International Law under Queen Elizabeth

THE latter part of the reign of Elizabeth was, in the political and religious world, an age of premonitions. Most of the great questions in church and state which were to be the subject of the long struggle of the seventeenth century emerged as problems demanding solution before the close of the sixteenth. Among these it is of interest to note that forty years earlier than the 'limit of legal memory' in international law, the publication in 1624 of Grotius's *De Jure Belli et Pacis*, Elizabeth and her ministers were discussing with the governments of Spain, the Hanse towns, the Netherlands, Denmark, Poland, and France the freedom of the seas, the position and privileges of ambassadors, the usages of war, contraband, and the rights and duties of neutrals.

Most of these disputes grew directly or indirectly out of the troubled relations between England and Spain. At five periods between 1580, when hostility between the two countries first became acute, and the death of Elizabeth, in 1603, questions of international law rose into special prominence. In September 1580, when Drake returned from his voyage round the world, bringing with him a store of plunder captured from Spanish settlements and vessels on the coasts of South America, Mendoza, the ambassador of Spain in England, appealed directly to Elizabeth for the restoration of the stolen property. No immediate reply or direct satisfaction was given to him, a personal interview with the queen being postponed on one ground after another for almost a year, and complaints of the misdeeds of the Spaniards in Ireland being made to serve in the place of explanations of those of Drake in America. Indeed, no official answer had been made when diplomatic relations were finally broken off three years afterwards. The questions involved had been, however, the subject of much discussion; frequent unofficial communications were made to Mendoza, and at one time a formal reply which had been drawn up by the privy council, and was only awaiting the production of a fair copy, was promised to him by Walsingham, but subsequently

stated to have been lost. Two skilful formulations of the points at issue still exist.¹ Besides these Camden, the contemporary annalist, who had access to official papers, preserves a reply to the Spaniards which is either the paper drawn up by the privy council and afterwards lost or suppressed, or the substance of the verbal statements made to the ambassador, or some later communication. This reply points out that Drake is subject to prosecution in the English courts by the ambassador or by any one else whom he has wronged, and promises that, if he is proved to have done anything illegal, restitution will be made from the treasure he has brought home with him. The English position is then stated as follows :—

The Spaniards have brought these evils on themselves by their injustice towards the English, whom, *contra ius gentium*, they have excluded from commerce with the West Indies. The queen does not acknowledge that her subjects and those of other nations may be excluded from the Indies on the claim that these have been donated to the king of Spain by the pope, whose authority to invest the Spanish king with the New World as with a fief she does not recognise. The Spaniards have no claim to property there except that they have established a few settlements and named rivers and capes. This donation of what does not belong to the donor and this imaginary right of property ought not to prevent other princes from carrying on commerce in those regions or establishing colonies there in places not inhabited by the Spaniards. Such action would in no way violate the law of nations, since prescription without possession is not valid. Moreover all are at liberty to navigate that vast ocean, since the use of the sea and the air are common to all. No nation or private person can have a right to the ocean, for neither the course of nature nor public usage permits any occupation of it.²

Thus on the first occasion when a serious dispute arose as to the Spanish monopoly of the Indies Elizabeth asserted the freedom of the seas. This assertion was based alike on nature and the *ius gentium*, and from it was deduced the claim that all nations had the right of navigation, trade, and colonisation in all seas and lands, limited only by the actual occupation of those lands by another civilised power.

The relations between England and Spain became more and more strained, from a variety of causes, until early in 1584 they reached a crisis, when Mendoza was charged on the confession of Throckmorton, the conspirator, with having taken part in the plot for the liberation of Mary and the deposition of Elizabeth. The English government was inclined to execute or imprison the ambassador, some of the members of the council urging that 'in

¹ State Papers, Dom., cxlvi. 12; Lansdowne MS. xxx. 10; *Cal. of State Papers, Spanish*, 1580-3, pp. 59-61, 249, 320.

