

THE CONFERENCE AT BERLIN ON THE WEST-AFRICAN QUESTION.

THE conference at Berlin on the West-African question is an event unique in the history of political science. To judge from outward show it was a diplomatic conference: the system adopted and the language used for its convocation; the constant reference during the various stages of its progress to international law, to the principles and to the aspirations of that science; the strict diplomatic form of procedure followed during the debates; and, above all, the ostensible subject of discussion, would all seem to point to this conclusion. And yet history records not another instance of an assembly at which were represented so many powers, gathered together, as it was supposed, for international purposes, that partook in so small a degree of the essential parts of an international conference, or that was so barren in results of importance to the science of international jurisprudence. Hitherto it has been some international question, that is, some question arising from and involving the collective interests of a number of states that, in each instance, first suggested the thought of an international conference; and the need of a settlement of questions of such nature has hitherto been the urgent cause for diplomatic gatherings. Such, notably, was the case with the Congresses of Vienna, of Aix-la-Chapelle, of Verona, and with the Congress of Berlin of 1878. With the recent Berlin Conference, however, it was wholly different. Diplomatic in form, it was economic in fact; ostensibly international in its bearings, in truth it concerned but one nation; and it was designed to help to solve, for that nation only, a strictly social problem.

I. History of the Question.

Africa, especially its west coast, has been pre-eminently the ground of Portuguese exploration. In that region were the earliest Portuguese discoveries made; and it was a Portuguese naval officer, in command of a Portuguese expedition, who, following the tracks of previous Portuguese

navigators, first sighted the broad mouth of the Congo as early as 1484. With the accustomed formalities of the times, possession was taken of the locality in the name of the crown of Portugal; the river was given the name of Zaire; and Portugal speedily perfected her inchoate rights of ownership, arising from original discovery, by actual occupation and by the establishment of a number of settlements along the coast, north and south of the estuary.

Whether it was that the papal partition of the southern section of the globe fully satisfied Spain as to the right of Portugal to Africa; or whether Spain, the only nation then capable of contending with Portugal for maritime supremacy, had no leisure to turn to Africa or no taste for acquisitions on that continent, certain it is that the rights of ownership and sovereignty which Portugal claimed at an early period over West Africa were never disputed by her neighbor and rival; and by the time that other states came to strive for the mastery of the seas and for colonial grandeur, these rights of ownership and sovereignty had grown so fixed that, in time of peace, they were respected by one and all, and regarded as traditional.

The clash of interests that existed between Portugal and Spain at an early period in their history had driven the former to ally herself with the enemies of the latter, especially with England and later with the Netherlands. As Spain was in an almost chronic state of war with these powers, Portugal found herself, in consequence, involved in continual hostilities either with Spain herself or with France, Spain's traditional ally, and sometimes with both. A descent upon each other's colonial possessions by the maritime belligerents was at that time a favorite piece of tactics; the colonies suffered most severely during European wars, and not infrequently passed, during a war, in rapid succession from the hands of one belligerent into those of another. The colonies of Portugal, whether in Africa or America, were not exempt from this fate. Owing perhaps to the proverbial lack of bravery of the Portuguese, the Spanish or the French flag would, as a rule, be seen, soon after the breaking out of a war, floating over a large number of places where the Portuguese flag had waved before the war. But with equal regularity, due perhaps to the proverbial tact of the cabinet of Lisbon, most of the territories Portugal had lost, and generally all of them, were as surely restored after the cessation of hostilities, and by the treaty of peace were

reaffirmed to be Portuguese domain. The treaties of 1668,¹ 1715,² and 1761³ between Portugal and Spain, and the treaty of 1713,⁴ between Portugal and France are, therefore, so many early title-deeds of Portuguese possessions in both hemispheres. Taking it for granted, as it would seem, that Portugal had been dispossessed of all her colonies during the preceding hostilities, it was declared by a sweeping clause in each of the treaties cited that all those possessions should be restored to their former owner. But those colonies only were mentioned by name which were retained by the conqueror, or transferred to him by way of exchange or for other considerations; and the name of the territory of Angola, as the western littoral of Africa then began to be called, does not appear in any of these treaties.

After the great European war that closed in 1763, into which Portugal had been drawn as a matter of course, the colonial possessions of all the belligerents again formed an important part of the negotiations for peace. During this war, as during all former ones, Portugal had been stripped of many valuable possessions, her possessions in Angola among others. These were now to be re-acquired, and her plenipotentiaries acquitted themselves of their task with their wonted ability. By article ii. of the treaty of Feb. 10, 1763, all the treaties cited above were reaffirmed; and by article xxi. it was especially stipulated, in respect to Africa, that the French and Spanish troops were to evacuate all the territories which they might have occupied on that continent; those territories to be restored to Portugal and placed under the guaranty of the treaties which, by article ii., were declared to be the bases of the present treaty.⁵

I have not been able to discover any public documents that throw any light on Angola from the date of this last treaty until 1784, when important disclosures were made. In that year the Portuguese government, in the exercise of what it considered its sovereign rights in Western Africa, ordered the erection of a fort at Cabinda, north of the Congo. But the fort had hardly

¹ Du Mont, VII. P.I. 70; La Clede, VIII. 518; Castro, I. 357; Schoell, I. 321.

² Du Mont, VIII. P.I. 444; Cantillo, 164; Calvo, II. 167; Castro, II. 262; Schoell, II. 149.

³ Cantillo, 467; Calvo, II. 348; Castro, III. 126; Koch, II. 162; Schoell, III. 225.

⁴ Du Mont, VIII. P.I. 353; Castro, II. 243; Calvo, II. 109; Schoell, II. 109; British and Foreign State Papers, IV. 818.

⁵ Castro, III. 100; Schoell, III. 106; Martens, R.I. 127; Calvo, II. 359; Cantillo, 486; Ghillany, I. 170.

been finished when it was attacked by M. de Marigny, in command of a French frigate, on the ground that the fort was calculated to interfere with the freedom of traffic of French subjects on that coast. The fort of Cabinda was not destined to be an exception to established rules in the military annals of Portugal. Its commander declared it to be impossible to keep the place; he signed a capitulation⁶ with M. de Marigny by which, reserving all the rights of Portugal, the settlement of the question was referred to the home governments; and in the meanwhile he suffered the fort to be demolished by the French commander.

The discussion on the subject of freedom of commerce on the coast of Angola, thus raised by M. de Marigny in Africa, and transferred to Europe by the timidity of the Portuguese Commander at Cabinda, gave rise to a protracted discussion between the cabinets of Lisbon and Versailles. The Portuguese court claimed right of sovereignty at Cabinda, and all accessory rights; and in aggrieved tones it demanded reparation for the insult done to the honor of its flag. The French court, on the other hand, without entering on the question of Portuguese rights of sovereignty, refused all reparation; and it stood firm on the right of its subjects to the freedom of commerce with the whole of West Africa, claiming that that right had been acquired by them by long and uninterrupted exercise. There was not at the time any prospect of a peace negotiation, where Portugal might have hoped to retrieve her loss. France remained unyielding. At this juncture Spain tendered her good offices to bring about a compromise. The offer was finally accepted; and on Jan. 30, 1786, the plenipotentiaries of Portugal and France met at the Pardo {sic}, in Spain, and signed a convention in the nature of a series of declarations setting forth the claims of their respective states and amicably adjusting their differences.

On behalf of Portugal, it was declared that the construction of a fort on the coast of Cabinda was not intended to disturb, to weaken or to impair the right claimed by the subjects of H.M.C.M., the king of France, to the freedom of commerce and traffic on that coast in the way they had hitherto enjoyed it; that accordingly H.M.F.M., the king of Portugal, had issued precise instructions to the authorities on land and to the naval officers, as well as to his own subjects, not to offer, directly or indirectly, the slightest hindrance to

⁶ Martens, R. IV. 466; Castro, III. 348.

the said commerce; and he pledged himself, furthermore, to indemnify the subjects of France for all damages which they might sustain by reason of the violation of his orders.

