Show somewhere in some letter the U.S. have heretofore & at various times asked for in the way of protection.

GEOLOGICAL SURVEY DEPARTMENT.

Alfred R. C. Selwyn, C. M. G., L.L.D., F.R.S.,

DEPUTY HEAD AND DIRECTOR,

MUSEUM AND OFFICE, SUSSEX STREET, OTTAWA.

....., 189....

Notes on Russian despatch of
12(24) Feb. 1893

The Russian despatch must be ordered from two points of view ~~xxx~~ apart from its application to the current year:—
First, as to its bearings as seizures made by Russia in 1892
Second, as to its bearings on future arrangements or regulations & the return of the arbitration.
It has no doubt been drawn up with a view to both.

The despatch neither affirms nor denies Russian claims in Behring Sea or property or right of protection in seals. The most that can be deduced from it is the ~~absence~~ omission to claim either.
It professes to be in reply to a communication respecting Behring Sea only, though the Commander ~~xxx~~ islands are not included in Behring Sea (forming part of its boundary) & Robben Island is in the Sea of Okotsk. (see despatch which it is a reply)
The subject of measures for preservation of seal life has for some time been under consideration by Russia & the despatch is based on the preliminary results of these studies. It is therefore evidently based on necessarily incomplete discussed data, but at the same time ~~evidently~~ reserves the right to assume a new position after further consideration & study.

The modus vivendi with the U.S. though arranged "without prejudice" required reciprocal concessions before Great Britain admitted the principle of curtailment of rights at sea, which are here said to have been indicated as necessary by negotiations on already past.

It is stated that the females during the time of suckling do not go far from the coast.

It is further stated, that many seals are wounded by sea hunters on the coast or in the territorial waters.

No ~~th~~ evidence is adduced on either point.

The first is in accordance with our information — The second, if intended to apply to seals killed at sea in the usual way, is not.

Looks forward to an international regulation (of Russia, G.B. & U.S.) as very efficacious method, but suggests temporary measures, pending such arrangement.

The despatch then proceeds to formulate certain measures which have been decided upon by Russia. These are not advanced as a ~~proposition~~. Suggestion.

The reasons given for the proposed limits are not clearly explained. The main rookeries are situated on ~~Copper and~~ the Commander Islands,

& on Robben Island. Swallow-tailed
or barking gulls are found on St Lorenz
Island & possibly on one or two places
on the ~~Russian~~ Siberian coast, but no
importance has ever been attached & there so far
as ~~no~~ special protection afforded by Russia to them.
If any of these are considered important
it would seem better to surround them
by a thirty-mile zone, than to carry a
ten mile zone along the whole west coast
of the Siberian coast, much of which is
so far north that it is ~~now~~ seen likely
~~from~~ to be occupied by seal-poachers.

The thirty mile limit round Commander &
Robben Islands should not be objectionable
but the meaning of the statement that it would
close the straits to sealing vessels between
~~the~~ the two islands of the Complet, is obscure,
for the distance separating these islands is
about 40 miles, & a 30 mile limit would
therefore close it with 20 miles to spare.

The ten mile limit around the whole coast,
appears to have been the suggestion that of
protecting Russian poachers. It might, for
instance, prevent sealing vessels from visiting
any part of the coast for water, or some, so
far as appears, if in distress.

The reason given for the 30-mile limit about
the seal islands (if genuine not objectionable)

is in itself objectionable. The theory that seals must go to "banks" for food is incorrect, but the statement if admitted opens the way to extend the limit indefinitely by the discovery of new "banks". It also renders it possible for the U.S. to set up a claim that the Eastern part of Behring Sea is all a "bank". Personally I am ~~convinced~~ convinced, from conversation with Mr Grebnitzky, that this theory of feeding on "banks" depends on his statements to the Russian government, but that it is not correct.

It would be preferable, if the 30-mile limit is conceded to make it depend on the fact, elsewhere stated in the despatch, that the females seldom go more than 10 miles from the islands during the period of suckling. The 30-mile limit might thus be expressed as an ample margin of safety for the great majority of females during the breeding season.

The establishment (without consent) of the rules explained, is justified as a measure of legitimate defense.

Expressly states that no wish to contest the ordinary rule of territorial waters, but claims this exception (impliedly under equal rights with those attaching to territorial waters) taking it as an "exception which proves the rule". This logical fallacy is very trifling.

The protection zone of 30 miles being carefully observed by the steamers in the despatch, it seems the very objectionable that vessels under any pretext should be subject to visit & search beyond this zone. Such a provision opens the way to vexatious visit & search and may create limits. If provided within the 30-mile zone vessels should be liable, if suspected, not liable.

p. 3. P. 3. This appears to refer to the finding of sealing clubs on vessels. Such vessels liable to search, such clubs under existing circumstances would prove that raids actually were intended, but it cannot be admitted that vessels everywhere should be subject to search for sealing clubs. Again, it cannot be admitted that the cargo of a vessel should be examined in search of furs skins of fur seals, & even if this were admitted, the distinction between fur & fur seals skins is so difficult in many cases that this would lead to endless dispute. It would be necessary to bring the seized skins into Court in every instance & have a jury of experts to report upon them. This idea is thus impracticable.

It should be remembered that discussion & regulations now submitted on case have any

bearing on ~~the~~ seizures made by Russia in 1892. These must be judged by the ordinary rules, upon which Russia here specially says she does not wish to depart.

With the rules apply specially Canada, the U.S. & perhaps Japan, which of the powers would not she any objection to take part in the fishery this year?

In the case of the Behring Sea with the U.S. reciprocal restrictions of a very strict character were imposed on the killing in the breeding islands. In the ~~rules~~ provisional rules proposed by Russia restrictions are placed on foreign subjects alone. With the American govt. voluntarily stated that certain waters & seals they would allow to be killed on the islands, in order to give the regulations a reciprocal character.

If the rules assented to, vessels should be warned as far as possible, but where they have not had opportunity of warning possible, they must be warned before any seizure is made. Again vessels seized by Russia, should as soon as possible be turned over to British authorities as in the case of the Behring Sea.

(Suggested Criticism on proposed U.S. draft Regulations. For second chapter on Regulations)

U.S. Case pp. 253-264

In the United States Case four proposals for "a limited prohibition" are separately discussed & each in turn is discarded as useless. By the term "limited prohibition" it is probable that the "Concurrent Regulations" mentioned in the Treaty of arbitration are intended to be designated, but, as has already been shown, prohibition is not Regulation.

The whole argument is moreover based on the assumption (shown to be erroneous) that the responsibility for the observance of Seals on or about the Pribilof Islands must be borne by pelagic sealers, & on the further assumption that Regulations, under whatever name, shall be framed in the sole interest of the owners of the Pribilof Islands.

Br. Counter Rep p. —

It is shown in detail in the reply of the British Commissioners, that Regulations of whatever kind (in order to be effective) must embrace the whole area frequented by any considerable number of fur-seals at any season & every mode of killing the Animal; & the all together apart from the principles of justice & the various interests involved, which it is submitted will undoubtedly be taken into consideration by the Treaty Arbitrators.

(Merely —)

Ibid p. —

It is shown in the same report, by a review of the actual facts of the case & the net, that no single measure or precaution is in itself equally applicable to the several modes of taking Seals, or separately capable of

affording appropriate safeguards in the interests of seal life. But It is further ~~when, therefore, several~~ shown, that by a judicious combination of checks of various kinds, ~~[illegible]~~ an efficient system of control may readily be established, such as to embrace the whole industry based upon the taking of fur-seals & ~~such as the~~ readily adaptable in its nature to the ever changing circumstances to be met.

When therefore, in the case of the United States, several single measures applicable to sealing at sea are discussed separately & separately condemned, it is evident that ~~this condemnation is so far~~ it is for the purpose of condemnation only that they are ~~[illegible]~~ noticed. ~~Throughout the case it is~~ This is rendered the more evident by the fact that the discussion in question follows after a special plea for the "absolute prohibition of pelagic sealing", which is there a measure in the case of the United States asserted to be the only remedy ~~of~~ possible against the too great killing of seals. Without doubt, the owners of the Pribyloff Islands would favour any action which would once & for all dispose of ~~their competition~~ ~~the competition of their~~ rivals the sealers on the high seas, while leaving their own unaffected, & it is not therefore surprising that any system of regulations unsuited to ~~the object~~ accomplish this object, should be found wanting.