² Camden, *Annales*, s. a. 1580, p. 809 (ed. 1606).

vaine he putteth himselfe under the safeguard of nations which violateth the lawe of nations.' But before taking action they consulted the two best known teachers of civil law of the time, Albericus Gentilis, then lecturing at Oxford, and the French jurist Hotman. These both advised that, although perhaps a more severe punishment might be used, it was preferable that he should be merely expelled from the country. This advice was accepted, and in a stormy scene before the privy council the ambassador replied to the curt orders from Walsingham for his departure within fifteen days with haughty defiance, threats of war, and an appeal to his own sovereign for judgment upon his actions. Within a few days he sailed from Dover. With the object of postponing a definite breach with Spain Elizabeth sent, close on the heels of Mendoza, William Waad, one of the secretaries of the privy council, with instructions to give the king a full explanation of the causes for the expulsion of his ambassador. Philip refused to see Waad, and referred him to his secretary and council. But Waad declined to give to them an explanation which was intended for the king in person, and after an unofficial interview with Idiaquez, the secretary, who treated the matter somewhat lightly, returned to England, with his letters undelivered and his mission unperformed. Indeed some were surprised that he returned safely at all, for it was acknowledged that 'he carried bitter stuff.'³ This incident of 1584, like that of 1580, was closed without any agreement having been reached. Nor as a precedent was the action of the government definitive, for the degree of privilege of an ambassador long remained quite uncertain. It did, however, attract the attention of students to the question involved, and at the annual disputations at Oxford in the succeeding summer, at which Leicester and Sidney were present, Gentilis made this the subject of his address. His work *De Legationibus* was published the next year, and one of its fullest chapters is devoted to the question, *Si legatus in principem coniuraverit apud quem legatus est*. In this he describes the incident of 1584 and refers to nature as the basis of international law, just as Elizabeth and her counsellors had done in 1580. *Habet ius gentium rationes naturales quae, insitae omnibus a natura, sic notae sunt ut argumento nullo indigeant, nullaque, quibus adprobentur, arte.*⁴

The most important questions of international law under Elizabeth, however, arose in connexion with the Armada sent against

³ Birch, *Memoirs of the Reign of Queen Elizabeth*, i. 458; Albericus Gentilis, *De Legationibus*, lib. ii. c. xviii. (ed. 1585), p. 79; Hotman, *The Ambassador* (ed. 1603), pp. 103-6; *Col. of State Papers*, Spanish, 1580-6, pp. 512-5; *Col. of State Papers*, Venetian, 1581-91, p. 86; Cotton MS. *Vespasian C. vii* 280-292.

⁴ *De Legationibus*, lib. ii. c. xviii.; T. E. Holland, *Inaugural Lecture at Oxford*, 1874; Coke, *Fourth Institute*, p. 158.

England by the Spaniards in 1588, and in that year were laid the bases of the policy which her government asserted during the whole remainder of her reign. The money resources of Spain were great. She received vast amounts of silver and gold from her American possessions and much valuable merchandise from the East Indies;—but she was very insufficiently provided with the immediate requirements for war. For materials for the building and equipment of ships, for ammunition, for food stuffs she was largely dependent on other countries. Burleigh declared, 'It hath bene in all former tymes known, and is notably known to all persons that haunt the navigation and coast of Spayn that without havynge of masts, boords, cabels, cordag, pitch, tarr, and copar out of the Eastlands, all Spayn is not hable to make a navy redy to carry the meanest army that can be ymagined.' After the outbreak of hostilities, therefore, it became a settled policy on the part of England to weaken Spain by keeping from her, as far as possible, all such foreign supplies.* Nevertheless the Armada, in 1588, was largely equipped with food, naval stores, and ordnance by the merchants of Hamburg, Lübeck, Dantzic, and other Hanse towns; and several of the largest vessels of the Spanish fleet were bought from the Hansards. Consequently in November of that year, at the command of the queen, the privy council summoned before them Maurice Timberman, alderman of the Steelyard, who was looked upon as in a certain sense the resident representative of the Hanse towns, and through him sent to them a vigorous protest against this unfriendly action, as the council termed it. Moreover they demanded that he should write letters to the Hanse cities requiring them

to forbear to send into Spain or Portugal any kind of provision fitt for the maintenance of the king of Spayne for his warres against this realm, upon paine of confiscation of the same goodes and the shippes upon which they should be laden, in case they should be taken with any such warlyke provision by any of her majestie's shippes or of her subjects.⁶