On behalf of France, it was declared that the expedition of M. de Marigny had not been ordered with the intention of disturbing, weakening or impairing the right of sovereignty which the crown of Portugal claimed over the coast of Cabinda as part of the kingdom of Angola; that accordingly H.M.C.M. would issue orders to the neighboring governors and to the naval officers, as well as to his own subjects, not to offer, directly or indirectly, any obstacle or difficulty, either with the natives or otherwise, to the said sovereignty or to the exercise thereof; and he pledged himself, furthermore, to indemnify the crown of Portugal for all damages which it might sustain by reason of the violation of his orders as well as by reason of the demolition of the fort at Cabinda.

Finally, lest the question of indemnity should lead to subsequent disagreements, it was declared on behalf of France and of Portugal, that the existing claims of each against the other—as well the claims which French subjects might at that time have against Portugal for interference with their commerce, as those of Portugal against France for the demolition of the fort at Cabinda—should be remitted and cancelled.⁷

The recognition by France of Portuguese sovereignty over the coast of Cabinda, and the indirect recognition of that sovereignty over the rest of Angola, did not, however, quite fill the measure of the wishes of the cabinet of Lisbon; and it was found necessary to subjoin a protocol to the above convention and declarations. In this protocol the plenipotentiary of Portugal set forth that, it being the desire and the object of his master to define the limits of French commerce on the whole coast of Angola, he therefore proposed, with the view of avoiding fresh disputes in the future, that it be agreed that the said commerce should never extend to the southward beyond the Zaire and Cape Padron. The plenipotentiary of France observed that the commerce of the French in those regions should not be limited more than was that of the English and the Hollanders, who extended theirs as far south as the rivers Ambriz and Mossula. Thereupon the plenipotentiary of Portugal declared, that, to the south of the Zaire, the possessions of Portugal extended

⁷ Martens, R. 2, IV. 101; Castro, III. 41; Koch, II. 490.

as far south as the southernmost extremity of Benguela, stretching from the coast inland to the Congo and Casange; that there were situated on that territory several parishes and military outposts, and several villages and hamlets the sovereignty of which belonged exclusively to the crown of Portugal. That for this reason Portugal could not consent to recognize in any other nation a right to traffic on said coast, unless it be on that portion which lay north of Zaire; to the south of that river and of Cape Padron only Portuguese subjects were allowed to trade; and Portugal looked upon all other commerce or navigation, which the subjects of any nation whatever might have tried to establish in those regions, as furtive, clandestine and illicit, such traffic and navigation never having been authorized by Portugal, and that country never having lent its assent to such traffic. And, finally, that Portugal never would authorize or lend her assent thereto, but on the contrary would hinder and resist it.

The plenipotentiary of France announced himself authorized to reply to the representations made on behalf of Portugal, and to declare, in the name of his master, that the principles of justice and moderation which governed all his actions did not allow him to arrogate to himself the right either of contesting or of affirming the rights claimed by the crown of Portugal to the ownership, the sovereignty and the commerce of the coast of Angola from Cape Padron to the south; but that H.M.C.M. agreed that the commerce of his subjects should not extend further south than Cape Padron, provided always the subjects of France were treated in that respect the same as the subjects of any other state.⁸

Thus with admirable skill did the cabinet of Lisbon extricate itself from a serious difficulty, with a minimum of loss to Portuguese interests and with the acquisition of substantial advantages. Portugal sacrificed her exclusive colonial policy north of the mouth of the Congo, where, it would seem, she never had been able to enforce it strictly. But in return she succeeded in establishing it the more firmly over the larger and more important tract of land, besides obtaining from so powerful a state as France the full recognition, as against France herself, or Portuguese ownership and sovereignty over the whole territory of Angola.

Whether royal, republican or imperial, France was destined to remain yet

⁸ Martens, R. 2, IV. 103.

for some time an object of terror to Portugal. At the beginning of this century the court of that kingdom fled across the seas, to its dominions in Brazil, and its capital was occupied by the soldiers of France. The intimacy that had always existed between Portugal and Great Britain was naturally strengthened by these events. Five successive treaties of alliance were signed between these two states between the years 1807 and 1810. Among these, the treaty of Feb. 19, 1810, signed at Rio Janeiro, deserves special study in connection with the subject in hand. This treaty had two objects in view: first, to renew and render more solemn the alliance between the two states, both of which pledged themselves to unremitting efforts against France, while Great Britain assumed the further obligation never to recognize any but a prince of the house of Braganza as king of Portugal (articles i.–viii.); and, second, to provide for the gradual suppression of the slave-trade. It would seem the hard conditions of the times should have restrained Great Britain from exacting any sacrifices from the court of Rio Janeiro in return for the powerful aid which she was then giving that court. To oblige Portugal to suppress the slave-trade, was to inflict upon it a hard blow. Portugal had always driven a lucrative trade in negroes; and the importance of that trade was, just at that time, growing in proportion as the resources of Brazil and Cuba were being developed. The clause for the abolition of the slave-trade was insisted upon by Great Britain; the court of Rio Janeiro had no choice but to yield; and, by article x., H.R.H., the prince regent of Portugal, promised to coöperate with H.B.M. in adopting the most efficient measures gradually to suppress the slave-trade throughout his dominions; and not to allow his subjects, in the future, to trade in negroes on any part of the coast of Africa which did not belong to Portugal. The court of Rio Janeiro was, however, keenly alive to the dangers to which Portuguese sovereignty in Africa might be exposed by this concession; and, with far-sighted forecast, it took the precaution to provide against the danger by stipulating expressly, in the same article x., that nothing contained therein should be so construed as to render null or in any way to affect the rights of the crown of Portugal over the territories of Cabinda and Mollembo, H.R.H., the prince regent of Portugal, being determined not to abandon or to renounce his just claims to the said territories.⁹

⁹ Martens, N.R. I. 245; Castro, IV. 396; Calvo, V. 207; B. and F. State Papers, I. 547.

As one of the objects of this treaty was to guarantee the crown of Portugal to the house of Braganza against French usurpation, few things could be more significant than the clause regarding Portuguese sovereignty in Africa, a sovereignty which, in a manner, had been recently disputed by France. There is no evidence in this treaty or in the negotiations which preceded it, that England contested at the time or had ever contested the sovereignty of Portugal over Angola. This treaty supplied Portugal with a new title-deed to the coast of Cabinda and Mollembo; and it throws important light upon the actual political status of that coast down to the year 1810.

During the years immediately following the restoration of the exiled dynasty, the signing of treaties between Portugal and Great Britain continued to be a no less frequent occurrence than it had been since 1807. There was not, at this later period, any question of alliance; the *do ut des* principle could no longer be invoked; but the abolition policy to which the Portuguese government was driven in the days of its distress remained a fruitful source of discussion between the two states, and soon grew to be a vexed question. The treaty of 1810 had not been faithfully observed by Portugal. Great Britain was not disposed to relent. New promises were forced from Portugal, and a series of treaties, each more stringent than the other, was again concluded between them. Among these treaties, those of January 22, 1815,¹⁰ and July 28, 1817,¹¹ are again important as defining anew the extent of Portuguese dominion in West Africa. Article i. of the former and article ii. of the latter enumerate the territories in which the traffic in slaves should continue to be permitted under certain restrictions to Portuguese subjects, only on the ground that those territories were owned by Portugal. They were, upon the west coast, all the territory extending from the eighth to the eighteenth degree of south latitude; and "those territories to the south of the equator, over which H.M.F.M. declares that he retains his rights, namely, the territories of Mollembo and Cabinda, from the fifth degree to the eighth degree south latitude." In other words, these treaties recognized the sovereignty of Portugal over the whole western littoral of Africa, from the fifth to the eighteenth degree south latitude.

Although by these treaties the British cruisers were clothed with

¹⁰ Martens, N.R. II. 96; N.S. II. 253; Hertalet, II. 72; Castro, V. 18; Calvo, V. 328; B. and F. State Papers, II. 348; XI. 587, 688.

