may not be placed upon any printed table issued prior to that date, but the Department of State should be consulted.

A word should also be said as to the reservations to the conventions. A Power may make a reservation either when signing a convention or at the time of ratifying it. A reservation may be made to an article or to several articles, in which case the nation making the reservation gives notice that it does not accept these articles and they are thereupon not binding upon it. A reservation may also be made not to the article itself, but to the meaning to be placed upon the article. If such a reservation is made at the time of ratification, its text is usually embodied in the instrument of ratification. If, however, the reservation is made only at the time of signature the meaning which the reserving nation accepts is stated in the Conference and may be obtained only by reading the minutes of the session in which the reservation was made. These minutes have never been printed in English and, so far as known, have appeared only in the official report in French published by the Dutch Government. It is understood that the Division of International Law of the Carnegie Endowment for International Peace has had the portions of these minutes containing the reservations translated and will issue them in English in pamphlet form within a short time.

THE TRANSFER OF WAR VESSELS FROM BELLIGERENTS TO NEUTRALS

At the outbreak of the present war the warships *Goeben* and *Breslau* formed an integral part of the German navy. As such they engaged in battle and to avoid capture they appear to have taken refuge in Turkish waters, where early in August, they were reported to have been sold to the Turkish Government. Their officers and crews appear to have been retained, although the names of the vessels were changed to *Sultan Yawuz Selim* and *Midellu*, and they are reported to have taken part in an attack on Odessa, a Russian port, although Russia and Turkey were at the time at peace. In view of the sale of these vessels to a neutral, it seems advisable briefly to consider the validity of the transfer from the standpoint of law.

On August 1st war was declared between Germany and Russia. On the 3rd of August Germany and France were officially at war, as were Great Britain and Germany on the 4th. At the date of the transfer of the *Goeben* and the *Breslau* to a neutral Power—for Turkey was then neutral in law if not in fact—the vessels were exposed to capture by

British and French cruisers. The effect of the sale was to deprive France and Great Britain of their right to capture the two vessels in question, if they were able to do so. The question is whether a neutral by its action can legally deprive belligerents, without their consent, of the right of capturing the vessels which the belligerents undoubtedly possess under the law of nations. There is very little precedent on the question, but such as it is, it is against the right of the neutral. There are three cases which are believed to be in point: the *Minerva* (6 C. Robinson, 396); *United States* v. *The Etta* (4 American Law Reg. N. S. 38, 25 Fed. Cases, No. 15,060); the *Georgia* (7 Wallace, 32).

The case of the *Minerva* was decided in 1807 by Lord Stowell, then Sir William Scott. Briefly stated, during war between Holland and Great Britain, a Dutch vessel, the *Minerva*, lying in the port of Bergen, was sold to the neutral Prince of Kniphausen in 1807, placed under Kniphausen colors, and appears to have been captured on a voyage from Bergen to the River Jade, the port of Kniphausen. The *Minerva* appears to have been chased into North Bergen by a British cruiser. Lord Stowell condemned the vessel, and in the course of his opinion stated that the recognition of the sale under such circumstances would, without their consent, withdraw from belligerents the right of capture. He said:

> Some communication, at least, we might suppose would be made to the belligerent government, accompanied with a disclosure of every circumstance of caution that should exclude the suspicion of what is always to be apprehended, the danger of such a vessel finding her way back again into the navy of her own country. * * * Can such things be allowed to be transferred as articles of commerce, and under the known pressure under which the enemy's marine has labored? It can, at most, only be expected to be allowed under all circumstances of communicated preventive caution, that might secure the belligerent from the just apprehension of abuse, which I have before stated; some previous acquiescence signified on the part of the belligerent government—some consent obtained, upon an entire disclosure of the intention fully substantiated.

The opinion expressed by Lord Stowell was twofold; namely, that the vessel would by sale to a neutral escape capture and that at some later time it might again find itself in the fighting force of the enemy. These two fears seem to be justified in the present case. The German vessels were, by the sale, withdrawn from the possibility of capture by British and French cruisers. The incorporation of the two vessels in the Turkish navy permits their use against France and Great Britain, because Turkey is at war with both these countries.

