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## **Supplement: The exchange of notes between Austria-Hungary and the United States. Nr. 1238. Vol. XXII. Nr. 96 February 11, 1916**

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SPECIAL FEATURES IN THIS ISSUE.

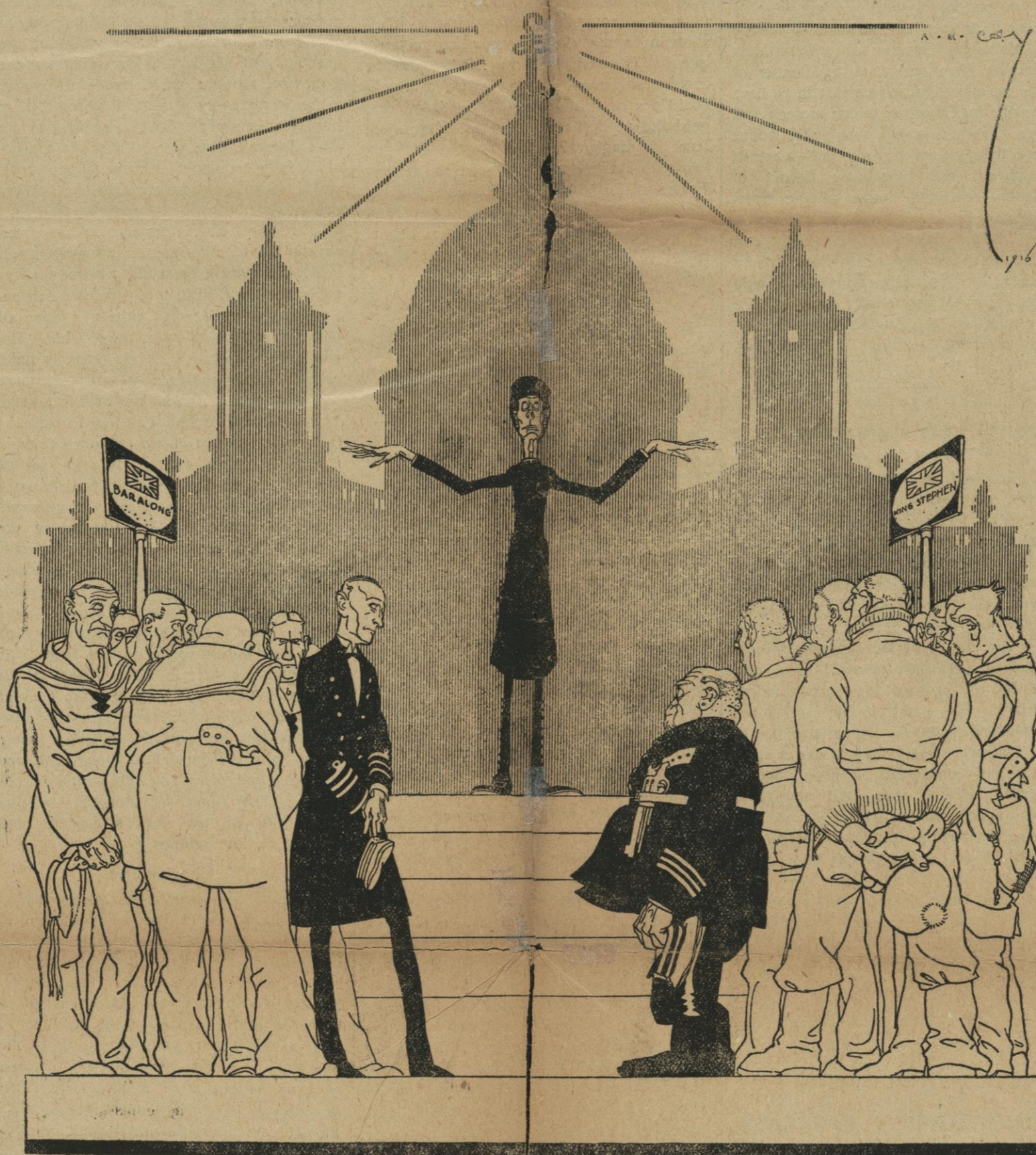
- Our Special Cartoon by "Cay" page 1
German Finances Defended . . . 1
Tzar Ferdinand at Head Quarters . . . 1
Speeches of the Monarchs . . . 1
The Albanian Campaign . . . 1
Essad Going to Corfu . . . 1
England Short of Ships . . . 1
A Very Important Question . . . 2
The Biter Bit . . . 2
"Lusitania Question" Favorable . . . 2
Austro-Hungarian News . . . 2
Armed Merchantmen beware! . . . 2
Misleading the Public . . . 2
The German Theatre . . . 3
Special Financial and Commercial . . . 4

LATEST NEWS SHORT ITEMS OF INTEREST FROM VARIOUS SOURCES.

The Duma Called. Petersburg, Thursday. By Imperial Ukase, the Duma has been summoned for the 22nd of February.
Salandra Cabinet Shaken. Lugano, Thursday. The Secolo writes that in Turin it is understood that Salandra wishes to re-constitute his cabinet.
Besnard Retires. Paris, Thursday. As a consequence of the last Zeppelin visit over Paris, M. Besnard, the much attacked minister of Aircrafts, has resigned.
Forno Occupied. Paris, Thursday. It is announced that the island of Forno, north of Corfu, has been occupied by the French troops.
The First Train. Copenhagen, Thursday. The first passenger train between Petersburg and Sorozkajabucht, which connects the capital directly with the White Sea, has started yesterday.
Consuls Recalled. Sofia, Thursday. Owing to existing military conditions it has been thought advisable to withdraw the Greek and Roumanian Consuls from Monastir.
Against Conscription. London, Thursday. The Union of Miners, which had held aloof from the Working Men's Association in its opposition to Conscription, now comes out against forced military service.
Essad Pasha's Request. Geneva, Thursday. According to an Athens despatch, Essad Pasha has made inquiry as to whether, in case it should become necessary, he would be allowed to transfer his troops to Corfu.
The Roman Catholic Albanians. Bern, Thursday. The powerful Mallisore tribe of Albanians, who are by religion Roman Catholics, have attached themselves to the Austro-Hungarian forces and are acting in the capacity of advance guard in the march upon Durazzo.
Morgan's Journey. New York, Thursday. Mr. Pierpont Morgan has started for Europe with the purpose of negotiating a French loan of 250 millions of Dollars. Security will be given in the form of American bonds.
Zeppelin Damages. Amsterdam, Thursday. It would appear that the greatest damage done during the last Zeppelin raid over England was at Birmingham where nine large factories and 31 houses were demolished.
Lieutenant Berg. New York, Thursday. Lieutenant Berg of the "Appam" has requested that he be allowed to remain in Norfolk without being interned. He says that he is able to continue the journey aboard the "Appam."
Essad for Corfu. Athens, Thursday. According to news received Essad Pasha and his army, said to be 20,000 men, are expected in Corfu. The number of Servians in Corfu are stated to be 80,000, but largely composed of refugees who are in the most terrible condition and utterly exhausted.
The Albanian Campaign. Paris, Thursday. The Bulgarians have reached Tirana on their march to Durazzo. The Italians have concentrated 40,000 troops at Valona and intend to make as strong a resistance as possible there. The Austro-Hungarian aeroplanists are very active over Durazzo and have dropped bombs in the camp of Essad Pasha and amongst the shipping lying in the harbor.
England's Greatest Needs. London, Thursday. In a speech at Manchester, Mr. Runciman said that the greatest trouble that Great Britain had known throughout the war had been the lack of ships for transport purposes. The Admiralty had more than ten thousand merchant ships at its disposal for military purposes and thousands more were wanted. The trouble was further increased by the demands of the allies of England.

"ENGLAND EXPECTS EVERY THUG TO DO HIS DUTY."

"The Nelson Touch"—Revised



The Bishop of London (to the heroic crews of the "Baralong" and "King Stephen": "England stands solid behind you. The Germans have killed all chivalry in this war." (Extract from speech at Stoke Newington.)

British and German Financial Comparisons State Secretary of the Treasury Doctor Helfferich Takes Up The Challenge of Sir Edward Holden And Asks Some Counter Questions. False Reports About Germany Which Serve in Place of the Truth in England. British People Pay Double as much Per Capita as Teutons.

