# RUSSIA.

## EXTENSION BY RUSSIA OF THE THREE-MILE LIMIT OF TERRITORIAL WATERS TO TWELVE MILES FOR CUSTOMS PURPOSES AND CONTROL OF FISHERIES.

File No. 861.0145.

*The Russian Embassy to the Department of State.*

[Memorandum.]

The British Government contend that a law recently promulgated in Russia and subjecting to the Russian customs regulations the waters of the sea within 12 nautical miles from the Russian shores, is contrary to the principles of international law.

Sections 2760, 2867 and 3067 of the Revised Statutes of the United States provide for a zone of 4 leagues (equal to 12 miles) within which the authority of the United States customs officers is exercised.

In view of the above-stated contention of the British Government, the Imperian Russian Foreign Office is anxious to learn whether the British Government have ever protested against the enactment of the American law, either when it was originally passed or at a later date, and what was the nature of the reply offered by the United States to such a protest.

IMPERIAL RUSSIAN EMBASSY,
*Washington, April 12, 1910.*

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File No. 861.0145.

*The Department of State to the Russian Embassy.*

[Memorandum.]

Referring to the inquiry contained in the memorandum of the Russian Embassy of the 12th instant, in connection with the subject of the Russian law assuming, for customs purposes, a jurisdiction of twelve nautical miles from the coasts, it may be stated that there is no record of any protest having been made at any time by Great Britain against the enactment of sections 2760, 2867 and 3067 of the Revised Statutes of the United States providing for a zone of four leagues from the coast within which the authority of the United States customs officers is exercised.

DEPARTMENT OF STATE,
*Washington, April 18, 1910.*

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File No. 861.0145/2.

*The American Ambassador to the Secretary of State.*

No. 363.] AMERICAN EMBASSY,
*St. Petersburg, September 30, 1910.*

SIR: I have the honor to transmit herewith a copy and translation of a law approved by the Emperor December 10/23, 1909, and pro-

mulgated January 1/14 last, whereby the area of supervision by the Russian customs authorities is extended to twelve marine miles from low-water mark.

I learn from the British Embassy that shortly after the promulgation of this law, the British Government gave notice that with reference to this question it reserved the rights of its subjects as fixed by international usage. The Russian Government replied that, in the absence of treaty provisions to the contrary, the determination of the limits to which customs supervision could be extended was a question not of international usage but of domestic regulation; and it instanced similar enactments of other Powers, including the United States (presumably referring to section 2760 of the Revised Statutes, quoted in Moore's Digest, I, 725, § 151); and it asked for a more precise statement of the rights which the British Government had declared its intention of reserving. The British Government thereupon expressed its unwillingness to acquiesce under any circumstances in a claim to jurisdiction over marginal seas beyond the generally recognized three-mile limit. To this expression of views the Russian Government has not yet replied.

I am informed from the same source that, notwithstanding some misleading comment published at the time, the recent seizure of the British steamer *Onward* (as to which a Russian official communiqué was transmitted in this Embassy's No. 277 of July 20 last) did not involve the question raised by this law: the *Onward* was seized on the charge of fishing within Russian territorial waters; but she was voluntarily released by the Russian Government upon its appearing that when arrested she was, though perhaps within twelve miles of a line from headland to headland of the White Sea, at a distance of more than twelve miles from the shore. The case is therefore of no significance as indicating the intention of the Russian Government to insist upon the extension of its territorial control over the marginal seas, whether for customs purposes only, or for other jurisdictional purposes.

One of the Secretaries of the Japanese Embassy has recently made inquiry of this Embassy as to the attitude of the Department of State on this question. While careful not to make any specific statement, he gave the impression that his Government is endeavoring to learn the attitude of the other Powers with a view to remonstrating against the Russian claim if it finds that it may rely upon support in such a protest.

I am informed by the German Embassy that its Government has not made any remonstrance in this matter; whether it intends to do so I have not yet been able to learn.

I have therefore the honor to request that the Department instruct me what action, if any, it desires me to take in regard to this question.

I have [etc.]

W. W. ROCKHILL.

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[Inclosure.—Translation.]

*Law extending the Maritime Customs area.*

Law approved by the Council of Empire and by the Imperial Duma, and supremely confirmed, concerning the extension of the maritime customs area.

To interpret in the following manner the fourth paragraph of the supplement to paragraph 2 of the Customs Regulations (*Collection of Laws, volume VI, Edition of 1904*):

1. The surface of the water for twelve marine miles from extreme low-water mark from the seacoasts of the Russian Empire, whether mainland or islands, is recognized as the Marine Customs area, within the limits of which every vessel, whether Russian or foreign, is subject to supervision by those Russian authorities in whose charge is the guarding of the frontiers of the Empire.

*The President of the Council of Empire,*
M. AKIMOFF.

So be it.[1]

At LIVADIA
*December 10[2], 1909.*

Countersigned: *Imperial Secretary,*
MAKAROFF.

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File No. 861.0145/2.

*Memorandum of the Solicitor's office of the Department of State.*

[Memorandum.]

OFFICE OF THE SOLICITOR,
DEPARTMENT OF STATE,
*Washington, December 28, 1910.*

MUNICIPAL SEIZURES BEYOND THE THREE-MILE LIMIT.

The American Ambassador at St. Petersburg reports that the Emperor has approved a law promulgated January 1/14, 1910, whereby the area of supervision by Russian customs authorities has been extended twelve marine miles from low-water mark. Inasmuch as enforcement of this law may lead to seizures of American vessels beyond the ordinary limit of territorial waters, it is necessary to examine the question whether such seizures would be consistent with rules of international law.

The British "Hovering Act" of 1734 assumed for certain revenue purposes a jurisdiction of four leagues from the coast by prohibiting foreign goods from being transshipped within that distance without payment of duties. Boyd says this act has long since been repealed and the present legislation distinguishes as to extent of jurisdiction claimed for revenue purposes between British ships and foreign ships. There is no longer any authority under British law to visit foreign vessels beyond the three-mile limit. (Boyd's Wheaton, 241). Hall, however, states that within 4 leagues any customs officer may board and demand the manifest of any ship. (Hall, For. Juris. 243.)

The United States in 1797 passed a similar law (probably suggested by the British Act) which has been incorporated in Revised Statutes, section 2760, which reads as follows:

They [officers of the revenue cutters] shall go on board all vessels which arrive within the United States or within four leagues of the coast thereof, if bound for the United States, and search and examine the same, and every part

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[1] "So be it" on the original is written in His Imperial Majesty's own hand. (Note by the Minister.)
[2] December 23, 1909, new style.

thereof, and shall demand, receive, and certify the manifests required to be on board certain vessels, shall affix and put proper fastenings on the hatches and other communications with hold of any vessel, and shall remain on board such vessel until they arrive at the port or place of their destination.