¹¹ Martens, N.R. IV. 458; N.S. II. 278; Hertalet, II. 80; Castro, V. 324; Calvo, VI. 70; B. and F. State Papers, IV. 85; XI. 689.

extraordinary powers of visitation and search, the trade does not seem to have been materially affected. Great Britain continued to complain;¹² she demanded and obtained from Portugal a decree fixing a date after which the trade should be absolutely interdicted;¹³ she then obtained from the same state a decree declaring the traffic in negroes to be a crime, and punishable by law;¹⁴ and, finally, seeing that notwithstanding all these precautions the slave-trade continued uninterrupted, especially in the ports of Cabinda and Ambriz, she questioned Portugal's right of sovereignty over the coast of Angola, alleging that those territories were evidently not occupied in a manner that was sufficiently effective and permanent. If the object of the cabinet of London, in resorting to such an extreme measure, was, as it is claimed, wholly disinterested, and if it was only intended to intimidate Portugal, it was highly successful. Portugal promptly agreed to the treaty of 1842,¹⁵ by which the trade was to be immediately suppressed; and the Portuguese officials at Cabinda and Ambriz, and all along the coast, were seized with unwonted zeal for the execution of their diplomatic engagements. The cabinet of London, it would seem, wished to stimulate this zeal; and, pursuing the new policy that had been inaugurated in 1842, it proposed to Portugal, in 1846, to recognize the sovereignty and ownership of the latter over Angola, provided that after a certain number of years, to be subsequently agreed upon, the Portuguese should make it appear to the satisfaction of the British government that the slave-trade was wholly suppressed in West Africa. The Portuguese minister at London considered it humiliating to his country to subject her rights of sovereignty to a contingency, and the proposition was rejected. But the question with Great Britain was becoming delicate. After hinting the doubts of 1842, and making the significant offer of 1846, the cabinet of London proceeded to a third stroke of policy: it protested against the military occupation by Portugal of any point on the coast of Angola; and it threatened to resist force with force.¹⁶

¹² B. and F. State Papers, VIII. 116.

¹³ *Ibid.*, XXIV. 782.

¹⁴ *Ibid.*, VIII. 18.

¹⁵ B. and F. State Papers, XXX. 448; Castro, VI. 374; Hertalet, VI. 625; Martens, N.R.G. III. 244.

¹⁶ B. and F. State Papers, XXVII.–XXXVII.: Correspondence between Great Britain and Portugal on the Slave Trade.

None of these moves were lost on the Portuguese government. It is true, they garrisoned the port of Ambriz in disregard of the threat of Great Britain; but at the same time they did not remit their efforts until the traffic in negroes was actually suppressed in that region, and until, on July 18, 1871, a treaty could finally be concluded with Great Britain declaring that the slave-trade no longer existed, and providing for the abolition of the slave-trade commissions and the recall of the extraordinary powers of visitation and search which had been conferred upon the cruisers on the coast of Angola.¹⁷

The prestige of Portugal in West Africa could not but suffer during the long period between 1810 and 1871. The presence of the slave-trade commissions and the watchfulness of the British cruisers tended inevitably to produce this result. But by the time the treaty of 1871 was signed, the authority itself of Portugal was greatly impaired on the coast of Angola. During this disturbed period, a number of factories, Dutch and French, had been suffered to go up; and the utterances of Great Britain since 1842 deprived the Portuguese government, as it would seem, of moral force to insist upon its exclusive prerogatives on the coast. But Great Britain was the only power that had ever pointedly questioned the rights of Portugal in Angola; and, moreover, in former days that same power had more than once acknowledged those very rights. The government of Portugal had regarded Great Britain's change of attitude as the outgrowth of an excessive zeal for abolition, and not as arising from any views founded in history or the law of nations; and it had acted upon this opinion. Nevertheless, when the presumable causes for the policy of Great Britain regarding Portugal's possessions in West Africa had at last ceased to exist, the cabinet of Lisbon opened negotiations with that of London to remove the cloud upon Portugal's title in that region. Nearly as the question concerned the honor of Portugal, it was of no immediate importance at the time when the first diplomatic notes were exchanged on the subject; and the matter was not pushed with vigor until the end of 1882. In 1882 the French explorations under M. Savorgnan de Brazza began to attract attention in Europe; the French press dilated upon their importance, and advocated their being pushed to the south. But M. de Brazza could not carry his explorations much further south, without entering upon domain which Portugal claimed as her own. Moreover, the explorations

¹⁷ Martens, N.R. XX. 511; B. and F. State Papers, LXI. 22.

under the leadership of M. de Brazza were not the only ones that began to alarm Portugal at this time. A geographical society which had been founded in Brussels, with King Leopold of Belgium as its president, and which subsequently gave itself the name and style of *The African International Association*, and later that of *The International Association of the Congo*, had lately been taking definite shape and assuming alarming proportions. It had endeavored, though without success, to retain the hero of the Tai-Ping rebellion to fight its battles on territories it claimed to have occupied in Central Africa; and it succeeded in enlisting Mr. H.M. Stanley to forward its plans by his exertions and the popularity of his name. Owing to the aggressive language which some of the members of the association began to hold in 1882, or perhaps because of the relationship existing between the reigning dynasties of Portugal and Belgium, the Portuguese government inclined to look upon the enterprise of the association as peculiarly menacing to the interests of Portugal on the Congo, and deemed it prudent to check its career betimes. These were the circumstances which, in the fall of 1882, caused the government of Portugal to feel that the time had come to take active measures looking to the final settlement of the status of the Congo. The negotiations with Great Britain, which had flagged since 1876, were, as a matter of course, first revived; and the Portuguese minister in London was instructed earnestly to solicit from Lord Granville a solution of the difficulties. He was to expose the situation on the Congo; without in any way alluding to the International Association of the Congo, he was to explain that it was not that Portugal feared encroachment on the part of France, but that the uncertainty regarding titles in West Africa, which had been created by Great Britain in 1842, endangered the situation; and that it was unwise to prolong such a state of affairs, lest actual occupation by a third power should complicate the matter and put the rights of Portugal in jeopardy.¹⁸

It was, however, not enough to treat with Great Britain only. The explorations of M. de Brazza could not be ignored; the factories of the Dutch on the Congo could not be argued out of existence; and the ear could not be shut to the pretensions of the International Association of the Congo, loudly urged as they were by many of its enthusiastic members. It was felt at Lisbon to be prudent to conciliate these interests, in order to secure to

¹⁸ *Mémorial Diplomatique*, 1884, p. 234.

Portugal the unmolested enjoyment of her rights. Consequently, at the same time that negotiations were conducted in London, the Portuguese ministers at Paris, Brussels and the Hague received instructions to sound the governments to which they were respectively accredited, in order to ascertain their views, and to secure their concurrence to the treaty which it was confidently expected the Portuguese minister at London would succeed in obtaining from Great Britain.

The reports of the Portuguese minister in Paris to his government were highly satisfactory. He believed he saw evidence that M. de Brazza and Mr. Stanley were not acting in concert, as had been apprehended in Portugal; the alleged treaties between Mr. Stanley and African chiefs were ridiculed by the members of the French cabinet, seeing that those treaties were concluded, on one side at the least, by a private individual and not by a constituted state. He found the government of France moved by the kindest feelings towards Portugal. He was set at ease on the score of the French press, and was assured France did not intend to extend her dominions on the Upper Congo without previous understanding with Portugal. France, he was told, looked upon the affair of the Congo in the light of a question that was strictly scientific; nevertheless, questions might arise which would fall within the province of the French government, and France would at all times act in accord with Portugal, whose good will, as one of the greatest African powers, it was in the interest of France to cultivate.¹⁹

The reports of the Portuguese minister from the Hague and from Brussels were less satisfactory. At the Hague he could make no impression with any argument based on the declarations of France and Portugal of 1786. The New Dutch Mercantile Association of Africa, having its headquarters at Rotterdam, was loudly calling upon its government to take active steps to prevent both France and Portugal from carrying out their designs of annexation in Central Africa, lest the Dutch government be later confronted with an accomplished fact; and the government listened with a willing ear.²⁰ At Brussels no word of comfort could be drawn for Portugal, either from the minister for foreign affairs himself or from Baron de Lambermont, who,

¹⁹ Archives Diplomatiques, 2de Serie. XII. pp. 284–321; Mémorial Diplomatique, 1884, pp. 681, 697, 727, 262.

