (1) As regards the lighting and buoying of the river, all changes and improvements are subject to the consent of the Dutch Commissioners on the Board of Control. Their veto can bring everything to a standstill, and seriously compromise the interests of navigation to and from Antwerp. (2) The constant dredging of the channel (fairway) of the Western Scheldt is absolutely necessary, but not a single cubic yard can be dredged without the consent of the Dutch. (3) The Dutch engage in damming operations in their section of the river without any regard to its effect upon the navigation higher up. (4) The contention of the Belgians is that Antwerp has been converted into an entrenched camp, intended to be a safe refuge for the Belgian forces, and the base of military defence of Belgium against an invader. The creation of such a fortified base, however, would clearly be useless unless

the river were open to the ships of a friendly Power. If reinforcements, munitions, and supplies were debarred from reaching Antwerp, the entrenched camp would prove to be a trap, and the whole scheme of defence would fall to the ground. (5) Under present conditions, Antwerp could not become a naval base, though this is a necessity for a colonial Power.

To take the last two of these grievances first (and that they are real grievances cannot be denied), there can be no remedy without expunging from the Fundamental Treaty, to which Belgium owes its existence as an independent State, Article XIV, which expressly declares:—

> "Le port d'Anvers, conformément aux stipulations de l'Article XV du Traité de Paris du 30 mai, 1814, continuera d'être uniquement un port de commerce."

How far it was legitimate for the Belgian Government to make Antwerp into an entrenched camp is discussed in a supplementary Note. It must be granted, however, that this Article, as it stands, forbids the conversion of this commercial port into a naval base. After the war the treaty of 1839 may in many respects be considerably modified; but, until that takes place, the question of the Scheldt and of Antwerp is not simply a Dutch-Belgian question. Both Holland and Belgium are still bound by the terms of settlement imposed upon them by the Five Powers of the Conference of London. Events since 1914 have further shown that the strict maintenance by the Dutch of their rights and duties, as a neutral Power, has been on the whole advantageous to the Allied cause, since they have prevented Antwerp from serving as a base for German submarines and destroyers.

(B) SUPPLEMENTARY NOTES

(a) *The Treaty Status of Antwerp*

Lord Castlereagh, when he left London to attend the Congress of Châtillon, took with him a memorandum of secret instruction dated December 26, 1813. One of the conditions, on which he was instructed to insist, as a *sine qua non* for the relinquishment by Great Britain of her conquests, was the absolute exclusion of France from any naval establishment on the Scheldt, and especially at Antwerp.

This insistence took definite shape in Art. XV of the Preliminary Treaty of Paris, May 30, 1814, which declares :—

> " Dorénavant le port d'Anvers sera uniquement un port de commerce."

At the Congress of Vienna a Commission was appointed to deal, *inter alia*, with the conversion of Antwerp into a commercial port. The British Plenipotentiary, the Duke of Wellington, was opposed to the demolition of works which were essential for the defence of the town. It was resolved, therefore, that the matter should be referred to the consideration of British and Dutch Commissioners chosen for the purpose; and the following instructions were given to them in a Protocol of the General Congress, March 29, 1815, for their guidance :—

> " Que les Gouvernements de l'Angleterre et des Pays-Bas seront tous les deux invités à nommer immédiatement chacun un commissaire, qui se réuniront sans délai à Anvers, et arrangeront entre eux :
>
> " 1. Lesquels seraient les objets à détruire totalement, comme le camp retranché et autres, pas nécessaires pour la défense de la place.

"2. Quels sont ceux à conserver, comme essentiels à cette défense.

"3. Quels sont ceux qui, en même temps qu'ils pourraient être maintenus comme utiles au commerce, pourraient être également rendus inapplicables au service marine maritime.

"4. Que les commissaires procéderont sans délai à diriger la destruction, totale ou partielle, selon leurs arrangements de tous les ouvrages destinés par leur accord à cet effet."

The revolt of Belgium and the erection of Belgium into an independent kingdom in no way altered the views of the Great Powers in regard to Antwerp.

Article XIV of the treaty of April 19, 1839, is quite clear on this point:—

"Le port d'Anvers conformément aux stipulations de l'article XV du Traité de Paris du 30 mai, 1814, continuera d'être uniquement un port de commerce."

The action taken by the Congress of Vienna may therefore be held to sanction the maintenance of fortifications necessary for the defence of Antwerp; but it is more than doubtful whether the conditions laid down by the Congress for the guidance of the British and Dutch Commissioners can be interpreted as sanctioning the creation of a vast entrenched camp round the city.