~~Under the circumstances, it is therefore perhaps unnecessary at this stage to enter in any great detail into the arguments~~

From the statements made in the Case of the United States it is evidently a foregone conclusion that no regulations not the equivalent of the distinctive prohibition of sealing at sea will receive commendation

In view of the repeated assertion in the Case of the United States that sealing at sea must be absolutely prohibited, it is in that case a foregone conclusion that any Regulations not equivalent to this & this done would remain unconvinced, & It is thus perhaps scarcely necessary, & at this stage, to follow in any ~~full~~ detail the arguments advanced in the United States Case against the several ~~[struck out]~~ modes of Regulation here selected for discussion, but It may be useful, however, to point out on what very slight grounds these propositions are those dismissed in the Case of the United States. —

Thus, a close season as applied to sealing at sea, is supposed to be sufficiently condemned by pointing out that differences of opinion exist between ~~several~~ eleven witnesses who propose such a close season, as to the time of year which it should cover. Of these witnesses four were boat-pullers with very limited experience, one claims no experience unless in pelagic sealing, & another ~~one~~ gave the opinion quoted in reply to a special question in relation to the proportion of females in Behring Sea, ~~& another~~ Certain statements made by the British Commissioners individually, & before their practical investigations respecting seal life, are also quoted, but these which since their deliberate conclusions reached as the result of their investigations have been placed on record, are scarcely to the point. Prof. Huxley's opinion is ~~in the [illegible]~~ lastly referred to, but it will be found, on referring to ~~the~~ his statement from which this is quoted, but it will be found, on referring to

U.S. Case App. I. p

~~the statement itself~~, but its meaning has been ~~essentially~~ materially altered by the ~~[illegible]~~ ~~[illegible]~~ incomplete character of the citation. x

x U.S. Case. App. I. p. 412

The second method of regulation noticed, is the prohibition of fire-arms. There can be no doubt that such a prohibition would be practically ~~tantamount~~ tantamount to the destruction of the industry of pelagic sealing. The argument advanced in the United States Case, ~~is however~~ as against this hypothetical means of regulation, is however based on the alleged ~~fact~~ circumstance that the seals ceased to increase in certain years ~~[illegible]~~ when spearing was the principal means of capture, & thus that if the present ~~increased~~ larger sealing fleet should still employ spears, the seals would still decrease. The argument thus outlined consists (as will be seen by reference to former parts of this Counter Case) of a series of erroneous assumptions.

The closure of Behring Sea against sealing vessels is then discussed, & likewise found to be in itself inadequate; a view in which the British Government have during the past discussions supported measures of wider scope. One of the British Commissioners is also again quoted, but it does not appear to be observed that his statement includes the "Pacific ocean & the coasts thereof" to the north of the 30th parallel. The Pribyloff Island shores are a portion of these coasts, & the killing of seals upon these islands is therefore necessarily included in the proposition for regulation. Neither must it be forgotten, that up to a very late stage in the present discussion the ~~advent~~ extent of the claims advanced by the United States has been limited to this very closure of Behring Sea.

urged in the United States Law
against the various modes of depletion
that dealt with, but a few of the more
striking points may be noticed.
Thus a close season as applied to
Sealing at Sea is suffered the difficulty
condemned by putting at the difference of
opinion exist between Several witnesses
as to the most suitable time of year. But
certain statements made by the British
Commissioners individually appear their
~~investigation~~ practical investigations of matters
connected with Seal life have been entered
upon, are also quoted, & Professor
Huxley is also quoted in

The fourth suspicion of a "maritime prohibition" refers to the establishment of a zone of protection around the Pribyloff Islands. The principal argument employed as against such a means of protection, is the extension of areas in which seals have been taken beyond the accepted limits security such a zone. This argument depends for its validity on the supposition that the purpose of the zone is to protect the herds of seals in Behring Sea, and not, as in fact, to afford a rookery protection to the breeding islands. It is however, further characterized as an "absurdity" on the ground that pups of this year are present about the islands. But it is very evident that a precisely similar argument might be employed in [illegible] to show that the limits of jurisdiction at sea are not the limits of jurisdiction at all useful. The province of pups might under it depart to points the ordinary three-mile limit, but it stands to reason that the enlargement of this limit to a distance of twenty or thirty miles would greatly increase the efficiency of the protection afforded to the shores themselves & their adjacent waters.

Memo by Mr Robinson QC.

Rec'd March 4. 93

On the question whether the arbitrators have power to make regulations extending beyond Behring Sea, and if so whether in reason and fairness it should be done.

It can hardly be said that the claim to such regulations has not been put forward with sufficient clearness.

At p.300 of their case it is said the U.S. will claim that no part of the high sea is or ought to be open to individuals for the purpose of accomplishing the destruction of national interests of such a character and importance.

At p.303 they ~~awoke~~ invoke the judgment of the tribunal to the effect that should it be considered the U.S. have not the full property or property interest asserted by them, it be then declared to be the international duty of Great Britain to concur with them on the adoption and enforcement against the citizens of either nation of such regulation to be prescribed by the tribunal as will effectually prohibit and prevent the capture <u>anywhere upon the high seas</u> of any seals belonging to the said herd.

At p.301 they say they will claim "that the extermination of this seal herd can only be prevented by the practical prohibition of pelagic sealing <u>in all the waters to which it resorts</u>," and the same claim may be said to be repeated in their counter case.

p. 121. Which insists "as claimed in their case" that they have such a property and interest in the seal herd frequenting the Islands of the U.S. in Behring Sea as entitles them to protection and to be protected by the Award against all <u>pelagic sealing</u>, which is the subject of controversy in this case."

These questions are of great importance for regulations not limited to Behring Sea might affect the whole coast of B. S. including Vancouver Island, and put a stop altogether to the industry on which many there now depend. The claim if acceded to would destroy not only pelagic sealing strictly so called, but the sealing by Coast Indians in

their canoes, which is carried only almost entirely outside of the 3 mile limit. And it would be practically impossible to enforce such regulations though the neglect to do so would no doubt be made a cause of complaint.

It seems clear that but for our sealing in Behring Sea there would have been no trouble or complaints, and it is unfortunate if in resisting the seizures and asserting our rights there, we have exposed ourselves to even a possibility of being regulated out of that sea and all other waters as well, especially as the only regulations provided for might expose our coasts to the operation of foreign vessels while our own vessels are excluded there.

It seems desirable therefore to protect ourselves against all risk of such regulations being made by whatever arguments may be admissible.

Taking the words of Clause VII. of the Treaty alone, and leaving all other considerations out of question, it would seem difficult to contend that the power is not given.

The arbitrators are to determine what concurrent regulations "outside the jurisdictional limits of the respective Governments are necessary and over what waters such regulations should extend."

It may be said on the one hand that the words"outside the jurisdictional limits of the respective Governments" shew that Behring Sea only cannot be intended because in that sea Great Britain has no territory and therefore no jurisdictional limits - this would seem to me by no means conclusive, for the words may well have been used as a general expression equivalent to "on the high seas" and may have that meaning.

On the other hand, there is certainly nothing in the words restricting the contemplated regulations to Behring Sea. They are sufficient to extend everywhere outside of the jurisdictional limits of either Government, and perhaps are more naturally applicable to water in which both have

territory and so jurisdictional limits.

It would have been easy to say "outside of the jurisdictional limits of the U.S. in Behring Sea" and"over what waters in Behring Sea - but these are not the words used. At that time however Great Britain might have resisted the use of words tending to distinguish this Sea from the rest of the Pacific Ocean. But do not Articles VI and VII taken together furnish a strong argument in our favour?

All the questions submitted by Article VI. including I incline to think the 5th are confined to Behring Sea, though as to that Clause there is room no doubt for difference of opinion. The first four questions are expressly so confined and the fifth is in substance - "what right of protection and property has the U.S. in the fur seals frequenting the Islands of the U.S. in Behring Sea when such seals are found outside the ordinary 3 mile limit". Does not this mean, taken in connection with the previous questions, in the fur seals when they are frequenting these Islands, and are found outside the ordinary 3 mile limit in that sea, and from those Islands? Can it be taken to mean the fur seals which during the summer are accustomed to frequent these Islands. Even though they may be found outside the 3 mile limit of any coast of either party to the treaty, perhaps thousands of miles outside the Behring Sea.