²⁰ Mémorial Diplomatique, 1884, 329.

besides being general secretary for foreign affairs, was also secretary of the International Association of the Congo, and was soon to represent Belgium at the Berlin conference.²¹

In Great Britain, also, Portugal met with greater difficulties than had been anticipated. The justice of Portugal's claims was promptly admitted, and Lord Granville signified his readiness to conclude a treaty recognizing Portugal's sovereignty on both banks of the Congo; but he stipulated also that the treaty be drawn upon the further bases of establishment of freedom of navigation on the Zambezi river and all its tributaries, abolition of all monopolies on those watercourses, establishment of a liberal tariff with a low maximum in all Portugal's possessions in Africa, and, lastly, cession to Great Britain of all the claims of Portugal, of whatever nature, to all the territories situated on the west coast of Africa between the fifth degree east and the fifth degree west longitude. Distasteful as were to Portugal the conditions demanded for the recognition of her rights by Great Britain, she submitted readily to all except the last one. She objected, in the first place, that it was difficult to establish any boundaries in Central Africa with mathematical precision, as those boundaries depended in a great measure upon the oscillations of the colonizing movement; and in the second place, that she could not, without abdicating her dignity, renounce the right she had in common with all other powers of establishing colonies in the interior of Africa. Such a course would place her in a position inferior to that of other European states, whose rights to extend their possessions and to acquire new ones had never been denied or curtailed.²² The point was discussed with much pertinacity on both sides for a twelvemonth, until finally a settlement was reached on Feb. 26, 1884. On that day the treaty was signed which, known generally as the Anglo-Portuguese treaty,²³ has attained a certain celebrity.

In order to settle the disputes about sovereignty at the mouth of the Congo, to provide for the complete extinction of the slave trade and to promote civilization and commerce in Africa—so runs the preamble of this treaty—it was stipulated that Great Britain recognized the sovereignty of

²¹ *Mémorial Diplomatique*, 1884, 280.

²² *Mémorial Diplomatique*, 1884, 234.

²³ *Mémorial Diplomatique*, 1884, 216; *Archives Diplomatiques*, 2de Serie. XII. 299.

Portugal over the western coast of Africa, between the fifth degree, twelfth minute, and the eighth degree south latitude, and inland on the Congo as far as Nokki (article i.). That the navigation of the Congo and the Zambezi rivers, with their affluents, was to be open to all flags alike, and that all nationalities were to enjoy in those regions the same liberties as the Portuguese; that a mixed commission of the two states should have power to establish police regulations and to impose such taxes on navigation as might be needed to defray the costs of maintaining light houses and other necessary works; that no monopolies should prevail in the navigation and commerce which were thus opened; that said navigation and commerce were not to be encumbered with any internal imposts; and that the tariff of Mozambique should be adopted as a maximum for the space of ten years (articles ii.–xi.). Lastly, that St. Juan Baptista d’Ajuda should, in a certain contingency, be ceded to Great Britain by Portugal (article xiv.).

The cabinet of Lisbon had won its point of honor; and it won more than its point of honor, but not without making important concessions. Besides the contingent relinquishment of St. Juan, Portugal’s exclusive colonial policy on the Congo was a thing of the past. But in return her sovereignty was recognized over both banks of that water-course, and it was acknowledged to extend up to Nokki, where the river ceases to be navigable. This was the real point of importance. Having won this point, the Portuguese diplomat felt himself intrenched on unassailable ground. The most liberal, the most advanced utterances of the law of nations had not yet claimed that a river, both banks of which were owned by the same power up to the highest point where such river was navigable, could be treated as the common property of the world, and used as a common highway for the commerce and navigation of all flags. Armed with the treaty of February, 1884, the Portuguese cabinet cared little in what direction M. de Brazza pushed his explorations; and it felt itself protected against the International Association of the Congo. It believed firmly it had outwitted the hidden foes of Portugal, and demolished at least one lofty aspiration. It now hoped to enjoy the fruits of arduous labor.

The cry raised against the Anglo-Portuguese treaty immediately after it became known was loud; but it sounded like the cry of impotent rage. The opposition seemed utterly disorganized. Outside of Great Britain the treaty

was assailed on the ground that it conceded too much to Great Britain; in Great Britain it was assailed on the ground that it conceded too little. The International Association which had claimed the territory north of the mouth of the Congo was landlocked. The blow dealt to it demoralized the action of its associates, the manufacturing towns of Great Britain, and the commercial centers of the Netherlands, before all of whom Mr. Stanley had spread the prospects of fabulous gains to be derived from the absolute freedom of commerce and navigation on the Congo. The association itself seemed seized with a panic. It had relied upon the sympathy of the continental powers with its project and upon what it considered the irreconcilable conflict of Portuguese and British interests, to prevent the conclusion of a treaty between these two states. Now that the treaty was a fact, the association thought only of saving its disbursements; it was anxious to liquidate; and, perceiving no other way to escape the consequences of the treaty of February, it hastened, on April 23, to sign with France an agreement, which, on its face was suspiciously unilateral. Absolutely silent as to the *quid pro quo*, the agreement bound the International Association of the Congo not to cede any point explored by itself to any power, under the reserve of special conventions which it might later conclude with France; and it pledged the association to give to France the right of preference, if through any unforeseen circumstances it should be led to dispose of its possessions.²⁴

The discussion concerning the Congo had reached this point when a new figure stepped upon the stage; a figure of such magnitude, such power, and such controlling influence that it immediately became the central figure of all. The matter was forthwith taken from the hands of the British and Portuguese statesmen; the seat of the discussion was transferred to the capital of the German Empire; and in the hands of the German Chancellor the essence of the question underwent a radical change.

II. *The Intervention of Germany.*

Few subjects in modern times have given rise to more astonishment and more comment than the recent aggressive attitude of Germany upon the seas. Few subjects have supplied material for so many articles in journals and

²⁴ Archives Diplomatiques, 2de Serie. XII. pp. 326, 331.

magazines. The old saying that Great Britain only has both colonies and colonists, while France has colonies but no colonists, and Germany colonists but no colonies, has been quoted as a text upon which all manner of prophecies have been risked. The maxim, it is said, is about to receive an important qualification; and the reading public has been promised the novel sight of portentous German colonies dotting the globe in all directions. A large emigration of Germans to any of the regions and latitudes that are yet open to colonization, in the strict sense of the term, is however an ethnic absurdity. But whether the establishment of such colonies is or is not absurd, the whole line of conduct of Prince Bismarck, and the unswerving course of his policy, both foreign and domestic, as avowed by himself on the most solemn occasions, is designed to check the present wholesale abandonment of the fatherland. No measure that would tend to spur emigration can find a place in Bismarck's plans.

The statesmen of Germany and of France are to-day confronted by the same social problem: the problem of increasing the population of their respective countries. But while the problem is the same in France as it is in Germany, it presents itself in each of these countries under a different aspect. In France the population remains stationary because of the paucity of births; in Germany it increases indeed, but not in the measure of the country's necessities, because of the hugeness of emigration. In consequence, the expedients adopted to arrest the evil are different in each country. While in France these expedients savor of the enactments under Augustus to encourage marriage and the begetting of children, in Germany the scheme devised by Prince Bismarck to keep the Germans at home is to furnish them there with ample and gainful employment. No sooner were the first exploits of the German navy known, and no sooner had the press began to foretell the founding of German colonies, than Bismarck gave the first rough outlines of his policy in a speech before the Reichstag. He wished, he said, to found not provinces but commercial enterprises; his object was not to open new countries whither Germans might emigrate; his object was to establish *entrepôts* for German manufactures, and to insure to these manufactures free access to new markets. Bismarck's endeavors sped apace. At Angra Pequena, at Cameroon, at Samoa, at Fernando Po, Germany had gained a footing, and German industry could compete with all other untrammelled by

discriminating imposts. The time had now come to take the second, perhaps the last, step required in the peculiar colonial campaign upon which Bismarck had entered. To establish *entrepôts* for German products in remote corners of the world without insuring the speedy, regular and frequent conveyance of these products to those places might have been but a waste of strength. In order to supplement that which the German war marine had achieved, it became necessary to create a fleet of merchant steamers whose mission it should be to establish such speedy, regular and frequent intercourse between the ports of the empire and those *entrepôts*. Accordingly, Prince Bismarck promptly began to demand from the Reichstag credits for the establishment of the needed steamship lines, besides subsidies for pushing the explorations in Central Africa. Neither proposition met with favor in the Reichstag. Nevertheless, during the years 1884 and 1885 the matter was vigorously pressed by Bismarck; and he finally demanded a credit of five and a half millions of marks for the establishment of steamship lines to the East, to Australia, and to Africa. The importance of the question, as regarded Africa above all, led during these years to protracted debates; and these debates revealed the full scope of the colonial policy of Germany. They gave a complete insight into the reasons that caused its adoption; the methods, foreign and domestic, by which it was to be developed; and the important end it has in view.