The fact that the territorial limits have been in some cases fixed by treaty (for example, Treaty of Guadalupe Hidalgo, 1848, Art. V), or changes suggested by that method (1 Moore, 732), would seem to show how definite and fixed nations regard the three-mile limit of territorial waters. The question of municipal seizure on high seas appears to be left open by the conventions of The Hague Conferences and the London Naval Conference. As indicating the attitude of the political department of the American Government, the following expressions of Secretaries of State may be given:

Mr. Fish, Secretary of State, wrote to the British Minister in 1875, in regard to the treaty of Guadalupe Hidalgo, and the act of Congress on revenue seizures, that:

> We have always understood and asserted that, pursuant to public law, no nation can rightfully claim jurisdiction at sea beyond a marine league from its coast. * * *
>
> It is believed, however, that in carrying into effect the authority conferred by the act of Congress referred to, no vessel is boarded, if boarded at all, except such a one as, upon being hailed, may have answered that she was bound to a port of the United States. At all events, although the act of Congress was passed in the infancy of this Government, there is no known instance of any complaint on the part of a foreign Government of the trespass by a commander of a revenue cutter upon the rights of its flag under the law of nations. (1 Moore, 731.)

In 1879, Secretary of State Evarts instructed Mr. Foster, American Minister to Mexico, that—

> An attack by Mexican officials on merchant vessels of the United States, when distant more than three miles from the Mexican coast, on the ground of breach of revenue laws, is an international offense, which is not cured by a decree in favor of the assailants, collusively or corruptly maintained in a Mexican court. (1 Moore, 731.)

Secretary of State Evarts in 1881, writing to the Minister to Spain concerning the visitation and firing upon four American vessels near the Island of Cuba in 1880, said:

> This Government must adhere to the three-mile rule as the jurisdictional limit, and the cases of visitation *without that line* seem not to be excused or excusable under that rule.
>
> This Government frankly and fully accepts the disclaimer of the Government of His Majesty that any intention of discourtesy existed in these proceedings. It insists, however, on the importance of a clear understanding of the jurisdictional limit. It insists, likewise, on the distinction between the verification (according to the usual procedure of revenue cruisers), within a reasonable range of approach of vessels seeking Spanish ports in the due pursuit of trade therewith, and the arrest by armed force, without the jurisdictional three-mile limit, of vessels not bound to Spanish ports. (1 Moore, 732.)

The validity of seizures under the above and similar municipal acts has been the subject of comment by various writers on international law. Mr. Dana in his notes to his edition of Wheaton says:

> Doubtless States have made laws for revenue purposes touching acts done beyond territorial waters, but it will not be found that, in later times, the right to make seizures beyond such waters has been insisted upon against the remonstrance of foreign States, or that a clear and unequivocal judicial precedent now stands sustaining such seizures when the question of jurisdiction has been presented.

He criticises the statute of the United States, which, he says—

does not authorize a seizure of a foreign vessel when beyond the territorial jurisdiction. The statute may well be construed to mean only that a foreign vessel, coming to an American port, and there seized for a violation of revenue regulations committed out of the jurisdiction of the United States, may be confiscated; but that, to complete the forfeiture, it is essential that the vessel shall be bound to and shall come within the territory of the United States after the prohibited act. The act done beyond the jurisdiction is assumed to be part of an attempt to violate the revenue laws within the jurisdiction. * * * If the foreign vessels have been boarded and seized on the high seas, and have been adjudged guilty, and their Governments have not objected, it is probably either because they were not appealed to or have acquiesced in the particular instance from motives of comity.

After reviewing the cases Church *v.* Hubbart, 2 Cranch, 187 and 234; Rose *v.* Himely, 4 Cranch, 241; Hudson *v.* Guestier, 4 Cranch, 293, 6 Cranch, 281; The Louis, 2 Dods, 245, Dana concludes:

It may be said that the principle is settled that municipal seizures can not be made for any purpose beyond territorial waters,

that is, beyond the marine league.

These and other cases will be briefly reviewed:

Church *v.* Hubbart (1804), 2 Cranch, 187, appears to be the earliest American case. The plaintiff took out two policies of insurance on the cargo of the *Aurora*, bound on a voyage from New York to Portuguese ports in Brazil. In one policy was the exception "not liable for seizure by Portuguese for illicit trade," and in the other, "insurers do not take risk of illicit trade with the Portuguese." The *Aurora* cleared from New York for the Cape of Good Hope, but went directly to Rio de Janeiro, where she remained fifteen days, and openly sold $700 worth of goods. Thence she went to Pará on the Brazilian coast, falling in on the way with a schooner. Both anchored four or five leagues from land, off the mouth of the Pará river, and in Pará bay. A longboat was put off to speak a boat inshore for the purpose of securing a pilot to carry the two vessels up the river, in order that they might get wood and water, and, if permitted, sell their cargo. Shortly afterward the captain went aboard the schooner and sailed in towards the shore, and brought to, by two shots, a Portuguese schooner and compelled her master to come aboard, but he was later taken ashore in a longboat. The crew of this boat were imprisoned upon shore, and two days later three armed boats came out from Pará and seized the *Aurora* and her companion and imprisoned the crews for attempting to trade in violation of the Portuguese laws prohibiting foreigners from trading with Portuguese colonists. These laws do not state any certain distance from shore within which they apply. Action was brought by the plaintiff to recover on the policy of insurance for the loss of his cargo. *Held* that no recovery was due because of the exception expressed in the policies, and, it would seem, because the application of the Portuguese law beyond the three-mile limit is not contrary to international law. The court admitted that illicit trade was such only as was contrary to some law. Chief Justice Marshall in delivering his opinion said:

* * * A nation has a right to prohibit any commerce with its colonies. Any attempt to violate the laws made to protect this right is an injury to itself which it may prevent, and it has a right to use the means necessary for its prevention. These means do not appear to be limited within any certain marked boundaries, which remain the same at all times and in all situations. If they

are such as unnecessarily to vex and harass foreign lawful commerce, foreign nations will resist their exercise. If they are such as are reasonable and necessary to secure their laws from violation, they will be submitted to.

In different seas and on different coasts a wider or more contracted range in which to exercise the vigilance of the government will be assented to (2 Cranch, 234).

Of this decision Mr. Dana said:

It is true that Chief Justice Marshall (in Church *v.* Hubbart) admitted the right of a nation to secure itself against intended violations of its laws by seizures made within reasonable limits, as to which, he said, nations must exercise comity and concession, and the exact extent of which was not settled; and in the case before the court the four leagues were not treated as rendering the seizure illegal. This remark must now be treated as an unwarranted admission. The result of the decision is that the court did not undertake to pronounce judicially, in a suit on a private contract, that a seizure of an American vessel, made at four leagues by a foreign power, was void and a mere trespass.