If not, then should all these questions be decided in favour of the U.S. giving her the jurisdiction claimed over Behring Sea and the right of protection and property in the fur seals while there, there will be no regulations, and pelagic sealing outside of that sea will remain - but should the decision be against her she may then ask, under her construction of Article VII, to have such sealing forbidden both in and beyond Behring Sea.

Can this have been intended or can it be a proper construction of the treaty. She can hardly claim to be

better off having failed in her contention as to jurisdiction and rights than if she had succeeded.

And this seems to form a strong argument also against the propriety and justice of so extending the regulations.

The argument as to the intention by the parties, derived from the surrounding circumstances and the previous negociations has been dealt with and I can see little new to suggest.

The dispute unquestionably arose about Pelagic sealing in Behring Seas and there only, no complaint having been made of it elsewhere, and the absence of any objection by the U.S. to the catch outside and along the Coast, which is said to be more destructive to the gravid females, is pointed out in the reports by the Canadian Committee of P.C. of the 15th Nov, 1890 and the 27th June 1891, and in Mr Tupper's letter to the Governor General of the 27th Nov. 1890.

In Mr Wharton's letters of the 8th and 22nd March 1892 written after the treaty with regard to the modus vivendi and cited in our argument (pp.84-5) the claim of the U.S. both as regards property and jurisdiction, is clearly stated as being confined to Behring Sea.

On the other hand in Mr Tupper's letter above referred to it is said that upon investigation it may possibly be found necessary to establish regulations in order to prevent the slaughter upon the coasts, and in an earlier let

U.S. App.I. 315. letter of Mr Wharton's of the 11th June 1891, also referring to the modus vivendi, he says their Government recognising the fact that full and adequate measures for the protection of seal life should embrace the whole of Behring Sea and portions of the N. Pacific and will agree to a commission to ascertain what permanent measures are necessary for the preservation of the seal species in the waters referred to.

It is to be noted that when the Modus Vivendi was proposed, it was proposed that all sealing in Behring Sea

and on its islands in that sea should be stopped by both parties. The United States did not dispute the reasonable character of this claim, or make any claim to be permitted to kill seals on the islands, in view of pelagic sealing outside Behring Sea. They insisted only on the right to kill 7,500 seals in the islands as a matter of necessity for the support of the natives there. Great Britain assented even to this exception with great reluctance.

It is not reasonable to argue that at least clear and unambiguous words are required to authorise regulations so unlimited. Question 5 is the only one which upon any interpretation can be read as extending beyond Behring Sea and this only because its language is indefinite.

It seems difficult to believe that regulations unlimited in area can have have been intended when it is remembered that no means are provided in the treaty for their revision or alteration hereafter - they must be made temporary in these operations by the Award, if that be practicable, or must last for all time and this when our knowledge of seal life is confessedly imperfect and upon many questions most important for the proper settlement of such regulations the Commissioners sent to enquire and whose reports are to assist the arbitrators, are diametrically opposed both as regards facts and opinions.

It cannot be supposed that other nations will under such circumstances be found ready to submit to any proposed regulations, except as an experiment - and it is clearly in the interests of either party to this controversy to be bound while other countries are free.

Would it not be well therefore to retain our position now taken in the argument as to regulations that such regulations outside of Behring Sea are beyond the scope of the reference.

There may be very little danger of such regulations, which would seem wholly unreasonable. They could only be

made on the assumption that all the seals found outside of Behring Sea along our coast prequent the Pribyloff Islands. Which is certainly not proved whatever may be probable.

It may be worthy of remark that at pp.300-1 of their case the U.S. claim that possessing solely the power of preserving and cherishing this most valuable interest they "are in a most just sense the trustee thereof for the benefit of mankind, and should be permitted to discharge their trust without hindrance."

Is not this somewhat inconsistent with their emphatic repudiation of all right on the part of other nations to control or interfere with their management of this interest, and their denial of the jurisdiction of the Tribunal with regard to it (at p. 122 of the Counter case) If they are trustees, the C.Y.T.S. should have some voice in the management of the trust property. May not this position taken by them be used to support our argument that any reasonable regulations should include the Islands. It is difficult to understand the assertion of trusteeship for the U.S. would not admit that if they were disposed for any reason to destroy the whole body of seals on the Islands any other nation could restrain them - or to understand on what grounds they could claim to do so.

MEMORANDUM as to British Argument.

The United States Counter-Case is occupied almost wholly with a discussion of facts relating to seal life -

This touches the claims of rights of property and of protection - and it is therefore probable that the U. S. Argument will in large part be confined to similar points -

The United States Counter-Case teems with mis-statements of important facts -

These can, however, be exposed by reference to papers now before the Arbitrators, though a few additional references to official documents would be useful -

The misrepresentations and erroneous statements in the U.S.C.C. are so numerous that it is not reasonable to conceive that the Arbitrators will trouble themselves to carefully investigate their accuracy -

On the other hand they may be easily misled by them and it would be unsafe to leave them unanswered -

Dr Dawson's notes (printed) deal fully with these points -

In the oral argument it would be tedious and also impossible effectively to follow the numerous mistakes and to supply the corrections. Somewhere this should be done.

It is submitted therefore that the British Argument should contain a chapter based on Dr Dawson's notes.

Killing males
cap. ~~65~~ 67
Refer to
~~Possible causes~~

The United States Commissioners admit as possible ones the two following causes of decrease in numbers of seals due to killing by man: —

U.S. Case p. 349

"First, from the killing of fertile females; and, second, from the excessive killing of males, carried to such an extent as to prevent the presence of the necessary number of virile males on the breeding rookeries. To one or the other of these causes must be charged the great changes which have come upon the rookeries within recent years" etc

It is not on the face of the proposition clear, but, logically evident why the whole decrease must be charged to one or other cause assigned. Both are known to have been in operation, & the question for decision is rather that of the relative importance of each.

The United States Commissioners however ~~assign~~ proceed to attribute the whole effect to the killing of females. ✗ But the facts here brought forward in evidence show conclusively that the main factor in bringing about the decrease has been ~~the~~ excessive killing of males.

Ibid p. 359

✗ on a later page insert a remark intended to ~~show~~ indicate that such of ~~the~~ the decrease as has been observed to be in males, it must be attributed to the killing of females

p 65 / after ¶ 1.

The ~~direct~~ evidence actually quoted to ~~substantiate this new position~~ in the United States case in support of this new position, is exceedingly slight. It consists in fact of certain statements made by Col J. Murray, ~~&~~ Major Williams, Mr J.C. Redpath & Mr J. Stanley Brown, with that of two natives. But the two natives alone directly oppose any scarcity of females; the other witnesses confining themselves to remarks as to the abundance of males.

As many of the subjects discussed in this part of the Counter-Case might appropriately be referred to the consideration of Naturalists, it appears to be important that one of the United States Commissioners should have obtained the opinion of a number of Eminent naturalists on some of these subjects, by means of a "circular letter", in which many of the statements proved to be erroneous by the evidence now adduced are contained. The statements made in the "circular letter" in respect of various matters connected with pelagic sealing are particularly incorrect.

Might a short index to this Official be added to p. 48 Part II. (End of Pelagic Sealing Chapter) to obviate the possibility of U.S. in argument taking credit for their reference of matters in dispute to Naturalists?

Part II
p. 63. (End)

?

It remains to be noted, in connection
with the question of the Management of the
Pribyloff Islands, that expressions to be
found in the writings of various authors
referring in terms of approval to the
methods of management, are based,
probably in every instance on the statements
contained in the earlier works of Mr H.W.
Elliott. ~~As~~ through these alone has any general
account of the ~~[illegible]~~ Pribyloff
Islands been ~~given~~ heretofore given wider
publicity. Mr Elliott has in fact been
accepted as the chief authority on seal life
in the North Pacific. Commentary
expressions of the kind, above alluded to
are cited in the Case of the United States,
but Mr Elliott's works are ~~[illegible]~~
~~referred to~~ no longer referred to on
any point, nor has his latest
Report, resulting from his special
investigations ~~in 1891~~ on the Pribyloff
Islands in 1890, been published by
the United States in any form. ~~Or~~
~~[illegible]~~, Such portions of this
report as the author has himself made
public, show that ~~his views relating~~
~~to the good effect of the methods practised~~
~~on the islands have so strongly changed~~
he has found reason to reverse his
former opinions as to the propriety of
the methods employed on the islands.