The alderman was sufficiently impressed with the demand to reduce it to writing for the inspection and approval of the council, and then transmitted it to the parties concerned. When an ambassador from Hamburg arrived in London shortly afterwards, the council gave the same warning to him, and a little later proved the seriousness of their intentions by stopping and examining the contents of some Hanse vessels off the port of Dover. Instructions were at the same time inserted in the commission of Drake and Norris, who were about to set sail with the 'Counter-

* Lansdowne MS. civ. 80, f. 71; *Cal. of State Papers*, Dom., 1581–90, pp. 410, 656; 1601–2, p. 101; *Dyson's Proclamations*, 296, 351.

⁶ S. P., Dom., Ellis. cccxv. 48; Lansdowne MS. civ. 80, f. 71.

Armada' of 1589, to seize any warlike goods intended for Spain found in neutral vessels.⁷

Notwithstanding the intimations given to them in these various ways, the Hanse merchants were not willing to forego the profitable sale of supplies to Spain; and in order to reach that tempting market and at the same time to avoid meeting English ships, a fleet of vessels from Baltic and North Sea ports made the long and dangerous voyage round the Orkneys, Hebrides, and Ireland. On 30 June 1589 they sailed into the harbour of Cascais, at the mouth of the Tagus, just as the victorious English fleet was about to leave it after sacking the suburbs of Lisbon. The German hulks, as such freight vessels were called, were laden with wheat, rye, cheese, wax, canvas, and other such goods, and although eleven, one of which was rigged as a warship for sale to the king of Spain, escaped, some sixty were captured by the English and carried away with them to Plymouth, Portsmouth, Southampton, Deptford, and other English ports. On 27 July the privy council issued a formal decree reciting the facts of the previous warning, and of the discovery and seizure of the contraband articles, and justifying by the terms of their treaties and by 'the laws of nations' the confiscation of all the ships with their cargoes. At the same time, by the special grace and favour of the queen, they ordered that only 'such things as were laden in any of the said ships which are manifestly of the proper nature of victualls and of munitions, as particularly sett downe in the foote of this decree,' should be confiscated to the queen's use. The 'note of such things as are thought good to be stayed' which follows is probably the earliest recorded list of articles declared contraband, and as such is printed here in full.

MUNITIONS.				VICTUALS.	
Cables	Tallow	Brimstone	Ordinance	Bacon	Beanes
Masts	Pitchstones	Saltpeter	[not belonging	Corne	Peason
Anchors	Callyvers	Boullets	to the ship]	Wheate	and
Cordage	Muskettes	Copper	Canvas	Rye	such like. ^a
Pitch	Armour	Leade	Dantzig Pol-	Barley	
Tarre	Powder	Matche	daynes	Meale	

The council was much occupied during the ensuing months in providing for the sale of the seized goods and the restoration of

⁷ S. P., Dom., Elis. cccxii. 86, 89; cccxiii. 64.

^a The same policy was applied to other nations as to the Hanse towns. On 30 Nov. 1588 Sir Thomas Bodley, the English ambassador to the Netherlands, was instructed to protest against their sending commodities to Spain. On 3 August 1589 the privy council gave orders to the English ambassador in Holland to demand that certain ships that were loading in Holland and Zealand with grain supposed to be for Spain should be stayed, and threatened that if afterwards found by the queen's ships they would be considered as lawful prize. As a matter of fact these or some other Dutch vessels were afterwards captured, and in March 1590 the estates of the United