The Chancellor was reminded of his promise not to open new fields for German emigration; he was warned to avoid conflicts with nations which, like Great Britain and France, had widespread colonial interests, and powerful navies to support them; and he was admonished not to impose upon Germany any greater burdens than she already bore. Von Moltke had declared that Germany would have to keep up her enormous armament fifty years longer. Herr Windhorst, the spokesman of the opposition, asked: "Are we strong enough to bear the additional burden of a naval force equally enormous?"

Bismarck disposed of the arguments that implied a fear of other powers, by declaring he did not expect to see the government of Great Britain alienate the friendship of Germany by any attitude hostile to the colonial development of the latter, and thus compel Germany to throw the weight of her influence against the interests of Great Britain when the Egyptian and other questions of importance should come up for a solution. And, as to France, he reminded

his opponents that she lay before the gate of sally (*Ausfallsthor*) of the fortress of Metz. No danger was to be apprehended from those sources. Moreover, Bismarck declared the fear that the colonial policy of Germany would necessitate the creation of a vast naval armament to be groundless for other reasons. That policy did not contemplate the establishment of any extensive colonial possessions requiring extensive armaments for their protection; on the contrary, having for its immediate object the opening of new channels to German commerce and industry, it only contemplated the establishment of *entrepôts* on the coasts whence Germany might introduce her manufactories into the interior. It was for this reason that, in Africa especially, the British threw so many obstacles in the way, not of the German government, but of the Germans themselves. It was for this reason that, with praiseworthy tenacity and energy, the British strove to keep and to extend their possessions in those latitudes; and their sole object was to be able to land the greatest quantity of British products possible, in order to dispose of them among the hundreds of millions of natives in the interior the moment the Africans should have acquired a taste for European products. Whatever charge might be brought against the British, they could not be charged with ignorance in business. What caused the middle classes of Great Britain to be in much easier circumstances than those of Germany? It was that Great Britain had many more millionaires than Germany. The larger the number of millionaires in Germany, the better off would she be: their millions would redound greatly to the benefit of the masses. It was the well-being of these masses, the Chancellor declared, he had at heart; and it was to compass their well-being at home, that the colonial policy of Germany was conceived. He was opposed to the foundation of colonies. Far was it from him to stimulate the exodus from the fatherland. His aim was to check the exodus by removing the necessity or the pretext for it, by furnishing plentiful and profitable occupation to the laboring classes, and thus rendering them happy and contented at home. What districts supplied the largest number of emigrants? It would be found to be the agricultural districts, where labor often lay idle. In the manufacturing districts emigration was reduced to a minimum. Increase the area of the manufacturing districts, the Chancellor urged, and the area of the districts that furnished emigrants, the area of the districts that bore citizens for foreign countries, would be diminished in

proportion. To increase the area of the manufacturing districts, it was a prerequisite to increase the demand for German manufactures. The first steps to this end were taken. Gates hitherto shut to German industry had been broken open; new markets had been found for that industry; all that remained to be done was to seize those markets; the credits asked for would complete the work.

Notwithstanding such lucid explanation, the measure was stubbornly opposed; the supporters of the government succeeded ultimately in saving the line to Australia only. The line to Africa was rejected in the teeth of Bismarck's strenuous efforts. Bismarck was touched in his most sensitive part by the bitterness of the resistance he had met; and, stirred by the failure of what he considered the most important portion of the important measure proposed by him, he addressed the Reichstag in language that was as significant as it was poetic. He said:

For the space of twenty years have I been pondering over the strange analogy so often noticeable between our history and our ancient mythology; and the thoughts that have come to me have often made me feel uneasy. In our mythology, whenever the gods were on the point of enjoying the pleasures of a splendid spring, the jealous Loki stepped in and stirred up dissensions and hatred among them. That spring of the year was enjoyed by us in 1866 when, with the aid of Providence, we untied the inextricable Gordian knot that impeded our national evolution. Such was the force of our tendency toward unification, that, after the lapse of not more than four years, no trace remained of the civil war, and the victors and the vanquished were found united against the foreign foe. I compare that epoch to the spring of which our mythology speaks. But it lasted only a few years after our victories of 1870. Whether the milliards have exercised this baneful influence I know not; but certain it is that Loki, our real hereditary enemy, . . . has risen anew; . . . and it is Loki whom I will arraign at the bar of God and of history if ever he succeed in destroying the magnificent work of Germanic unification which has been achieved with the sword.²⁵

After these debates, and after these closing remarks, there can be no doubt as to the meaning of the colonial policy of Germany, and as to the

²⁵ *Stenographische Berichte*, 1884, II. pp. 719–747, 1050–1087; *Europäischer Geschichtskalender*, Schulthess, 1884, VI. 14, 17, 18, 26; XII. 1; *Archives Diplomatiques, Chronique*, 1884–1885; *Mémorial Diplomatique*, 1884, 425; 1885, 39, 151, 183.

importance attached thereto by Bismarck. Upon the opening and keeping of new markets for the industry of Germany, Bismarck pins his hopes for the retention of the Germans at home; and upon this retention he evidently considers the perpetuity of Germanic unity to be in great measure dependent.

Nothing daunted by the resistance he was encountering at home, Bismarck had continued to pursue his policy abroad. His quick eye perceived that the state of the Congo controversy, after the treaty of Feb. 26, 1884, and the claims that had been set up by the International Association, offered him a rare opportunity to turn to profit the location of the island of Fernando Po, and to secure free access to the interior of Africa for German industry. The treaty of 1872,²⁶ the latest between Germany and Portugal, had left extant the restrictions imposed by Portugal on foreign commerce in Angola. Any objection to the Anglo-Portuguese treaty, based solely on former freedom of commerce in those regions, would have stood on weak foundations. Nor could the foothold acquired by Germany at several points of Africa give her a *locus standi* in the discussion. But the recognition by Germany of the International Association of the Congo, with all its sweeping territorial claims, or the seeming readiness on her part to make such a recognition, would supply the want. Of the two courses, the latter seemed to be the wiser for the moment; and that course Bismarck promptly adopted. The sinking hopes of the International Association of the Congo thereupon instantly revived; and with them the hopes of the boards of commerce of Manchester, Birmingham, and Glasgow, and of the Dutch and Belgian mercantile houses; and a new assault, more clamorous and vigorous than before, was made by these combined interests upon the course pursued by Lord Granville. Having in this manner first raised an organized opposition, and what seemed to be a widespread popular cry against the Anglo-Portuguese treaty, Bismarck proceeded to attack it in person; and from the commanding height he holds in the affairs of Europe, he aimed the unerring shafts of his diplomacy. He officially informed the cabinet of London that he did not think the treaty had any chance of being universally recognized; Germany, he frankly announced, was not prepared to admit the previous rights of any of the powers interested in the Congo trade as a basis for the negotiations; and she could not take part in any scheme for handing over the administration, or even the direction of trade and commerce, to Portuguese officials. In the interest of German

²⁶ Martens, N.R.G. XIX. 500; B. and F. State Papers, LXII. 43.