It was an unfortunate day for Sir Edward Holden, Managing Director of the City and Midland Bank of London, when he undertook to make attacks upon the conditions of German finances, for he has been taken to book by Doctor Helfferich, the State Secretary of the Treasury who completely demolishes the rash utterances of the Englishman who had set himself to ask a number of leading questions regarding the latest speech of Doctor Helfferich in the Reichstag, with the object of showing that the statements then made were wrong and misleading throughout.
The questions asked by Sir Edward Holden, and which were evidently intended to be of a crushingly damaging nature, have been taken in the English press as being weighty and showing that the optimistic speech of Doctor Helfferich was based upon false arguments. The State Secretary of the Treasury however not only answers the questions asked by Sir Edward, in clear, succinct and convincing manner, showing that every word he said in his Reichstag speech was fully justified, but further he utterly breaks down the position taken up by Sir Edward Holden, with a series of counter-questions which reflect sadly upon the financial stability and resources of Great Britain and show up some of the principal fallacies and bluffs whereby it is sought to mislead the English in particular and the world in general into believing that all is right in the financial position in Great Britain when all is wrong. The following

are the chief questions, answers and counter questions.

QUESTIONS AND THEIR ANSWERS.

Question 1. Had Germany Credits abroad at the time of the outbreak of the war, do they still exist or have they entirely disappeared?

Reply. Germany went to war having credits abroad, just the same as England. That millions of such credits still exist, Sir Edward Holden can well ascertain, they having been unlawfully placed under compulsory supervision in England and its Colonies.

Counter-question. Where are all the English Credits which were outstanding abroad at the commencement of the war? Must one not imagine them to have become exhausted, seeing that at the meeting at which Sir Edward spoke he bore witness to the decline in the exchange upon the sovereign, which would have fallen still further had England not received a loan from America?

Question 2. Has not the export trade of Germany sunk heavily and thereby a blow been struck at the financial standing of the country?

Reply. Yes! The exports of Germany have fallen much, but the imports of Germany—thanks to the illegal measures of England—have likewise fallen. The imports will voluntarily be further restricted, and in that manner the needful balance is made with the exports.

Counter-question. Can it be unknown to Sir Edward Holden that England's imports during the war have enormously increased, its exports on the other hand vastly decreased, by half, and that in consequence of that England finds itself in a far more difficult position than Germany to be able to finance its imports?

They Are Not Exhausted.

Question 3. Admitted that the credits of Germany abroad are exhausted and the exports reduced, is it not a fact that Germany has sold almost all its American, Swiss, Dutch, Scandinavian and even Russian securities?

Answer. Germany has naturally utilised its possessions of foreign securities, which had been accumulated as reserves in view of possible hard times, for the purpose of payments to foreign countries. But the German holdings of foreign securities are not at all exhausted; on the contrary their sales continue upon a large scale, a fact of which England must have knowledge in examining the contents of its recent robberies of mail bags.

Counter-question. Is it not known to Sir Edward Holden that England has been compelled to pay the major portion of her imports in foreign securities and quite especially in American bonds, and that it has even been necessary for England to take this matter of the American securities into its own hands, and that Sir Edward in his

(Continued on Page 2.)

Tzar Ferdinand At Head Quarters

Upon the Invitation of the Emperor William, Tzar Ferdinand of Bulgaria is at Staff Head Quarters of the German Army, on a Visit Which it is Stated Will Last a Few Days.

In the political world the highest importance is attached to the announced visit of Tzar Ferdinand to Kaiser Wilhelm at the Staff Head Quarters of the German army. That the meeting is intended to be taken as of the greatest significance, is demonstrated by the fact that the Emperor has summoned the Imperial Chancellor and Secretary of State von Jagow to attend; whilst on the other hand Tzar Ferdinand is accompanied by his Prime Minister, M. Radoslawow, and the head of the Bulgarian Army General Jekow.

All the German newspapers agree that the meeting of the Emperor of Germany and Tzar Ferdinand, just at the present moment and under existing circumstances, must be regarded as a political event of the first order, one which it is hoped may have far-reaching results.

Tzar Ferdinand has earned for himself the reputation of being an exceedingly far-seeing and clever Monarch, who has known how to control and guide his people with great dexterity in times most difficult and under circumstances which made his path as ruler so full of troubles, that from time to time it looked very doubtful as to whether he would be able to pull through at all.

In spite of inducements, and later on of open threats, Tzar Ferdinand steadfastly refused to be drawn into the net set for him by the Entente Powers. It is not too much to say, that the wise decision of King Ferdinand, to side with the Central Powers, had a quite powerful influence upon the course of the Great Campaign, and his services are thoroughly recognised. In his own interests and those of his country, in joining the Central Powers, Tzar Ferdinand followed the one course which was destined to wipe out effectually the results of the never to be forgotten treachery of Bulgaria's former ally, the Servian nation.

Kaiser Greet Bulgarian's King

In honor of the arrival of Tzar Ferdinand, a Banquet was given at Staff Head Quarters a truly most brilliant gathering, at which, besides the two Monarchs, there were present the leading Politicians and Military men of Germany and Bulgaria, all in uniform, forming a quite unique scene.

The Kaiser rose and spoke the following toast to his distinguished guest:

"I welcome Your Majesty on German soil in my own name and that of my army and people. Just as the meeting on the blood contested ground of Nisch will forever remain unforgotten in the annals of the history of Germany and Bulgaria, as the visible evidence of a true brotherly unity in Arms, so likewise I see in this visit of Your Majesty this day a symbol of the unity of our Realms. That unity has not been brought about merely by political and commercial interests. It is built upon off repeated cordial expressions of sympathy respect and confidence, a confidence which has been sealed with the blood shed by the sons of both countries in a joint contest for the one ideal. May it be granted to the Bulgarian people, under the wise and farseeing leadership of Your Majesty, to powerfully develop the acquired territory so that its present and the future may be guaranteed. I raise my glass to the welfare of the victorious Bulgarian army, to the proud Bulgarian people and to its illustrious leader. To His Majesty the Tzar of the Bulgarians, Hurrah!"

Tzar Ferdinand's toast.

To which Tzar Ferdinand replied: "It was with sincere pleasure that I made the journey hither, in order once more to personally thank Your Majesty for having conferred upon me the Fieldmarshal Staff. Deeply moved by the gracious and all significant words in which Your Majesty deigned to address me it has been a quite special satisfaction to me to be able here

(Continued on Page 2.)



THE ADMIRABLE GERMAN THEATRE. ITS LOFTY STANDARDS.

MASTERPIECES OF ALL NATIONS AND PERIODS.

By R. L. Orchelle.

There is one bitter-sweet pleasure in which I should like to indulge myself. I would give much to conduct a small band of the Society of the Assassins of Truth, be they from Fleet Street, London, or Park Row, New York...

Show me a man's library, the saying goes, and I'll give you an index of his character. The same may be said of a people's theatres...

The Broadway Standard.

With their usual fatuity and blind faith in the power of money, our millionaires some years ago built a splendid playhouse near Central Park. But the structure became a tomb and not a temple of art.

Marvellous Variety.

In Germany as elsewhere there are different publics and therefore different levels of taste. The scale may run from the most frivolous Viennese musical comedy to the most sombre and stately of Greek tragedies.

Shakespeare and the Germans.

There is even some truth in the intellectual claim the Germans make to Shakespeare—for gold is where you find it—and universal genius belongs not where it was born in the body, but where it is honored as a living force to-day.

Enthusiastic Baconian, has written several forceful and erudite pamphlets to prove that England's degradation is largely due to her falling-away from the ideals of the true Shakespeare...

America's Dissatisfaction with the Stage.

Though we may claim no success, some of us may nevertheless claim the credit of having raised our voices against the prostitution of the American stage. It is customary for every American to inveigh against the badness, the vulgarity and the stupidity of the plays presented to him.

Judged by this law the German public is a highly-deserving one. Let us take the program of the leading Berlin theatres for a single Sunday (these "barbarians" do not fear to "desecrate" their Sunday by playing the masterpieces of the drama)...

One Sunday's Program.