The words "continuera d'être uniquement un port de commerce" plainly forbid the conversion of Antwerp into a naval arsenal. The following extract from the Protocol of the Congress of Vienna (March 29, 1815), a portion of which has been already quoted, confirms this statement:—

"Les Puissances ayant stipulé dans le XVe Article du Traité de Paris que, dorénavant, le port d'Anvers sera uniquement un port de commerce, le mode le plus simple pour l'exécution de cette stipulation sera sans doute de résoudre la destruction totale de tous les ouvrages, les fortifications, les quais, les bassins, &c., qui ont été construits sous les ordres de Bonaparte, dans la vue de rendre le port d'Anvers un arsenal de guerre maritime et une place pour la construction, l'équipement et le maintien des vaisseaux de guerre. Mais la Commission a l'honneur de soumettre au jugement éclairé de leurs Excellences Messieurs les Plénipotentiaires des Hautes Puissances signataires du traité que quelques-uns de ces ouvrages pourront être jugés essentiels pour la défense de la place, et que parmi

les autres il pourrait s'en trouver qui, utiles toutefois au commerce, en même temps qu'il serait peut-être praticable de les rendre inapplicables aux objets d'une marine militaire, pourraient être maintenus pour tous les objets légitimes d'une marine commercielle. . . ."

(b) *The Case of the "Phœnix"*

In 1875 a Danish vessel, the "Phœnix," ran down a Dutch ship, and, on the refusal of the owners to pay damages, was seized by a Dutch gunboat in the Scheldt. The Danish Government settled the matter amicably, but the Belgian Government were uneasy at this assertion of Dutch sovereignty, and addressed an appeal to the Powers. They questioned the legality of the Dutch action in seizing a vessel not in a Dutch port, but in the channel of the Scheldt forming the communication between Antwerp and the sea—an international waterway whose freedom was safeguarded by treaty. No definite action was taken by the Powers, and this may be regarded as a silent acknowledgment that there was no case against the Dutch. The seizure of the "Phœnix" was an act of police, such as a riparian Power had the right to exercise, according to the General Regulations drawn up by the Congress of Vienna (March, 1815) for the free navigation of rivers.

Art. II of these General Regulations runs as follows:—

> "The navigation of rivers along their whole course from the point where each of them becomes navigable to their mouth, shall be entirely free, and shall not, in respect of commerce, be prohibited to anyone; it being, however, understood that the negotiations established with regard to the police of this navigation shall be respected, as they will be framed alike for all and as favourable as possible to the commerce of all nations."

By Article IX of the treaty between Holland and Belgium, April 19, 1839, under the guarantee of the Five Great Powers, these Regulations of the Act-General of the Congress of Vienna are specifically applied to the rivers and streams which traverse Holland and Belgium.

A number of detailed regulations were drawn up by the Dutch and Belgian Governments in 1842 and 1843. One of these, dated May 20, 1843, deals with the execution of Article IX of the treaty of 1839 in regard to the waters intermediate between the Scheldt and the Rhine.

Article I runs as follows:—

> "The navigation and the transit of the intermediate Dutch waters between the Western Scheldt and the Rhine shall be, from Belgium to the Rhine, or *vice versa*, reciprocally free, it being well understood that it will be in conformity with the police regulations demanded for the maintenance of general security,[1] and with the dispositions laid down by the present regulation."

(c) *The Fortification of Flushing*

The proposal of the Dutch Government in November, 1910, to spend 38,000,000 florins upon the fortifications of Flushing aroused a considerable amount of controversial criticism in the press of Belgium, France, and England, on the alleged ground that such fortification, if carried out, was intended to prevent (in the possible event of the outbreak of an Anglo-German war) the sudden seizure of this important seaport at the mouth of the Western Scheldt by a British naval force. Public opinion was the more disposed to criticise adversely the action of the Dutch Government, because it was believed that this action was taken under secret pressure on the part of Germany.

The agitation met with no response from responsible Statesmen. In reply to a question in the House of Commons, Sir Edward Grey (February 10, 1911) replied: "That the British Government thought it undesirable to state its views upon a measure taken by a foreign State to protect its own territory." The French Foreign Minister and the German Chancellor used words to the same effect. The subject was, in fact,

[1] "Bien entendu que l'on se conformera aux règlements de police exigés pour le maintien de la sûreté générale."

allowed quietly to drop. No fortifications at Flushing had been begun at the end of 1911. In the following year (1912) a Bill was introduced in the States-General, in which the proposal of 1910 was very much modified, for the improvement of the defences of various seaports of the Netherlands, including Flushing.

Whatever may have been the motives (pressure from Germany or otherwise) which influenced the Dutch Government in 1910, the extremely difficult position of Holland in the event of an Anglo-German war fully justified the Dutch in taking every reasonable precaution beforehand for the maintenance of the neutrality of a small country exposed to military invasion from the East and to naval attack from the West. This particular precaution was reasonable; and in taking it the Dutch Government was acting strictly within its rights.

The seaport of Flushing occupies a key-position, owing to its command of the entrance to the Western Scheldt, for the defence of the province of Zeeland. It has for centuries been strongly fortified. Its capture by the Sea Beggars in 1572 was the turning-point in the early history of the revolt of the Netherlands. It became the chief naval base of the rebel cause under William of Orange. In 1585, when Queen Elizabeth sent an English force to the Netherlands, Flushing was the chief of the cautionary towns handed over to her as a pledge for the repayment of her costs, and it received an English garrison. The debt was settled in 1614; and Flushing thenceforth, during the 17th and 18th centuries, was the naval base of the Zeeland squadrons of the Dutch fleet, an arsenal and seaport of great importance. When the French conquest in 1795 led to the formation of the Batavian Republic, one of the conditions imposed upon the Dutch, in the treaty which recognised their independence, was the right of the French to place a garrison in Flushing and to use the harbour in common with its nominal possessors.