Not wanted

U.S. Case pp. 114, 115

It must not be omitted to mention that, though much evidence is cited in United States Case in order to prove that each female seal suckles her own young and no other, mostly this evidence consists merely of assertions to that effect. The circumstances are in fact such upon the rookeries as to render it ~~abundantly~~ very difficult to secure facts on this subject, which it is not ~~be~~ considered necessary here to discuss at length. It may be noted, however, that the results of such observations as have been made on this point appear to show ~~that it is very probable that~~ ~~carried~~ while it is probable that the female suckles her own young alone for ~~some~~ a certain time after birth it is further probable that some time before the young are weaned this ceases to be the case.

Br. Commrs. Rep. pp. 317–328, 301, 302.

Appendix p —.

The whole of the ~~argument~~ evidence on this point was cut out from end of Chapter on Pelagic Sealing. Might something like the above go in, merely to keep the point in view?

(?)

~~In regard to~~ the amount of care which
~~any company~~ the Alaska Commercial Company
(the lessees of the islands for twenty years
ending in 1889) may have from the
preservation of seal-life as such, may be
judged from various circumstances
which have long been known. It is for
instance known that in the Company through
its agents actually employs
numerous Aleuts, attempted to
intercept the fur-seals entering the
Behring Island, while in the same
Company actually filled out vessels with
suits for the purpose of intercepting fur-seals
in the waters of the Aleutians while on
their way from Behring Sea. As to the
North American Company, which obtained
the new lease in 1890, it is sufficient to
refer to the remarks made on another
page, where it is shown that the
principals ~~interested in~~ supporting it, had previously
been ~~interested in~~ deeply interested in
schooners which were sent to raid the
breeding rookeries on the Pribilof Islands.

p—.

by Straved interpretation of the treaty which would admit such incongruities & absurdities, & the determination of British Courts, can for a moment be contemplated.

In their Agents, assertions & demands, the U.S. have gradually advanced pari passu with positive assertion, ~~but in the Counter Case of the Government, or actually put it thus~~ ~~that.~~ Though in the U.S. Case (Conclusions) it is maintained that regulations must practically be such as to prevent pelagic sealing everywhere, it is also stated that the U.S. are in the position of Trustees of the sealing interest, thus involving the idea of other rights besides those of the U.S.*

U.S. Case p. 301

The U.S. position, in their Conclusions & other matters, include in the second "material question" to be determined by arbitrators:— "whether the U.S. & Great Britain ought not in justice & each other, in sound policy, for the common interest of mankind etc etc." "to enter into such reasonable arrangement, by concurrent Regulations or Convention, in which the participation of other Governments may be properly invited" etc.

p. 299

In the Counter Case of the U.S., however, a more advanced position is taken, & we read:—

"The U.S. insist, as claimed in this Case, that they have, upon the facts established by the evidence, such a property & interest in the seal herd frequenting the Islands of the U.S. in Behring Sea, & in the industry there maintained arising out of it, as entitles them to protection & the protection by the award of this Tribunal against all pelagic Sealing, which is the subject of controversy in this Case.

U.S. Counter Case p. 121.

Addenda. Suppl. Report

De Buuren fide Snow, Dec. 2.
Dec. (middle) of fur seals off S.E.
coast of Yezo & E. coast of Nipon S
to Inuboye.
20 to 150 miles off coast.
also at same seasons in Japan Sea
as far S. as Str. of Korea.

Compare list of vessels &
≠ late corrections
in suppl. report.

C.A. Williams p. 127
= W.B. Taylor
P 748. 1884 = 10 Oct. 83

BEHRING SEA. [Section No. 80.]

CONFIDENTIAL.

No. 1.

Sir R. Morier to the Earl of Rosebery.—(*Received February* 28.)

(No. 69.)

My Lord, *St. Petersburgh, February* 25, 1893.

WITH reference to my despatch No. 35 of the 25th ultimo, I have the honour to transmit to your Lordship herewith a copy of a note I have just received from the Russian Government, in reply to mine of the 11th (23rd) ultimo, on the subject of sealing in the North Pacific.

I have, &c.

(Signed) R. B. D. MORIER.

Inclosure in No. 1.

M. Chichkine to Sir R. Morier.

Ministère des Affaires Étrangères,
le 12 (24) *Février*, 1893.

M, l'Ambassadeur,

PAR votre note du 11 (23) Janvier, vous avez bien voulu m'informer que plusieurs capitaines de navires destinés à la chasse des otaries dans la Mer de Behring ayant demandé à être renseignés sur les limites dans lesquelles il leur serait loisible de pratiquer leur industrie, le Gouvernement Britannique se proposait de leur répondre que la chasse aux otaries resterait jusqu'à nouvel ordre complètement interdite dans les limites de la ligne de démarcation convenue en 1891 entre l'Angleterre et les États-Unis d'Amérique, mais qu'elle était libre en dehors de ces limites, sauf les eaux territoriales de la Russie. En même temps, votre Excellence m'a demandé de lui communiquer les objections éventuelles que le Gouvernement Impérial pourrait être dans le cas de former contre cette déclaration.

Tout en vous remerciant, M. l'Ambassadeur, de cette démarche dont le Gouvernement Impérial prend acte, je m'empresse de vous informer que la question des mesures à prendre pour empêcher la destruction de la race des otaries ayant été depuis quelque temps mise à l'étude, j'ai dû attendre les résultats préliminaires de ce travail pour répondre à la note que vous avez bien voulu m'adresser.

En abordant aujourd'hui la question de la chasse aux otaries, je crois devoir, avant tout, faire observer à votre Excellence que l'insuffisance de la stricte application en cette matière des règles générales du droit des gens relative aux eaux territoriales, a été démontrés par le fait même des négociations ouvertes dès 1887 entre les trois Puissances principalement intéressées dans le but de convenir des mesures spéciales et exceptionnelles.

La nécessité de telles mesures a été, depuis, confirmée par l'entente Anglo-Américaine établie en 1891.

En se prêtant à ces pourparlers et à cette entente, le Gouvernement Britannique à lui-même admis l'opportunité d'une dérogation éventuelle aux règles générales du droit international.

Un point sur lequel il importerait ensuite d'attirer tout particulièrement l'attention du Gouvernement Britannique est celui de la situation absolument anormale et exceptionnelle créée pour les intérêts Russes par les stipulations Anglo-Américaines. Au fait, la prohibition de la chasse dans les limites tracées par le *modus vivendi* convenu en 1891 a eu pour résultat d'augmenter la destruction des otaries sur les côtes Russes dans une proportion telle que la disparition complète de cette race n'y serait plus qu'une question de peu de temps, si des mesures de protection efficaces n'étaient prises sans retard.

Les chiffres suivants le démontrent clairement :—

Le nombre des otaries à tuer annuellement étant fixé par l'Administration proportionnellement à leur quantité, les années de 1889 à 1890, avant l'établissement du *modus vivendi* Anglo-Américain, ont donné les chiffres du 55,915 et 56,833, tandis que pour les années 1891 et 1892, après l'entente susmentionnée ces chiffres sont tombé à 30,689 et 31,315. D'autre part, d'après les données statistiques que le Gouvernement Impérial a pu se procurer, la quantité des peaux d'otaries, de provenance Russe, livrée par les chasseurs sur le marché de Londres s'est par contre accrue pendant ces deux

années dans une proportion infiniment plus considérable. Le nombre des navires s'occupant de la chasse et aperçus dans les alentours des Iles Komandorsky et Tulénew (Robben Island) aurait aussi augmenté considérablement, selon les observations faites par l'Administration locale. Les procédés sauvages et illicites de ces chasseurs ressortent d'ailleurs du fait avéré par les saisies que plus de 90 pour cent des peaux d'otaries emportées par eux sont celles d'otaries femelles qui ne s'éloignent guère à une grande distance de la côte pendant la saison de la chasse et dont la destruction entraîne celle de tous les petits qu'elles nourrissent. Le nombre d'otaries blessées ou abandonnées sur la côte ou dans les eaux territoriales et retrouvées ensuite par les autorités locales constate également le caractère destructeur de la chasse.