- Parsifal (Wagner)
Fidelio (Beethoven)
Troubadour (Verdi, Italian)
Freischütz (Weber)
Antigone (Sophocles, Greek)
Sturm (Shakespeare, English)
Peer Gynt (Ibsen, Norwegian)
Egmont (Goethe)
Maria Stuart (Schiller)
Maria Magdalena (Hebbel)
Nora (Ibsen, Norwegian)
Der Vater (Strindberg, Swedish)
Der Meister von Palmyra (Wilbrandt)
Der Weibsteufel (Schönherr)
Der Pfarrer von Kirchfeld (Anzengruber)
Der Hüttenbesitzer (Ohnet, French)
Die Haubenlerche (Wildenbruch)
Liebelein (Schmitzler)
Die Ehre (Sudermann)
Heimat (Sudermann)
Das Glück im Winkel (Sudermann)
Die Waise von Lowood (Hirsch-Pfeiffer).

The Vogue of Strindberg.

I have recently seen that terrible, nerve- and heart-rending play of Strindberg's, "The Father" (also playing at two theatres simultaneously) and admired the quality of German nerves in time of war.

Yes; I should enjoy a tour of the theatres of Berlin as the ciccone of a band of the ignoramuses who persist in yawning at German "Kultur"—those who but repeat the lying phrase that springs from the Fleet Street mire and, ruminant-like, keep chewing the old barren cud of calumny supplied by the British censor.

TARTUFFE AND ANANIAS

Cant, Calumny and Commercialism.

"L'Allemagne barbare. Un Empereur criminel et fou." —G. Langlois.

"Now England is awake its manhood insists on using a British shaving stick." —Lever Brothers.

"I have made a discovery—a wonderful discovery about the war. God cannot regenerate the Hun. Our duty is clear. We must exterminate the breed." —Hratisio Bottomley.

"Those are some of the things, which would happen if the United States were to do to Germany even a tithe of what Germany has been doing to us." —Boston Transcript from British Press.

"The end of the Habsburgs. The parvenu house of Hohenzollern." —N. Y. Herald.

Cut the cable between the rest of the world and Germany and in six weeks she would be suing for peace." —Mme. Schwimmer.

"In Germany a brave and devoted population, long sustained by falsehood." —N. Y. World.

"Germany shows signs of exhaustion while the French, English, Russians and Italians have not even excited themselves to the highest pitch." —Boston Transcript from British Press.

One great object in going to Turkey is to drain that ally of fighting men to fill German ranks massacred in Poland." —Ditto.

"Moritz Ferdinand Baron von Bissing, seventy-one, cavalry officer, governor-general of Belgium, exercises despotism—alias Kultur—from King Albert's palace in Brussels." —Ditto.

SOME NEW BOOKS.

The Bryce Atrocities. A European Monroe Doctrine.

Otto Weddigen und seine Waffe, Marinendank Verlag, Berlin, S. 42, boards 2 Marks, cloth, 3 Marks.

Otto Weddigen, despite his untimely end by treacherous means at the hands of English navy men, is assured of fame in all countries, and of immortality in his own. His great feat in sending three great cruisers to the bottom, with, so to speak, a single blow, was the first shock that Britain felt there where its pride and prestige have been the greatest—in its naval achievements.

This latest volume of the Marinendank publications is No. 2 of its series of "Sea Heroes" and contains many interesting extracts from Weddigen's diary and letters, as well as a photogravure portrait and some 63 illustrations, some of them dealing with the technique of that weapon whose terrible powers Weddigen was the first to prove—the U-boat.

Die Lüge im Solde Englands, Wilhelm Marten, League of Truth, Berlin W.

This is a vigorous answer to and refutation of the infamous Bryce Report and its incredible mass of "alleged," and "reported" and absolutely unproved German "atrocities." As Sir Roger Casement has already shown in the Continental Times, a more shameful and fraudulent document was never signed by reputable men under the influence of a false patriotism, nor a greater outrage committed upon truth and humanity than this horrible document of trumped-up charges.

Das Endziel des Weltkrieges, von Maurus Révai, Verlag Puttkammer & Mühlbrecht, Berlin.

This is an exceedingly thoughtful and deliberate work by a well-known Hungarian scholar. It possesses a particular interest for those who cherish constructive ideals, bent upon a European community of interests—a great task that awaits humanity after the chaos and carnage of the war.

Mr. Révai recognizes in England the constant historical factor that made for the disturbance of peace, and proves, step by step, how her system and her goal have always worked towards the end of creating a disunited and disaffected Europe, which at the moment most opportune to herself, she would precipitate into war.

Continental nations, and England's exclusion from this circle. That alone would ensure peace in the future among the neighboring nations and England would be relegated to its proper place of immunity—and harmlessness.

The Coming Leipzig Fair

The fact that the Easter Fair is to be held this year also at Leipzig the same as in times of peace is a witness to the strength and vigour of the industrial life of Germany. The fair will represent the ceramic, glass, metal, wood, paper, leather, rubber, basket, small-ware, fancy goods, toys and related business branches, and will be opened on Monday, the 6th of March.

The industrial and commercial life of Germany goes on uninterrupted. Travellers can journey to and fro undisturbed provided they are supplied with the proper passport and papers to establish their identity. Life and activity in Germany is very little different from what it was in times of peace. In Leipzig itself, the visitors to the Fair will be most kindly welcomed by the city authorities, and by the proprietors of the fair buildings as well as by the whole population.

A visit to the next Fair will be to the advantage of German industry which now as before is capable of producing and delivering its products; it will also be to the advantage of business firms in neutral countries, who can in this way convince themselves on the spot of the strength and of the healthy condition of the economical life of Germany, and, at the same time, forward their own business interests because the Fair enables them to obtain a comprehensive view of the general conditions of the market and therefore to get important and valuable data for their business purposes.

The Leipzig Fairs with their sample collections concern not only the city of Leipzig, but are of importance for the whole of German industry and for foreign and domestic trade, which receives through them a far-reaching impulse, since they are the intermediaries for the transmission of orders and for supplying foreign countries with industrial products.

Rita Sachetto's Dances.

Performance at Blüthner Saal.

As already announced in our last Friday's issue, Fräulein Rita Sachetto, that past-mistress of the plastic-dramatic act of the dance, gave last Monday, in the Blüthner Saal, one of her welcome Dance Evenings. Her pupils helped to make the evening one of grace, movement and beauty. The name of the artiste, already famous far beyond the borders of Germany, promised much, but the performance surpassed all expectations. All the dance creations showed, both in their originality and in their plastic dramatic form, the impression of a master-hand and a high vision of art.

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HARMONIUM-HALL. Tuesday, February 15th 8 o'clock p.m. Musical Performance by the Pianist EDWIN HUGHES Program: Bach—Busoni—Beethoven Brahms—Chopin Tickets at Mark 4, 3, 2, 1 at Bote & Beck and Wertheim, Berlin

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## Supplement to "The Continental Times"

## The Exchange of Notes between Austria-Hungary and the United States

## SOME COMMENTS

By R. L. Orchelle.

On re-reading the exchange of diplomatic notes between Austria-Hungary and the United States, the student of international psychology and international affairs encounters one important and, indeed, tragic factor. It is a factor which operates on both sides, and its results are as unfortunate between nations as between individuals. A closed diplomatic controversy is often as disheartening as a closed personal correspondence—disillusion, regret, unrighted wrongs, uncorrected evils and unjustified contentions and protestations confront one at every turn. This factor is almost entirely negative and may be described as the inherent inability of nations to understand one another, to speak a common speech or be governed by common standards. This factor is, of course, increased or decreased by the particular attitude assumed by each side—*Motive* is a key that will either lock or unlock the door of Misunderstanding.

A diplomatic controversy is therefore either a formal debate in which points are fenced for or an amiable discussion in which light and agreement are sought. The language in which it is conducted runs the gamut between the heaviest, most turgid legal dullness and the most courtier-like flippancy—though always according to certain forms of international courtesy. Yet even this may be encroached upon by ignoring certain unwritten laws of diplomatic custom or intercourse—an unfortunate instance of which occurs in the present exchange of notes.

