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Letter of Mr. Monroe to Mr. Madison—Concluded.

To your 6th objection, little need be added to what is stated on the subject of it, in our letter of January 3d, 1807. As the paper of the British commissioners to which it relates, had no sanction whatever from us, as was fully shown by that letter, the objection cannot be said to apply to any part of our conduct. The paper was produced by the decree of the Emperor of France, of the 21st November, 1806, and was intended by the British commissioners, to operate as a reservation of right, in their government, not to ratify the treaty, or not to be precluded, under certain circumstances, in case it did ratify it, from adopting such measures, as it might find necessary, to counteract the restrictions imposed by that decree. The exercise of the right reserved was made dependent on the abandonment of the principle of that decree by the French government, or an assurance from the government of the United States, or such conduct as would be equivalent, that the pretention would not be submitted to by it. We apprized the British commissioners that our government would enter into no engagement whatever, of what it would do, in any case, with another power. Had the the treaty been ratified, even without any notice being taken of that paper, it could not have imposed the slightest obligation on the United States, either to perform any act on their part, or to submit to any, on the part of Great Britain. I had supposed, however, in the case of ratification, that we should have been instructed to present to the British government, with the instrument of ratification, a counter declaration to that effect. The whole subject was before our government, with our strong and decided objections to the paper. All that we could do was to transmit it to you, with a correct statement of what had occured in the negociation respecting it, which we did. To the government it belonged to take the step which the occasion required, not to us.

Having noticed the objections which are especially stated in your letter of May 20, 1807, and given our view of the several parts of the treaty to which they relate, I shall proceed to make explanatory remarks on the other articles, in order to do justice to the conduct of the American commissioners in regard to them.

Article 5. You admit that this article is an essential improvement of that on the same subject in the treaty of 1794. It certainly improves it in two important interests; 1st, in that of the navigation of the U. States, and 2d, in that of duties on American productions carried to the British market. The tonnage on American ships in the British ports had been raised to   sterling per ton, while that on British ships in the ports of the United States was only 50 cents or 2s. 3d. per ton; and the duty on the bulky productions of the U. States in American bottoms, had been raised to such a height, under the countervailing regulations which the treaty allowed, as to secure in time of peace, the entire carriage of those productions to British vessels, if, indeed, it did not materially affect the price of the articles themselves. What made it more unfortunate was, that the United States could not adopt any measure to remedy those evils without committing a direct and palpable violations of the treaty, as they were bound by it not to raise the existing duties higher than they were at the time the treaty was concluded Those evils would, however, have been completely done away by this article. By it the United States would have had a right to raise the duty on British vessels to any height to which the British government might raise it on theirs, a check which could not fail to prove adequate to the object, while they had also a right to give what preference they thought fit to their own vessels, which might be done by reducing the duty on them below the tonnage which was imposed on those of G. Britain. This arrangement secured to the U. States an advantage which G. Britain could not countervail, as the necessity she is under to avail herself of every resource which she can command to raise revenue for indispensable purposes, renders it impossible for her to make a like discrimination in favor of her own vessels. The inhibition of all discriminating duties, on the productions of the one, and manufactures of the other party, whether they be carried in American or British bottoms, was a stipulation which it was presumed would also prove highly advantageous to the U. S. The pernicious tendency of that principle was well known to you, and we were happy to be able to suppress it.

The objections which you urge to other parts of the article, apply to clauses in the treaty of 1794, which it was impossible for us to change. I have, however, to observe that there is nothing in it to prevent the passage of a navigation act, provided it be adopted as a measure of general policy. Most of the nations of Europe, especially France, would be happy, in a general view, to see the United States resort to that expedient to counteract the restrictive system of England; and as it is one which could not essentially affect them, they could find no motive of that kind, to inspire a wish to oppose it, nor could the United States, as I supposed, find one to exempt them from it.

We regretted that we could not obtain a stipulation which should compel Great Britain to repeal the laws which impose so high a duty on her manufactures, when exported to the United States. Our letter shewed that we did every thing in our power to obtain such a stipulation. I was however, persuaded, that the want of it would not expose us to all the evils which you seem to apprehend from it, admitting that the British construction of that clause in the former treaty was a sound one, and that nothing is contained in the 23d article of the present one to discountenance it. It is certain that no government will ever tax exports higher than indispensable necessity compels it, because such a tax tends in all cases essentially to check industry, and to destroy the most productive source of national prosperity. The inhibition imposed by the constitution of the United States on the Congress, to tax, in the slightest degree, their exports, affords a strong argument, drawn from the acknowledged wisdom of its framers, against the policy of such a tax, in the abstract; and I persuaded that the reasons against it are as strong with Great Britain, if not stronger, than with any other nation. Without taking a more comprehensive view of the subject, it is sufficient to observe, that a tax on British exports must operate as a bounty in favor of American manufactures, which are already in an advanced state, in certain parts of the union. Great Britain must be sensible of this fact, and aware of the encouragement which the present export duty gives them, & of the consequences attending it. I should presume that there was not much cause to apprehend, that she would tax the export of her manufactures to the United States, to prevent their being sent thence to other countries. The sole effect of such a tax would be to secure to her own vessels the carriage of the articles, if indeed, that were attainable. In both cases the manufactures of G. Britain would be the subject of the commerce. The supply of the great, the productive and increasing markets of the U. S. must be a primary object of British policy, and Great Britain would doubtless be cautious not to hazard it for one comparatively of much less importance.

