

British-American Diplomacy

The Caroline Case

[Mr. Webster to Lord Ashburton]

DEPARTMENT OF STATE, Washington, 27th July, 1842.

Lord Ashburton, &c, &c, &c,

MY LORD: In relation to the case of the "*Caroline*", which we have heretofore made the subject of conference, I have thought it right to place in your hands an extract of a letter from this Department to M^rFox, of the 24th of April, 1841, and an extract from the message of the President of the United States to Congress at the commencement of its present session. These papers you have, no doubt, already seen; but they are, nevertheless, now communicated, as such a communication is considered a ready mode of presenting the view which this Government entertains of the destruction of that vessel.

The act of which the Government of the United States complains is not to be considered as justifiable or unjustifiable, as the question of the lawfulness or unlawfulness of the employment in which the "*Caroline*" was engaged may be decided the one way or the other. That act is of itself a wrong, and an offense to the sovereignty and the dignity of the United States, being a violation of their soil and territory-a wrong for which, to this day, no atonement, or even apology, has been made by Her Majesty's Government. Your Lordship cannot but be aware that self-respect, the consciousness of independence and national equality, and a sensitiveness to whatever may touch the honor of the country-a sensitiveness which this Government will ever feel and ever cultivate-make this a matter of high importance, and I must be allowed to ask for it your Lordship's grave consideration.

I have the honor to be, my Lord, your Lordship's most obedient servant,

DAN^l WEBSTER.

[Enclosure 1-Extract from note of April 24,1841]

The Undersigned has now to signify to M^r Fox that the Government of the United States has not changed the opinion which it has heretofore expressed to Her Majesty's Government, of the character of the act of destroying the "*Caroline*". It does not think that that transaction can be justified by any reasonable application or construction of the right of self-defence under the laws of nations. It is admitted that a just right of self-defence attaches always to nations, as well as to individuals, and is equally necessary for the preservation of both. But the extent of this right is a question to be judged of by the circumstances of each particular case; and when its alleged exercise has led to the commission of hostile acts, within the territory of a power at peace, nothing less than a clear and absolute necessity can afford ground of justification. Not having, up to this time, been made acquainted with the views and reasons, at length, which have led Her Majesty's Government to think the destruction of the "*Caroline*" justifiable as an act of self-defence, the Undersigned, earnestly renewing the remonstrance of this Government against the transaction, abstains, for the present, from any extended discussion of the question. But it is deemed proper, nevertheless, not to omit, to take some notice of the general grounds of justification, stated by Her Majesty's Government, in their instruction to M^r Fox.

Her Majesty's Government have instructed M^r Fox to say, that they are of opinion, that the transaction, which terminated in the destruction of the "*Caroline*", was a justifiable employment of force, for the purpose of defending the British Territory from the unprovoked attack of a band of British rebels and American pirates, who, having been "permitted" to arm and organize themselves within the territory of the United States, had actually invaded a portion of the territory of Her Majesty.

The President cannot suppose that Her Majesty's Government, by the use of these terms, meant to be understood as intimating, that those acts, violating the laws of the United States, and disturbing the peace of the British territories, were done under any degree of countenance from this Government, or were regarded by it with indifference; or, that under the circumstances of the case, they could have been prevented, by the ordinary course of proceeding. Although he regrets, that by using the term "permitted", a possible inference of that kind might be raised, yet such an inference, the President, is willing to believe, would be quite unjust to the intentions of the British Government.

That on a line of frontier, such as separates the United States from Her Britannic Majesty's North American Provinces, a line long enough to divide the whole of Europe into halves, irregularities, violences, and conflicts should sometimes occur, equally against the will of both Governments, is certainly easily to be supposed. This may be more possible, perhaps, in regard to the United States, without any reproach to their Government, since their institutions entirely discourage the keeping up of large standing armies in time of peace, and their situation happily exempts them from the necessity of maintaining such expensive and dangerous establishments. All that can be expected, from either Government in these cases, is good faith, a sincere desire to preserve peace and do justice, the use of all proper means of prevention, and, that if offenses cannot, nevertheless, be always prevented, the offenders shall still be justly punished. In all these respects, this Government acknowledges no delinquency in the performance of its duties.

Her Majesty's Government are pleased, also, to speak of those American Citizens, who took part with persons in Canada, engaged in an insurrection against the British Government, as 'American pirates'. The Undersigned does not admit the propriety or justice of this designation. If citizens of the United States Started out, or were engaged in fitting out, a military expedition from the United States, intended to act against the British Government in Canada, they were clearly violating the laws of their own country, and exposing themselves to the just consequences, which might be inflicted on them, if taken within the British Dominions. But notwithstanding this, they were, certainly, not pirates; nor does the Undersigned think that it can advance the purpose of fair and friendly discussion, or hasten the accommodation of national difficulties so to denominate them. Their offense, whatever it was, had no analogy to cases of piracy. Supposing all that is alleged against them to be true, they were taking a part in what they regarded as a civil war, and they were taking a part on the side of the rebels. Surely, England herself has not regarded persons thus engaged as deserving the appellation which Her Majesty's Government bestows on these citizens of the United States.