Dans cet état de choses, nous nous croyons justifiés, M. l'Ambassadeur, en exprimant notre entière confiance que le Gouvernement Britannique admettra l'urgence de mesures restrictives en attendant qu'une réglementation internationale de la chasse aux otaries puisse être établie entre les Puissances principalement intéressées.

Le Gouvernement Impérial pour sa part n'hésite pas à reconnaître que la protection ne saurait être exercée d'une manière vraiment efficace qu'à la suite d'un tel accord. En conséquence il est disposé, dès à présent, à entrer dans ce but en pourparlers avec les Gouvernements de la Grande-Bretagne et des États-Unis d'Amérique; mais il reconnaît en même temps la nécessité absolue de mesures provisoires immédiates tant à cause de la proximité de l'ouverture de la saison de chasse, que pour être à même de répondre, en temps utile, à la question posée dans la note de votre Excellence du 11 (23) Janvier.

A cet effet, et d'après un examen approfondi, le Gouvernement Impérial a cru nécessaire d'arrêter les mesures suivantes qui seraient applicables pour l'année 1893 :—

1. La chasse aux otaries sera prohibée pour tout navire n'étant pas muni d'une autorisation spéciale, à une distance de 10 milles le long de tout le littoral appartenant à la Russie.

2. Cette zone prohibée sera de 30 milles autour des Iles Komandorsky et Tulénew (Robin Island) [*sic*] selon les cartes officielles Russes, ce qui implique la fermeture pour les navires s'occupant de la chasse aux otaries du détroit entre les Iles Komandorsky.

Ces mesures seraient justifiées en ce qui concerne la zone de 10 milles le long du littoral par ce fait que les navires s'occupant de la chasse aux otaries stationnent généralement à une distance de 7 à 9 milles de la côte, tandis que leurs chaloupes et leur équipage se livrent à la chasse tant sur la côte même que dans les eaux territoriales; aussitôt qu'un croiseur est signalé au loin, les navires prennent le large, et tâchent de rappeler leurs embarcations en dehors des eaux territoriales.

Pour ce qui concerne la zone de 30 milles autour des îles, cette mesure est motivée par la nécessité de protéger les bancs désignés par les chasseurs sous le nom de "sealing grounds" qui se trouvent autour des îles et ne sont pas suffisamment précisés sur les cartes. Ces bancs servent dans certaines saisons de station aux femelles dont la chasse est particulièrement destructive pour la race des otaries à l'époque de l'année où les femelles nourrissent leurs petits ou vont leur chercher la nourriture sur les bancs dit "sealing grounds."

En vous priant, M. l'Ambassadeur, de porter ce qui précède à la connaissance du Gouvernement Britannique, je crois utile d'insister sur le caractère essentiellement provisoire des mesures susmentionnées, qui sont arrêtées sous la pression de circonstances exceptionnelles, pouvant être reconnues comme un cas de force majeure et assimilées aux cas de défense légitime.

Il n'entre, bien entendu, en aucune façon dans l'intention du Gouvernement Impérial de contester les règles généralement reconnues quant aux eaux territoriales. Dans sa pensée, loin de porter atteinte à ces principes généraux du droit des gens, les mesures qu'il croit nécessaire de prendre doivent, au contraire, les confirmer comme l'exception confirme la règle.

Le poids des arguments ci-dessus développés n'échappera certainement pas à l'appréciation éclairée du Gouvernement Britannique, et j'ai la ferme confiance qu'il ne se refusera pas de prendre relativement aux navires Anglais destinés à la chasse des otaries des dispositions conformes aux mesures que le Gouvernement Impérial se propose de prendre pour l'année 1893.

De son côté, le Gouvernement Impérial ne manquera pas de donner à ces mesures, en temps utile, la publicité qu'elles comportent.

En outre et afin de prévenir dans la mesure du possible, des malentendus et des contestations en cas d'infraction aux mesures provisoires ci-dessus ainsi qu'aux règles

générales du droit des gens, les croiseurs de la marine Impériale aussi bien que les autorités locales seront munis d'instructions précises définissant nettement les cas où le droit de poursuite, de visite et de saisie des navires en contravention devrait être exercé.

Comme il a été avéré que tout en se tenant en dehors des eaux territoriales et quelquefois même à une distance dépassant les 10 milles, les navires destinés au trafic des otaries envoient une partie de leur équipage et leurs chaloupes sur la côte même dans les eaux territoriales ou à proximité, il sera prescrit par les instructions susmentionnées de poursuivre et de soumettre à la visite tout navire dont les embarcations ou l'équipage auront été aperçus ou saisis se livrant à la chasse aux otaries sur la côte ou dans la zone prohibée par les mesures provisoires pour l'année 1893.

Une forte présomption résultant du fait même de la présence d'embarcations près de la côte ou dans la zone prohibée lors même qu'au premier abord il aurait été impossible de constater si ces embarcations se livraient ou non à la chasse des otaries; il sera loisible de poursuivre et de soumettre à la visite les navires auxquels appartiendraient ces embarcations.

La saisie sur les navires soumis à la visite d'instruments spécialement employés pour la chasse des otaries sur la côte même ainsi que des peaux d'otaries dont la plus grande partie seraient celles de femelles constituerait des présomptions suffisantes pour la saisie du navire, attendu que les otaries femelles ne s'éloignent guère du rivage à plus de 10 milles (à l'exception des bancs situés autour des îles) pendant la saison où elles nourrissent leurs petits.

En informant les capitaines des navires Anglais destinés à la chasse des otaries des mesures provisoires arrêtées pour l'année 1893 le Gouvernement Britannique jugera peut-être utile de leur faire connaître également la teneur sommaire des instructions dont les croiseurs Russes seront munis, en ajoutant que le droit de surveillance sera également confié aux navires de la côte sur le grand mât desquels le Gouverneur des Iles Komandorsky hissera le pavillon Douanier de la Russie lorsqu'il se trouvera à bord dans l'exercice de ses fonctions.

Veuillez, &c.

(Signé) CHICHKINE.

Mr. Pope will incorporate Mr. Tupper['s] notes in margin & the notes not scored — according to their pages & subjects — J.H.T.

p. 7. Main object of the Arbitration not B.S. rights, but seals. Quote Blaine of Dec. 17. 91 as against arguments on this subject by U.S. Much other evidence to the same effect.

13. The Courts of the U.S. in Alaska, [illegible], confiscated vessels solely on ground of territorial possession of Behring Sea.

13. The claim to property never defined or formally raised, whatever its admissibility. The claim to rights over sea, on contrary strongly formally & repeatedly raised but acted on.

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14 See as to the award of [settlement?] implied by what is said in this page.

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15. The letter [illegible] expressed only the opinion of the Company. The actual [views?] of ukase of 1799 shown in British Case.

16. U.S. clearly distinguished the Coast from B.S., while British case "confounds". True that they "distinguish" but they do not show reason for the distinction.

B. Case & Counter — Case on this?

18-19 But see the rights actually claimed by the ukase to be exercised over the 100 mile belt.

Ditto?

19 Now state that the exercise of right over 100 miles belt only to safeguard interests on shores.

20 For inclusion of B.S. in treaties etc. said to show that it was excluded. Already shown that opposite conclusion the correct one.

Ditto?

20. Case of the Pearl. Papers now for the first time made public.

The papers show that the case in fact was considered in connection with the signature of treaty of 1824. The payment of damages was assumed by her Middleton as a direct corollary of the settlement of treaty, & was acknowledged practically as such by Russia. The polite expressions quoted on p 21 are only the usual diplomatic standing an unfriendly position.

The assertion that the Russian Govt. insisted up to the very last that the Pearl had violated Russian law", is not to the point. Russia never admitted that the seizure of 1822 was illegal, but she resisted from it under pressure & in the case of the Pearl, the only one which had arisen, made the reparation retroactive.

It ought to be noted (p. 178) that Mr Middleton says that the action of Russia in abandoning in part this pretension as the Govt. pressed on it." that Russia "had no sovereignty on it."

21. What is meant by the implied of "the strict colonial system" of Russia here & Elsewhere referred to?

22. Earl correspondence does not traverse British position, that U.S. held that treaty of treaty was ample & perfectly clear towards Govt. when no Russian settlements existed. That part of the correspondence which shows that U.S. abandoned claim to coast before that Russian settlements existed when Earl seized, is not quoted. p. 180–184.

p 24. The U.S. have acknowledged that any such law as that alluded to in P. was in force. The U.S. proclamation has already been quoted (Br. Case p.) The Russian proclamation referred to (p. 164 speaks only of Russian territory. It is not signed, & there is nothing to show that it was ever issued, far less enforced.