Rose *v.* Himely, 4 Cranch, 241, was the case of the American ship *Sarah*, which after trading at several ports of Santo Domingo sailed with a cargo purchased there for the United States. At ten leagues from the Santo Domingo coast she was seized by a French privateer (February 23, 1804) and taken to Barracoa, a Spanish port in Cuba. There she and her cargo were sold by the captors (March 18, 1804) before condemnation, but under the authority of the French "Agent of Santo Domingo," and the greater part of the cargo was bought by the master of an American vessel, transshipped, and taken to Charleston, South Carolina. The plaintiff, Rose, supercargo of *Sarah*, libeled the cargo in the United States on behalf of the original owner. After sufficient time had elapsed to have heard of these libel proceedings, the French captors began proceedings in the Santo Domingo court, which entered a decree of condemnation (about July 15, 1804), on the ground of trading with Santo Domingo contrary to an arret of March 1, 1804, forbidding trade with Santo Domingo ports, except the port of Santo Domingo, and providing for the seizure of "generally every vessel * * * found at a less distance than two leagues from the coast." *Held*, restoration to Rose (that is, decision of Santo Domingo court reversed) by opinion of five judges: two judges, including Chief Justice Marshall, on the ground that it was a seizure under a municipal law, which has effect only within the territory of the sovereign, and not on the high seas as in war; hence possession thus gained by the captor is unlawful, and is therefore possession by the captor alone, and not by the sovereign, and such illegal possession by the captor confers no jurisdiction on the court of the sovereign in Santo Domingo to condemn the property lying in another country; three judges, on the ground that the vessel, crew and supercargo never having been brought within the jurisdiction of the Santo Domingo court or the dominion of the sovereign, that court never had jurisdiction and its sentence is to be disregarded. Two justices dissented. No point is made in the decision of the fact that the arret was issued after the date of seizure, and no mention appears to be made either in the argument or opinion of the case of Church *v.* Hubbart, supra.

Hudson *v.* Guestier, 1808, 4 Cranch, 293, was similar to the case of Rose *v* Himely, except that the seizure of the vessel *Sea Flower* was made within the territorial jurisdiction of Santo Domingo and

carried into a Spanish port of Cuba. While lying there, proceedings were regularly begun in the French court at Guadaloupe, which condemned both cargo and vessel. *Held* by a majority of the judges, including Chief Justice Marshall, that the decision of the circuit court below for the plaintiff should be reversed (that is, no restoration for the claimant, and the decision of the Guadaloupe court upheld) on the ground that the seizure being made within territorial jurisdiction was indisputably a valid seizure and vested lawful possession in the sovereign (not in the captor, as in Rose *v.* Himely), and on the ground that while the sovereign has possession of the *res* the sentence of his court can be executed; hence this possession is an essential fact on which the jurisdiction of the court depends. The court added that while the sovereign has possession the courts of the country where the *res* is taken have no authority to decide the cause or divest the authority of the sovereign's courts, at least unless there be such delay in proceeding to condemnation as to justify the opinion that no such proceedings were intended, and thus convert a seizure into a trespass. Two judges dissented from this opinion on the ground that the vessel must be brought into a port of the captor's court before the court of that country had jurisdiction.

The same case came before the United States Supreme Court again (6 Cranch, 281) after a new trial in the lower court, and the question was thus stated in the words of J. Livingston delivering the opinion:

> Considering it, then, as settled that the French tribunal had jurisdiction of property seized under a municipal regulation, within the territorial jurisdiction of the Government of Santo Domingo, it only remains for me to say whether it will make any difference if, as now appears to have been the case, the vessel were taken on the high seas, or more than two leagues from the coast.

*Held* by the majority of the judges that the decision of the circuit court for defendant be affirmed (that is, no restitution to the claimant, and the decision of the Guadaloupe court upheld), on the ground that the sovereign acquired lawful possession through the seizure by the captor though made on the high seas, or in the words of the court:

> If the *res* can be proceeded against when not in the possession or under the control of the court (as decided in Hudson *v.* Guestier, 4 Cranch, 293), I am not able to perceive how it can be material whether the capture were made within or beyond the jurisdictional limits of France, or in the exercise of a belligerent or municipal right. By a seizure on the high seas she interfered with the jurisdiction of no other nation, the authority of each being there concurrent. It would seem also that if jurisdiction be at all permitted where the thing is elsewhere, the court exercising it must necessarily decide, and that ultimately, or subject only to the review of a superior tribunal of its own state, whether in the particular case she had jurisdiction, if any objection be made to it. * * * Even if the reasons of his judgment (judge of Guadaloupe court) should not appear satisfactory, it would be no reason for a foreign court to review his proceedings, or not to consider his sentence as conclusive on the property. (6 Cranch, 284–285.)

One judge, Chief Justice Marshall, dissented, it would seem, on the ground that the sovereign had no lawful possession because the ship was taken on the high seas. He observed:

> that he had supposed that the former opinion delivered in these cases upon this point (Rose *v.* Himely) had been concurred in by four judges, but in this he was mistaken.

The opinion was concurred in by one judge. He was still of the opinion that the construction then given was correct. * * *
However, the principle of that case (Rose *v.* Himely) is now overruled.

In the face of this statement of Chief Justice Marshall, Dana says, "the judges differed in stating the principle of this case and of Rose *v.* Himely, and the report leaves the difference somewhat obscure."

Williams *v.* Armroyd, 1813, 7 Cranch, 423. The schooner *Fortitude*, owned by the plaintiff, an American citizen, while on a trading voyage from New London, Connecticut, to Martinico, a British colony, during the war between France and England was seized on high seas by a French privateer for trading with the enemy contrary to the French decree (Milan decree) and taken to St. Martins (French) to await trial. Later the prize master left St. Martins for Guadaloupe with the ship's papers on the pretense of beginning proceedings. Two weeks later she and her cargo were sold by order of the Governor of St. Martins. Part of the cargo was then transshipped and taken to Philadelphia, consigned to the defendant. Three weeks after the sale the Guadaloupe court condemned both ship and cargo for trading contrary to the Milan decree. The plaintiff libeled the Governor upon arrival in the United States. *Held*, no restoration, on the ground that the sentence of a competent court *in rem* is conclusive and passes an absolute change of property. No court of coordinate jurisdiction (as a court of another country) can examine the sentence, consequently its conformity to public or municipal law cannot be inquired into by such court. Hudson *v.* Guestier, it was said, fully established this principle.

It was contended that the sentence of the Guadaloupe court did not change the property because: (1) The sale was made before the decree of the court, and thus possession passed over to the purchaser, but the court held that the purchaser held possession through and for the captor, and the sentence reverted back to time of capture and affirmed it. (2) Because the Milan decree was contrary to international law, but the court held that it cannot revise the sentence under the decree, even if erroneous or if Congress had said without more that the decree was a violation of international law. The conclusion of the court seemed to be that the sentence of the Guadaloupe court bound the property concerned, whatever might be the opinion of coordinate courts as to the sentence or as to the laws under which it was rendered.