There were certain inherent, if not insuperable, obstacles in the way of Austria-Hungary and the United States being able to talk to each other, much less understand each other. To most Americans the real Austria-Hungary is as remote in nature as in distance, and the effort necessary for them to sympathize with the sentiments and opinions of an alien nation of whose citizens they have seen few representatives save humble immigrants, is altogether too great.

The audience which the modern diplomat addresses in international matters, is no longer composed of the few members of a court or cabinet, but of the entire press and population of his own country and that of the power he addresses, not to speak of other interested nations. But the question arises whether the language of traditional diplomacy has been made sufficiently elastic for this modern problem. It is doubtful whether the immense and necessary task of influencing not only the immediate Minister, but the public in general, to whom the newspapers trumpet forth these notes, is not beyond the precise niceties and correct legal language of diplomatic form. I am myself fully persuaded that the psychologist, the student of the soul and temperament of foreign peoples, the literary stylist and even the journalist may prove of immense service to even the most astute diplomat in helping him to attain the end or to make the impression he desires.

There is a positive danger in certain features of the system as it now prevails, especially in respect to countries with different languages—a fact from which the English have profited immensely in this war so far as the United States is concerned. We all know the uncertain element, both as to the letter and the spirit of the original, that resides in a translation. An ambassador recently complained to me of the difficulty of making

proper and adequate translations of foreign notes, for, as he insisted, these must be made literally. The result is in many cases unfortunate and even if the exact meaning be preserved, an altogether different impression is usually conveyed. The personality of the man behind the note—*le style c'est l'homme*—may be replaced by the individuality of the person making the translation, or be colored by it. And by virtue of the law that not only *what* is said is of importance, but *how* it is said, millions of persons may be affected wrongly in their judgment of the "tone" of a note.

For instance the finely-wrought and carefully thought-out clauses and paragraphs of the polished Austro-Hungarian notes, point following point in elaborate sentences, with one delicate qualification modifying another in the conscientious endeavor to fix the precise shade of meaning in the exact tone, are by no means easy to translate into their equivalents in English. For one thing the American popular mind, largely rebellious to sustained effort, is in danger of losing the dialectical argument or the point deduced. On the other hand the more direct, more abrupt and less subtle form and expression of the American notes renders their translation into the accommodating German language a less intricate or uncertain task.

It is to be accounted as one of the tragedies of this world conflict that even among neutral nations the intention and spirit of the Hague Conventions should have been subjected to an interpretation based upon the dead letter and the empty technicality rather than upon the living spirit—which is subject to that most universal of laws: "that circumstances alter cases". Of the justice of Austria-Hungary's protest against the simply overwhelming proportions assumed by the munition industry of the United States, there can be not the slightest doubt. The absurdity of existing laws relating to neutrality is proved by the paradoxical, almost cynical contention, so easily accepted as an expedient, that it would be "unneutral" not to furnish the well-equipped and numerous enemies of a friendly power with the means to destroy that power, while at the same time surrendering the indubitable neutral right of furnishing it with food! If such a law can be upheld, it is a law which simply clamors for reform or restriction, and there is no American but must regret that our own country, under the real and only test of actual war, should not have been the pioneer in this matter. It was a privilege that was nothing less than a duty to civilization.

One great and fundamental error seems to lie at the root of these unfortunate misconceptions and misunderstandings. This is the assumption that in the nature of things laws which apply to the homogeneous peoples of Europe should also apply to the heterogeneous nation of the United States. The United States, not only by reason of its situation, its exclusive doctrines and traditions, but also by reason of the fact that it is composed not of one race or people but of all, is a nation apart. It should be subject to special stipulations that would prevent the recurrence of such a situation as the present. America is by nature and should be in fact, the neutral nation, *par excellence*. It is to be fervently hoped that in future Hague Conferences some attention will be paid to this great human and historical fact. It is the duty of America to Americans to remain free of alliances; it is equally the duty of America to proclaim its perpetual neutrality so far as European conflicts are concerned,—a neutrality self-imposed from within like its self-assumed independence. Until these deep flaws are remedied we may persist as a form of government, but we shall not remain a true union, nor evolve into a people.

## NOTE OF THE IMPERIAL AND ROYAL MINISTER OF FOREIGN AFFAIRS TO THE AMBASSADOR OF THE UNITED STATES OF NORTH AMERICA.

Vienna, June 20th, 1915.

The far-reaching effects arising from the fact that a vast trade in war supplies between the United States of North America on the one hand and Great Britain and its allies on the other has for a considerable time been taking place; whilst Austria-Hungary as well as Germany are completely cut off from the American markets, is something which from the very beginning has aroused the serious attention of the Imperial and Royal government. In that the undersigned permits himself to enter upon the discussion of this question, a question which has previously been called to the attention of the Washington Cabinet only by the German Imperial Government, he merely obeys the dictates of an unavoidable duty—that of protecting the interests entrusted to him from further damage resulting out of this situation not only for the German Empire but also for Austria-Hungary.

Though the Imperial and Royal government be thoroughly convinced that the attitude assumed by the government of the United States in this matter arises from no other intention than that of maintaining the strictest neutrality and of conforming to the very letter of the provisions of those international treaties which come into consideration here, the question nevertheless must be considered whether those conditions which have arisen in this war quite independently of the will of the American Government are not of a nature calculated to render null and void the intentions of the Washington Cabinet in so far as their effect is concerned, nay, even to bring about an exactly opposite effect. Should an affirmative answer be given to this question—and its affirmation, in the opinion of the Imperial and Royal Government, cannot be doubted—it follows that another question arises,—as to whether it be not possible and indeed necessary that measures be taken in order to realize fully the desire of the United States government to maintain

an attitude of strict parity towards both belligerent parties? The Imperial and Royal Government does not hesitate to return an unconditional affirmative answer to this question as well.

The American Government which has taken so conspicuous a part in the work of the Hague Conference; must surely be cognizant of the fact that the nature and the essentials of neutrality are by no means exhausted by the fragmentary prescriptions of the agreements under consideration. If we give special consideration to the historical evolution of Article 7 of the Fifth, or conditionally, the Thirteenth Convention upon which the United States Government obviously bases its case in the present instance, and the text of which, as must be agreed, bestows upon it a formal extenuation for tolerating the trade in war material at present carried on by the United States, it is hardly necessary, in order to estimate the true spirit and extension of this rule—which appears, moreover, to have already been transgressed by the rule prohibiting the delivery of warships and by that which forbids the delivery of certain war supplies to belligerent countries—to point out that the particular concessions granted to neutral states in the sense of the Preamble to the last-named Convention, must necessarily be limited by the demands of neutrality in accordance with the principles generally recognized in international law.

According to all the authorities upon international law who have concerned themselves more directly with the question under consideration, a neutral government must not permit trade in contraband to proceed uninterruptedly when this trade assumes such a form or such proportions as thereby to affect the neutrality of a country. If the judgments regarding the admissibility of the trade in contraband be based upon the criteria which have been established by scholarship in this connection, each of these forces us to the conclusion that the exports of war supplies from the United States as it is carried on during the present war, cannot be reconciled with the demands of neutrality. It is not a question as to whether those American industries which are occupied with the production of war material are to be protected because they have suffered loss through the suspension of the exports they enjoy in times of peace.

These industries have rather undergone an unexpected increase in consequence of the war. In order to manufacture the enormous quantities of arms, munitions and other war materials of various sorts which Great Britain and its allies have ordered in the United States in the course of the past months, it was not only necessary completely to utilize the existent factories, but also to bring about their readaptation and extension, as well as the establishment of large new plants and the streaming together of masses of workmen of all branches to these industries—in short, a profound change in the industrial life of the entire land. No one can therefore dispute the right of the American government to inhibit this undeniably vast export of war supplies by passing an embargo upon shipment, the more so since it is notorious that only one party of belligerents is able to profit therefrom. Should the United States government make use of the privilege to which it is entitled, it would maintain itself free from reproach even if in order to comply with the demands of its own national law, it should proceed to issue such an order. For even though it may in principle be correct that a neutral state ought not to alter the laws valid within its confines and relating to its attitude toward the belligerents, during the duration of a war, an exception may nevertheless be urged against this principle as may be clearly seen from the preamble of the XIII Hague Convention "où l'expérience acquise en démontrerait la nécessité pour la sauvegarde de ses droits." This instance is moreover already established in the case of the American government inasmuch as Austria-Hungary as well as Germany are cut off from all commercial intercourse with the United States of America—without the just and legal preliminary conditions being complied with—a legitimate Blockade.