commerce, he declared he could not consent that a coast of such importance should be subjected to the Portuguese colonial system.²⁷

Although Bismarck believed that the diplomatic difficulties in which Great Britain was involved and the exposed situation of France enabled him to control the action of both, he adopted a very different line of policy toward each; he guarded against furnishing them with a common cause against Germany; and he strove to detach them from one another by drawing France over to his side at the same time that he attacked Great Britain. Accordingly, while he was imperious toward Great Britain, and in his note to London boldly refused to respect the previous rights of the parties interested on the Congo, his correspondence with France was dressed in the most conciliatory terms. He showed himself deferential to her government, and seemed considerate of the interests of the republic. Bismarck first broached to M. de Courcel, the French minister at Berlin, the question of extending the principles of the declaration of the Congress of Vienna to the river Congo; he then suggested the advisability of extending those principles to the river Niger also; of convening an international conference to this end, and of inviting the United States, Great Britain, Portugal, Belgium, the Netherlands, and Spain, to take part in the deliberations. M. de Courcel was informed that the wishes of France would be respected if she desired other nations to be invited besides those mentioned; and he was assured that no action should be taken by the proposed conference to force France to extend to her African possessions the principles which Germany wished to see enforced on the Congo and the Niger. And, finally, to leave nothing undone in this policy of propitiation, Bismarck expressed to M. de Courcel his willingness to abandon any point occupied by Germany in Africa, should such occupation be thought to conflict with the interests of France.²⁸ Great Britain was the only power of importance seated at the mouth of the Niger. The principles of freedom of commerce and navigation had not yet entered upon their first stages on that river; its navigation formed no part of the Anglo-Portuguese treaty; and it was jealously guarded by Great Britain. France had previously endeavored to enter the Niger, but without success. The prospect was now

²⁷ *The Congo*, Stanley, II. 384.

²⁸ *Archives Diplomatiques*, 2de Serie. XII. pp. 332–337; *Mémorial Diplomatique*, 1884, 664.

opened to her of enjoying this coveted privilege; and the privilege was to be enjoyed without the relinquishment by her of any of her exclusive rights over her African water-courses. The ill-will of Portugal, which the French government had but lately declared it was the interest of France to avoid, and the hostility of Great Britain, which, it might be thought, it should be slow in arousing, went for little with them. “*Das klug und richtig rechnende Frankreich*,” to use Bismarck’s own terms, seemed to find her account in seconding the views of the German chancellor, and in rendering him the valuable service of allowing her name to be joined to that of the empire, on the invitation that was soon to issue to the powers of Europe to meet in a conference at Berlin, where it was intended to victimize both Portugal and Great Britain.

The cabinets of Lisbon and London had intimation of the powerful opposition that was gathering against the treaty they had just concluded. In view of such an opposition, the ratification of the treaty would have been futile; it was decided it should be cancelled. But the cabinet of Lisbon did not yet give up its point of vantage. It made one more effort to restrict the controversy to the original issue; and it proposed a conference to the governments of Europe as the best means to settle their conflicting claims on the Congo. But the invitation that issued from Lisbon, although anterior in date, could not carry with it the weight of that that issued from Berlin shortly after. The powers of Europe and the United States were by this document informed that the governments of Germany and France concurred in believing that it was desirable to come to an agreement: first, on the question of freedom of commerce in the basin and at the mouth of the Congo; second, on the application to the Congo and the Niger of the principles which were adopted at the Congress of Vienna—principles which had in view the consecration of the freedom of navigation on several international rivers, and which were subsequently applied to the Danube; and third, on the establishment of formalities to be observed in order to render effective future occupations on the coast of Africa; and the powers addressed were invited to send representatives to the conference that was to meet at Berlin on the 15th day of November, 1884, in order to discuss and settle the matters above enumerated.²⁹

²⁹ [Europlischer Geschichtskalender, Schulthess, 1884, X. 6; Archives Diplomatiques, 2de](#)

III. *The Conference.*

The Berlin Conference met on the appointed day, in the palace of the German Chancellor, and in the same hall where, six years before, the Congress of Berlin had held its sittings. The assembly presented an imposing appearance. Every important state of Europe, with the exception of Switzerland and Greece, was represented; and, for the first time in history, a delegation from the United States took their seats with those of European powers at a diplomatic conference in Europe. Prince Bismarck was called to the chair, and opened the session with an allocution regarding the humanizing tendency of the Conference, and its international significance. He again enumerated the three points for whose settlement the Conference was convened; these, he said, were the objective points of the Conference; and as if apprehensive of delay and of the consequences that might result if the thorny questions regarding sovereignty were allowed to be raised, he closed his address with the declaration that the Conference would not consider them. Indeed, the questions of sovereignty on the Congo and the Niger were of no moment for the purposes Bismarck had in view. It mattered little to him who held or claimed the empty honors, so long as Germany derived the substantial benefits.³⁰

The exclusion of all questions regarding sovereignty shut out the elaborate brief which had been prepared on the subject by the representatives of Portugal; it cleared the atmosphere; and the Conference went to work immediately on the three points which were laid before it. The rapidity with which it disposed of these points showed that the principle part of its labors was accomplished before it had met. All that remained, apparently, was to ratify the decisions of the mastermind that had called it into being, and that directed its action. At the first sitting, Great Britain and Portugal gave in their adhesion to the application of the principles of absolute freedom of commerce and navigation to the Niger and the Congo. The adhesion of Portugal was given without qualification. A mixed commission, to be styled *The International Commission of the Navigation and Commerce of the Congo*, was thenceforth to be charged with superintending the application of the

Serie, XII. 363; XIII. 140; *Mémorial Diplomatique*, 1884, p. 731.

³⁰ *Europäischer Geschichtskalender*, Schulthess, 1884, XI. 15.

principles of freedom of commerce and navigation on that river. On the part of Great Britain the single point of honor was raised, that as she was the chief, if not the sole proprietor on the Lower Niger, it was her duty and her privilege herself to superintend the execution of those principles on that river; and the British delegate, Sir Edward Malet, stipulated that the surveillance over the execution of those principles should remain exclusively with his government. The two first points submitted to the Conference were thus settled without difficulty. The third and last was disposed of with equal ease. In order to render effective future occupations on the coast of Africa, it was agreed that prompt notice of such occupation should be given to the signatory powers; and the state making such occupation was furthermore required to establish and maintain in each case a sufficient authority to insure peace, and to uphold the rights assumed by it. After the settlement of these points, a number of secondary matters were introduced. In the introduction of these matters, Messrs. Sanford and Kasson, the representatives of the United States, took most active part; and it was mainly due to the ensuing discussions in committees, and on the floor of the Conference, that the sessions were prolonged until the end of February, 1885. It was thought necessary, in the first place, to define the basin of the Congo. Through the exertions of our representatives, supported by Mr. Stanley, our technical delegate to the Conference, the whole area of land drained by that river was included within the term, and placed under the jurisdiction of the *International Commission of the Navigation and Commerce of the Congo*. In the next place, Messrs. Sanford and Kasson endeavored to secure the adoption of a declaration binding the powers represented at the Conference to abstain from hostilities in the basin of the Congo, and to enforce the neutrality of the basin in case of war. In this they failed. After lengthy debates, the proposition was clearly shown to be chimerical; and in its stead a declaration was adopted by which the signatory states engaged to use their good offices to the end that, in case of war, the belligerent powers should not extend hostilities into the basin of the Congo, and should abstain from using said territory as a base for operations of war. Next to these propositions there came from the same source a series of well-meant motions regarding the treatment of missionaries, and the strictest enforcement of prohibition rules among the savages whom it was desired to civilize, but who were

suspected of rather strong anti-prohibition leanings. Here their efforts were partially successful. Finally, as if to give a practical counterpoise to their previous projects, Messrs. Sanford and Kasson introduced propositions for the establishment of railroad lines at certain important points in the basin. In this they failed. But if they failed it was not through want of persistence on their part. The motion was introduced three times; three times it was defeated; a fourth and last attempt was made a few weeks after, and a fourth time the proposition was rejected.³¹

The promptness with which a common accord was reached upon the three points that were submitted to the Conference did not, however, exclude all discussion. The discussion that took place, although not extensive, is of importance as showing of how little value—notwithstanding the language of the invitations, notwithstanding the appearance presented by the Conference, and notwithstanding certain expressions embodied in its declarations—were its decisions when looked upon strictly from the point of view of international law. Baron de Lambermont, the Belgian representative, was made chairman of the committee, to which was referred the question of “applying to the Congo and the Niger the principles which were adopted at the Congress of Vienna—principles which had in view the consecration of the freedom of navigation on several international rivers, and which were subsequently applied to the Danube.” It was to be expected that the report presented by the chairman of this committee would reflect the international spirit in which the invitation to the Conference was cast. In its preamble the report referred to the Congress of Vienna as having established certain general principles touching the freedom of navigation on the rivers whose free navigation was of *international importance*; it stated that the application of these principles had been extended more and more to other rivers of Europe and America; that these principles had received their final sanction by being applied to the navigation of the Danube; and, lastly, that the declarations which the Conference was invited to make on this subject would undoubtedly mark an epoch in the history of international law.