In 1809 Flushing was taken by the British expeditionary force under Lord Chatham, and its fortifica-

tions were destroyed. One of the first cares of Napoleon after the retreat of the British was to order the restoration of the fortress. In 1810, after the French annexation of Holland, the Emperor visited Flushing (September 26-29), and in person carefully examined the state of its defences. When restored to Holland in 1814 Flushing was a strong fortress. In the Treaty of Paris (May 30, 1814), and in the General Act of the Congress of Vienna a year later, it was declared that Antwerp was to be "uniquement un port de commerce"; in the treaty between Holland and Belgium (April 19, 1839) this declaration was repeated, and at the same time elaborate regulations were made for securing freedom of commerce in the Scheldt; but in none of these treaties, which were drawn up and signed by the representatives of all the Great Powers, was any mention made of Flushing or its fortifications. The right of the Dutch to protect their ports on the Western Scheldt was not raised, still less disputed.

Considerable sums were spent on the improvement of Flushing as a commercial harbour in 1865-73, and a large floating dock was added to the Royal Dockyard in 1875. The proposal of 1910 was not to create a fortress where none previously existed, but to bring obsolete defences up to date.

APPENDIX

(Extracts from Treaties, Conventions, &c.)

GENERAL ACT OF THE CONGRESS OF VIENNA, JUNE 9, 1815

Arts. CVIII-CXVII

Art. CVIII.—Les Puissances, dont les États 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 bases de leurs travaux les principes établis dans les articles suivants.

Art. 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 de commerce, être interdite à personne, bien entendu, que l'on se conformera aux règlemens relatifs à la police de cette navigation, lesquels seront conçus d'une manière uniforme pour tous, et aussi favorable que possible au commerce de toutes les nations.

Arts. CX, CXI, CXII, CXIII, CXIV, CXV, and CXVI treat of details.

Art. CXVII.—Les règlemens particuliers relatifs à la navigation du Rhin, du Neckar, du Mein, de la Moselle, de la Meuse, et de l'Escaut, tels qu'ils se trouvent joints au présent Acte, auront la même force et valeur que s'ils y avaient été textuellement insérés.

TREATY OF PARIS, MAY 30, 1814

Art. XV.—Dorénavant le Port d'Anvers sera uniquement un Port de Commerce.

PROTOCOL OF THE CONFERENCE OF LONDON, JANUARY 27, 1831

The XVIII Articles

Art. III.—Il est entendu que les dispositions des Articles CVIII jusqu'à CXVII inclusivement de l'Acte général du Congrès de

Vienne, relatives à la libre navigation des fleuves et rivières navigables, seront appliquées aux rivières et aux fleuves qui traversent le Territoire Hollandais et le Territoire Belge.

ART. VIII.—Le Port d'Anvers, conformément au Traité de Paris, du 30 mai, 1814, continuera d'être uniquement un Port de Commerce.

LAW PROMULGATED BY THE BELGIAN GOVERNMENT, JUNE 5, 1839

ART. I.—Le péage à percevoir par le gouvernement des Pays-Bas sur la navigation de l'Escaut, pour se rendre de la mer en Belgique ou de la Belgique à la mer, par l'Escaut ou le Canal de Terneuze, sera remboursé par l'État aux navires de toutes les nations.

TREATY BETWEEN HOLLAND AND BELGIUM, COMPLEMENTARY TO THAT OF APRIL 19, 1839; NOVEMBER 5, 1842; FOLLOWED IN 1843 BY A SERIES OF CONVENTIONS

Convention réglant l'exécution de l'Article 9 du traité du 19 avril, 1839, et du Chapitre II, § 1, du traité du 5 novembre, 1842, relativement à la navigation de l'Escaut et de ses embouchures, 20 mai, 1843.

Convention réglant l'exécution de l'Article 9 du traité du 19 avril, 1839, et du Chapitre II, § 2, du traité du 5 novembre, 1842, relativement au pilotage et à la surveillance commune, 20 mai, 1843. . . . . .

TREATY FOR THE CAPITALISATION OF THE SCHELDT DUES, MAY 12, 1863

ART. I.—Sa Majesté le roi des Pays-Bas renonce à jamais, moyennant une somme de dix-sept millions cent quarante-un mille six cent quarante florins des Pays-Bas, au droit perçu sur la navigation de l'Escaut et de ses embouchures en vertu du § 3 de l'Article 9 du traité du 19 avril, 1839.

ART. II.—Cette somme sera payée au gouvernement néerlandais par le gouvernement belge. . . . .

ART. III.—A dater du paiement du dernier tiers, le péage cessera d'être perçu par le gouvernement des Pays-Bas. . . . .

ART. IV.—Il est entendu que la capitalisation du péage ne portera aucune atteinte aux engagements qui résultent, pour les deux États, des traités en vigueur en ce qui concerne l'Escaut.

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MAPS.

See note in *Belgium* (No. 26 of this series), p. 220.

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