In answer to the possible objection, that in spite of the willingness of the American industrial world to make deliveries to Austria-Hungary and Germany as well as to Great Britain and its allies, it is impossible for the United States of America to carry on trade with Austria-Hungary and Germany merely as a consequence of the war-situation, one may be permitted to indicate that the American government

would no doubt be able to assume a position in which the condition described might be obviated. It would presumably suffice to acquaint the opponents of Austria-Hungary and Germany with the possibility, of an embargo to be placed upon food supplies and raw materials should the legitimate trade in these articles between the Union and the two Central Powers not be freed from repression.

Should the Washington Cabinet be prepared to take action along these lines, it would not only maintain those high traditions which the United States have always upheld with respect to the freedom of legitimate trade by sea, but would also perform the noble service of rendering null and void the outrageous attempts of the enemies of Austria-Hungary and Germany to make use of starvation as an additional ally.

The Imperial and Royal government, acting in the spirit of the excellent relations that have never ceased to subsist between the Austrian-Hungarian monarchy and the United States of America, addresses this appeal to the American government in sincere friendship, that in view of the representations herein made it might give a thorough reconsideration to the standpoint it has up to the present assumed in this most important question. A revision of this standpoint by the United States government in the sense of the interpretation made by the Imperial and Royal government would, according to the conviction of the latter, not only lie within the rights and obligations of a neutral government, but also in the direction of that true humanity and love of peace which have always governed the principles of the United States and been inscribed upon their banner since earliest times.

The undersigned has the honor to bespeak the gracious mediation of his Excellency the Envoy Extraordinary and Plenipotentiary of the United States of America, Mr. Frederic Courtland Penfield, to bring the foregoing statements by telegraphic means to the knowledge of the Washington Cabinet, and at the same time takes advantage of the occasion to renew to his Excellency, the American Ambassador, the expression of his distinguished consideration.

Burián, m. p.

## NOTE OF THE AMBASSADOR OF THE UNITED STATES TO THE IMPERIAL AND ROYAL MINISTER OF FOREIGN AFFAIRS

Vienna, August 16, 1915.

The undersigned Ambassador of the United States of America did not fail to communicate to his Government the full contents of the esteemed Note, dated the 29th June last, in which His Excellency Baron Burián, Imperial and Royal Minister for Foreign Affairs, set forth the views and comments of the Imperial and Royal Government on the attitude of the Government of the United States in permitting the traffic in arms and ammunition, between American manufacturers and Great Britain and her Allies. He is now instructed by his Government to communicate the following reply:

The Government of the United States has given careful consideration to the statement of the Imperial and Royal Government in regard to the exportation of arms and ammunition from the United States to the countries at war with Austria-Hungary and Germany. The Government of the United States notes with satisfaction the recognition by the Imperial and Royal Government of the undoubted fact that in its attitude with regard to the exportation of arms and ammunition the United States is prompted by its intention to "maintain the strictest neutrality and to conform to the letter of the provisions of international treaties," but is surprised to find the Imperial and Royal Government implying that the observance of the strict principles of the law under the conditions which have developed in the present war is insufficient and asserting that this Government should go beyond the long-recognized rules governing such traffic by neutrals and adopt measures to "maintain an attitude of strict parity with respect to both belligerent parties."

To this assertion of an obligation to change or modify the rules of international usage on account of special conditions the Government of the United States cannot accede. The recognition of an obligation of this sort unknown to the international practice of the past would impose upon every neutral nation a duty to sit in judgment on the pro-



Feb. 11, 1916

THE CONTINENTAL TIMES

States of North America has assumed in the question of the delivery of war supplies to Great Britain and its allies, as represented by the standpoint of the Imperial and Royal government.

The representations which the Washington Cabinet has devoted to this question permit the various points of view to be discerned which are accepted as standards by the American Government in this contingency, and which in its opinion prevent it from accepting the views which the Imperial and Royal Government regards as valid. Greatly as the Imperial and Royal Government has been concerned to test in detail the valid points submitted by the Washington Cabinet, the most careful weighing and valuation are unable to determine it to recede from the standpoint made clear in the note of June 29th of this year,—No. 59,465.

The amplifications of the American Government depend to a great extent upon the irrelevant assumption that the Imperial and Royal Government had in fact disputed the privilege, which according to Article 7 of the 5th and the 13th Hague Convention, bestows upon the citizens of neutral states the right of furnishing contraband—whereas the note of the Imperial and Royal Government had expressly stated, that the letter of the rule—but only the letter—referred to, accorded the American Government a formal justification for tolerating the traffic in war materials at present carried on by its citizens. It is self-evident that it would be far from the intention of the Imperial and Royal Government to impute to the Washington Cabinet any desire to deviate from a valid agreement. It merely indicated that its acceptance of this rule should not be given an interpretation which would be contradictory to the basic thought and the highest principles of the rights of neutrality. It is true that with the progressive codification of international law there arises the danger that the legal clauses as laid down in written agreements, are to be regarded as the sum and total of international law and that the most common ideal of international law, so far as this is not expressly stated in state agreements, will be overlooked. This, however, is a possibility which should above all be anticipated especially in connection with the subject of the rights of neutrality and it is in this sense that in the Preamble of the 13th Hague Convention (section 2 and 3) stress is laid upon the fact that the stipulations of this agreement represent only fragments which cannot be applied to all circumstances arising in practice and which find their correctives or in certain cases their complement in the general principles of international law.

The Imperial and Royal Government had therefore confined its pertinent exposition to the special problem as to whether the treaty provision quoted did not reach its limits in these principles. And when in affirming this question it referred to the authorities, it merely had and only could have had such authorities in view as have made a special examination of the question as to whether the export of war supplies, permissible under ordinary circumstances, did not under other circumstances involve a compromise of neutrality. A declaration to the effect that the authors were unanimously of the opinion that the export of contraband was opposed to neutrality, is to be found in no portion of the note of June 29th, 1915.

Furthermore, the Imperial and Royal Government uttered no word concerning a principle of "equalization". As a matter of fact the suggestion it made in respect to the question concerning the export of war supplies was not based upon the fact that it was not itself in a position to import such supplies from the United States,—nay, it is even of the opinion that the excessive export of war materials would not be admissible even if this took place to the countries of both belligerent parties. The thought that it was incumbent upon a neutral power to make good the disadvantage in which Austria-Hungary finds itself owing to the impossibility of importing war supplies from the territory of such neutral power, by this neutral power forbidding its subjects to maintain their normal commerce with such goods, had never occurred to the Imperial and Royal Government. It made no other objection than this—that the industrial life of the United States through the creation of

new plants and the extension of the present plants, has been made serviceable in the most comprehensive degree to the purpose of producing and exporting materials of war, has, so to speak, been militarized—if it be permitted to make use of this much-abused word.

In this concentration of so many forces toward one end—the delivery of war supplies which, even though not intentionally, are nevertheless actually as a matter of consequence, an effective support of one of the parties to the war—a fact rendered all the more conspicuous since the other party to the war is not even given deliveries of such goods as are not contraband—lies a *fait nouveau* through which the allusion to supposed cases of precedent in other wars loses its validity. The parallel between this and former wars is the less tenable inasmuch as these have always been wars between single powers or at least between groups of powers less numerous. Under such conditions it was possible that when a neutral power delivered war material to one belligerent only, the other might apply to other neutrals. In the present war, however, the United States of America are the solitary power which is seriously to be taken into consideration in this respect. Through this fact likewise the export of war material from the Union as it is now carried on, attains quite a different significance from that which could ever before have been applied to the export of contraband. Since all these variable phases had attained their full significance only during the course of this war, the Austrian-Hungarian Government believes itself entitled to the interpretation that these elements would in the sense of the last clause of the preamble to the 13th Convention, have been ample justification for the alteration of standards which had up till then found sanction in the United States. There can be no doubt that complete and strict non-partisanship such as is striven for by the Cabinet at Washington as well as the refraining from all direct and indirect support and furtherance of one belligerent, is in all cases to be likewise considered as one of the rights of a neutral state.