It is quite notorious, that for the greater part of the last two centuries, subjects of the British crown have been permitted to engage in foreign wars, both national and civil, and in the latter in every stage of their progress; and yet it has not been imagined that England has at any time allowed her subjects to turn pirates. Indeed in our own times, not only have individual subjects of that crown gone abroad to engage in civil wars, but we have seen whole regiments openly recruited, embodied, armed, and disciplined, in England, with the avowed purpose of aiding a rebellion against a nation, with which England was at peace; although it is true, that subsequently, an Act of Parliament was passed to prevent transactions so nearly approaching to public war, without license from the crown [59 George III, ch. 69, July 3, 1819].

It may be said, that there is a difference between the case of a civil war, arising from a disputed succession, or a protracted revolt of a colony against the mother country, and the ease of the fresh outbreak, or commencement of a rebellion. The Undersigned does not deny, that such a distinction may, for certain purposes, be deemed well founded. He admits, that a Government, called upon to consider its own rights, interests, and duties, when civil wars break out in other countries, may decide on all the circumstances of the particular case, upon its own existing stipulations, on probable results, on what its own security requires, and on many other considerations. It may be already bound to assist one party, or it may become bound, if it so chooses, to assist the other, and to meet the consequences of such assistance. But whether the revolt be recent, or long continued, they who join those concerned in it, whatever may be their offense against their own country, or however they may be treated, if taken with arms in their hands, in the territory of the Government, against which the standard of revolt is raised, cannot be denominated Pirates, without departing from all ordinary use of language in the definition of offenses.. A cause which has so foul an origin as piracy, cannot, in its progress, or by its

success, obtain a claim to any degree of respectability, or tolerance, among nations; and civil wars, therefore, are not understood to have such a commencement.

It is well known to M^r Fox, that authorities of the highest eminence in England, living and dead, have maintained, that the general law of nations does not forbid the citizens or subjects of one Government, from taking part in the civil commotions of another. There is some reason indeed, to think, that such may be the opinion of Her Majesty's Government at the present moment.

The Undersigned has made these remarks, from the conviction that it is important to regard established distinctions, and to view the acts and offenses of individuals in the exactly proper light. But it is not to be inferred, that there is, on the part of this Government any purpose of extenuating' in the slightest degree, the crimes of those persons, citizens of the United States, who have joined in military expeditions against the British Government in Canada. On the contrary, the President directs the Undersigned to say, that it is his fixed resolution that all such disturbers of the national peace, and violators of the laws of their country, shall be brought to exemplary punishment. Nor will the fact, that they are instigated and led on to these excesses, by British subjects, refugees from the Provinces, be deemed any excuse or palliation; although it is well worthy of being remembered, that the prime movers of these disturbances on the borders are subjects of the Queen who come within the territories of the United States, seeking to enlist the sympathies of their citizens, by all the motives which they are able to address to them, on account of grievances, real or imaginary. There is no reason to believe that the design of any hostile movement from the United States against Canada, has commenced with citizens of the United States. The true origin of such purposes and such enterprises is on the other side of the line. But the President's resolution to prevent these transgressions of the laws is not, on that account, the less strong. It is taken, not only in conformity to his duty under the provisions of existing laws, but in full consonance with the established principles and practice of this Government.

The Government of the United States has not, from the first, fallen into the doubts, elsewhere entertained, of the true extent of the duties of neutrality. It has held, that however it may have been in less enlightened ages, the just interpretation of the modern law of Nations is, that neutral States are bound to be strictly neutral; and that it is a manifest and gross impropriety for individuals to engage in the civil conflicts of other States, and thus to be at war, while their Government is at peace. War and peace are high national relations, which can properly be established or changed only by nations themselves.