the ships, and in answering the expostulations of the shipmasters and merchants of Hamburg, Lübeck, Dantzic, and Wismar. A formal protest of the Hanse government was made on the characteristic but somewhat ill-chosen ground that the seizures were against their ancient privileges in England. The English government, in its answer, easily met them on their own ground by pointing out that the *Carta Mercatoria* of 31 Edward I, on which their trade in England was based, had been granted on the express condition that foreign traders coming into England should not carry any commodities into the dominions of the professed enemies of England. A long series of precedents was next adduced. In 1545, in the war between England and France, Hanse vessels which were taking supplies to the latter had been seized by England, and Charles V had acknowledged the justice of the seizure and forced the Hansards to respect neutrality. In the recent war between Sweden and Denmark neutral trade had been prohibited. In the war between Poland and Muscovy the same rights had been enforced by Poland against England herself; and quite recently the prince of Orange had insisted on the same right of seizure of contraband against the Hansards and others. A broad statement of principle is next made. 'These precedents are just, for the right of neutrality must be used in such a way that none in our alliance are injured. It is not rightfully used when by helping one ally we are injuring another who is equally in our alliance.'* The queen and her councillors seem to have felt the matter important enough to be given the greatest publicity. Burleigh drew up a proclamation 'for the satisfaction of such as are capable of reason and void of malice,' in which he states the claim of the government in the broadest way.

Her Majesty thynketh and knoweth it by the rules of the law as well of nature as of men, and specially by the law civil, that whenever any doth directly help her enemy with succours of any victall, armor, or any kynd of munition to enable his shippes to maintain themselves, she may lawfully interrupt the same, and this agreeth with the law of God, the law of nature, the law of nations, and hath been in all tymes practised and in all countries betwyxt prynce and prynce, and country and country.¹⁶

Provinces complained loudly, and asked that their ordinary trade with Spain should not be interfered with. S. P., Dom., Elia. cccxv. 44; *Cal. of State Papers*, Dom., 1581-90, pp. 608-11; Birch, *Memorials of Elizabeth*, i. 58-60; Camden, *Annales*, ed. 1627, ii. 11; Oppenheim, notes to *Monson's Tracts* (Navy Records Society, 1902), pp. 272-5.

* Cotton MS. Nero, B. iii. f. 200, *Acts of the Privy Council*, 1589-90, xviii. 22-23, 50, 112, &c. Mr. Oppenheim points out that much earlier precedents might have been found by the council (note to *Monson's Tracts*, Navy Records Soc., 1902, pp. 272-5).

¹⁶ Lansdowne MS. civ. 80, f. 70.

A well-written and moderate pamphlet was also issued in English and in Latin in August 1588, composed probably by Burleigh and printed by the queen's printers, stating the English case before Europe. Similarly on 13 July 1589 in the propositions for alliance with the king of France it is declared that 'her majesty desyreth yt he will earnestly prohibit ye carriage of any grain or other vittull into Spayne or Portugall.'¹¹ The right to seize enemies' goods in neutral ships seems to have been exercised whenever there was an opportunity, and to have been so completely acquiesced in as to have raised no protest or discussion, for when the earl of Cumberland and other English captains made a number of seizures of Spanish and Portuguese goods from Hanse and Dutch vessels we hear of it only from the English side.¹²

Thus within the years 1588 and 1589 the right of confiscation of contraband and enemies' goods was asserted, enforced, defined, and defended, and during the whole remainder of Elizabeth's reign was an established part of the policy of her government. The contemporary records of this period, both English and foreign, are filled with instances of seizure, and with the conflicts that arose out of these, often complicated, it is true, with other matters in dispute between England and the continental states. There was one time, some six years after the disputes of 1588-89, when England's claims were made with such special distinctness and opposed with such vigour as to require separate mention. Early in 1596, when an English fleet had been prepared for an attack upon the ships and coasts of Spain and Portugal, a proclamation was drawn up by the council, and on 24 April issued in the names and under the seals of the earl of Essex and Lord Admiral Howard, the commanders of the expedition. It was translated and printed in English, French, Italian, German, and Spanish, and distributed as widely as possible in the seaports of Spain and Portugal. It declared that, England being in amity with all nations except Spain, her majesty's navy had orders to refrain from injury to the persons and property of all men, except, in the first place, subjects of the king of Spain; in the second, such other persons as should give to that king 'manifest aid with men, shippes, artillery, victuals, and other warlike provisions for invasion of her majesty.' All the latter class of persons were required to remove their ships and contraband goods from all ports of Spain and Portugal. If they refused or neglected to do so, the commanders of the queen's navy would feel themselves at liberty to treat them as manifest aiders of the king of Spain, and consequently open enemies of England. They would, therefore, have

¹¹ Cotton MS. Galba, D. iii. f. 265; Rymer, *Foedera*, vii. pt. I. 29 (Hague ed.); Lansdowne MS. 104, f. 57 b.