24 No motive for protecting Russian whaling interests — Perhaps not, but shows a repeated protests against foreign whaling were taken by the Company.

25. Whatever the domestic motives may have been the Russian govt. have attempted to prohibit whaling, as a matter of fact. The U.S. claims prescription, vested rights, & thus is clearly in part from the standpoint of prescription.
The claim to exclusive Whaling was the only one directed in the Warrant, & whether from motives of policy, or economy, Britons rights & property were safeguarded. The idea that a latent right to protect seals survived, is absurd.

(There were known, enquired of Company's whalers" in 1885-3. p. 28)

26. Whalers had visited St Paul Island in 1869. The board of Administration (not the Govt.) wrote to the Manager that the papers had been communicated to Russian ministers in U.S. with the request that americans may be punished from "invading the integrity of the Russian limits" &c p. 199.
The answer to this request is not given. Nothing is said of any maritime jurisdiction.

28. "Instructions herewith enclosed" necessary for understanding of the document. They are stated not to be in possession of the U.S. p. 162.

p. 29. The claim here made that Russia had not receded from her original position in regard to limits of protection, is wholly negatived by the correspondence & treaties, as already shown.

The U.S. admit that the distances from the shores were not stated. If the distance unusually great it would have been particularly stated to that effect.

Admit that no vessel warned or seized for sealing. Think that if any vessel had engaged in sealing she would have been interfered with.

Allege that this position sustained by Russian action in 1892, but this action not admitted as legal & no attempt (?) has been made to sustain it beyond ordinary 3-mile limit.(?)

What is meant (bottom of page) by "extra-territorial waters" do the U.S. give up their whole case of extraordinary limit of protection?

Can [illegible] of these seizures up to the present be used against us.?

or the U.S. acquiesce in the justice of the seizure by Russia of the C. H. White?

p. 30. U.S. practically abandon the first part of their case.

31. Repeats the wrong statement that acquisition of fur-seals of Pribyloff's one of chief motives of purchase of Alaska by U.S.

See Case

31. No open or persistent or any other species of attempt was made at pelagic sealing before date of cession, for the obvious reason that such sealing was an undiscovered & unknown industry

p. 31. U.S. State now completely [illegible] renounce any dependence on Russian claims. Assert only that the "right" asserted & maintained by them is in strict accordance & continuation of rights of Russia.

They ignore the fact that new factors had arisen which would in any event have rendered the claims of Russia nugatory.

p 32. U.S. deny that the claim to property new. This appears to be considered important, for it has already been referred to in opening pages of U.S. Counter Case. Necessary to complete train of argument in support of our position that it is new. Perhaps need not go back further than Blaine's letter of Dec. 17. 91, for in that letter all other grounds except special rights to B.S., definitely abandoned. That is to say all suggestions of special property rights were made on land side.

But ~~admitting~~ admitting, for the sake of argument that earlier correspondence may be in point, the statements then made are so vague & unsupported by reasons, that it would be practically impossible to discuss the claims hinted at, but not defined.

34 & 35. Phelps wholly inconclusive argument, ~~It~~ must however be dealt with.

35. Is the postulation here exact. It seems to me Phelps (or Blaine) alluded specifically to Imperial and [illegible], not to Canadian Courts.

35. Admits in effect that U.S. prepare to invent a new principle of International law in ~~this~~ this instance. And ~~[illegible]~~ new & unknown principle of law is badly introduced by means of seizures made on the high seas in the special interests of a single nation.

Though the Elliott Report was made by an official of the U.S., it has not been relied upon, so far as known, referred to or influenced by the Govt. in any way in the course of the discussion except in so far as this may be supposed to have been done in the uncertain allusions made in preceding pages of the U.S. Counter Case. In ~~this~~ the U.S. Case the author (Elliott) is not even quoted ~~(?)~~ & in the Counter Case, ~~[illegible]~~ (App.) special pains are taken to bring forward matter detrimental to his credibility (p.)

pp. 38-40 Case of the Harriet, requires discussion.

p. 40. The concluding assertion applies equally to all the alleged claims of Russia to peculiar rights as to seals in Behring Sea.

Memorandum by Sir Thomas Sanderson F.O. Feb: 6.1893.

It was agreed that printed copies of the accompanying despatches from Sir J. Pauncefote should be circulated to Counsel in order that they might consider and advise Lord Rosebery whether any notice should be taken of the assumption in Mr Foster's note of Jan: 21st, that the two Governments are in accord as to the obligatory nature of any Regulations that may eventually be determined on by the Arbitrators.

With reference to the question which was discussed at the meeting on the 3rd instant, as to the powers of the Arbitrators and the scope and nature of the Regulations they were entitled to make under Art: VII of the Treaty, I would ask Counsel to refer to the correspondence out of which the Article grew.

It is called in that correspondence Point 6.

The first proposal will be found at the close of Mr. Blaine's note of Dec: 17, 1890. (U.S. Appendix Vol: I. p. 286). Lord Salisbury's reply will be found in the last paragraph but one of his despatch of Feb: 21. 1891 (Ibid p. 294).

The present Article was then proposed in Mr. Wharton's note of June 25. 1891, (Ibid p. 319) and accepted.

The evidence is very strong that neither party at that time contemplated anything beyond a close season in a part of Behring Sea.

CONFIDENTIAL.

No. 1.

Sir J. Pauncefote to the Earl of Rosebery.—(*Received January* 31.)

(No. 23.)

My Lord, *Washington, January* 20, 1893.

IT was announced in the Washington papers that, on Monday the 16th instant the Secretary of State and Mr. Phelps, the Agent of the United States' Government in the Behring Sea Arbitration, and Senator Morgan, one of the Arbitrators nominated by the United States' Government, had a Conference with President Harrison at the White House in regard to the Behring Sea Case.

On the same day I received a note from the Secretary of State requesting me to call on him at my early convenience. I proceeded at once to the State Department, where I was immediately received by Mr. Foster, He informed me that the Advisers of his Government in the Behring Sea Case had raised a question as to the meaning and import of two passages in the British Case, which appeared to them to amount to a declaration on the part of Her Majesty's Government that they do not view the Regulations to be made by the Arbitrators under Article VII of the Behring Sea Treaty as obligatory, but only in the light of recommendations. The passages in question are the closing paragraph of the introductory statement (p. 9), and paragraph 19 of Chapter X (p. 160).

He added that he did not understand those passages in the sense above mentioned, nor did the President. He did not therefore propose to address a formal note to me on the subject, but as the point had been raised by the Advisers of the Government he felt bound to ask that Her Majesty's Government should confirm his belief and that of the President, that the two paragraphs above referred to have not the meaning and purport ascribed to them, but are only statements of the contention of Her Majesty's Government apart from the Treaty. I deprecated raising any question as to the obligatory character of the Regulations, as it had already formed the subject of correspondence between the two Governments at the close of 1891, and as it appeared to me had then been disposed of. Mr. Foster, however, insisted on his request that I should address his inquiry to your Lordship, and I accordingly did so the same day by telegraph. On receipt of your Lordship's reply I prepared the following statement in writing, which I read to Mr. Foster at an interview which took place on the 18th at his private house, where he was confined by temporary indisposition.

The following is the statement:—

"The context renders perfectly clear the meaning of the two paragraphs referred to.

"As regards the paragraph at p. 9, it merely states what throughout the discussion has been the attitude of Great Britain.

"As regards the paragraph at p. 160, it is governed by the preliminary sentence with which Chapter X commences, and it merely states one of the conclusions which it is maintained that the arguments and facts set forth in the Case have established.

"It was not intended by either of those paragraphs to express any opinion with regard to the powers of the Arbitrators, nor as to the construction to be placed on the Treaty in that respect. Neither paragraph, in the view of Her Majesty's Government, can be considered as raising any such question."

When I had read the above statement, Mr. Foster exclaimed that it was no answer to his question. I insisted, however, that it was a complete answer, and entirely confirmed the view taken by the President and himself of the paragraphs in question. He then asked to be allowed to take down in writing the answer which I had verbally delivered. To this I of course readily assented, and I then took my leave. I am awaiting any further communication which Mr. Foster may have to make to me.