The United States have thought, also, that the salutary doctrine of nonintervention by one Nation with the affairs of others is liable to be essentially impaired, if, while Government refrains from interference, interference is still allowed to its subjects, individually or in masses. It may happen indeed, that persons choose to leave their country, emigrate to other regions, and settle themselves on uncultivated lands, in territories belonging to other States. This cannot be prevented by Governments, which allow the emigration of their subjects and citizens; and such persons, having voluntarily abandoned their own country, have no longer claim to its protection, nor is it longer responsible for their acts. Such eases, therefore, if they occur, show no abandonment of the duty of neutrality

The Government of the United States has not considered it as sufficient, to confine the duties of neutrality, and non-interference, to the case of Governments, whose territories lie adjacent to each other. The application of the principle may be more necessary in such eases, but the principle itself, they regard as being the same, if those territories be divided by half the globe. The rule is founded in the impropriety and danger, of allowing individuals to make war on their own authority, or, by mingling themselves in the belligerent operations of other Nations, to run the hazard of counteracting the policy, or embroiling the relations, of their own Government. And the United States have been the first, among civilized Nations, to enforce the observance of this just rule of neutrality and peace, by special and adequate legal enactments. In the infancy of this Government, on the breaking out of the European wars, which had their origin in the French Revolution, Congress passed laws with severe penalties, for preventing the citizens of the United States from taking part in those hostilities.

By these laws, it prescribed to the citizens of the United States what it understood to be their duty, as neutrals, by the law of Nations, and the duty, also, which they owed to the interest and honor of their own country.

At a subsequent period, when the American Colonies of a European Power took up arms against their Sovereign, not diverted from the established system of the Government by any temporary considerations, not swerved from its sense of justice and of duty, by any sympathies which it might naturally feel for one of the Parties, did not hesitate, also, to pass acts applicable to the case of Colonial insurrection and civil war. And these provisions of law have been continued, revised, amended, and are in full force at the present moment. Nor have they been a dead letter, as it is well known, that exemplary punishments have been inflicted on those who have transgressed them. It is known, indeed, that heavy penalties have fallen on individuals, citizens of the United States, engaged in this very disturbance in Canada, with which the destruction of the "*Caroline*" was connected. And it is in Mr Fox's knowledge also, that the act of Congress of March 10th 1838, was passed for the precise purpose of more effectually restraining military enterprises, from the United States into the British Provinces, by authorizing the use of the most sure, and decisive preventive means. The Undersigned may add, that it stands on the admission of very high British authority, that during the recent Canadian troubles, although bodies of adventurers appeared on the border, making it necessary for the people of Canada to keep themselves in a state prepared for self-defence, yet that these adventurers were acting by no means in accordance with the feeling of the great mass of the American People, or of the Government of the United States. [The neutrality laws of the United States to which reference is made in this and preceding paragraphs are cited and discussed in Moore, Digest, VII, 1010-14; for the act of March 10, 1838, see 5 Statutes at Large, 212-14.]

This Government, therefore, not only holds itself above reproach in every thing respecting the preservation of neutrality, the observance of the principle of non-intervention, and the strictest conformity, in these respects, to the rules of international law, but it doubts not that the world will do it the justice to acknowledge that it has set an example, not unfit to be followed by others, and that by its steady legislation on this most important subject, it has done something to promote peace and good neighborhood among Nations, and to advance the civilisation of mankind.

The Undersigned trusts, that when Her Britannic Majesty's Government shall present the grounds at length, on which they justify the local authorities of Canada, in attacking and destroying the "*Caroline*", they will consider, that the laws of the United States are such as the Undersigned has now represented them, and that the Government of the United States has always manifested a sincere disposition to see those laws effectually and impartially administered. If there have been cases in which individuals, justly obnoxious to punishment, have escaped, this is no more than happens in regard to other laws.

Under these circumstances, and under those immediately connected with the transaction itself, it will be for Her Majesty's Government to show, upon what state of facts, and what rules of national law, the destruction of the "*Caroline*" is to be defended. It will be for that Government to show a necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment for deliberation. It will be for it to show, also, that the local authorities of Canada, even supposing the necessity of the moment authorized them to enter the territories of the United States at all, did nothing unreasonable or excessive; since the act justified by the necessity of self-defence, must be limited by that necessity, and kept clearly within it. It must be shown that admonition or remonstrance to the persons on board the "*Caroline*" was impracticable, or would have been unavailing; it must be shown that daylight could not be waited for; that there could be no attempt at discrimination, between the innocent and the guilty; that it would not have been enough to seize and detain the vessel; but that there was a necessity, present and inevitable, for attacking her, in the darkness of the night, while moored to the shore, and while unarmed men were asleep on board, killing some, and wounding others, and then drawing her into the current, above the cataract, setting her on fire, and, careless to know whether there might not be in her the innocent with the guilty, or the living with the dead, committing her to a fate, which fills the imagination with horror. A necessity for all this, the Government of the United States cannot believe to have existed.

All will see, that if such things be avowed to occur, they must lead to bloody and exasperated war; and when an individual comes into the United States from Canada, and to the very place, on which this drama was performed, and there chooses to make public and vainglorious boast of the part he acted in it, it is hardly wonderful that great excitement should be created, and some degree of commotion arise.