¹² Monson's *Tracts*, ed. 1902, I. 226-7, 269; *Acts of the Privy Council*, xxi. 447-8.

no just cause of complaint or claim for restitution of such goods and ships as should be seized.

English vessels in the narrow seas already had orders to stay all Easterling and Dutch vessels going southward, unless they had a pass from the lord admiral, and the privateers of the southern and western coasts were on the watch for such as should elude the government ships. Frequent seizures followed.¹² These and the prominence given to the matter by the proclamation of the admirals soon brought a response in the form of a series of protests from other governments. Early in the summer of 1597 an ambassador from Hamburg came to demand the restitution of certain wheat sent by Hanse merchants to Spain and intercepted by the English at sea. They received from the privy council a reply on 24 June. Just a month later an embassy appeared from a new quarter. Among the Hanse cities which felt the hardship of English interference with neutral trade two, Dantzic and Elbing, lay in the dominions of the king of Poland, who at this time was the newly elected Sigismund. On 28 July 1597 his ambassador, Paul Dzialin, a handsome, learned, and eloquent Polish nobleman, arrived in London. The first and only interview of this ambassador with the queen, occurring three days after his arrival, was a dramatic and amusing scene that has been described for us by more than one eye-witness. Elizabeth's counsellors, mistaking the nature of his errand, informed her that he was probably come to return thanks for certain favours the English ambassador had recently done Poland at the Turkish court. The queen, always glad of an occasion for display, and interested in what she had heard of the ambassador's personal appearance, arranged a great reception for him on the occasion of his presentation. She sat under the cloth of state in the presence chamber at Greenwich Palace in the midst of a large body of the noblemen and gentlemen of her court. The ambassador was ushered in, dressed in a robe of black velvet covered with jewels. He advanced to the queen, kissed her hand, then formally retired ten paces, and began in a loud voice a Latin oration which dumbfounded his hearers. After reminding the queen of the ancient alliance between the sovereigns of England and Poland he complained in the harshest terms that Elizabeth had suffered the subjects of his master to be despoiled, and with wanton injustice had refused them restitution, notwithstanding repeated petitions. She had taken upon herself, simply because she had a quarrel with the Spanish king, to issue a mandate cutting off all other people from intercourse with Spain

¹² Speed, *Chronicle*, ii. 868; *Cal. of State Papers*, 1595-7, pp. 173, 207, 219, 337, 484; 1598-1600, pp. 146-152, 156, 163, 477; *Acts of the Privy Council*, xxi. 448; Wheeler, *Treatise of Commerce*, p. 91; *Letters from Chamberlain to Carleton*, Camden Society, pp. 82, 85, 45, 119, 144, 172.

and Portugal. In doing this she assumed to herself a superiority over other princes which was intolerable. The king of Poland, his master, was determined not to endure this, and if the queen would not reform it he would take measures to do so himself.

The moment his speech was finished Elizabeth, interrupting the lord chancellor, who was about to reply, answered the ambassador in an impromptu Latin address, which is reported in so nearly the same words by several hearers that we doubtless have it substantially as she gave it. She cried out angrily, *Oh quam decepta fui! Expectari legationem, tu vero querelam mihi adduxisti; per literas accepi te esse legatum, inveni heraldum. Nunquam in vita mea audiri talem orationem. Miror, sane miror tantam et tam insolitam in publico audaciam.* After declaring that if the king of Poland had sent such a message, which she did not believe, it must be either because he was so young and inexperienced or else because he came to his throne by election and not by inheritance, like other princes, she proceeded, in words translated by a contemporary—

And as for you, although I perceive you have read many books to fortify your arguments in this case, yet I am fain to believe you have not lighted upon the chapter that prescribeth the forms to be used between kings and princes. Were it not for the place you hold, to have so publicly thrown an imputation upon our justice, which as yet never failed, we would answer that audacity of yours in another style. Since you have so often in your oration quoted the law of nations you ought to know that when war has broken out between kings it is allowed to one party to intercept the aid or succours sent to the other, and to provide that no injury thence arise to himself. We declare that this is in conformity to the law of nature and of nations, and not enforced by us alone, but by the kings of Poland and of Sweden in the wars which they have waged with the Muscovite.