Should experience prove that an embargo of one kind or another should become necessary for this purpose in the course of a war, then such neutral power would be justified in altering the practice of neutrality to which it had hitherto adhered.

On the other hand the present and up till now unprecedented case is to be considered as something entirely unique—something which—as already indicated—is not provided for by Article 7 as quoted and may therefore be regarded as nothing else than a "cas non prévu", which is to be adjudged in the spirit of the preamble of the 13th Convention (clause 3) according to the common principles of international law as these had been developed in the preceding passages.

Moreover the suggestion made by the Imperial and Royal government with respect to the deliveries of food supplies and raw materials, were not governed by the idea that a neutral government was obligated to make good the advantages accruing to one party of belligerents over the other by adopting a "non-intercourse" system. This suggestion, as may be seen from the purport of the note of June 29th, 1915, was to serve only the purpose of acquainting the Washington Cabinet, which had declared that it was impossible for the United States to carry on commerce with the Central Powers in consequence of the war situation, that it lay within the power of the United States government to create such a possibility. As a matter of fact it is not the naval successes of Great Britain and its allies which put a stop to the trade between America and Austria-Hungary, at least so far as non-contraband comes into question, but the illegal measures adopted by the countries of the Entente, measures which as is known to the Imperial and Royal government, are also regarded as illegal by the United States.

The Imperial and Royal government, to be sure, does not deny that in the event of the Washington Cabinet meeting the views of the Imperial and Royal government, this would result in the attitude of the United States towards the two parties of belligerents being a less unequal one in the field of commercial intercourse than is the case at present.

But out of this it appears to the Imperial and Royal government that an argument against the suggestion, however otherwise acknowledged as justified from the viewpoint of neutrality, may be the less deduced, as it must assuredly also be in line with the views of the Washington Cabinet that it does not lie within the tasks of a neutral state to shape its attitude towards both belligerent parties as unequally as possible, or in case such an inequality already exists, to refrain from altering it under all circumstances.

Contrary to the assumption of the United States government that in the opinion of the Imperial and Royal government the export of arms and munitions is in violation of the last clause of the preamble to the 13th Convention, it must be emphasized that the Imperial and Royal government has taken its position against the excessive export of war supplies—as already entered into above—upon the basis of the 2nd and 3rd clause of this preamble. The reference to the last clause was conceived in connection with the question of the illegal exclusion of Austria-Hungary from the American market and was intended to show that the United States would on these grounds alone be justified in issuing an embargo by due legislation.

Should it, as appears, lie within the intention of the United States, to give voice to the idea that the government of a belligerent country lacks the necessary legitimation to open up overtures where the preservation or the exercise of the rights of a neutral state are concerned, this is no doubt to be explained by the circumstance that the Washington Cabinet had interpreted the final clause referred to, in a manner somewhat too restrictive, as though it were concerned only with purely personal rights whose observation must necessarily, as is likewise the opinion of the Imperial and Royal Government, be left to the judgment of the neutral state. But the clause referred to, as appears from the report which the French delegate M. Renault made to the full session of the Hague Conference regarding the 13th Convention (*Deuxieme Conf. Intern. de la Paix, actes et doc., tome I, p. 326*) has in mind the preservation of neutrality, and a belligerent cannot therefore be denied the privilege, based upon this particular passage, of addressing a neutral government when the rights of the neutral state grow tangential to the circle of rights of the belligerent.

It is with active interest that the Imperial and Royal government has followed the expositions of the United States government in which points of view are expounded which appear to make it conclusive that the Washington Cabinet holds that no limits should be set to the export of war material in the present war but the Austrian-Hungarian government does not give up hope of obtaining the assent of the United States government, when it observes that these points of view, being of a purely practical nature, have no influence upon the judgment of the point of law at issue, whereby it is necessary on our part that we should leave unexamined the fact whether the production of war material in the United States could assume such enormous proportions, would not rather lead to the conclusion that the United States, in which all the preliminary conditions of this production, human labor, natural resources and capital, are now to be found in superabundance in the event of their being obliged to wage war on their own account, not to speak of the augmentation of the energies of its citizens in their own cause,—would not be dependent upon supplies of war materials from foreign countries.

In particular the Imperial and Royal government would like to be permitted to add the following:

In the quotation of a number of cases of precedent by the Washington Cabinet, cases which, as already intimated, cannot be accepted as precedents, the government of the United States lays stress upon the instance of the Boer War, during the course of which an analogous commercial isolation of one belligerent took place, just as in the present war. But an analogy of this kind can in truth hardly be said to exist, since Great Britain at that time had not issued orders against trade such as are now represented by the illegal measures taken by the London Cabinet, and that the prevention of an import of arms and

munitions to which the United States Government refers, cannot by any means be regarded as a commercial isolation. One need scarcely mention the fact that the export of war material from Austria-Hungary during the Boer War, as well as in other wars in which such an export took place at all, had never exceeded the limits of admissibility.

As to the reference made by the Cabinet at Washington to the German author cited, the validity of the conclusions drawn from this source have also been negated by the fact that—as the United States government must in the meantime have discovered—Herr Einicke has himself publicly protested against one passage of his treatise regarding neutrality in naval warfare being interpreted in favor of the attitude assumed by the Washington Cabinet. In addition the Imperial and Royal government holds it to be self-evident that a neutral state must not issue an embargo with the intention of injuring one of the belligerent parties. But it is equally self-evident that it could never be maintained of an embargo law which had been issued by a neutral state in order to preserve its neutrality that this had been done with the intention of injuring one party of belligerents.

Finally the disquisitions of the United States government dealing with the provisioning of warships are apparently based upon a misunderstanding. In alluding to the law forbidding the delivery of warships and the prohibition of certain deliveries to warships the Imperial and Royal governments had no concrete instance in mind, but merely the prohibitions as expressed in Articles 8, 19 and 20 of the 13th Hague Convention.

The undersigned has the honor to bespeak the kindness of his Excellency the Ambassador of the United States in forwarding the foregoing friendly expositions—which are intended merely to serve as a complement to the presentation of the legal situation as expressed in the note of June 29th, 1915, with consideration of the instances cited by the American government—to the Washington Cabinet by telegraphic means, and at the same time makes use of this occasion to renew to his Excellency, the American Ambassador, his sentiments of distinguished consideration.

Burián, m. p.

THE FIRST NOTE OF THE UNITED STATES IN THE "ANCONA" AFFAIR.

Vienna, December 9th, 1915.

The undersigned Ambassador of the United States of America has the honor, pursuant to instructions from his Government, to make the following communications to His Excellency Baron Burián, Imperial and Royal Minister for Foreign Affairs, in relation to the sinking of the Italian steamship "Ancona" on the 7th ultimo off the coast of Sardinia:

Reliable information obtained from American and other survivors who were passengers on the steamship "Ancona" shows that on November 7th a submarine flying the Austro-Hungarian flag fired a solid shot toward the steamship; that thereupon the "Ancona" attempted to escape but being overhauled by the submarine she stopped; that after a brief period and before the crew and passengers were all able to take to the boats, the submarine fired a number of shells at the vessel and finally torpedoed and sank her while there were yet many persons on board; and that by gun fire and foundering of the vessel a large number of persons lost their lives or were seriously injured among whom were citizens of the United States.

The public statement of the Austro-Hungarian Admiralty has been brought to the attention of the Government of the United States and received careful consideration. This statement subsequently confirms the principal declaration of the survivors as it admits that the "Ancona" after being shelled was torpedoed and sunk while persons were still on board.

The Austro-Hungarian Government has been advised through the correspondence which has passed between the United States and Germany of the attitude of the Government of the United States as to the use of submarines in attacking vessels of commerce and the

acquiescence of Germany in that attitude yet, with full knowledge on the part of the Austro-Hungarian Government of the views of the Government of the United States as expressed in no uncertain terms to the ally of Austria-Hungary, the commander of the submarine which attacked the "Ancona" failed to put into a place of safety the crew and passengers of the vessel which they purposed to destroy because, it is presumed, of the impossibility of taking it into port as a prize of war.