This Republic does not wish to disturb the tranquillity of the world. Its object is peace, its policy, peace. It seeks no aggrandizement by foreign conquest, because it knows that no foreign acquisitions could augment its power and importance so rapidly as they are already advancing, by its own natural growth, under the propitious circumstances of its situation. But it cannot admit, that its Government has not both the will and the power to preserve its own neutrality, and to enforce the observance of its own laws upon its own citizens. It is jealous of its rights, and among others, and most especially, of the right of the absolute immunity of its territory, against aggression from abroad; and these rights it is the duty and determination of this Government fully and at all times to maintain; while it will at the same time, as scrupulously, refrain from infringing on the rights of others.

The President instructs the Undersigned to say, in conclusion, that he confidently trusts, that this, and all other questions of difference between the two Governments, will be treated by both, in the free exercise of such a spirit of candor, justice, and mutual respect, as shall give assurance of the long continuance of peace between the two countries.

The Undersigned avails himself of this opportunity to assure Mr. Fox of his high consideration.

DAN^l WEBSTER.

[Enclosure 2 Extract from presidential message of December 7,1841]

I regret that it is not in my power to make known to you an equally satisfactory conclusion in the case of the *Caroline* steamer, with the circumstances connected with the destruction of which, in December, 1837, by an armed force fitted out in the Province of Upper Canada, you are already made acquainted. No such atonement as was due for the public wrong done to the United States by this invasion of her territory, so wholly irreconcilable with her rights as an independent power, has yet been made. In the view taken by this Government the inquiry whether the vessel was in the employment of those who were prosecuting an unauthorized war against that Province or was engaged by the owner in the business of transporting passengers to and from Navy Island in hopes of private gain, which was most probably the case, in no degree alters the real question at issue between the two Governments. This Government can never concede to any foreign government the power, except in a case of the most urgent and extreme necessity, of invading its territory, either to arrest the persons or destroy the property of those who may have violated the municipal laws of such foreign government or have disregarded their obligations arising under the law of nations. The territory of the United States must be regarded as sacredly secure against such invasions until they shall voluntarily acknowledge their inability to acquit themselves of their duties to others. And in announcing this sentiment I do but affirm a principle which no nation on earth would be more ready to vindicate at any hazards than the people and Government of Great Britain. If upon a full investigation of all the facts it should appear that the owner of the *Caroline* was governed by a hostile intent or had made common cause with those who were in the occupancy of Navy Island, then so far as he is concerned there can be no claim to indemnity for the destruction of his boat which this Government would feel itself bound to prosecute, since he would have acted not only in derogation of the rights of Great Britain, but in clear violation of the laws of the United States; but that is a question which, however settled, in no manner involves the higher consideration of the violation of territorial sovereignty and jurisdiction. To recognize it as an admissible practice that each Government in its turn, upon any sudden and unauthorized outbreak which, on a frontier the extent of which renders it impossible for either to have an efficient force on every mile of it, and which outbreak, therefore, neither may be able to suppress in a day, may take vengeance into its own hands, and without even a remonstrance, and in the absence of any pressing or overruling necessity may invade the territory of the other, would inevitably lead to results equally to be deplored by both. When border collisions come to require the sanction or to be made on the authority of either Government general war must be the inevitable result. While it is the ardent desire of the United States to cultivate the relations of peace with all nations and to fulfill all the duties of good neighborhood toward those who possess territories adjoining their own, that very desire would lead them to deny the right of any foreign power to invade their boundary with an armed force. The correspondence between the two Governments on this subject will at a future day of your session be submitted to your consideration; and in the meantime I can not but indulge the hope that the British Government will see the propriety of renouncing as a rule of future action the precedent which has been set in the affair at Schlosser.

[Lord Ashburton to Mr. Webster]

WASHINGTON 28 July 1842

SIR. In the course of our conferences on the several subjects of difference which it was the object of my mission to endeavour to settle, the unfortunate case of the *Caroline*, with its attendant consequences, could not escape our attention; for although it is not of a description to be susceptible of any settlement by a convention or treaty, yet being connected with the highest considerations of national honour and dignity it has given rise at times to deep excitement, so as more than once to endanger the maintenance of peace.

The note you did me the honour of addressing me the 27 inst: reminds me that however disposed your Government might be to be satisfied with the explanations which it has been my duty to offer, the natural anxiety of the public mind requires that these explanations should be more durably recorded in our correspondence, and you send me a copy of your note to M^r Fox, Her Britannic Majesty's minister here, and an extract from the speech of the President of the United States to Congress, at the opening of the present session, as a ready mode of presenting the view entertained on this subject by the Government of the United States.