*Le Louis*, 1817, 2 Dods., 210. This was a French-owned ship with a French register pass, etc., on a voyage from Martinique to Africa, which was captured ten or twelve leagues off of Cape Mesurada, Africa, by a British cutter for carrying on slave trade. The crew resisted capture, some sailors on both sides being killed. An act of the British Parliament enabled the governors of colonies to authorize ships to seize and prosecute vessels engaged in the slave trade or found on or near the coast of Africa and within the limits of any of the colonies. (51 George 3 C., 23.) The captor took the vessel to Sierra Leone, where the admiralty court condemned both vessel and cargo. *Held* (Sir William Scott), restoration, on the ground that there was no law of France forbidding slave trade at the time of the capture; that the treaty between England and France did not

forbid it; that the British statute of 51 George 3 applied only to British ships and British subjects, for a nation has a right to enforce its laws only so far as it does not interfere with the rights of others; that if there was a French law it could not be enforced by England without a treaty; and that slave trading is not a crime under international law. The court assumed the fact of resistance and of jurisdiction of the lower court, though neither was perfectly shown, and also assumed that the ship had a "contingent intention" to trade in slaves, as she had on board manacles, platforms, large quantities of stores, etc.

Dana, however, says "the arrest was held unjustifiable because made in time of peace for a violation of municipal law beyond territorial waters."

In re Cooper, 1891, 143 U. S. 473. The British schooner *Sayward* while sealing in the Behring Sea, seventeen miles from land, was seized by an American revenue cutter and taken to Sitka, Alaska, and libeled and condemned for the violation of Revised Statutes 1956, which prohibited killing seals within the limits of Alaskan territory. The 477 sealskins on board were also condemned. The answer of the claimants before the lower court denied that the ship was sealing within Alaskan territorial waters, and the case came before the United States Supreme Court on an application for a writ of prohibition to restrain the United States Supreme Court in Alaska from enforcing its decree of forfeiture and condemnation. *Held*, application refused on the ground that the courts are bound by the action of Congress or the Executive within the limits of the Constitution or laws; that the courts are given jurisdiction by Revised Statutes 1954, 1956, 734, and 563, section 3 of the act of March 2, 1889 (25 Stats. 1009), and the treaty with Russia of 1867; that from the record of the lower court it does not appear that the seizure was made outside of the three-mile limit, so the legal inference is that it was made within the limit; that the master raised no question of jurisdiction in the lower court; and that, inasmuch as the lower court had power to inquire into its jurisdiction, its maintenance of same involved the conclusion necessary to sustain it. Hence upon the face of the libel, the facts found below, and the final decree, the district court clearly had jurisdiction. The petitioner had a remedy by appeal from that decree which is rendered of no effect because of his neglect to have included in the findings the exact locality of the seizure.

The *Sylvia Handy*, 1891, 143 U. S. 513. This was a case of libel in the United States district court in Alaska against this ship for sealing in the Behring Sea in violation of Revised Statutes, section 1956, for which she was seized by a United States revenue cutter. The district court decreed forfeiture of ship, tackle, etc., and 1,679 sealskins on board. Motion in arrest of judgment was overruled, and an appeal taken to the United States Supreme Court. *Held*, the decree of the district court affirmed on the ground of in re Cooper (143 U. S. 472).

I do not find that this case came before the Behring Sea Claims Commission, but the case of the *Sayward* was presented to that commission. The Paris tribunal of arbitration which sat under the treaty of 1892 between the United States and Great Britain, held in

effect that the United States had no jurisdiction in the Behring Sea beyond the ordinary three-mile limit, and had no right to protection of property in the fur seals frequenting the islands of the United States in the Behring Sea when such seals are found outside the three-mile limit. With the point of jurisdiction thus decided the question of the damages for seizures of British sealing vessels was decided by another commission under the treaty of 1896. This commission awarded the amount of compensation to be paid to Great Britain on behalf of the owners, master, officers and crew of the *Sayward*, at a total of $20,262.

To summarize the above cases, it may be said that in Church *v.* Hubbart, Chief Justice Marshall in effect held that the facts made out a case of illicit trade within the exception in the policy, so that there could be no recovery for loss of ship resulting from such illicit trade. This, however, is quite a different thing from saying that the seizure of the ship was legal or illegal. The trade may have been illegal whether the seizure was legal or illegal. The exceptions in the policy do not qualify the word "seizure." If the trade was illicit, it does not appear whether it was illicit from what was done beyond or within the three-mile limit, hence it is difficult to see how this case either upholds or denounces municipal seizure beyond the three-mile limit. The case of Rose *v.* Himely is not a strong one as the grounds of the decision were not concurred in by a majority of the judges. Hudson *v.* Guestier, decided on the same day as Rose *v.* Himely, is not in point, for then the seizure was considered as made within territorial waters. When this case came up again, however, the seizure was considered as made upon the high seas, and the court held that the jurisdiction of the Guadaloupe court was not affected by seizure on the high seas, and that, anyway, the Guadaloupe court was the one to determine its own jurisdiction and may have done so in this case, and its decision could not be reviewed by a coordinate court. But to hold that a court has jurisdiction of a case is not to hold that the decision of such court as to the legality of the seizure is correct. (See Dana's similar conclusions.) This view of the United States Supreme Court is significant, however, in showing how foreign judgments in cases of municipal seizures on the high seas are considered when the foreign court has jurisdiction and acts fairly. In Williams *v.* Armroyd, the court practically followed Hudson *v.* Guestier, and held that the sentence of a competent foreign court *in rem* is conclusive. The case of *Le Louis* is a case in point, being a seizure on the high seas for a supposed violation of a British law, but Sir William Scott held that the British law applied only to British ships, and British subjects, and for this and other reasons restored the French ship. The cases in re *Cooper* and *Sylvia Handy* are also cases in point where the United States District Court in Alaska condemned British vessels for violation of municipal law on the high seas. This court and the Supreme Court were bound by the municipal law as would have been Sir William Scott in *Le Louis* had the offender been a British subject. (See Regina *v.* Heyn, 13 Cox C. C. 403; Conception Bay case, 2 App. Cas. 394.) The decision of the Arbitral Tribunals, however, reversed in effect the cases of

in re *Cooper* and *Sylvia Handy*, and no doubt many others which never got to the United States Supreme Court. The case of *Marianna Flora*, 11 Wheat. 1, has not been mentioned, as it was later considered in *Palmyra*, 12 Wheat. 1, as a case of seizure *jure belli*.

Thus it would seem that the question whether municipal seizures beyond the three-mile limit are legal has been decided affirmatively by the municipal courts, bound by municipal law, and negatively by international tribunals governed by international law. This last was the general view contended for by Chief Justice Marshall in the earlier cases above reviewed.

L. H. W. [WOOLSEY].

NOTE.—In the North Atlantic Coast Fisheries Arbitration, Great Britain did not contend that she had jurisdiction beyond the three-mile limit outside of "bays." This is shown on page 25 of the British countercase where it is stated that the action of the British brig *Jaseur*, in seizing an American vessel on the high seas, "could not be justified." Great Britain contended, however, that she had jurisdiction in bays beyond the three-mile limit, and that seizures made in such bays, but beyond three miles from the shore, were legal, not because they were made on the high seas for violation of the municipal law, but because they were made in territorial waters for violation of treaty rights. Mr. Cartwright states that inasmuch as the United States wished to show that Great Britain had not asserted jurisdiction in bays beyond the three-mile limit, seizures in such localities were not exhaustively treated in the United States case.

The main cases, however, cited by either country are three in number.