The wording of the invitations to the Conference, and the allusion therein made to the Danube, had aroused the suspicion of the cabinet of St.

³¹ *Mémorial Diplomatique*, 1884, pp. 721, 744, 753, 769, 785, 801, 817; 1885, Nos. 1, 2, 3, 4, 5, 6, 10, 11, 12, 13, 14; *Archives Diplomatiques*, 1885, III. 67, 181.

Petersburg. To guard against surprises, Count Kapnist, the best equipped Russian diplomat on Oriental questions, had been charged to represent the government of the Czar at the conference. Count Kapnist was the only delegate on the floor whose attitude was manly. He could afford to be independent. He had not come to the Conference under the pressure of danger to his government, as did Sir Edward Malet; nor with a feeling of utter impotence in the face of a vast coalition against his country, as did the representatives of Portugal; nor merely to carry out his part of the performance in a bargain into which his government had been cajoled, as did M. de Courcel; nor yet had he come to fill an empty role, as did the rest of the representatives. Count Kapnist was the watch-dog of the conference. His mission was to hold the delegates to the actual work before them, and to prevent them from launching into generalizations for which, at the moment, there was no adequate international crisis. The preamble of the report presented by Baron de Lambermont brought the Russian diplomat to his feet. He took exception to the spirit that pervaded the report, and he objected to its marked tendency to raise the resolutions of the Conference to the importance of doctrines of public law. In view of the maxim that silence might imply consent, Count Kapnist denied, in the first place, that the declaration of the Congress of Vienna referred to rivers whose free navigation was of *international importance*; that declaration spoke only of water-courses traversing or separating several states. He denied that the principles of the Congress of Vienna were being extended more and more to several other European rivers; the rivers on which several states bordered, and to which those principles had been applied, were, in Europe, principally the Rhine, the Elbe, the Meuse, and the Scheldt; in so far as the Count knew those principles were applied to those rivers *pure et simple*, perhaps even with some restrictions; but assuredly they had not been more and more enlarged. He denied that the principles of the Congress of Vienna in regard to fluvial navigation had been applied to the Danube, either in the spirit or the letter of several essential dispositions contained in the Final Act of that Congress; he asserted, on the contrary, that the dispositions contained in that Act had been materially altered in respect to the navigation of that river. Its mouth had to be opened at a time when a number of vassal principalities bordered thereon, which were not able themselves to defray the costs of the

undertaking. To that end, a European international commission was substituted in lieu of the riverine commission contemplated by the Final Act of the Congress of Vienna. This European commission had not lost the provisional character which attached to it from its origin. Count Kapnist challenged his colleagues to cite a single instance where article xv. of the treaty of Paris was applied. He doubted the existence of any such case, the explicit statements in the preamble of the report to the contrary notwithstanding. The system of an international commission to superintend the navigation of a river, Count Kapnist insisted, was an exception to and not an application of the rule established by the Congress of Vienna. The resolutions establishing such a commission for the Congo were also exceptional; the best proof thereof was that the Niger was to be subject to a totally different regimen. The government of Russia was willing, Count Kapnist declared, to join in the civilizing work of the Conference; but that government insisted upon the adherence on the part of the Conference to the exceptional character that typified it; and, so far from being willing to extend the bearing of the act on the navigation of the Congo, the government of Russia would acquiesce in its provisions only in case those provisions were expressly limited to those regions of Africa which were the legitimate subject of discussion before the Conference.³² The soundness of the arguments of Count Kapnist could not be denied. Each time he rose to what may be called a point of order—and those times were not a few—the members of the Conference felt themselves forced back to the domain of facts; and, what is of great significance, each time his views were accepted and his amendments adopted. The phraseology of the general declarations concerning navigation that were ultimately embodied in the General Act of the Conference, was accordingly purged of all generalizations. These declarations now tamely set forth that an act was discussed and adopted as to the navigation of the Congo and the Niger, which takes into consideration the local circumstances affecting these rivers and their affluents, the waters that are similar to them, and the general principles set forth in articles 108–116 of the Final Act of the Congress of Vienna, intended to regulate between the signatory powers to that act the free navigation of navigable water-courses that separate or traverse several states—principles that have been generally applied to the

³² *Mémorial Diplomatique*, 1885, No. 1, pp. 6, 71. No. 3, p. 41.

rivers of Europe and America, and notably to the Danube, with the modifications provided for by the treaties of Paris of 1856, of Berlin of 1878, and of London of 1871 and 1883.³³ Thus the position of the navigation of the Danube was rectified and accurately defined; the generalizations on the declarations of the Congress of Vienna, and on the principles of public law which that Congress was thought to have consecrated, were dropped; and the pregnant phrase concerning the rivers whose navigation was of *international importance*, disappeared.

What then is the significance of the Berlin Conference, and of the General Act³⁴ that emanated from it when viewed from the standpoint of international law? Was the Final Act of the Congress of Vienna further confirmed; or did the Berlin Conference carry the declarations of that congress one step further towards the establishment of the principle of freedom of navigation over navigable water-courses of *international importance*, whether such water-courses were or were not wholly within one state? Perhaps it was the secret and remote intention of Prince Bismarck to lay, by means of this Conference, the first foundation for the subsequent enforcement of this new principle. Perhaps he realized the obstacles he might in future encounter, were he at some later day, in order to bring himself within the principles of the declarations of Vienna, to be forced again, as he was forced this time, to recognize a new state on the borders of a navigable river, before he could demand admission for German bottoms on that river. If such, indeed, was in part his intention, it was frustrated by the watchfulness of Count Kapnist; and what might have been a step forward in the law of nations was prevented. Thus, viewed in the light of an international conference, the Berlin Conference only established two more exceptions to the declarations of the Congress of Vienna; it advanced no theory of international importance; it enunciated no new maxim of public law; it consecrated no principle of international jurisprudence.

To these conclusions, however, there may be cited one exception. The duties of a power, in order to entitle it to maintain its claims over newly-acquired territories, have not yet received from international bodies that consideration which the importance of the question demands. We learn from

³³ [Mémorial Diplomatique, 1885, 41.](#)

³⁴ [Mémorial Diplomatique, 1885, pp. 171, 185; The Congo, Stanley, App. 440.](#)

President Cleveland's message to Congress³⁵ that the Argentine Republic has revived the long-dormant claim for damages on the subject of the Falkland Islands. If traced to its source, this claim will be found to originate in an imperfect understanding of the rights conferred by original discovery. The affair of the Falkland Islands, the recent serious differences between Germany and Spain about the Carolinas, and numerous other instances of the same nature, show a defect in the law of nations in regard to the matter of new occupations, and are evidence of the importance of a common accord on that subject. The declarations of the Berlin Conference as to the formalities to be observed, and the measures to be taken, in order to render further occupations on the coast of Africa effective, is a move in the right direction. These declarations apply, it is true, only to the coasts of Africa; but the soundness of the principle that underlies them justifies the expectation, that they may at no distant day receive a general international sanction. With this single exception, the Berlin Conference contributes nothing to international jurisprudence. In fact, from the moment when the private and special wants of Germany were brought to bear upon the discussion that was going on in Western Europe, the diplomatic character of that discussion was virtually lost. Diplomacy became subservient to an economic and social question. The international garb was kept mainly with the view the better to conceal the private and exclusive interests which the Conference was intended to promote.

