

neutral Governments of things which are naturally or politically impossible, or to the violation of the principles on which all national Governments (the idea of which necessarily precedes that of international obligation), themselves are founded.

It will be convenient, in this place, to examine the meaning of certain propositions extracted in the Argument of the United States from Sir Robert Phillimore's work on International Law, which were certainly not intended by that jurist to be understood in the absolute and unqualified sense in which the Counsel of the United States seem desirous of using them. It is proper here to mention that Sir Robert Phillimore, the author of that work, was appointed Her Britannic Majesty's Advocate, in the room of Sir John Harding, in August, 1862; and that with respect to all the questions which afterwards arose between the British Government and the United States, till some years later than the termination of the war, the British Government acted under his advice, which must be presumed to have been in accordance with his view of international obligations. That period covers the ground of all the claims now made by the United States against Great Britain, except those which relate to the Sumter and the Nashville, and to the original departure of the Florida and the Alabama from Great Britain.

The following extract (United States Argument, page 35) is from the Preface to the second edition of the first volume of Sir R. Phillimore's work (pp. 20-22):—

"There remains one question of the gravest importance, namely, the *responsibility of a State* for the acts of her citizens, involving the duty of a neutral to prevent armaments and ships of war issuing from her shores for the service of a belligerent, though such armaments were furnished and ships were equipped, built, and sent without the knowledge and contrary to the orders of her Government.

"The question, to what extent the State is responsible for the private acts of its subjects (*civitasne deliquerit, an cives?*) is one of the most important and interesting parts of the law which governs the relations of independent States.

"... It is a maxim of general law, that so far as foreign States are concerned, the will of the subject must be considered as bound up in that of his Sovereign.

"It is also a maxim that each State has a right to expect from another the observance of international obligations, without regard to what may be the municipal means which it possesses for enforcing this observance.

"The act of an individual citizen, or of a small number of citizens, is not to be imputed without clear proof to the Government of which they are subjects.

"A Government may by *knowledge* and *sufferance*, as well as by direct *permission*, become responsible for the acts of subjects whom it does not prevent from the commission of any injury to a foreign State.

"A Government is presumed to be able to restrain the subject within its territory from contravening the obligations of neutrality to which the State is bound."

Upon this passage, which couples together "armaments and ships of war," it is to be observed, in the first place, that there is nothing in it which implies any different view of the extent of those international obligations (as distinct from its own municipal prohibitions) by which a State is bound, from that which is shown to have been established by earlier authorities. Sir R. Phillimore is too sound a jurist to suppose that any private opinion of a particular jurist could impose retrospectively upon the Governments of the civilized world obligations not previously recognized. He does not define here what are "the obligations of neutrality by which the State is bound;" he leaves them to be ascertained from the proper sources of information.

Next, when he lays it down as a maxim, that "each State has a right to expect from another the observance of international obligations, without regard to what may be the municipal means which it possesses for enforcing this observance," he says nothing at all inconsistent with the proposition, that a neutral State will have observed its international obligations with due diligence, if, having provided itself with municipal means suitable to the nature and character of those obligations, it proceeds to use those means in good faith, on the proper occasions, and in the proper manner, though (it may be) without succeeding in the prevention of everything which it is bound to endeavour to prevent. The learned author's meaning, and the kind of cases which he has in view, are apparent from the reference which he makes in the footnote to Part iv., ch. i, of the same volume, where he discusses the doctrine of "intervention" in the following terms:—

"CCCXCII, And first of all, it should be clearly understood, that *the intervention of bodies of men, armed or to be armed*, uncommissioned and unauthorized by the State to which they belong, *in a war*, domestic or foreign, of another State, has no warrant from international law. It has been already observed (Section CCXIX.), that it is the duty of a State to restrain its subjects from *invading the territory* of another State; and the question, when *such an act* on the part of subjects, though unauthorized by the State, may bring penal consequences upon it, has received some consideration. It is a question to which the events of modern times have given great importance, and as to which, during the last half-century, the opinions of statesmen, especially of this country (Great Britain) have undergone a material change. That this duty of restraining her subjects is incumbent upon a State, and

7. The maxims cited by the United States from Sir R. Phillimore, on the question, "*Civitasne deliquerit, an cives?*"