The Bay of Fundy case was a seizure of the American vessel *Washington*, 10 miles from the shore of the bay, for fishing in violation of the British-American treaty of 1818. The question was whether this was fishing within "three miles of the coasts, bays etc." An award was granted to the claimants. (Claims Commission 1853, Moore Arb. 4342.)

The *Argus* case was a seizure of the American vessel *Argus* 28 miles from land, and not in any bay, by a British ship, for fishing in violation of the same treaty of 1818. An award was made to the claimants because, being 28 miles from shore, there was no violation of the treaty of 1818. (Claims Commission 1853, Moore Arb. 4344.)

The Moray Firth case, referred to at the beginning in Mr. Warren's argument for the United States, is a recent Scottish case which is not readily available. This appears, however, to be the case reprinted in American Journal of International Law, 526. In this case a Norwegian boat was seized 5 miles from shore in Moray Firth, a bay whose mouth is 13 miles wide, and the master fined 50 pounds, for trawling in violation of a Scottish act and regulations thereunder, forbidding trawling in this firth. The court held it was bound by municipal statutes; that therefore this case became a question of construction of the statute; that the statute covered not only the firth but aliens fishing therein.

L. H. W.

File No. 861.0145/3.

*The American Ambassador to the Secretary of State.*

No. 452.] AMERICAN EMBASSY,
*St. Petersburg, January 16, 1911.*

SIR: Referring to my No. 363 of September 30 last, with which I transmitted the law of December 10/23, 1909, extending the area of supervision by the Russian Customs authorities to 12 miles from low-water mark, I have the honor to report further that the British Ambassador has recently discussed with the Minister for Foreign Affairs the unwillingness of his Government to acquiesce in the claim to jurisdiction over marginal waters beyond the three-mile limit: Mr. Sazonoff promised to consider the remonstrance of the British Government, but has not yet made any further communication on the subject. The Japanese Embassy also addressed to the Foreign Office, during the latter part of December, a note to the effect that the Japanese Government adheres to the accepted rule of international law fixing at three marine miles the limit of territorial jurisdiction over marginal waters.

The disposition of the Russian Government to establish a twelve-mile limit for other purposes than those of customs supervision is indicated by a project of law elaborated for presentation to the Duma by the Chief Administration of Land and Agriculture (or Minister of Agriculture): in the *Government Messenger* of December 24/January 6 appeared an announcement (of which a translation is inclosed[1]) that this project contemplates, among other things, prohibiting foreigners from carrying on fishery or other marine industries in the waters of the Government of Archangel, the prohibited area including all the White Sea to the line between Cape Kanin and Cape Sviatoi (Holy Cape) and all other marginal waters to a distance of twelve miles from shore. There is reason to suppose that this bill, if enacted, will incur the energetic protest of the British Government against the extension of territorial jurisdiction by the enlargement of the three-mile limit and by the closing of the White Sea.

I have [etc.]

W. W. ROCKHILL.

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File No. 861.0145/2.

*The Secretary of State to the American Ambassador.*

No. 135.] DEPARTMENT OF STATE,
*Washington, January 21, 1911.*

SIR: The Department has received your No. 363, of September 30 last, reporting concerning the Russian law extending the area of supervision by the Russian customs authorities to twelve marine miles from low-water mark.

You will inform yourself thoroughly on the nature and extent of the jurisdiction assumed under the Russian law and report fully to

[1] Not printed.

the Department especially as to the operation of the law upon American shipping. Meanwhile you will discreetly call the matter to the attention of the Minister for Foreign Affairs, and state that with reference to the general operation of the law over the marginal seas beyond the generally recognized three mile limit and particularly as affecting American commerce, the United States is constrained to reserve all rights of whatever nature.

I am [etc.]

P. C. KNOX.

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File No. 861.0145/4.

*The American Ambassador to the Secretary of State.*

AMERICAN EMBASSY,
No. 466.] *St. Petersburg, February 13, 1911.*

SIR: Replying to the Department's No. 135 of January 21 in reference to the despatch No. 363 of September 30 last in which I reported concerning the Russian law extending to twelve miles from low-water mark the area of supervision by the Russian customs authorities, I have the honor to report that in conversation with the Minister for Foreign Affairs to-day I took occasion to discuss this question and to read to him that portion of the instruction in which it is stated that "with reference to the general operation of the law over the marginal seas beyond the generally recognized three-mile limit and particularly as affecting American commerce, the United States is constrained to reserve all rights of whatever nature." Mr. Sazonoff at the same time promised me a full reply to a memorandum which I then left with him, asking information as to the nature and extent of the jurisdiction assumed under the law in question.

In discussing with me this matter and the correlated question raised by the proposal to exclude foreigners from fishing within twelve miles from the shores of Archangel Government (reported in my No. 452 of January 16), Mr. Sazonoff took the view that territorial jurisdiction over marginal seas is based on the theory of control from the land, and that the delimitation of this area of control at twelve miles now corresponds more nearly with actual conditions than does the three-mile limit which represented the effective range of cannon at the time when this limitation of control over the seas was recognized as a principle of international law.

I enclose herewith a summary[1] of an editorial article in the *Novoye Vremya* of the 11th instant, which embodies what I take to be the official Russian view of this question.

With reference to the proposed closure of the White Sea to foreign fishermen, I would note Mr. Sazonoff's statement that this measure is necessitated by the insufficiency of fish in those waters, and is directed primarily against the competition of Norwegian fishermen.

I have [etc.]

W. W. ROCKHILL.

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[1] Not printed.

File No. 861.0145/5.

*The Acting Secretary of State to the American Ambassador.*

No. 148.] DEPARTMENT OF STATE,
*Washington, March 11, 1911.*

SIR: The Department has received your No. 466 of the 13th ultimo reporting further concerning the Russian law extending to twelve miles from low-water mark the area of supervision by the Russian customs authorities.

The Department awaits the reply promised to you by the Russian Minister for Foreign Affairs and your comments thereon.

I am [etc.]

ALVEY A. ADEE.

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File No. 861.0145/6.

*The American Ambassador to the Secretary of State.*

No. 506.] AMERICAN EMBASSY,
*St. Petersburg, March 28, 1911.*

SIR: In reply to the Department's instruction No. 148 of the 11th instant, concerning the Russian law extending to twelve miles from low-water mark the area of supervision by the Russian customs authorities, I have the honor to state that the only information on the subject which the Minister for Foreign Affairs has so far been able to give me was another copy of the Law of December 10/23, 1909 (forwarded with my despatch No. 363 of September 30, 1910).

I have been unable to secure copies of the notes exchanged by the Russian and British Governments on this subject, which is still under discussion, though I had already asked that they be shown for your confidential information.

I have [etc.]

W. W. ROCKHILL.

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File No. 861.0145/6.

*The Secretary of State to the American Ambassador.*

No. 157.] DEPARTMENT OF STATE,
*Washington, April 21, 1911.*

SIR: The Department has received your No. 506 of the 28th ultimo, in regard to the Russian law [etc.]

The Department awaits the reply promised by the Minister for Foreign Affairs, referred to in your despatch of February 13, 1911, and any further information concerning this matter which you are able to obtain.

I am [etc.]