Article 6. As this article was approved, I shall only observe, that I considered the reservation contained in it important, as it enabled the U. S. to counteract the British policy, in respect to the trade with the West Indies, which is the object of it, by means the most efficacious, whenever they should be resorted to. The trade of Great Britain with the U. S. is carried on principally by circuitous voyages, in which her vessels pass from the ports of the U. S. to the West Indies. By suspending the intercourse between the U. S. and her West Indies, in British vessels, the chain would be broken, and the whole commerce in such vessels be, in a great measure, suspended. The provision in the article obviously looks to such an object, and the time of carrying it into effect, unless the trade should be placed on satisfactory ground, would have depended altogether on the U. S.

Having already noticed the subjects which are embraced by the following articles, I shall add but little more, on any of them, to what is said in our joint letter of January 3d, 1807. The 7th was taken literally from the treaty of 1794. The 8th and 9th amended, as you allow, the articles in that treaty on the same subject. The 10th, relative to blockade, taken in connection with the British paper of December 31, 1806, placed, as I presumed, that interest on ground which would be satisfactory. The preamble cannot affect it unfavorably, as it does not alter the acknowledged law. The only effect which it could have, would be to admonish the courts to be cautious in admitting evidence of notice, on account of the distance of the U. S. from the blockaded ports. It was supposed to give the U. S. a claim to a more favorable rule in respect to evidence, than was allowed to powers more contiguous to the theatre of action. The doctrine contained in Mr. Merry's note to you was not contested by the British commissioners. It is, on the contrary, maintained in their note to us of December 31st, 1806, in which it is asserted to be notorious "that the king did not declare any ports to be in a state of blockade without allotting to that object a force sufficient to make the entrance into them manifestly dangerous." I quote the passage in their note to observe that the doctrine is not made conditional on any other part of it, but is laid down as the established law. It justifies the additional remark that the preamble was not intended and cannot be construed to alter the law. It follows that it cannot produce any other effect than that which is above imputed to it.

The 13th article relates to the search of merchant vessels, and differs from the 11th of the treaty of 1794, in the introductory sentence, which enjoins it on the commanders of ships of war and privateers, to observe in the course of the war, which may then exist, as much as possible the acknowledged rules and principles of the law of nations; and also in the penal sum [which it encreases] to be given by the commanders of privateers before they receive their commissions, as a security for their good conduct under them. It was supposed that in this as in the preceding case, the law remained untouched, and that the stipulation produced no other effect, than to enjoin it on the governments respectively, to be particularly attentive to the conduct of its officers in the respect alluded to.

The 13th article and the paper of the British commissioners of the 31st of December, 1806, obviously look to the Russian convention, as the standard of the acknowledged law respecting the search of merchant vessels and blockade. That instrument was held constantly in view on both sides, in every discussion on those subjects, and indeed on every other to which it extends, and its doctrine admitted, especially in those, to be the established law. We were extremely desirous, and used our best exertions, to introduce articles to the same effect, into our treaty, but it was utterly impossible to accomplish it. It must however be allowed that if engagements of the kind alluded to, especially in regard to blockade, for which there was a special document, would not be observed, that it would be useless to stipulate them by treaty.

On the subject of the 17th article, I have already made some remarks under another head. I cannot think that a stipulation to receive the ships of war of each party, hospitably into the ports of the other, restrains them from limiting the number of ships to be admitted at one time, or from designating the ports to which they shall be admitted. A stipulation to admit them settles only, as I presume, the principle, that they shall be admitted, and leaves open to arrangement the other points connected with it. This opinion is supported by a passage in the article itself, as to the ports, which secures to vessels which might be driven by stress of weather, &c. into ports not open to them in ordinary cases, an hospitable reception in such ports. Had the right to designate the ports been given up by the general stipulation, there would have been no necessity for that contained in this passage. The remark is equally applicable to the other case, that of the number to be admitted at one time. As that must be an affair of special and strict regulation, an exception which admitted more, by securing rights to them in case they entered, would necessarily defeat the limitation itself.

The stipulation which relates to the good treatment of the officers of each party in the ports of the other, being reciprocal, contains no reflection on one, which is not applicable to the other; and I will venture to affirm that it is equally necessary in regard to G. Britain as to the U. S. It is well known in respect to the latter, that the passions, which were excited by the revolution, did not long survive the struggle; that the sword was no sooner sheathed, than the calamities of the war were forgotten. The injured are always the first to forgive. It is, however, just to remark that time has essentially effaced, from the people of both nations, the hostile impression which that arduous conflict produced.