It is so far satisfactory to perceive that we are perfectly agreed as to the general principles of international law applicable to this unfortunate case. Respect for the inviolable character of the territory of independent nations is the most essential foundation of civilization. It is useless to strengthen a principle so generally acknowledged by any appeal to authorities on international law, and you may be assured, Sir, that Her Majesty's Government set the highest possible value on this principle, and are sensible of their duty to support it by their conduct and example for the maintenance of peace and order in the world. If a sense of moral responsibility were not a sufficient surety for their observance of this duty towards all nations, it will be readily believed that the most common dictates of interest and policy would lead to it in the case of a long continuous boundary of some thousand miles with a country of such great and growing power as the United States of America, inhabited by a kindred race, gifted with all its activity and all its susceptibility on points of national honour.

Every consideration therefore leads us to set as highly as your Government can possibly do this paramount obligation of reciprocal respect for the independent territory of each. But however strong this duty may be it is admitted by all writers, by all Jurists, by the occasional practice of all nations, not excepting your own, that a strong overpowering necessity may arise, when this great principle may and must be suspended. It must be so for the shortest possible period, during the continuance of an admitted overruling necessity, and strictly confined within the narrowest limits imposed by that necessity. Self defence is the first law of our nature and it must be recognized by every code which professes to regulate the condition and relations of man. Upon this modification, if I may so call it, of the great general principle, we seem also to be agreed, and on this part of the subject I have done little more than repeat the sentiments, though in less forcible language, admitted and maintained by you in the letter to which you refer me.

Agreeing therefore on the general principle and on the possible exception to which it is liable, the only question between us is whether this occurrence came within the limits fairly to be assigned to such exception, whether, to use your words, there was "that necessity of self-defence, instant, overwhelming, leaving no choice of means" which preceded the destruction of the *Caroline*, while moored to the shore of the United States. Give me leave to say, Sir, with an possible admiration of your very ingenious discussion of the general principles which are supposed to govern the right and practice of interference by the people of one country in the wars and quarrels of others, that this part of your argument is little applicable to our immediate case. If Great Britain, America, or any other country suffer their people to fit out expeditions to take part in distant quarrels, such conduct may, according to the circumstances of each case, be justly matter of complaint, and perhaps these transactions have generally been in late times too much overlooked or connived at. But the case we are considering is of a wholly different description, and may be best determined by answering the following question. Supposing a man standing on ground where you have no legal right to follow him has a weapon long enough to reach you, and is striking you down and endangering your life, How long are you bound to wait for the assistance of the authority having the legal power to relieve you or, to bring the facts more immediately

home to the ease, if cannon are moving and setting up in a battery which can reach you and are actually destroying life and property by their fire, If you have remonstrated for some time without effect and see no prospect of relief, when begins your right to defend yourself, should you have no other means of doing so, than by seizing your assailant on the verge of a neutral territory?

I am unwilling to recall to your recollection the particulars of this case, but I am obliged very shortly to do so, to show what was at the time the extent of the existing justification, for upon this entirely depends the question whether a gross insult has or has not been offered to the Government and people of the United States.

After some tumultuous proceedings in Upper Canada, which were of short duration and were suppressed by the Militia of the Country, the persons criminally concerned in them took refuge in the neighbouring state of New York, and with a very large addition to their numbers openly collected, invaded the Canadian territory taking possession of Navy Island.

This invasion took place the 16th of December 1837; a gradual accession of numbers and of military ammunition continued openly, and though under the sanction of no public authority, at least with no public hinderance until the 29th of the same month, when several hundred men were collected, and twelve pieces of ordnance, which could only have been procured from some public store or arsenal, were actually mounted on Navy Island and were used to fire within easy range upon the unoffending inhabitants of the opposite shore. Remonstrances, wholly ineffectual were made; so ineffectual indeed that a Militia regiment, stationed on the neighbouring American island, looked on without any attempt at interference, while shots were fired from the American island itself. This important fact stands on the best American authority; being stated in a letter to M^r Forsyth of the 6th of Feb^r 1838, of M^r Benton, attorney of the United States, the gentleman sent by your Government to enquire into the facts of the case, who adds, very properly, that he makes the statement "with deep regret and mortification". [The letter of Nathaniel S. Benton, United States Attorney for the Northern District of New York, is printed in House Document No. 302, 25th Congress, 2d session, serial 329, pp. 36-39.]

This force, formed of all the reckless and mischievous people of the border, formidable from their numbers and from their armament, had in their pay and as part of their establishment this steamboat *Caroline*, the important means and instrument by which numbers and arms were hourly increasing. I might safely put it to any candid man acquainted with the existing state of things, to say whether the military commander in Canada had the remotest reason on the 29th of December to expect to be relieved from this state of suffering by the protective intervention of any American authority. How long could a Government, having the paramount duty of protecting its own people be reasonably expected to wait for what they had then no reason to expect? What would have been the conduct American officers-what has been their conduct under circumstances much less aggravated? I would appeal to you, Sir, to say whether the facts which you say would alone justify this act, viz: "a necessity of self defence, instant, overwhelming, leaving no choice of means and no moment for deliberation", were not applicable to this case in as high a degree as they ever were to any case of a similar description in the history of nations.