The Government of the United States considers that the commander violated the principles of international law and of humanity by shelling and torpedoing the "Ancona" before the persons on board had been put in a place of safety or even given sufficient time to leave the vessel. The conduct of the commander can only be characterized as wanton slaughter of defenceless non-combatants since at the time when the vessel was shelled and torpedoed she was not, it appears, resisting or attempting to escape and no other reason is sufficient to excuse such an attack not even the possibility of rescue.

The Government of the United States is forced, therefore, to conclude either that the commander of the submarine acted in violation of his instructions or that the Imperial and Royal Government failed to issue instructions to the commanders of its submarines in accordance with the law of nations and the principles of humanity. The Government of the United States is unwilling to believe the latter alternative and to credit the Austro-Hungarian Government with an intention to permit its submarines to destroy the lives and property of helpless men, women and children. It prefers to believe that the commander of the submarine committed this great outrage without authority and contrary to the general or special instructions which he had received. As the good relations of the two countries must rest upon a common regard for law and humanity, the Government of the United States cannot be expected to do otherwise than to demand that the Imperial and Royal Government denounce the sinking of the "Ancona" as an illegal and indefensible act, that the officer who perpetrated the deed be punished, and that reparation by the payment of an indemnity be made for the citizens of the United States who were killed or injured by the attack on the vessel.

The Government of the United States expects that the Austro-Hungarian Government, appreciating the gravity of the case, will accede to its demand promptly; and it rests this expectation on the belief that the Austro-Hungarian Government will not sanction or defend an act which is condemned by the world as inhuman and barbarous, which is abhorrent to all civilized nations and which has caused the death of innocent American citizens.

The undersigned avails himself of this opportunity to renew to His Excellency the Imperial and Royal Minister for Foreign Affairs the assurance of his highest consideration.

Frederic C. Penfield, m. p.

THE ANSWER TO THE "ANCONA" NOTE OF THE UNITED STATES OF NORTH AMERICA.

Vienna, December 14, 1916.

In answer to the esteemed note which His Excellency the Envoy Extraordinary and Plenipotentiary of the United States of America, Mr. C. Frederick Penfield, has addressed to the undersigned under date of the 9th inst. with reference to the matter of the sinking of the Italian steamer "Ancona," the undersigned has the honor as a preliminary step and as something in no way invalidating a thorough and meritorious treatment of the reclamation, to remark that the sharpness with which the American government assumes that the commander of the submarine in question should be censured, and the decisiveness with which these demands appear to be directed to the Imperial and Royal government, might well have permitted one to hope that the American government would have made a careful presentation



of the actual circumstances of the case upon which it bases its demands. As may easily be ascertained, the presentation of the contents of the said note leaves room for numerous doubts, and even should it be verified upon all points and the most rigorous interpretation of the law be adopted in the judgment of these, it would nevertheless not furnish sufficient reason for holding the commander of the war vessel or the Imperial and Royal government to be guilty of a wrongful act.

The American government has also neglected to designate the persons upon whose statements it depends and which it apparently thinks itself entitled to credit with a greater degree of trustworthiness than the Chief of the Imperial and Royal fleet. Nor does the note furnish any particulars in connection with the number, the names and the immediate fate of the American citizens who happened to be aboard the said steamer at the critical moment. Nevertheless the Imperial and Royal government in view of the fact that the Washington Cabinet has now made a positive statement in the body of this note, to the effect that citizens of the United States of America have come to harm, is now prepared in principle to enter upon an exchange of views in this matter with the American government. The Imperial and Royal government must, however, first posit the question as to why the American government in consideration of special circumstances of the case as emphasized by itself, should have failed to base the claims made in its note upon a legal foundation and in place of such a basis, should point to a correspondence which it had entertained in other matters with another government. The Imperial and Royal government is the less able to follow the American government upon paths so unusual, since by no means possesses any authentic knowledge of all the pertinent correspondences of the American government, and is also of the opinion that such knowledge would not suffice it in the case at issue, a case which, so far as its information goes, differs in essential points from the case or cases at which the American government seems to hint. The Imperial and Royal government may therefore leave it to the Washington Cabinet to formulate the separate clauses of law against which the commander of the submarine is supposed to have transgressed in connection with the sinking of the "Ancona."

The American government has also thought fit to allude to the position assumed by the Berlin government in the exchange of notes referred to. The Imperial and Royal government finds nothing in this esteemed note which would serve as an indication as to what intention is to be served by this allusion. Should it however have been within the intention of the American government to express an opinion tending toward the supposition that the case mentioned, so far as the Imperial and Royal government is concerned, would in any way influence the legal decision through a precedent of any sort, the said government must, in order to anticipate eventual misunderstandings, declare that it naturally reserves full liberty for itself to make valid its own interpretation of law in the discussion of the "Ancona" case.

The undersigned has the honor to bespeak the kindness of his Excellency the Ambassador of the United States of America, with the request that he communicate the foregoing to the American government and takes advantage of the occasion to give expression to the fact that under all circumstances the Imperial and Royal government laments the fate of the innocent victims of the incident in question no less than does the American government, and at the same time makes use of the opportunity to renew to his Excellency the Ambassador, assurances of his sentiments of distinguished consideration.

Burián, m. p.

#### NOTE OF THE AMBASSADOR OF THE UNITED STATES TO THE IMPERIAL AND ROYAL MINISTER OF FOREIGN AFFAIRS.

Vienna, December 21 st, 1915.

The undersigned Ambassador of the United States of America has the honor to communicate to His Excellency Baron Burián, Imperial and Royal Minister for Foreign Affairs, the following reply of the Government of the United States to His Excellency's esteemed Note of the 14th instant, No. 5735, with reference to the sinking of the Italian steamship "Ancona", the purport of which in translation was duly transmitted to the Secretary of State at Washington:

The Government of the United States has received the Note of your Excellency relative to the sinking of the "Ancona" which was delivered at Vienna on December 15th, 1915, and transmitted to Washington, and has given the Note immediate and careful consideration.

On November 15th, 1915, Baron Zwiedinek, the Chargé d'Affaires at Washington, transmitted to the Department of State a report of the Austro-Hungarian Admiralty with regard to the sinking of the steamship "Ancona" in which it was admitted that the vessel was torpedoed after her engines had been stopped and when passengers were still on board. This admission alone is, in the view of the Government of the United States, sufficient to fix upon the Commander of the submarine which fired the torpedo the responsibility for having willfully violated the recognized law of nations and entirely disregarded those humane principles which every belligerent should observe in the conduct of war at sea. In view of these admitted circumstances the Government of the United States feels justified in holding that the details of the sinking of the "Ancona", the weight and character of the additional testimony corroborating the Admiralty's report and the number of Americans killed or injured are in no way essential matters of discussion. The culpability of the commander is in any case established and the undisputed fact is that citizens of the United States were killed, injured or put in jeopardy by his lawless act.

The rules of international law and the principles of humanity which were thus willfully violated by the Commander of the submarine have been so long and so universally recognized and are so manifest from the standpoint of right and justice that the Government of the United States does not feel called upon to debate them and does not understand that the Imperial and Royal Government questions or disputes them.

The Government of the United States, therefore, finds no other course open to it but to hold the Imperial and Royal Government responsible for the act of its naval Commander and to renew the definite but respectful demands made in its communication of the 6th December, 1915 (the undersigned's Note No. 4167, of the 9th instant). It sincerely hopes that the foregoing statement of its position will enable the Imperial and Royal Government to perceive the justice of those demands and to comply with them in the same spirit of frankness and with the same concern for the good relations now existing between the United States and Austria-Hungary which prompted the Government of the United States to make them.

The undersigned avails himself of this opportunity to renew to His Excellency the Imperial and Royal Minister for Foreign Affairs, the assurance of his highest consideration.

Frederic C. Penfield, m. p.

#### AUSTRIA-HUNGARY'S ANSWER TO SECOND NOTE OF THE UNITED STATES GOVERNMENT IN THE MATTER OF THE "ANCONA."

Vienna, Dec. 29, 1915.