I have, &c.

(Signed) JULIAN PAUNCEFOTE.

No. 2.

Sir J. Pauncefote to the Earl of Rosebery.—(*Received January* 31.)

(No. 26.)

My Lord, *Washington, January* 20, 1893.

WITH reference to my despatch No. 23 of to-day, I have the honour to transmit herewith copies of a note, with its inclosures, which I have since received from Mr. Foster, and of my reply thereto, in which I inclosed a carefully paraphrased copy of my telegram to your Lordship No. 7 of the 16th instant.

I have, &c.

(Signed) JULIAN PAUNCEFOTE.

Inclosure 1 in No. 2.

Mr. Foster to Sir J. Pauncefote.

Dear Sir Julian, *Department of State, Washington, January* 19, 1893.

I INCLOSE herewith a type-written Memorandum in duplicate of the interviews held between us on the 16th and 18th instant, and shall be glad to have you advise me if it is a correct and satisfactory statement, and, if not, what corrections you have to suggest.

Yours, &c.

(Signed) JOHN W. FOSTER.

Inclosure 2 in No. 2.

Memorandum of Interviews between the Secretary of State and the British Minister, January 16 *and* 18, 1893.

THE British Minister, Sir Julian Pauncefote, having called at the Department of State, in response to a request of the Secretary of State, on Monday, 16th January, 1893, the Secretary stated to the Minister that he had been directed by the President to inform him that doubt had been expressed to him whether the British Government regarded itself as bound to carry into effect the Regulations which might be determined upon by the Arbitrators, in case they should deem them necessary in conformity to Article VII of the Treaty of Arbitration of the 29th February, 1892; that this doubt had been created by the language used by the Agent of Great Britain in the printed Case of Her Majesty's Government, on p. 9, second paragraph, and p. 160, paragraph 19; that the President regarded the Treaty as clearly binding both Governments to carry out the Regulations which might be determined upon by the Arbitrators in accordance with Article VII, and he could not allow himself to believe that Great Britain intended to express any doubt on that point; but that, in view of the responsible source from which the suggestion as to the position of Great Britain had come to him, the President had thought it proper that the Secretary should request from the Minister an authoritative declaration from his Government on the question as to whether it regarded itself as bound to carry out the Regulation which might be determined upon by the Arbitrators in conformity to Article VII of the Treaty.

The Minister replied to the Secretary that he would communicate with his Government on the subject by telegraph, and advise the Secretary of the response of his Government.

On Wednesday, the 18th January, 1893, Sir Julian Pauncefote, the British Minister, called at the private residence of Mr. Foster, Secretary of State, the latter being confined to his house by a slight indisposition, and the Minister stated that, in response to the inquiry of the Secretary, made to him on Monday, the 16th instant, Lord Rosebery had directed him to make the following statement:—

The context renders perfectly clear the meaning of the two paragraphs referred to.

As regards the passage on p. 9, it merely states what has been throughout the discussion the attitude of Great Britain.

As regards paragraph 19 at p. 160, is governed by the preliminary sentence at

p. 158, with which Chapter X commences. Paragraph 19 merely states one of the conclusions which it is maintained that the arguments and facts set forth in the Case have established.

It was not intended by either passage to express any opinion with regard to the powers of the Arbitrators in the matter of the Regulations, nor as to the construction to be placed on the Treaty in that respect.

Neither passage in the view of Her Majesty's Government can be considered as raising any such question.

Inclosure 3 in No. 2.

Sir J. Pauncefote to Mr. Foster.

Dear Mr. Foster, *Washington, January* 20, 1893.

I AM in receipt of your note of yesterday, inclosing a Memorandum of our interviews of the 16th and 18th instant, and inviting me to express my concurrence therein or to suggest any corrections.

Your record of our interview of the 16th does not accord, I regret to say, in all particulars with that which I telegraphed, immediately after our meeting, to Lord Rosebery.

I cannot do better than send you the substance of my telegram to his Lordship, in which I endeavoured to adhere as closely as possible to your own language, and I can only express my regret if I misapprehended in any way the precise bearing of your inquiry. I understood that inquiry to be carefully limited to the meaning and purport of the two passages in the British Behring Sea Case under discussion, and to be occasioned solely by the interpretation to be placed on those two passages by the Legal Advisers of your Government, and which interpretation has since been disclaimed by Lord Rosebery.

As regards your record of our interview of the 18th, I have only to suggest the insertion of the word "it" in the 4th paragraph, after "p. 160."

I remain, &c.

(Signed) JULIAN PAUNCEFOTE.

Inclosure 4 in No. 2.

Sir J. Pauncefote to the Earl of Rosebery.

(No. 7.)

(Telegraphic.) P. *Washington, January* 16, 1893.

I CALLED this morning on the Secretary of State at his request. He informed me that a question had been raised by the Advisers of his Government as to the meaning and import of two passages in the British Behring Sea Case, namely the paragraph, at p. 9, which commences with the word "finally," and paragraph 19, at p. 160. In their opinion, those paragraphs amount to a declaration from Her Majesty's Government that any Regulations made by the Arbitrators under the VIIth Article of the Behring Sea Treaty would be considered by them not as obligatory, but only in the light of recommendations. This view, he said, was not shared either by the President or by himself. They looked upon those paragraphs as mere statements of the contentions of Her Majesty's Government, independently of the Treaty. Mr. Foster said that he had examined the correspondence which took place in November and December 1891 on the subject of the Regulations. He did not intend to address a formal note to me, but as the question had been raised by the Advisers of the United States' Government, he felt it his duty to ask me to obtain from my Government a confirmation of his view and that of the President as to the meaning and effect of the two paragraphs referred to.

No. 3.

Sir J. Pauncefote to the Earl of Rosebery.—(*Received January* 31.)

(No. 27.)

My Lord, *Washington, January* 20, 1893.

WITH reference to my despatch No. 13 of the 9th instant, I have the honour to transmit herewith copy of a note which I have received from Mr. Foster, and in which he comments on some passages in the Memorandum, of which a copy is inclosed in my above-mentioned despatch.

I do not propose to carry the correspondence further unless otherwise instructed by your Lordship.

I have, &c.

(Signed) JULIAN PAUNCEFOTE.

Inclosure in No. 3.

Mr. Foster to Sir J. Pauncefote.

Sir, *Department of State, Washington, January* 19, 1893.

I HAVE had the honour to receive your note of the 7th instant and the Memorandum which accompanied it.

It appears from your note and Memorandum that the latter was prepared because of the reference to you in my note to Mr. Herbert of the 9th November last, and which, in your judgment, made it necessary for you "to disclaim the views inferentially attributed to you." I fully participate with you in the wish that the diplomatic "discussion may not be renewed," and I have no intention in this note to reopen questions which may well be remitted to the Tribunal of Arbitration. I feel it necessary, however, to renew in writing the disclaimer which I made verbally to you, in the conversation of the 6th instant referred to in your note of any intention to attribute to you the views which you combat in the Memorandum. Nor can I conceive that the language used by me bears such a construction. You are kind enough to quote the language relied upon for your conclusions, but you unfortunately omit the sentence in the paragraph cited, wherein I intended to limit the reference to you in the last sentence. I think that a proper construction of the paragraph is that you are appealed to in support of the statement of facts recited in Mr. Blaine's letter, and that statement only.

I must ask your indulgence while I notice one other statement in your Memorandum. You say: "The proposal of Her Majesty's Government for the appointment of a Joint Commission was for a long time opposed by the United States' Government." And you proceed to cite two occasions (in 1890 and 1891) when the appointment was refused by Mr. Blaine."

An examination of the correspondence referred to in your Memorandum can hardly be held to sustain this allegation. The proposition submitted by you in 1890 for the appointment of a Joint Commission was coupled with a comprehensive scheme for the regulation of the taking of seals on land and in the water, and the scheme was declined by Mr. Blaine because it was inadequate; but in his lengthy review of your proposition there does not appear to be any disapproval of the creation of a Joint Commission. The correspondence of 1891, to which you make reference, shows that Mr. Blaine did not reject the proposition for the appointment of a Joint Commission, but that he was unwilling to send it to Behring Sea "until the terms of the Arbitration had been definitely agreed to." The same position was taken by Mr. Wharton in the notes cited. At no time did the Government of the United States question the propriety of the creation of a Joint Commission, and at the proper time it cheerfully agreed to it. As an earnest of its acceptance of the Joint Commission in good faith, my Government proposed that these "Agents of the respective Governments go together, so that they may make their observations conjointly." This proposition was declined by Her Majesty's Government, and the sequel shows that no joint investigation ever took place.