Nearly five years are now past since this occurrence, there has been time for the public to deliberate upon it calmly, and I believe I may take it to be the opinion of candid and honourable men, that the British officers who executed this transaction and their Government who approved it, intended no slight or disrespect to the sovereign authority of the United States. That they intended no such disrespect, I can most solemnly affirm, and I trust it will be admitted that no inference to the contrary can fairly be drawn even by the most susceptible on Points of national honour.

Notwithstanding my wish that the explanations I had to make might not revive in any degree any feelings of irritation, I do not see how I could treat this subject without this short recital of facts, because the proof that no disrespect was intended is mainly to be looked for in the extent of the justification.

There remains only a point or two which I should wish to notice, to remove in some degree the impression which your rather highly coloured description of this transaction is calculated to make. The mode of telling a story often tends to distort facts, and in this case more than in any other it is important to arrive at plain unvarnished truth.

It appears from every account that the expedition was sent to capture the *Caroline* when she was expected to be found on the British ground of Navy island, and that it was only owing to the orders of the rebel leader being disobeyed, that she was not so found. When the British officer came round the point of the island in the night, he first discovered that the vessel was moored to the other shore. He was not by this deterred from making the capture, and his conduct was approved. But you will perceive that there was here most decidedly the case of justification mentioned in your note, that there should be "no moment left for deliberation". I mention this circumstance to show also that the expedition was not planned with a premeditated purpose of attacking the enemy within the jurisdiction of the United States, but that the necessity of so doing arose from altered circumstances at the moment of execution.

I have only further to notice the highly coloured picture drawn in your note of the facts attending the execution of this service. Some importance is attached to the attack having been made in the night and the vessel having been set on fire and floated down the falls of the river, and it is insinuated rather than asserted that there was carelessness as to the lives of the persons on board. The account given by the distinguished officer who commanded the expedition distinctly refutes or satisfactorily explains these assertions. The time of night was purposely selected as most likely to ensure the execution with the least loss of life, and it is expressly stated that, the strength of the current not permitting the vessel to be carried off, and it being necessary to destroy her by fire, she was drawn into the stream for the express purpose of preventing injury to persons or property of the inhabitants at Schlosser [see House Document No. 302, 25th Congress, 2d session, serial 329].

I would willingly have abstained from a return to the facts of this transaction, my duty being to offer those explanations and assurances which may lead to satisfy the public mind and to the cessation of all angry feeling, but it appeared to me that some explanation of parts of the case, apparently misunderstood, might be of service for this purpose.

Although it is believed that a candid and impartial consideration of the whole history of this unfortunate event will lead to the conclusion that there were grounds of justification as strong as were ever presented in such cases, and above all that no slight of the authority of the United States was ever intended, yet it must be admitted that there was in the hurried execution of this necessary service a violation of territory, and I am instructed to assure you that Her Majesty's Government consider this as a most serious fact, that far from thinking that an event of this kind should be lightly risked, they would unfeignedly deprecate its recurrence. Looking back to what passed at this distance of time what is perhaps most to be regretted is that some explanation and apology for this occurrence was not immediately made: this with a frank explanation of the necessity of the case might and probably would have prevented much of the exasperation and of the subsequent complaints and recriminations to which it gave rise.

There are possible cases in the relations of nations as of individuals, where necessity which controls all other laws may be pleaded, but it is neither easy nor safe to attempt to define the rights or limits properly assignable to such a plea. This must always be a subject of much delicacy, and should be considered by friendly nations with great candour and forbearance. The intentions of the parties must mainly be looked to, and can it for a moment be supposed that Great Britain would intentionally and wantonly provoke a great and powerful neighbour?

Her Majesty's Government earnestly desire that a reciprocal respect for the independent jurisdiction and authority of neighbouring states may be considered among the first duties of all Governments, and I have to repeat the assurance of regret they feel that the event of which I am treating should have disturbed the harmony they so anxiously wish to maintain with the American people and Government.

Connected with these transactions there have also been circumstances of which I believe it is generally admitted that Great Britain has also had just ground to complain. Individuals have been made personally liable for acts done under the avowed authority of their Government; and there are now many brave men exposed to personal consequences for no other cause than having served their country. That this is contrary to every principle of international law it is useless for me to insist. Indeed it had been admitted by every authority of your Government; but, owing to a conflict of laws, difficulties have intervened much to the regret of those authorities in giving practical effect to these principles; and for these difficulties some remedy has been by all desired. It is no business of mine to enter upon the

consideration of them, nor have I sufficient information for the purpose, but I trust you will excuse my addressing to you the enquiry whether the Government of the United States is now in a condition to secure in effect and in practice the principle which has never been denied in argument, that individuals acting under legitimate authority are not personally responsible for executing the orders of their Government. That the power when it exists will be used on every fit occasion I am well assured, and I am bound to admit that looking through the voluminous correspondence concerning these transactions, there appears no indisposition with any of the authorities of the federal government under its several administrations to do justice in this respect in as far as their means and powers would allow.