She referred the ambassador to her ministers for further reply to his protests, and closed with *Valeas et quiescas*. Then, as Speed says, 'lionlike rising she daunted the malapert orator no less with her stately port and majesticall departure than with the tartness of her princelie checks.' Before leaving the room she turned half laughing to the gentlemen of the court and exclaimed, with her favourite oath, 'God's death, my lords, I have been enforced this day to scour up my old Latin, that hath lain long in rusting.' She was evidently proud of her speech, however, for she told Cecil she was sorry Essex, who was then at Plymouth, had not been by to have heard her Latin, and she was pleased when Cecil promised to send him as much as he could remember of it.

A few days afterwards four of the privy councillors repeated

to the ambassador arguments that were practically the same as those Elizabeth had used in her recent speech, and which must by this time have become tolerably familiar, as they were also those that had been used constantly since 1588. They were, first, that the privileges which the Polish, like other foreign merchants, possessed in England were given them on the express condition that they should not carry goods to the open enemies of England; secondly, that the English government had precedent for confiscation in the recent action of other countries, and notably of Poland itself; and, lastly, that to intercept succours sent to enemies was in accordance with the law of nations, since it has been provided by natural law that every one should defend himself. When the ambassador was invited to give a reply to these arguments he declined, saying he was sent to deliver a message, not to make responses, and so left England.¹⁴

The third embassy of the year in the same business arrived a few weeks later. This was from Denmark. Two envoys brought a protest against recent seizures, and a request that, 'if it stood with her majesty's good liking, the merchants of Denmark might transport their goods into Spain without danger in the narrow seas, which heretofore some of them had sustained to their great losse.' By this time Elizabeth and her ministers were beginning to realise the necessity of walking somewhat warily. Apart from questions of contraband the old disputes between the English merchant adventurers and the Hanse towns were restricting English commerce. The discontent of the northern countries with the policy of England was carefully fomented by Spain, and the possibility of their uniting with her in war against England was not a remote one.¹⁵ Henry IV was already negotiating that peace with Spain which made possible a policy of commercial development for France that could ill brook the unlimited assertiveness of England on the seas. A somewhat more conciliatory policy with regard to contraband is therefore observable. Elizabeth replied most mildly to the Danish ambassadors, declaring that she would investigate any cases of molestation of Danish ships and give redress if there had been injustice, and moreover would make definite laws against such molestation in the future. At the request of the ambassadors the English privy council drew up a new list of 'prohibited' and 'licit' articles, agreeing that if the Danish king would order his subjects not to carry any of the former goods to Spain during the war, the English naval commanders would be

¹⁴ Letter from Cecil to Essex, *Cal. of State Papers*, 1595-7, pp. 472-5; Lansdowne MS. xlv. 50; Camden, *Annals*, ii. 189; Speed, *Chronicle*, p. 871; Wheeler, *Treatise of Commerce*, pp. 95-110.

¹⁵ *Cal. of State Papers*, 1595-7, pp. 500, 550; *Hist. MSS. Comm.*, Cecil MSS. vii. 271-2.

given orders not to interfere with those carrying the latter. The two lists are as follows :

PROHIBITED ARTICLES.		LICIT ARTICLES.	
Cables	Pitch	Butter	Beans
Cordage	Tarr	Cheese	Iron
Gunpowder	Saltpeter	Bacon	Steele
Hempe	Wheat	Stockfish	Copper
Mastes	Rye	Pease	Roan
Ordinance -	Meale of wheat		
Sailyards	or rye		

