London, Jan. 20 1843, William Nassau Senior à François Guizot

Auteurs : Nassau Senior, William (1790-1864)

Les folios

En passant la souris sur une vignette, le titre de l'image apparaît.

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Madame Princess
London. Jany 20. 1843

Dear Sir,

I was happy to hear from Count Pozzo that I have the honor of remaining in your Excellency's recollection. There is no Italian man, & I have known the most eminent in my own country, & many abroad, whose virtues & talents have inspired me with more respect. It is not honour to say this that I have ventured to intrude on your valuable time, but to make some remarks on the right of search

It seems to me that in the debates in your chambers the right of visit for the purpose of detention & the right of search for the purpose of inquiry have often been confounded, & that they have been supported to rest, as between France & England, on the same foundation, the treaties of 1831 & 1833.

Now these rights are perfectly distinct

in their origin Like their Object.
The first is, of course, the result
of treaty. A ship is part of the territory
of its nation, & no country can exercise
exercise jurisdiction in a foreign territory
except by treaty.

But the second, the right of search
for the purpose of inquiry, is the result
not of treaty but of necessity. It
arose as soon as all Europe declared the
maritime slave trade to be a crime
& agreed to use the utmost exertions
to put it down. The treaties of 1831 &
1833 do not create, or extend, but
limit it: and if they were abandoned
the right would remain not only undiminished
but enlarged.
On board the rule that no one can
enter a foreign territory without

Lemonstrin is easily ~~enforced~~ respected, for the frontiers of most countries are marked & known. But the only sign of a ship's nationality is her flag, & she can assume any given flag, & change it as often as she chooses. If therefore the mere assumption of a flag were conclusive evidence of the right to use it, a vessel on the high seas wd be practically exempt from all jurisdiction. She need only hoist the flag of some power whose cruisers are not to be met with in the seas in which she is sailing, & all inquiry is at an end.

It follows that if any jurisdiction is to be exercised on the high seas it must either be exercised over all vessels without reference to their nationality, or it must carry with it the right to ascertain their nationality.

Until the present century the only crime of which a ~~ship~~ pirate could be

guilty was piracy. And by international law pirates have no nationality & may be seized & punished by the force & tribunals of any country. It was therefore unnecessary in time of peace ever to ascertain the nationality of a ship, for unless she were a pirate she could not be interfered with, and, if she were a pirate, she might be seized whatever were her flag. Nor was it necessary in time of war, since war gives a universal right of detention, in order to search for enemies goods & contraband of war.

When the Slave trade was declared a crime, the British Government assimilated it to piracy, and directed their cruizers to detain all vessels engaged in it. Had their attempt succeeded it would have remained unnecessary to ascertain the nationality of a ship on the high seas — since she could not be detained unless a pirate or a slaver, & then might be detained whatever were her country. The English

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Courts defeated this attempt. They decreed restitution of French slavers & established the doctrine that slave trading is an offence cognizable only by the Country of which the offender is a subject, or by some authority to which that Country has expressly delegated its jurisdiction.

The necessary consequence is, an inquiry into the Nationality of a vessel suspected of slave trading. If she could protect herself from all investigation by merely hoisting a flag different from that of the Cruiser which attempts to detain her, all attempts to intercept slavers on the high seas must cease. If a ship with her deck crowded with negros, & "the Mary of London" pointed on her stern had a right to hoist as many Swedish colours as she chose, she would challenge thro' a British fleet the mutual engagements of the christian world to put down the maritime slave

trade must become solemn enquiries.
But such an inquiry takes time,
& loss of time at sea is always
expense, & sometimes danger. If vexatious
carried on it may occasion intolerable
annoyance & can never be endurable
unless conducted with the utmost
moderation & candor. And even
then it is made at the peril of
the inquirer, that is to say on the
condition of making full compensation
if the suspicion, however fair, shall
appear to be groundless.
All the nations of Europe and America
therefore, with the solitary exception of
our hemisphere, have determined by
mutual treaties where, & by whom,
& how it shall be effected.
The United States & Portugal have
as yet refused to become parties
to these arrangements, & the consequence
is, as Mr W Heaton has remarked

in his work on the right of search, p. 161
that these nations are placed in a worse
situation than if they had not thus
separated themselves from the rest
of the christian world. The treaties
which regulate the right of search provide
a remedy for all injuries which it may
inflict on the subjects of the contracting
parties. But no remedy can be provided
for the members of a nation which refuses
to recognize the right.
In fact to refuse the right is to
say you shall not exercise your own
laws, on the seas of the rest of the
christian world on your own vessels
or on the vessels of countries with
which you have treaties. - if those vessels
choose to assume our flag, you
shall not inquire into their right
to it. A French squadron shall
allow a French vessel under suit
flames to sail thro' her, if she have
the american papers.
Such a pretension as this can not be
allowed by France to England or by

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England to France: or in fact by any one nation to any other. The conduct as respects the United States will be that her vessels will from time to time be visited by mistake, that she will complain, that we shall justify ourselves by the necessity of the case, & that ultimately she will join the rest of the civilized world.

No portion of these remarks is likely to be new to you, but I thought that it might be useful if they were shortly stated.

I have the honor to be with great respect Your Excellency's very truly

Stephen W. Senior.

His Excellency

Monsieur Guizot.

It is to be recollected that in relation to the conduct proposed in the severity of France as to the abolition of the slave trade will be the tendency to believe, when a stance, shows that it is resisted.