For Mr. Knox:
HUNTINGTON WILSON.

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File No. 861.0145/7.

*The American Ambassador to the Secretary of State.*

No. 558.] AMERICAN EMBASSY,
*St. Petersburg, May 16, 1911.*

SIR: In acknowledging the Department's instruction No. 157 of the 21 ultimo, in reference to the Russian law extending to twelve

miles from low-water mark the area of supervision by the Russian customs authorities, I have the honor to state that I have been able to gain little further information on the subject. The Duma Committee has unanimously adopted the Government's text of the bill, as well as that of the bill for the protection of the fisheries in the seas of the Government of Archangel (See my Nos. 452 of January 16, and 466 of February 13, last.) As the Duma is to adjourn on June 28, however, the bills will doubtless not be reported to that body or acted upon in the present session.

In a recent conversation the British Ambassador informed me that the question is now under discussion of bringing the whole subject, (not only of the twelve-mile limit, but of the fisheries also) before an international conference.

I have [etc.]

W. W. ROCKHILL.

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File No. 861.0145/7.

*The Secretary of State to the American Ambassador.*

No. 168.] DEPARTMENT OF STATE,
*Washington, June 6, 1911.*

SIR: I acknowledge the receipt of your despatch No. 558, of May 16, in further reference to the proposal of the Russian Government to secure the passage through the Duma of a law extending to twelve miles from low-water mark the area of the territorial waters which shall be supervised by the Russian customs authorities.

You are requested to keep the Department advised of any further developments connected with this matter.

I am [etc.]

P. C. KNOX.

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File No. 861.0145/8.

*The American Ambassador to the Secretary of State.*

No. 592.] AMERICAN EMBASSY,
*St. Petersburg, June 21, 1911.*

SIR: In continuation of my despatch No. 558 of May 16 last and in compliance with the Department's instruction No. 168 of June 6, I beg to state that since the date of my despatch above mentioned the bill extending the area of Russian territorial waters to twelve miles from low-water mark along the Pacific coast of the Empire has passed the Duma and the Council of Empire, and only awaits the approval of the Emperor.

As regards the extension of the area of territorial waters along the coast of European Russia, I am informed by the British Chargé d'Affaires that his Government has not yet reached any definite conclusions in its discussions of the matter with the Russian Government. The President of the Council of Ministers, with whom he recently spoke on the subject, seemed disposed to agree, in principle, to the submission of the question, in a limited form, to a conference, but not otherwise.

I cannot learn that any of the other diplomatic representatives are taking any part whatsoever in the discussion of this matter with the Russian Government.

I have [etc.]

W. W. ROCKHILL.

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File No. 861.0145/8.

*The Secretary of State to the American Chargé d'Affaires.*

No. 186.] DEPARTMENT OF STATE,
*Washington, July 18, 1911.*

SIR: I acknowledge the receipt of Ambassador Rockhill's despatch No. 592, of June 21, in further reference to the policy of the Russian Government to extend to twelve miles the limits of Russian territorial waters. Careful note has been made of your statements as to the steps already taken in this direction.

The Embassy is requested to keep the Department informed of future developments in this matter.

I am [etc.]

P. C. KNOX.

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File No. 861.0145/9.

*The American Chargé d'Affaires to the Secretary of State.*

No. 641.] AMERICAN EMBASSY,
*St. Petersburg, July 21, 1911.*

SIR: With reference to this Embassy's dispatch No. 592 of June 21 last, and to previous despatches on the subject of the law extending the area of Russian territorial waters to twelve marine miles from low-water mark along the Pacific coast of the Empire, I have the honor herewith to forward (with translation) Law No. 1066 of the "Collection of Laws and Dispositions of the Government," establishing the regulations for sea-fishing in the Maritime Government-Generalship.

I have [etc.]

POST WHEELER.

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[Inclosure.—Translation.]

*Law establishing rules for sea-fishing.*

No. 1066. Concerning the establishment of rules for sea-fishing industries in the Maritime Governor-Generalship.

A law approved by the Council of Empire and the Imperial Duma for establishing rules for sea-fishing industries in the Maritime Governor-Generalship:

I. As change and supplement to the existing rules, to establish the attached rules for sea-fishing industries in the Maritime Governor-Generalship.

II. The rules contained in Division 1 to be put into operation six months after notification of the same to the Imperial Japanese Government, in accordance with Article IX of the Fishing Convention between Russia and Japan, imperially ratified July 13, 1907.

*The President of the Council of Empire,*
M. AKIMOFF.

So be it.[1]

PETERHOFF, *May 29, 1911.*[2]

Countersigned: *Imperial Secretary,*
MAKAROFF.

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[1] "So be it" on the original is written in His Imperial Majesty's own hand. (Note by the Chargé d'Affaires.)

[2] June 11, 1911, new style.

*Rules for sea-fishing industries in the Maritime Governor-Generalship.*

[Extract of the portions of the text relating to extent of territorial waters.]

DIVISION 1.—*General Regulations.*

1. Where the extent of the seashore radius is not defined by special international enactments or treaties, the present rules cover the coastal sea to a distance of three geographical miles (=12.02 marine miles=20.87 versts), counting from the line of the lowest ebb-tide, or from the extremity of the coastal standing ice.

The present rules do not cover the Amur estuary from a line connecting Cape Lazareff on the mainland to Cape Pogobi on the island of Saghalin, to a line connecting Cape Perovskiy on the mainland with the northern tributaries to the Baikal Gulf on the island of Saghalin.

2. The carrying on of sea-fishing industries is permitted (that is, the catching of fish and their preparation) on sites defined for this purpose, which constitute special governmental quit-rent locations, and also from trading-vessels.

The trading sites, consisting of a defined area, shall be leased either: (1) for the catching and preparation of fish, with the right of fishing in the waters adjacent to the shore over a surface of the width of one marine mile; or (2) only for the preparation of fish, without the right of fishing.

Outside the limits of one marine mile from the shore the fishing shall be carried on from vessels with an arrangement of special permits.

The Chief Manager of Land Works and Agriculture, in agreement with the Maritime Governor-General, has the right to declare, for a definite time, separate rayons of the coastal waters as closed altogether to fishing, or to separate phases of fishing (catching fish or their preparation), and also to establish periods when fishing is not allowed.

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File No. 861.0145/9a.

*The Acting Secretary of State to the American Ambassador.*

No. 59.] DEPARTMENT OF STATE,
*Washington, January 19, 1912.*

SIR: Referring to the despatch No. 452 of January 16, 1911, in which your predecessor forwarded a translation of a project of law introduced into the Duma by the Chief Administration of Land and Agriculture which contemplated the extension of the area of Russian control over fisheries to a distance of twelve miles from the shores of the Archangel Government, as well as over the whole of the White Sea, and to his despatch No. 592 of June 21, 1911, reporting the passage of such a project of law by the Duma and the Council of Empire, the Department has to bring to your attention an item which appeared in the American newspapers of December 13 last to the effect that as a result of protests by the interested Powers "Russia has abandoned her claim to introduce a twelve-mile limit in the waters of the White Sea." In view of this statement, it is desired that you report upon the present status of the Russian Government's proposals to extend its jurisdiction, for the purposes of the control of fisheries, over the whole of the White Sea, and to a limit of twelve miles over marginal seas.