The second case happened in the American Civil War. The *Etta*, under the name of the *Retribution*, was a privateer flying the flag of the Confederate Government. It entered the neutral port of Nassau and was there sold at public auction to a neutral. It was later resold to a neutral, again at public auction in Nassau, both transactions taking place in the year 1863. The name of the vessel was changed to the *Etta*. Upon capture by authorities of the United States it was condemned in 1864. In the course of his opinion, District Judge Field said:

> This question as to the right of a neutral to purchase an enemy's vessel of war, would at any time, and under any circumstances, be a question of importance; but it derives an especial interest from the nature and character of the war in which we are now engaged, and which would render the exercise of such a right, supposing it to exist, peculiarly liable to abuse. It is a matter of some surprise, that a question confessedly so important, and one too so likely to arise, should not have received a larger share of attention from writers on international law, and that it should not have been the subject of more frequent judicial interpretation. And yet, with the exception of the case of *The Minerva* [6 C. Rob., Adm. 396], decided by Lord Stowell in 1807, and which has been silently adopted as an authority by subsequent text writers, it has never, so far as I have been able to ascertain, been the subject either of legal discussion or of legal adjudication.

The *Georgia*, the twin of the *Alabama*, was a Confederate cruiser flying the Confederate flag and under the command of Captain Maury. The *Georgia* entered the port of Liverpool in 1864 to escape capture by the *Kearsarge*, the *Niagara*, and the *Sacramento*, vessels of the United States cruising off the coast of France and in the British Channel, to quote the opinion of the court, "in search of this vessel and others that had become notorious for their depredations upon American commerce." It was dismantled and purchased by a British subject, and sailed as a neutral on a voyage from Liverpool under a charter party to the Portuguese Government on August 8, 1864. It was seized upon reaching the high seas from Liverpool, and condemned by the Supreme Court. Mr. Justice Nelson, who delivered the judgment, relied upon the two cases previously cited, and in the course of his judgment said:

> It has been suggested that, admitting the rule of law as above stated, the purchase should still be upheld, as the *Georgia*, in her then condition, was not a vessel of war, but had been dismantled, and all guns and munitions of war removed; that she was purchased as a merchant vessel, and fitted up, *bona fide*, for the merchant service. But the answer to the suggestion is, that if this change in the equipment in the neutral port, and in the contemplated employment in future of the vessel, could have the effect to take her out of the rule, and justify the purchase, it would always be in the power of the belligerent to evade it, and render futile the reasons on which it is

founded. The rule is founded on the propriety and justice of taking away from the belligerent, not only the power of rescuing his vessel from pressure and impending peril of capture, by escaping into a neutral port, but also to take away the facility which would otherwise exist, by a collusive or even actual sale, of again rejoining the naval force of the enemy.

THE SANCTITY OF TREATIES

Since the outbreak of the present unfortunate war a great deal of attention has been given to the sanctity of treaties, and in a recent book by W. A. Phillips, entitled *The Confederation of Europe*, there is a very pointed reference to the alleged violation of the Hay-Pauncefote Treaty of November 18, 1901, by the act of Congress of August 24, 1912, exempting American coastwise vessels using the Panama Canal from the payment of tolls (pp. 4–6). It should be said that the United States had the undoubted right and duty to interpret the Hay-Pauncefote Treaty, and it makes no difference whether the interpretation was by a formal act of Congress or by the State Department. It was also the undoubted right and duty of Great Britain, as a party to the treaty, to interpret it. As the interpretations differed, it was natural to discuss the difference through diplomatic channels. Failing to reach agreement, the two countries were bound by the arbitration convention of April 4, 1908, to submit the dispute, which was admittedly of a legal nature, to arbitration. It is difficult to see wherein the United States could properly be charged with a breach of faith, as the two countries were still negotiating and each believed that its contention was justified. Diplomatic discussion had not been exhausted, and an appeal to arbitration remained.

Thanks to the courage and conviction of President Wilson and to the statesmanship of Senator Root, the clause exempting American coastwise shipping from the payment of tolls was repealed by act of Congress approved June 15, 1914. Recourse to arbitration was thus made unnecessary by the voluntary action of the United States, and it is a source of congratulation that no charge, however ill founded, can be laid against the United States in respect to the Hay-Pauncefote Treaty. A quotation, however, from Mr. Phillips' book, which was written and published before the outbreak of the war, is nevertheless interesting at this time. He reports a conversation about the treaty with an American engineer, during the course of which the engineer is reported to have said "that the United States has a right to do what it likes with its own territory."