A critical review of the results of the Berlin Conference would not be complete without a few words on the Free State of the Congo, a political entity which, though it formed no part of the deliberations, must be considered as the legitimate issue of the Conference. To enter on the Congo under the existing rules of public law, Bismarck was constrained to supply a neighbor to Portugal on that river. Accordingly, on Nov. 8, 1884, a week before the meeting of the Conference, a treaty was concluded between the German Empire and the International Association of the Congo, wherein the former declared its readiness to recognize the territory of the association, and of the new state about to be founded, "as indicated on the map annexed hereto."³⁶ This map was not then and has not since been made public.

³⁵ Dec. 7, 1885.

³⁶ *Europäischer Geschichtskalender*, Schulthess, 1884, XI. 8; *Mémorial Diplomatique*, 1884, 774; *Archives Diplomatique*, 1885, III. 133; *The Congo*, Stanley, App. 421.

Promptly upon the publication of this treaty, most of the powers represented at the Conference entered into diplomatic relations with the representatives of the new state, then already calling itself the Free State of the Congo, and concluded with them treaties of recognition, friendship, commerce, and navigation.³⁷ Last among European states to enter into relations of friendship with the Free State of the Congo was Portugal. She had still hoped that no further sacrifices would be asked of her after the complete relinquishment of her colonial privileges on the Congo; but finally she submitted to this most unkindest cut of all, and, with the mediation of France, her representatives signed a treaty³⁸ with those of the Free State the day before the Conference adjourned. The treaties with France, Great Britain, and Portugal together define the boundaries of the Free State. The possessions of these three powers in Africa surround it almost entirely. To the east it reaches the sources of the Nile; to the north and south it occupies nearly the whole of Central Africa; and to the west, Portugal ceded to it a narrow strip of land, lying between her possessions of Cabinda on the north and the estuary of the Congo on the south, thus giving it an opening to the Atlantic. Having obtained European sanction, the Free State proceeded to evolve a visible head. King Leopold, of Belgium, was appointed its ruler;³⁹ and, thus equipped, this novel political structure started on its career with the millions of subjects it contains blissfully ignorant of their elevation to the rank of a nation, and with a number of enterprising men, societies and syndicates to manage its concerns and to make their fortunes out of it. The organization of the Free State, if it has any organization at all, is almost entirely mercantile. The chances of life of such a state in our century seem to be slim; mercantile sovereignties seem to be institutions of the past.

We cannot turn from the contemplation of the Berlin Conference without mixed feelings: admiration for the giant intellect in the chair, and the reverse of admiration for the pigmies who occupied the floor. While M.M. de Courcel, Lambermont, Launay, Benomar, and the representatives of Denmark, the Netherlands, Sweden, and Norway, together with Messrs. Sanford, Kasson, and Stanley, strutted over the stage, believing they had in hand weighty

³⁷ *Mémorial Diplomatique*, 1885, pp. 232–233, 247–248; *Archives Diplomatiques*, 1885, III. 130–147; *The Congo*, Stanley, App. 423–429.

³⁸ *Mémorial Diplomatique*, 1885, 247; *Archives Diplomatiques*, 1885, III. 144; *The Congo*, Stanley, App. 431.

³⁹ *Archives Diplomatiques*, 2de Serie. XIII. 225.

questions of international law and were originating principles of far-reaching importance, they were, in fact, one and all, either led or driven as Prince Bismarck pointed the way, for purposes with which they had no concern. Most to be regretted by an American was the spectacle presented by the delegation from our own country. In view of the traditional foreign policy of the United States, towards Europe especially, it was singular to behold this country, of a sudden, not only participating in a conference called into being by European rivalries, but going so far as to endeavor to lay the foundation for future international entanglements of the most serious nature. The efforts of Messrs. Sanford and Kasson to extend the basin of the Congo, and to bind the powers represented at the Conference to enforce the neutrality of that basin, in case of war, looked like a departure by the United States from its time-honored policy. It was so understood in Europe. And, so understanding it, it was applauded by the statesmen of those nations whose raids on the American hemisphere had been balked by the application of the Monroe doctrine; for the logical counterpart of that doctrine is the policy of non-interference in Europe.

Nor was the principle of non-interference in European affairs the only American principle which the attitude of our delegation tended to weaken. In the discussion with Spain regarding the territory comprised within the Louisiana purchase, and subsequently in the discussion with Great Britain regarding the Columbia River, it was maintained on the part of the United States that the nation which discovered and occupied a coast line where lay the mouth of a river, or which discovered and occupied the mouth of a river, whether such discovery was made by an authorized agent or not, acquired by so doing constructive possession of the whole basin drained by such river. This position was philosophic, but it was novel in the law of nations; it was combated in Europe, but it was insisted upon in the United States. Our State Department has more than once taken a position in advance of its times, and which was denied abroad; in such cases, its policy has been to wait until the ripening of the times should bring about a general acceptance of its views. The Berlin Conference was an excellent platform from which Messrs. Sanford and Kasson might have enunciated anew the views of their government. The mouth of the Congo, and a considerable extent of coast line north and south of that river, had been discovered by an authorized agent of the Portuguese

government, and had been occupied by Portugal. Whatever her shortcomings might have been on that coast, Portugal was sovereign over Angola. It was not for the representatives of the United States to assist at the carving of a new state on the Congo out of territories which, according to American principles, were Portuguese; and thus to abandon, without any assignable cause, the position which their government had taken on two former and notable occasions.

However, the harm done in these two instances could, to some extent, be remedied. Our present administration has decided to withhold the General Act of the Conference from the Senate, and thus the government of the United States will not stand officially committed by the action of its representatives. But there is one consequence attending the presence of our representatives at the Berlin Conference, which no action on the part of the administration can now avoid. Had the Conference met at Lisbon, at Paris, or at London, the United States might have been represented without special injury to her interests. But the Conference at Berlin was one of {a} series of measures adopted for the special purpose of checking the emigration from Germany; the bulk of this emigration comes to our shores; and of all ethnic alloys which the people of this country receives, that which proceeds from Germany is the most valuable. The bare presence of a delegation from the United States at Berlin increased the effectiveness of the Conference in the accomplishment of its special purpose; and that purpose assuredly was not to the interest of the United States.

These were the grossest political blunders of our representatives at the Berlin Conference; but there were others, though of minor importance. They rocked the cradle of a most singular kingdom. They advanced political theories so naive and of such primitive simplicity, that their views were, in mild derision, styled Arcadian by their colleagues. And, finally, their instinct for enterprise so far overcame the diplomatic character with which they were clothed, that they left an unpleasant suggestion of speculation behind them.

The Conference closed its sessions on Feb. 26, 1885, and its General Act has been ratified by all the powers who participated in the deliberations, except the United States. Since then, and fortified with the new advantages he has secured for Germany, Bismarck has returned to the charge in the Reichstag, and is anew engaged in proving the needfulness of credits for the

establishment of steamship lines between Germany and the new markets that have been opened to her industry. Loki may be stirring. Though frequently presented and strongly urged, the credits demanded may continue to be refused. Ethnic causes may be silently at work that may counteract the efforts of Prince Bismarck to solve the social problem with which he is grappling. But whether he be successful or not, the Berlin Conference will stand as a monument of the restless activity of the man who, overlooking no opportunity, and spurning no means which his genius may suggest or which accident may create, steadily pursues his life's aim of welding into one self-reliant and stable nation the German-speaking peoples that are settled in the valleys of the Rhine, the Weser, the Elbe, the Oder, the Vistula, and the Danube.

DANIEL DE LEON.

[Transcribed by Robert Bills for the official Web site of the Socialist Labor Party of America.
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