It is also desired that you should endeavor circumspectly to ascertain and report to the Department whether any protest has been made by the interested Powers against the similar extension of the area of control over the marginal waters of the Maritime Governor-Generalship as provided by the law of May 29/June 11, 1911, of which a translation was forwarded in the Embassy's No. 641 of July 21st last.

I am [etc.]

HUNTINGTON WILSON.

File No. 861.0145/10.

*The American Ambassador to the Secretary of State.*

No. 173.] AMERICAN EMBASSY,
*St. Petersburg, February 3, 1912.*

SIR: Referring to your instruction No. 59 of January 19, 1912, I have the honor to report as follows:

My predecessor did not report, as therein stated, in his despatch of June 21, 1911, that the Duma and the Council of Empire had passed any project of law in connection with an extension of the control of fisheries to a twelve-mile limit *on the shores of the Archangel Government and the White Sea.* His despatch referred only to the Pacific coast.

The whole matter is most complicated and confusing, but conferences with the British and Japanese Embassies and with the Secretary of Foreign Affairs have helped me to a clearer understanding of the question.

Russia proposes ultimately to extend her control in every way to a distance of twelve miles from all her coasts bordering on the ocean. This has not yet been fully accomplished, but only in part. The question naturally groups itself into three divisions:

1. The exercise of customs authority to a distance of twelve miles from all her coasts on the open sea.

This law was approved by the Emperor December 10/23, 1909, promulgated January 1/14, 1910, and is now in force. As yet, so far as can be ascertained, no case calling for special international protest has occurred under it.

2. The extension of Russian jurisdiction over all open-sea fisheries on the Pacific coasts within twelve miles of the lands of the Russian Empire.

This law was passed May 29/June 11, 1911, and went into force December 25/January 7, last.

3. The law extending jurisdiction over fisheries conducted in the White Sea and within twelve miles of the Archangel Government was reported favorably by the Committee to the Duma last June, but has not yet been passed. It lies on the table and it is reported that English influence is responsible for the delay in its passage.

England has formally protested against all three of these laws in particular and against the attitude of Russia in general in regard to the extension of jurisdiction from three miles to twelve. Not being, however, specially interested in the Pacific Coast fisheries, England has confined vigorous action to the Archangel and White Sea fisheries, where her interests are large. England hopes to be able to get this proposed law postponed long enough to permit the matter to be presented before the next Hague Conference in 1915. The President of the Duma has assured the British Ambassador that the project can not be reached by the present Duma, and M. Sazonov practically admitted the same thing to me.

Japan also has protested in general against the whole proposition of extension of jurisdiction to twelve miles from shore in the open sea, but she has confined her vigorous action to the fisheries in the Pacific, where her direct interests are enormous. The annual Japanese catch

of fish in what are now claimed to be Russian waters is valued in gross by the Japanese Embassy at 80,000,000 roubles.

Japan contends that the section of these laws dealing with Pacific fisheries is not only in violation of international law, but is also a violation of the spirit of the existing Russo-Japanese Fishery Agreement.

Two Japanese delegates representing the fishing fleet of Japan are now here seeking amelioration of present conditions.

The Japanese Embassy filed a formal note of protest on October 31 last in regard to Russia's action in the Pacific Fisheries, but as yet has received no answer.

The item mentioned by you from the American press of December 13 in regard to the abandonment by Russia of this policy is an error.

On the contrary, M. Sazonov in a long interview last night assured me that Russia proposed to maintain the twelve-mile limit as a permanent policy, though he hinted that it might be modified in detail, and frankly stated that Russia had agreed to hold conversations with the representatives of Japan and of England, especially on the points in which the two countries were respectively interested.

Russia contends that the three-mile limit is obsolete. The distance of three miles having been set as the conventional range of a cannon, it is claimed that with the extension of the range of modern ordnance the limit of jurisdiction should be increased to correspond.

M. Sazonov stated further that though this matter is not in his own department, but, being a matter of territorial jurisdiction, is being handled by the Department of Land and Agriculture, he thought nevertheless he could assure me now that Russia would not under any circumstances consent to refer such a question to The Hague tribunal.

Upon my venturing to suggest that grave complications might arise, especially in case of war, unless there was a common agreement among all the nations, at least as to some common limit of jurisdiction on the open sea, in case the three-mile limit is abandoned, he stated that Russia regarded this question in general as one of domestic (interior) legislation. He added that though the Russian Government is quite willing to discuss the matter, any modification must be taken by Russia's own act of volition and not by the decree of any outside tribunal.

I have to thank Mr. Frederick Sterling, Third Secretary, for valuable collaboration in this report.

I have [etc.] CURTIS GUILD.

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File No. 850d.00/175.

*The American Ambassador to the Secretary of State.*

No. 179.] AMERICAN EMBASSY,
*St. Petersburg, February 9, 1912.*

SIR: I have the honor to enclose the original and translation of a note sent me by the Minister of Foreign Affairs in regard to my inquiries in connection with Spitzbergen.

You will notice that in the closing sentence my despatch No. 173 of February 3rd, in regard to the Russian attitude on the extension of jurisdiction on the open sea to twelve miles, is confirmed.

I have [etc.] CURTIS GUILD.

[Inclosure.—Translation.]

*The Minister for Foreign Affairs to the American Ambassador.*

MINISTRY OF FOREIGN AFFAIRS,
*St. Petersburg, January 25/February 7, 1912.*

MR. AMBASSADOR: Your excellency has expressed the desire to be informed on the present situation in regard to Spitzbergen, and also on the project of law extending the zone of jurisdiction over the fisheries in the waters of the Archangel Government to 12 marine miles.

I have the honor, therefore, to inform you that in accordance with an understanding which has just been effected between the three Powers of the North, the Governments which have taken part in the Conference sitting at Christiania this January will communicate to the Norwegian Government their observations on the project of the convention elaborated by this Conference. The Norwegian Government on its side, having received these observations, will not fail to remit to the Governments which have received the original project of the Spitzbergen Convention the texts of the convention and of the arrangement which have just been elaborated. These Governments will be invited to examine them and asked to send their replies in due time to the three Powers of the North in order that the latter may exchange views in regard to these replies before the final invitation to the conference which the Norwegian Government proposes to convoke in the near future, if possible in June of the current year.

As regards the jurisdiction over the fisheries in the waters of the Archangel Government, the project relating to it is still being studied by one of the Committees of the Duma of the Empire, and it is difficult at this time to fix the date on which it will be submitted to the examination of the Duma in full sitting.

Please accept [etc.]

SAZONOFF.

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File No. 861.0145/12.

*The American Ambassador to the Secretary of State.*

No. 231.] AMERICAN EMBASSY,
*St. Petersburg, April 13, 1912.*

SIR: I have the honor to report that a telegram from Tokyo to the Russian papers stated on April 10 that, in view of the approaching opening of the fishing season, the Japanese press was protesting against the extension by Russia of its control over the fisheries in the Pacific to a twelve-mile limit from the shore.