I trust, Sir, I may now be permitted to hope that all feelings of resentment and ill will resulting from these truly unfortunate events may be buried in oblivion, and that they may be succeeded by those of harmony and friendship which it is certainly the interest and I also believe the inclination of all to promote.

I beg, Sir, you will be assured of my high and unfeigned consideration.

ASHBURTON

The Hon^{ble} DANIEL WEBSTER

&c &c &c

[Mr. Webster to Lord Ashburton]

DEPARTMENT OF STATE, Washington, 6th Augt., 1842.

Lord ASHBURTON, &c, &c, &c

Your Lordship's note of the 28th of July, in answer to mine of the 27th, respecting the case of the "*Caroline*", has been received, and laid before the President.

The President sees with pleasure that your Lordship fully admits those great principles of public law, applicable to cases of this kind, which this Government has expressed; and that on your part, as on ours, respect for the inviolable character of the territory of independent States is the most essential foundation of civilization. And while it is admitted, on both sides, that there are exceptions to this rule, he is gratified to find that your Lordship admits that such exceptions must come within the limitations stated and the terms used in a former communication from this Department to the British Plenipotentiary here. Undoubtedly it is just, that while it is admitted that exceptions growing out of the great law of self-defence do exist, those exceptions should be confined to cases in which the "necessity of that self-defence is instant, overwhelming, and leaving no choice of means, and no moment for deliberation."

Understanding these principles alike, the difference between the two Governments is only whether the facts in the case of the "*Caroline*" make out a case of such necessity for the purpose of self-defence. Seeing that the transaction is not recent, having happened in the time of one of his predecessors; seeing that your Lordship, in the name of your Government, solemnly declares that no slight or disrespect was intended to the sovereign authority of the United States, seeing that it is acknowledged that, whether justifiable or not, there was yet a violation of the territory of the United States, and that you are instructed to say that your Government considers that as a most serious occurrence; seeing, finally, that it is now admitted that an explanation and apology for this violation was due at the time, the President is content to receive these acknowledgments and assurances in the conciliatory spirit which marks your Lordship's letter, and will make this subject, as a complaint of violation of territory, the topic of no further discussion between the two Governments.

As to that part of your Lordship's note which relates to other occurrences springing out of the case of the "*Caroline*" with which occurrences the name of Alexander McLeod has become connected, to

say that the Government of the United States entirely adhere to the sentiments and opinions expressed in the communications from this Department to M^r Fox. This Government has admitted, that for an act committed by the command of his sovereign, (lure bell), an individual cannot be responsible, in the ordinary courts of another State. It would regard it as a high indignity if a citizen of its own, acting under its authority, and by its special command, in such cases, were held to answer in a municipal tribunal, and to undergo punishment, as if the behest of his Government were no defense or protection to him.

But your Lordship is aware that, in regular constitutional Governments, persons arrested on charges of high crimes can only be discharged by some judicial proceeding. It is so in England; it is so in the colonies and provinces of England. The forms of judicial proceeding differ in different countries, being more rapid in some and more dilatory in others; and, it may be added, generally more dilatory, or at least more cautious, in cases affecting life, in Governments of a strictly limited than in those of a more unlimited character. It was a subject of regret that the release of McLeod was so long delayed. A State court, and that not of the highest jurisdiction, decided that, on summary application, embarrassed as it would appear, by technical difficulties, he could not be released by that court. His discharge, shortly afterwards, by a jury, to whom he preferred to submit his case, rendered unnecessary the further prosecution of the legal question. It is for the Congress of the United States, whose attention has been called to the subject, to say what further provision ought to be made to expedite proceedings in such cases and, in answer to your Lordship's question towards the close of your note, I have to say that the Government of the United States holds itself not only fully disposed, but fully competent, to carry into practice every principle which it avows or acknowledges, and to fulfil every duty and obligation which it owes to foreign Governments, their citizens, or subjects.

I have the honor to be, my Lord, with great consideration, your obedient servant,

DAN^l WEBSTER.

In the presidential message of August 11, 1842 (quoted above), submitting the Webster-Ashburton Treaty to the Senate, mention was made of the correspondence "upon the subject of the attack and destruction of the steamboat *Caroline*"; and in a paragraph devoted to the subject it was said that the note of Ashburton of July 28 had seemed "sufficient to warrant forbearance from any further remonstrance against what took place, as an aggression on the soil and territory of the country".