Regretting that I have found it necessary to prolong the correspondence on this question, I have, &c.

(Signed) JOHN W. FOSTER.

CONFIDENTIAL.

No. 1.

Sir J. Pauncefote to the Earl of Rosebery.—(*Received February* 2.)

(No. 33.)
My Lord, *Washington, January* 23, 1893.

WITH reference to my correspondence with the Secretary of State respecting the meaning of certain passages in the printed Case of Her Majesty's Government in the Behring Sea Arbitration, and in continuation of my despatch No. 26 of the 20th instant, I now have the honour to inclose a copy of a note which I have received from Mr. Foster, in reply to that which I addressed to him on the 20th instant, and of which a copy was transmitted to your Lordship in my above-mentioned despatch.

I do not propose to return any answer to Mr. Foster's note unless otherwise instructed by your Lordship.

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

Inclosure in No. 1.

Mr. Foster to Sir J. Pauncefote.

My dear Sir Julian, *Department of State, Washington, January* 21, 1893.

I AM in receipt of your note of yesterday, with which you transmit a paraphrase of the telegram sent to Lord Rosebery, as indicating your understanding of the purport of the interview we held at the Department of State on the 16th instant.

I am pleased to say that your telegram, so far as it goes, is substantially a correct statement of what occurred at our interview, but unfortunately it fell short of the inquiry which I desired you to make to your Government, to wit, whether it felt itself bound to carry out the Regulations which might be determined upon by the Arbitrators in conformity to Article VII of the Treaty. Such an inquiry I certainly propounded to you, and it is a matter of regret if the manner in which I presented it did not impress upon you the necessity of telegraphing it to Lord Rosebery.

The reply which you have communicated from his Lordship makes it clear that it was not the intention of Her Majesty's Government to express in its printed Case any doubt as to the binding obligation of Great Britain to carry out the Regulations which might be determined upon by the Arbitrators; and what has taken place between us satisfies the President that the views of the two Governments are in harmony respecting the obligatory character of the Regulations.

I have, &c.
(Signed) JOHN W. FOSTER.

No. 2.

Sir J. Pauncefote to the Earl of Rosebery.—(*Received February* 2.)

(No. 35. Confidential.)
My Lord, *Washington, January* 24, 1893.

IN my despatch No. 23 of the 20th instant I reported the announcement by the local press of a conference having taken place at the White House on the 16th instant, between the President, the Secretary of State, Mr. Phelps, and Senator Morgan, in regard to the Behring Sea Case. On the same day Mr. Foster addressed to me, by desire of the President, the inquiry reported in my above-mentioned despatch, and the correspondence ensued of which I have had the honour to transmit a copy to your Lordship. The impression left on my mind by the incident is that Mr. Phelps and Senator Morgan (who were probably the legal advisers of the Government referred to by Mr. Foster) were not satisfied as to the position in which the question of the obligatory character (independently of the adhesion of other Powers) of the concurrent Regulations to be made under Article VII of the Behring Sea Treaty was left by the correspondence of November and December 1891 (see Parliamentary Paper, "United States No. 3, 1892").

It was difficult to raise the question, after the signature of the Treaty, without some new ground for reviving the discussion; and for this reason a very strained and unreasonable interpretation was placed by them on two passages of the British Case in the hope of eliciting in an indirect manner an express declaration or acknowledgment by Her Majesty's Government that they held themselves bound by the Regulations, whether the other Powers should accept them or not. At my interview with the Secretary of State on the 16th instant I particularly noticed his hesitancy in making any inquiry as to how far Her Majesty's Government felt bound by the Regulations. He appeared to me, on the contrary, to assume that they considered themselves bound by the Regulations absolutely and unconditionally, and he disclaimed on the President's behalf, as well as on his own, the view of the legal advisers of the Government as to the meaning and purport of the two passages in the British Case which gave rise to the inquiry.

I carefully watched the terms of the question which he stated that the President had desired him to address through me to Her Majesty's Government. The question was certainly limited to the interpretation of the two passages referred to, as recorded in my telegram No. 7 sent to your Lordship immediately after the interview.

I was not a little surprised, therefore, when (as reported in my despatch No. 23 of the 20th instant) Mr. Foster, on receiving your Lordship's reply, exclaimed that it was no answer to his inquiry.

He subsequently sent me a note inviting my concurrence in a Memorandum which he had prepared of our interviews on the subject, and in which it is made to appear that his inquiry had extended to the obligatory character of the Regulations. A copy of that note and of my reply are inclosed in my despatch No. 26 of the 20th instant. Finally, in my despatch No. 33 of the 23rd instant, I have had the honour to transmit to your Lordship copy of a note from Mr. Foster, in which he states that "what has taken place between us satisfies the President that the views of the two Governments are in harmony respecting the obligatory character of the Regulations." I have made no reply to the above-mentioned note, which appears to me to close the incident.

I am at a loss to understand what greater satisfaction the President can have derived from what has taken place than he had before, seeing that the attempt made to obtain a declaration from Her Majesty's Government as to the effect of Article VII of the Treaty (under the pretext of a pretended ambiguity in certain passages of the British Case) has completely failed.

I have, &c.

(Signed) JULIAN PAUNCEFOTE.

CONFIDENTIAL.

No. 1.

Sir J. Pauncefote to the Earl of Rosebery.—(*Received February* 2.)

(No. 34.)

My Lord, *Washington, January* 24, 1893.

WITH reference to my telegram No. 12 of yesterday on the subject of the composition of the Behring Sea Tribunal of Arbitration at its first meeting, I have the honour to inclose copy of the note which, at the request of Mr. Foster, I addressed to him on the subject, as well as copy of his reply to my communication.

I have, &c.

(Signed) JULIAN PAUNCEFOTE.

Inclosure 1 in No. 1.

Sir J. Pauncefote to Mr. Foster.

Sir, *Washington, January* 21, 1893.

I HAVE received a telegram from the Earl of Rosebery, in which he informs me that he has reason to believe that it will be extremely inconvenient to the Arbitrators nominated by His Majesty the King of Italy and by His Majesty the King of Sweden and Norway under the Behring Sea Treaty to come to Paris on the 23rd February, as at present arranged, with the prospect of adjourning for a month. It would be still more inconvenient to the British Arbitrator from Canada.

In these circumstances, Lord Rosebery suggests that a formal meeting be arranged of two or three Arbitrators, who might in their own names and that of their colleagues grant an adjournment. His Lordship adds that the Governments of Great Britain and the United States could agree by an exchange of notes; that such a meeting should be deemed a sufficient fulfilment of the Treaty provisions respecting the date of the first meeting of the Arbitration; Tribunal, and that until the full meeting in March all questions other than that of the adjournment should be postponed.

I shall be obliged if you will take the above proposal into consideration, and inform me whether it meets with the concurrence of your Government.

I have, &c.

(Signed) JULIAN PAUNCEFOTE.

Inclosure 2 in No. 1.

Mr. Foster to Sir J. Pauncefote.

Sir, *Department of State, Washington, January* 23, 1893.

I HAVE the honour to acknowledge the receipt of your note of the 21st instant respecting the meeting of the Tribunal of Arbitration at Paris on the 23rd February.

In view of the fact stated therein, that you have information that it will be inconvenient for some of the members of the Tribunal to attend on the 23rd proximo, I am authorized by the President to state that it will be accepted by the Government of the United States as a sufficient compliance with the Treaty of the 29th February, 1892, respecting the date of the first meeting of the Tribunal if, at the meeting on the 23rd proximo, there are present one Arbitrator on the part of Great Britain, one on the part of the United States, and one of the three Arbitrators selected by the foreign Governments; and it is agreed that, until the full meeting on the 23rd March next, all matters other than that of the adjournment, and such action as may be deemed by the Arbitrators present as necessary for the organization of the Tribunal, shall be postponed.

I have, &c.

(Signed) JOHN W. FOSTER.