A full report on this subject was forwarded to the Department in the Embassy's dispatch No. 173, of February 3 last. Thinking, however, that the Department might desire to learn any possible further developments, the First Secretary of the Embassy, Mr. Wilson, called by my direction at the Japanese Embassy and reports that there has been practically no change in the situation since that date and nothing to cause any special protest on the part of the Japanese press, except that the approach of the fishing season rather brought the matter to public attention.

The Embassy informed Mr. Wilson that no reply had been received to its formal note of protest against Russian action in the Pacific fisheries, presented to the Russian Foreign Office on October 31, 1911, and that therefore a few days ago the Ambassador took up the matter verbally with the Minister for Foreign Affairs, suggesting to him the conclusion of some sort of modus vivendi to cover the present fishing season.

M. Sazonow made no formal reply to this proposition, but the Ambassador gathered from his remarks that the Russian Government

would make no concessions and intended to hold to its original plan of extending its control to the twelve-mile limit.

At present the matter rests at this point, and the Japanese Government, while ready and anxious to arrange some modus vivendi to cover the present fishing season, is not hopeful of a prompt or favorable acceptance of its proposal.

I have [etc.]

CURTIS GUILD.

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File No. 861.0145/13.

*The American Chargé d'Affaires to the Secretary of State.*

No. 257.] AMERICAN EMBASSY,
*St. Petersburg, May 15, 1912.*

SIR: Referring to the Embassy's despatch No. 231 of April 13 last on the subject of the extension of Russian jurisdiction to twelve marine miles in the Sea of Okhotsk, I have the honor to report that I was informed by a member of the Japanese Embassy to-day that no change has occurred in the situation during the last month.

The Japanese Embassy is still carrying on pourparlers with the Russian Foreign Office with the end of at least obtaining a modus vivendi between the two Governments which will tide over the question until the present fishing season is passed. As the season begins almost at once the situation is causing anxiety and my informant considers that there will be continual conflicts between the Japanese fishermen and the Russian authorities if some sort of agreement is not immediately reached. The Japanese Government is therefore pressing the matter with energy.

My informant further stated that the report which appeared in the London Times of May 5, i. e., that the question is soon to be arbitrated at The Hague and that Japanese cruisers have been sent to the fishing grounds, is without foundation. His Government would be glad to have the matter decided by The Hague Tribunal, but to this Russia has not yet assented.

I have [etc.]

CHARLES S. WILSON.

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File No. 861.0145/14.

*The American Chargé d'Affaires to the Secretary of State.*

No. 313.] AMERICAN EMBASSY,
*St. Petersburg, July 19, 1912.*

SIR: Referring to previous correspondence on the subject of the extension of the area of territorial waters to twelve miles by the Russian Government, I have the honor to enclose herewith a copy of a note which I have been able to procure—a note from the Russian Imperial Ministry of Foreign Affairs in reply to the protest entered by Japan against this extension in the Pacific Ocean. While this note is not of recent date, having been sent to the Japanese Embassy a year ago last March, it may prove of interest to the Department.

I have [etc.]

CHARLES S. WILSON.

[Inclosure.—Translation.]

*The Minister for Foreign Affairs to the Japanese Ambassador to Russia.*

In reply to the note verbale of ———— relative to the limits of customs surveillance along the Russian coasts the Imperial Ministry of Foreign Affairs has the honor to draw the attention of the Imperial Embassy of Japan to the fact that in modern international law there exists no generally accepted rule concerning the limits of territorial waters within which sovereign state authority may be exercised.

The question has been given widely different solutions either by international treaties or the municipal laws of a state, and very often in an unequal manner for the various protected interests (customs regulations, fisheries, criminal or civil jurisdiction, sanitary observation, etc.).

Thus an examination of the laws dealing with the question shows that a great many States in Europe and America exercise undisputed jurisdiction within limits that exceed the so-called ordinary zone of three nautical miles.

Sections 2760, 2867, and 3067 of the Revised Statutes of the United States of America, for instance, fix the limit of the jurisdiction of American customs officers at 4 marine leagues (12 nautical miles), exactly the distance set by the new Russian law of 1909.

The jurisdiction of British officers in all customs and quarantine cases also covers (under Article XXIII of chap. 35 of the British Act 9 Geo. II; Article XII of chap. 80 of Acts 39 and 40 Geo. III; and Article I of chap. 47 of Act 24 Geo. III) a 4 marine-league zone.

Finally, under the law of March 27, 1817, the customs marine zone of France reaches out 2 myriameters from the coast.

Taking into consideration the above-cited provisions of laws against which no State appears to have protested, together with the fact that Russia is not bound by any international treaty fixing the 3-mile zone for the territorial waters and that therefore its area cannot be measured from the viewpoint of international law except by the range of the cannons on the coast (which now even exceed the 12-nautical-mile limit) the Imperial Government is unable to admit that the Russian law of December 10, 1909, conflicts with international law.

Lastly, the Imperial Ministry deems it its duty to recall to the Japanese Embassy's memory that the Institute of International Law (whose authority on such questions is unquestionable) did not hesitate to declare (as far back as 17 years ago, when it met at Paris, in 1894) that the "usually adopted" distance of three miles was absolutely insufficient. Fully concurring in that view, the Netherlands Government soon thereafter (1895) took the initiative of an international conference (unfortunately never going beyond the stage of being contemplated) which was to give special attention to the question of territorial waters and accurately define the law common to all States, the lack of which the Imperial Government is not the last to deplore.

It might perhaps be possible, should all the States interested therein arrive at an agreement thereon, to include that question, of such importance to international life, in the program of the approaching Third Peace Conference that is to meet at The Hague about 1915.

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File No. 861.0145/15.

*The American Chargé d'Affaires to the Secretary of State.*

No. 367.] AMERICAN EMBASSY,
*St. Petersburg, September 10, 1912.*

Referring to previous correspondence between the Department and the Embassy on the subject of the extension of Russian jurisdiction to 12 marine miles in the Sea of Okhotsk, I have the honor to report that, in reply to inquiries, I have been informed by a member of the Japanese Embassy, that notes on the subject are still being exchanged between the two Governments.

Early in the summer Russia finally agreed to modify the application of this law, under certain conditions, though what these con-

ditions were the Japanese Embassy naturally refused to state. This proposal the Embassy refused about a month ago, by a note, to which the Russian Government has not yet replied.

Up to the present time no Japanese fishermen have been arrested, nor suffered any embarrassment, and the law has not been rigidly enforced, nor, in the opinion of the Japanese Embassy, will be, until a definite understanding is reached between the two Governments.

In conversation with a member of the British Embassy, which is kept pretty fully informed by the Japanese Embassy as to the progress of the matter, I was told that probably neither Russia nor Japan were inclined just at present to press the question.

I further gathered that this was to some extent connected with the understanding which the Russian and Japanese Governments seemed desirous to reach in regard to all questions in dispute between them.

I have [etc.]

CHARLES S. WILSON.