She sent a special ambassador to the king of Poland, and through him, while reiterating her claim, *iure gentium et civili*, to confiscate merchandise destined to her enemies, offered to permit subjects of the king to transport freely into Spain grain and all kinds of merchandise except material for war. In 1599 a proclamation in favour of the commerce of Venice and Tuscany was issued against the excesses of English privateers going to the Mediterranean. Somewhat later, in September 1601, in the instructions given by Elizabeth's government to Sir Richard Leveson, along with the usual orders to seize all ships resorting to Spain with munitions, cordage, &c., the reservation is introduced that, 'considering these are chiefly brought from the east countries and not France, we forbid you to deal with French subjects except you see pregnant cause; and then take heed that no spoil be committed.' Sir William Monson is carefully warned in the succeeding summer against any seizure or stay of vessels of her majesty's allies, unless there is manifest proof of their carrying goods prohibited or belonging to subjects of the king of Spain.¹⁶

Nevertheless these evidences of a conciliatory spirit ought not to be taken too seriously. Elizabeth and her ministers were far from surrendering their claim to the right of confiscation of contraband. The queen's complacency to the Danish envoys and concessions offered to the Polish cities only made the list of contraband articles somewhat narrower, without introducing any change of principle. The care in exercising the right against France and the Italian states was rather directed to the avoidance of indefensible and embarrassing seizures than to a cessation of the general policy. On the contrary, in a treaty for the restriction of reprisals entered into by England and France in 1600 it was specifically provided that no kind of arms or warlike ammunition should be transported by Frenchmen into the king of Spain's dominions, and in the last year of Elizabeth's life the right was still being exercised, for in that year the French ambassador was heard to declare that his government would no longer endure having their ships viewed by the

¹⁶ Cotton MS. Nero, B. iv. f. 59. Camden, *Annales*, ii. 140-2; Speed, *Chronicle*, p. 871; *Cal. of State Papers*, 1598-1600, p. 153; 1601-3, pp. 101, 152, 220, 800.

queen's ships. In the very negotiations with the Danish envoys in which Elizabeth had made such abundant promises of restitution for loss the commissioners were induced, before they returned home, to agree 'that none of the king of Denmark's subjects should transport, or cause to be transported, any kind of those things whereby the Spanish king, being her majesty's known enemy, might be fortified by land or sea against her majesty.' Two years later, during a renewed effort to settle the various disputes between England and Denmark, the English envoys successfully insisted on a new agreement 'that no warlike material should be carried into Spain,' notwithstanding the efforts of the Danes to exclude that point and their declaration that their trade was of no value to the Spaniards, and did nothing to prolong the war.¹⁷

Elizabeth's old contention for the freedom of the seas was renewed in 1602 with the same arguments, although in a somewhat different connexion from its assertion in 1580. When the king of Denmark claimed that he had dominion in the northern seas, and could, if he thought best, prohibit fishing in them without a license from him, the English envoys declared that the law of nations permitted resort and fishing in the sea to all persons indifferently, that the denial of such a use of the sea by any prince was a usurpation, not a right, and that lawful use of the waters of the sea ought to be as free to all men as the air itself. They acknowledged that jurisdiction in adjacent seas might belong to princes having realms adjoining, in order that navigation might be safe from pirates and enemies, but denied any dominion over the waters. They declared that the most celebrated lawyers had given their judgment that the sea, by the law of nations, is free and common, and cannot be monopolised by any prince.¹⁸

On still another point of international law interesting regulations were laid down by Elizabeth's government during the latter years of her reign. In the 'Laws and Ordinances' issued by the earl of Leicester when he took command of the queen's forces in the Netherlands in 1584, it is provided, 'That no man in any part of this service that he shall doe shal lay violent handes upon any woman with childe, or lying in childebed, olde persons, widowes, yong virgins, or babes, without especial order from the magistrate, upon paine of death.' In the instructions given to the earl of Essex, 15 June 1597, as he was about to set out upon the 'Islands Voyage,' are included the following humane provisions concerning the treatment of non-combatants:—

We will and specially require you to give straye commandment to all persons serving under your charge by sea or by land, that there be

¹⁷ Camden, *Annales*, ii. 206, 272-3; Bymer, *Fœdera*, vii. pt. ii. 56.