The 23d article was thought to contain an useful stipulation by securing to the U. S. the advantages in navigation and commerce, which G. Britain might afterwards grant to any other nation. That stipulation was obviously founded on the right of the most favored nation, and subject of course to the conditions incident to it. It amounts to this, that if G. Britain should concede any accommodation to another power in commerce with her East or West India colonies, or any other part of her dominions, gratuitously, the U. S. whould be entitled to it on the same terms; but if she made such accommodation in consideration of certain equivalents to be given her in return, that the U. S. would not be entitled to those advantages without paying the equivalents. The doctrine is the same in its application to the U. S. If they could grant any privileges in trade to France or Spain for admission into their West India colonies, G. Britain would be entitled to the same, provided she admitted the U. States into her islands also, and not otherwise. I could not perceive therefore how it was possible that the U. S. should be injured by the stipulation contained in this article; while it was probable that they might derive some advantage from it. It could not restrain them from passing a navigation act to place them on an equal footing with Great-Britain, especially if it was made general or applied only to her and the other nations having such acts. The right to pass such an act was not taken away by any other stipulation in the treaty, and there was nothing in this article that had such a tendency. The terms "shall *continue* to be on the footing of the most favored nation, &c." refer to the principles established by the preceding articles and not to the existing laws or regulations of either party. If the latter was the case, it would follow, that the tonnage duties, the discriminating duties, &c. would remain as they were. The preceding articles were intended, in the points to which they extended, to establish a standard of equality between the parties, to which the regulations of each, whether they exceeded or fell short of it, should be brought. It could not be doubted that the British export duty was of the first description, that it violated the principle of the most favored nation. The British commissioners admitted the fact, and did not pretend to justify it on that ground. They urged in its favor only, that the same duty was imposed on exports to their own colonies in America, and that if any change was made in it, to satisfy the claim of the U. S. on the principle of the right of the most favored nation, it would be to raise it on the goods exported to other countries, not to reduce it on those sent to the U. S. The principle, however, established by this article, being applicable to that duty, it was to be presumed that it might fairly be relied on to obtain a modification of it, either by reducing the duty on exports to the U. S. or raising it on those to other nations. There is nothing in this article to restrain the U. S. from adopting measures to counteract the British policy with respect to the W. Indies. If that object had not been secured by a special article, from the possibility of being affected by the others, the principle, established by the present one, could not have affected it, otherwise than beneficially.

Having replied to your objections to the several articles of the treaty, and the papers connected with it, and given our view of them, I shall proceed to make some remarks on the whole subject to do justice to the conduct of the American commissioners in that transaction.

In every case which involved a question of neutral right, or even of commercial accommodation, Great Britain was resolved to yield no ground which she could avoid, and was evidently prepared to hazard war, rather than yield much. There seemed to be no mode of compelling her to yield, than that of embarking in the war with the opposite belligerent, on which great question it belonged to the national councils to decide. We had pressed the claims of the U. S. in the negociation, to the utmost limit that we could go, without provoking that issue. It is most certain that better terms could not have been obtained at the time, we signed the treaty, than it contains.

The state of the war in Europe suggested likewise the propriety of caution on our part. Russia was then on the side of England, and likely to continue so; and Austria, known to be in the same interest, was holding an equivocal attitude, and ready to take advantage of any favorable event that might occur. Prussia, lately powerful, had been defeated, but was not absolutely subdued; her king, the ally and friend of Alexander, kept the field with him, and made head against France. The emperor of France, far removed from his dominions, was making the bold and dangerous experiment, of the effect which his absence might produce in the interior, and in a situation to be compelled to risk every thing, if pressed by his adversary, on the precarious issue of a single battle. These were strong reasons why we should not throw ourselves too decisively into that scale.

The situation of the United States, always a respectable one, was then less imposing than it usually was. It was known that they were not on good terms with Spain, and that France was the ally of Spain. Their interior too, was disturbed by a conspiracy of doubtful extent and dangerous tendency, the consequences of which were sure to be greatly magnified by all who were unfriendly to our happy system of government. Those circumstances could not fail to be taken into view, by any the most friendly administration in England, when pressed to make concessions which it was unwilling to make. Add to these considerations, the important one, that the British ministry had become much impaired in its strength, especially in what concerned the United States, by the death of a very eminent and distinguished statesman, and had not the power, or thought that it had not, to pursue a liberal policy towards the United States, and that its power was evidently daily diminishing.

These considerations induced us to sign the treaty, and submit it to the wisdom of our government, after obtaining the best conditions that it was possible to obtain. We were aware that, in several points, it fell short of the just claims of our country. But we were persuaded that such an arrangement was made of the whole subject as justified us in the part which we took. In the rejection or adoption of the treaty, I felt no personal interest. Having discharged my duty with integrity and zeal, I neither wished applause nor dreaded censure. Having the highest confidence in the wisdom, the rectitude and patriotism of the administration, I was satisfied that it would pursue the course, which an enlightened view of the public interest, and a just sensibility to the national honor, might dictate.

Our letter of January 3d, was written in haste, and was deficient in many of the explanations which would otherwise have been given of the the treaty. I was happy when at Washington to find that you were perfectly willing to receive any explanations which I might now be disposed to give of that transaction, and to allow them the weight which they might deserve. In making this communication I have indulged the freedom which belonged to it, in full confidence that it would be approved.

I cannot conclude this letter without adding my most ardent wish, that