In reply to the esteemed Note No. 430, dated the 21st of this month, the undersigned has the honor to advise his Excellency Frederick Courtland Penfield, Ambassador of the United States, as follows:

The Imperial and Royal Government is in the fullest agreement with the necessity of taking into account, even in time of war, the sacred dictates of humanity. Just as it has up to the present, never given anyone cause to doubt its reverence for these dictates, so in the whole course of this war, which presents so many frightful aspects of the destruction of the moral sense, it has given to enemies and neutrals alike, numerous proofs of its humanitarian sentiments. The blame did not lie with this government when a short time ago it was not able to see eye to eye with the Washington Cabinet, precisely in a question which in concord with the universal public opinion in Austria-Hungary it regarded as fundamentally a question of humanity.

Further the Imperial and Royal Government is essentially in agreement with the principle enunciated in the esteemed Note, that enemy private ships, in so far as they do not attempt flight or resistance, may not be destroyed, except after the persons on board of them have been brought into safety.

The Imperial and Royal Government receives with pleasure the assurance that the Government of the United States sets a high value upon the maintenance of the good relations which fortunately obtain between Austria-Hungary and the United States of America. It reiterates this assurance in the warmest manner and is now as heretofore resolved, so far as lies in its power, to render these relations still more cordial.

Led by the same frank spirit as the Government of the United States, the Imperial and Royal Government is prepared, although it did not in the Note aforementioned, find an answer to all its justifiable questions, to communicate to the United States Government the result of the enquiry which in consequence of the existing internal provisions, was immediately instituted upon the receipt of the naval communication as to the sinking of the "Ancona," and which is at this moment concluded. The result of this enquiry reveals the facts to be as follows:

On the 7th of November, 1915, at forty minutes past eleven in the forenoon, the Commander of the submarine, then in 38° 40' North and 10° 8' East, in thick weather, suddenly observed a point off the starboard bow, at a distance of about 3000 yards, the outline of a large Italian steamer loom up out of the fog. He believed it at first to be a transport steamer, turned, and fired a warning shot from the aft gun, directed wide of the ship; at the same time he hoisted the signal "Leave the ship!" The steamer did not stop, on the contrary she turned and attempted to escape. The Commander thereupon remained quiet for some minutes, that the distance might be increased, since he feared that the steamer had a gun on her afterdeck and would fire upon the submarine. When a distance of 4500 yards had been attained, he started upon the chase at full speed, and fired from the forward gun at decreasing distances, 16 shells, among which he could observe three that reached their mark. During the pursuit the steamer took a zig-zag course, and only stopped when hit for the third time. Thereupon the Commander suspended fire.

Already during her flight, when going at full speed the steamer had lowered some boats containing passengers. These capsized at once. After stopping she

began to put out boats. At a distance of about 2000 yards the Commander saw that six boats were laden and were rowing quickly away from the steamer. Another boat was capsized and floated keel upward; the passengers were clinging fast to the floating ropes and to the capsized boat. As the submarine came nearer, the Commander observed that there was great panic aboard, and that the vessel was a passenger steamer, the "Ancona," from Genoa. On this account he allowed the travellers on the steamer more than the usual time to leave the ship and take to the life-boats.

There were still at least ten lifeboats aboard, which would have more than sufficed for the rescue of the persons still remaining on board; one of these boats, completely filled, hung half suspended from the boat-davits. As however, no further efforts were made to lower the boats, the commander decided, after a lapse of 45 minutes, to torpedo the ship in such a manner that it must remain above water for a long period, so that on the one hand the launching of the boats might be expedited, and on the other hand, ample opportunity remain for saving the lives of those still remaining on board.

Shortly afterwards, a steamer came into view, which made for the "Ancona" with great clouds of smoke issuing from its funnels, and which had apparently been summoned by the "Ancona", through her wireless apparatus. As the submarine commander had now to reckon with an attack by the steamer, which he took to be an enemy cruiser, he dived, after he had at 12.35 p. m., at a distance of 800 yards, fired a torpedo into the forward cargo-hold of the "Ancona". After the shot the ship took a list of about ten degrees to starboard.

There was then an attempt to complete the launching of the suspended lifeboat; it tore away, however, and fell into the water. The boat floated keel upward, and the people clung to its edge. None of the remaining boats were lowered, although passengers were still discernible on deck. The steamer righted herself upon an even keel, and sank so slowly that at first the commander of the submarine doubted whether she would sink at all; not till 1.20 p. m. did she sink, head on, after long parallel plungings. During this further period of 45 minutes, everyone on board could have been rescued without difficulty in the remaining boats. From the circumstance that this, contrary to expectation, did not take place, the commander came to the conclusion that the crew, contrary to all the laws of the sea, had saved themselves in the first boats and left the passengers who had been entrusted to them to their own devices.

The weather at the time of the occurrence was good and the sea calm, so that the lifeboats could have reached the nearest shore without danger. In fact the lifeboats came to grief only on account of the inefficient manner in which they were lowered, and not after they had gained the water. The loss of human life cannot in any way be attributed primarily to the sinking of the ship; on the contrary, and in all probability to a much greater degree is this traceable to the casting-off of the first boats when the ship was going full steam ahead—to the fact that the crew thought only of themselves, and made no attempt to rescue the inmates of the capsized boats—and possibly to shots having taken effect on the ship as she fled. But the death of those who sank with the steamer is above all the consequence of the shameful behavior of the crew.

As may be seen from the aforesaid, the esteemed Note of the 9th of this month proceeds in several points from incorrect conclusions. The information communicated to the United States Government, that the steamer was at once fired on with ball (solid shot toward the steamship) is incorrect. It is untrue that the submarine "overhauled"

the steamer during the pursuit. It is untrue that the passengers were allowed only "a brief period," in which to take to the boats on the contrary, the "Ancona" was granted much longer than is usual for the transhipment of her passengers. Finally it is untrue that a "number of shells" were fired at the steamer after she had stopped.

The foregoing indicates further that the submarine Commander allowed the steamer 45 minutes, that is, more than sufficient time to enable everyone aboard of the vessel to take to the boats. When he saw that the people were not proceeding with the work of rescue, he launched a torpedo in such a manner that the ship should remain as long as practicable above water, this with the idea of enabling the remaining boats to be launched. This purpose would have been achieved, since the steamer remained a further 45 minutes above water, had not the crew of the "Ancona" in violation of their duty, abandoned the passengers to their fate.

With all respect to the procedure of the Commander regarding the rescue of the crew and passengers, the Imperial and Royal Admiralty nevertheless came to the conclusion that he had neglected to take into sufficient account the condition of panic which prevailed and so greatly hindered the launching of the boats. In the spirit of the provision that officers of the Imperial and Royal Navy should never refuse help in case of need, even to the enemy, and on a charge of exceeding his instructions, the officer was punished according to the measures provided for this end.

The Imperial and Royal Government, under these circumstances, does not hesitate to allow the necessary conclusion that the American citizens who were injuriously affected by the sinking of the prize are entitled to indemnification. In this respect however it must make the following observations.

The inquiry into the sinking of the "Ancona" is of course unable to establish any basis for determining the measure in which American citizens are entitled to claim damages. For the damage which ensued owing to the unquestionably justifiable firing upon the escaping ship, the Imperial and Royal Government, in agreement with the views of the Washington Cabinet, can not be held responsible. Just as little can it be held to account for the damage which ensued before the firing of the torpedo in consequence of faulty launching, or the capsizing of boats already launched.

The Imperial and Royal Government cannot but think that the Washington Cabinet is prepared and in a position to furnish the information which is necessary and certainly not unreasonable in this respect. Should the United States Government however not be in possession of all the exact information with regard to the circumstances by which the American citizens were injuriously affected, the Imperial and Royal Government, having regard to the, humanly speaking, deeply regrettable occurrence, and led by the desire to convince the United States Government anew of the friendliness of its sentiments, is ready, and willing to pass over these gaps in the evidence, and to extend the damages to cover every injury the immediate cause of which cannot be ascertained.

Inasmuch as the Imperial and Royal Government believes it may regard the foregoing statement as having cleared up the case of the "Ancona", it declares at the same time that it is prepared at a later date to examine the whole question of the difficult points of international law which have been raised by submarine warfare.

The Undersigned has the honor to bespeak the kindness of his Excellency the Ambassador of the United States in bringing the foregoing to the knowledge of the United States Government, and at the same time makes use of this occasion to renew to his Excellency his sentiments of distinguished consideration.

Burián, m. p.