¹⁸ *Ibid.*; Camden, ii. 207.

made no slaughter of people, but such as shall with open force manifestly withstand you or our people to your and their danger, but to admit all such to mercy as shall freely submit themselves, and so detain such of them as prisoners to be redeemed according as the qualities of their estate may be known. And likewise we doo most straitly charge you to give strait commandment to all serving in our navy and army, upon payne of death, in no sorte to spoyle or destroye any church or place appoynted to divine service, nor any hospitall used to keepe sick or poore people. But if any of your ennemyes appoynted as a man of war or souldier shall flee to any church or hospitall to save himself, which same person shall be a person worthy to be taken as a prisoner, yt shall be lawfull with force to recover him, without destroying of the church or hospitall. And likewise also you shall forbid and restrayne all persons from killing or willfull hurting of any woman or children, or any aged or sick person not liable to carry weapon or arms.

Similar views as to what was justifiable and not justifiable in such cases had already been stated with a wealth of quotation and illustration by Gentilis in a Latin work in 1588; but there is no indication that such rules had been before so clearly formulated for a practical occasion.¹⁹

Thus during the last twenty-three years of the reign of Elizabeth, in addition to some minor points, her government asserted consistently two important claims in the field of international law: first, that during the progress of a war goods carried by merchants of a nation not engaged in the war, which might aid one party, may justly be confiscated by the other; secondly, that the sea is free, in the sense that no nation may exclude others from any large stretch of it, nor place arbitrary restrictions upon them when navigating it. The simple questions involved in these principles were doubtless much obscured by the prevalent recklessness and violence at sea. The maritime policy of the English at this time included a wide and almost undefined field of practice, ranging all the way from the simple self-defence of armed merchant vessels, through various forms of reprisals, privateering, and seizure, to sheer bald piracy. It is not to be wondered at if other nations did not always clearly distinguish seizure under the claim of contraband from those frequent instances of capture under some other, or no other, claim which, in the later sixteenth century, bade fair to make Englishmen the scourge of the seas. When the English ambassador went to Copenhagen in 1592 'he was railed at by divers gentlemen of the court, who called him thief, and said that our countrymen were a company of thieves, and had robbed their ships, for which they could have neither law

¹⁹ 'Laws and Ordinances set downe by Robert, Earle of Leycester, the Queene's Majesty's Lieutenant and Captaine General of her armie and forces in the Low Countries,' sect. 6, p. 8. S. P., Dom., Elizabeth, cclxiii. 102. Albericus Gentilis, *De Jure Belli*, lib. ii. cc. xvii. xxi.

nor justice.' A contemporary German pamphlet, in giving, under the year 1598, an account of the actions of Elizabeth, says, 'She prepared also in the same year certain corsairs and sea robbers upon the ocean, who seized many grain ships and everything they could.' An Englishman settled in Rouen writes to Cecil, 19 Dec. 1602, 'The better sort of Frenchmen hate us for continual complaints in sea causes, as though our nation lived on their spoil.'²⁰ The state papers, reports of ambassadors, and foreign correspondence are full of bitter complaints of English depredations at sea. The justice of the claim of seizure of contraband was clouded by the manifest injustice of many other seizures by Englishmen.

Nor was any appreciable progress made during the period with which we are concerned in the development of the principles underlying the English claims. The arguments used to support them were the same at the end as at the beginning. They received no serious or extended discussion by the few writers of the time who interested themselves in international law. There seems to be no discussion of either contraband or the freedom of the seas in the writings of Gentilis. They were, on the other hand, a natural and consistent part of the vigorous, direct, and practical policy of the government of Queen Elizabeth. The occasion for the assertion of the freedom of the sea was found in the rapid extension of the sphere of England's commercial activity and the obstacles which the claims of other nations put in its way. The question of seizure of contraband arose from the circumstance of a desperate war waged with a power which had, or seemed to have, an unlimited amount of money, but which was singularly dependant on other countries for the direct requirements of warfare.

EDWARD P. CHEYNEY.

²⁰ Birch, *Memorials of Elizabeth*, i. 78; Johann Mayr von Frelsing, *Kurzer Bericht aller gedenkwürdigen Sachen*; *Cal. of State Papers*, 1601-3, p. 289.