The first report of Ashburton on the "settlement" of the case of the *Caroline* was in his despatch of July 28, 1842 (Ashburton Papers, despatch No. 14), which enclosed copies of the first two of the three notes above quoted, with this comment:

Although the question of boundaries forms the material and most substantial part of the differences which I am expected to settle here, your Lordship is aware that there are other subjects in which the public here take great interest. Of these the case of the *Caroline* is the principal; it has occupied the public mind for nearly five years, and what is called a settlement of it is expected, and indeed without it there is reason to apprehend that there would be a general indisposition to settle any thing else. I have attempted this by a letter to the Secretary of State of which a copy is enclosed, as is also the copy of a letter from him to me asking explanations on the subject. I have reason to believe that it will be considered satisfactory here, and I have only to hope that it may not be disapproved by your Lordship. This task was one of some delicacy. You will perceive that I have interwoven the degree of apology which I thought the case required with a decided justification of what was done. Indeed, although the explanation is intended for the public eye, I have said no more than what I really think was due, and what is necessary to guard against future violations of territory, from which in this part of the world we have at least as much to fear as our neighbours.

The remaining case of the Creole will, I fear, be attended with more difficulty. This I shall undertake tomorrow; and the whole of this correspondence will go before the Senate at the same time with our treaties.

I am assured that the bills referred to in my note to M^r Webster which are to give power to the Executive to deal with cases similar to those of M^r Mcleod and M^r Hogan, are likely to pass through Congress before the session ends.

A later despatch, of August 9, 1842 (ibid., despatch No. 19), further reported on the subject, enclosing a copy of the third of the exchanges above quoted; in that despatch Ashburton wrote as follows:

In my despatch of the 28th of last month, I had the honour of sending your Lordship copy of my letter to M^r Webster on the subject of the case of the *Caroline*, and I have now to add a copy of his reply. This subject of angry controversy may now be considered as so far set at rest, and I hope in a manner which your Lordship will approve.

I wish I could make as favourable a report of the state of things growing out of this event, and referred to in the latter part of my and M^r Webster's letters. Your Lordship has been informed that a Bill had passed the Senate, giving Power to the Executive to relieve persons in the situation of M^r Mcleod and M^r Bogan from personal persecution arising from their public service. This bill has made some progress in the House of Representatives, and I am assured that it will pass before the session ends; but there is much unfinished business before the House and much party irritation and general confusion, arising from the controversy between the President and the Legislature; and I am consequently not without apprehension that this important measure may be lost in the crowd; not so much from any objection to it, as from neglect and from the want of any person to look after public business.

It will be seen that the principles which govern cases of this description are fully admitted by the Secretary of State, but experience has proved that, owing to the convicting complication of federal and State law, there is not that power which he maintains there is, to give practical effect to his own principles. The public mind being satisfied as to the case of the *Caroline*, I am not very apprehensive of any recurrence of these vindictive proceedings; but at the same time there can be no security, so long as there is no power in the hands of that branch of the Government which is alone responsible to foreign and to which alone foreign nations can apply. I am assured, and I believe, that all persons connected with this Government are sensible of this difficulty, and that they will see that it be ultimately satisfactorily settled.

It appears, moreover, that the note of Ashburton to Webster of July 28, 1842, which has been quoted above, was altered from its first form. In his despatch of August 13, 1842 (ibid., marked "Separate"), Ashburton wrote thus:

By my despatch No 14 of the 28th ult, I had the honour of sending your Lordship copy of my note to M^r Webster on the subject of the *Caroline*. It was on consideration thought expedient to suppress a paragraph of that note, which related to the question of compensation to the owner of the vessel. I have therefore to ask your Lordship's permission to substitute the accompanying corrected copy of that note, and to request that the former may be cancelled. There is no other difference between these copies but the omission of the paragraph above referred to.

A comparison of the corrected copy of the note of July 28-that is to say, the text above printed-with that originally written shows that the change made was the omission of a few lines, quoted below, which appeared toward the close of the note as the final sentences of the paragraph beginning "Although it is believed" and immediately following the words "to which it gave rise":

If the Boat which was destroyed could by any fair construction of the case have been considered as the private property of a citizen bona fide and innocently employed by him as a passage vessel, compensation for its loss might perhaps have been admitted, but it is notorious that it was part and parcel of the armament of the insurgent force, and I have reason to know, that the property in part, if not wholly, was in British subjects. Under such circumstances no question of compensation could be entertained or expected.

The proposed statute to cover such cases as that of McLeod was duly enacted (act of August 29, 1842, 5 Statutes at Large, 539-40).