THE SLAVE TRADE QUESTION IN ANGLO-AMERICAN RELATIONS, 1840-1862

APPROVED:

[Signatures]

Major Professor

[Signature]

Minor Professor

[Signature]

Director of the Department of History

[Signature]

Dean of the Graduate School

Not since 1933, when Hugh G. Soulsby published *The Right of Search and the Slave Trade in Anglo-American Relations, 1814-1862*, has anyone undertaken a study of the role and significance of the Slave Trade Question in British-American diplomacy. But this scholarly work focuses on the right-of-search issue, which lay dormant between 1843 and 1857, and does not devote adequate space to the Slave Trade Question. The aim of the present study, therefore, is threefold: (1) to give a balanced treatment to both issues, (2) show their relationship to other foreign and domestic problems of the early Victorian Era, and (3) to present new material and views.

The major primary sources for the study of the Slave Trade Question are the House and Senate Executive Documents, the U.S. Department of State "Despatches from United States Ministers to Great Britain," *British and Foreign State Papers*, A. Taylor Milnes' "Documents: The Lyons-Seward Treaty of 1862," *American Historical Review*, XXXVIII, No. 3 (April 1933), and the correspondence, memoirs, and diaries of contemporary statesmen. The most useful secondary accounts are Hugh G. Soulsby's *The Right of Search and the Slave Trade in Anglo-American Relations, 1814-1862*, William Law Mathieson’s *Great
This study concludes that (1) Anglo-American policy in 1840 concerning the right of visit differed more in practice than in theory; (2) the ascendancy of Aberdeen in London and Webster in Washington in 1841 paved the way for a rapprochement on the Slave Trade Question; (3) Lewis Cass's actions had little influence on Louis Philippe's refusal to ratify the Quintuple Treaty; (4) France's rejection of this convention undermined Britain's policy on the right-of-search issue and strengthened America's position; (5) the Treaty of Washington (August 9, 1842) did not resolve Anglo-American differences on the right of visit and search but did help to create a mood of conciliation which, in turn, led Aberdeen to accept Webster's contention that the right of visit and the right of search were identical and thus illegal in time of peace without a relevant treaty; (6) joint cruising failed to stem the black tide, but the experiment gave each power almost two decades in which to reexamine her slave trade policies; (7) the renewal of the dispute in 1858 combined with Southern opposition to stronger anti-slave trade legislation and judicial indulgence of slavers to vex Anglo-American relations until they had returned to their strained state of 1840; (8) the Lincoln administration for a variety of reasons--humanitarian, military, and diplomatic--reversed traditional American foreign policy on this issue and agreed to sign a right-of-visit (search) treaty which the London
cabinet had proposed; and (9) the Seward-Lyons treaty (April 7, 1862), resulted in the immediate and rapid decline of the black traffic across the Atlantic and ended at last the Anglo-American controversy over the Slave Trade Question.
THE SLAVE TRADE QUESTION IN ANGLO-AMERICAN RELATIONS, 1840-1862

THESIS

Presented to the Graduate Council of the North Texas State University in Partial Fulfillment of the Requirements

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By

Gerald Minor Stanglin, B. A.
Denton, Texas
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PREFACE

Not since 1933, when Hugh G. Soulsby published The Right of Search and the Slave Trade in Anglo-American Relations, 1814-1862, has anyone undertaken a study of the role and significance of the Slave Trade Question in British-American diplomacy. But this scholarly work focuses on the right-of-search issue, which lay dormant between 1843 and 1857, and does not devote adequate space to the Slave Trade Question. The aim of the present study, therefore, is threefold: (1) to give a balanced treatment to both issues, (2) show their relationship to other foreign and domestic problems of the early Victorian Era, and (3) to present new material and views.

For more than a century after the Seward-Lyons Treaty had ended the Anglo-American controversy on the right of visitation (search), the Slave Trade Question has remained an enigma, evoking such questions as these: After an impasse on this issue for more than two decades, why did the United States and Britain suddenly do an about-face in 1841 and effect a rapprochement the next year? Did Lewis Cass play a significant role in France's refusal to ratify the Quintuple Treaty? What influence did Louis Philippe's action have on Anglo-American relations? Since the Webster-Ashburton Treaty failed to suppress the slave trade, of what significance is
it relative to this problem? What caused the revival of the right-of-search (visit) controversy in 1858? What factors motivated Lincoln and Seward to sign a right-of-visitation treaty with Britain? Why does the curse of slavery still plague the world? These and other questions have never been satisfactorily answered.

The major primary sources for this study are the House and Senate Executive Documents, British and Foreign State Papers, Parliamentary Papers, the Department of State "Despatches from United States Ministers to Great Britain," A. Taylor Milnes's "Documents: The Lyons-Seward Treaty of 1862," American Historical Review, XXXVIII, No. 3 (April 1933), and the correspondence, memoirs, and diaries of contemporary statesmen. The most important of these collections is the House and Senate executive documents which contain a wealth of information on the slave trade and relevant Anglo-American correspondence. The British and Foreign State Papers and the Parliamentary Papers document the British side of the dispute, while the documents published in Milnes's article, "The Lyons-Seward Treaty of 1862," make a significant contribution to our understanding of the origin of this convention. The most valuable correspondence, memoirs, and diaries are the Life and Correspondence of Henry John Temple, Viscount Palmerston, George M. Dallas's Diary, Guizot's Memoirs (which sheds light to France's rejection of the Quintuple Treaty), and the Private Correspondence of Daniel
Webster, the American Secretary of State from March 5, 1841, to May 8, 1843.

Useful secondary accounts, other than Soulsby's study, include William Law Mathieson's *Great Britain and the Slave Trade, 1839-1865*, Warren S. Howard's *American Slavers and the Federal Law, 1837-1862*, Philip D. Curtin's *The Atlantic Slave Trade, A Census*, Peter Duignan and Clarence Clendenen's *The United States and the African Slave Trade, 1619-1862*, Samuel Flagg Bemis's *American Secretaries of State and Their Diplomacy*, and Beckles Willson's *America's Ambassadors to England, 1785-1929*. Despite its lack of focus and other defects, Soulsby's monograph remains the standard work in its field. *Great Britain and the Slave Trade* ably presents the British position, while *American Slavers and the Federal Law* criticizes America's inadequate efforts to suppress the black traffic. *The Atlantic Slave Trade, A Census*, is valuable for its revision of the commonly accepted volume of slaves imported into the Americas in the nineteenth century. All of these books contain good bibliographies, but *The United States and the African Slave Trade* has the best. Of special interest are the *American Secretaries of State and Their Diplomacy* and *America's Ambassadors to England*, which describe the character and foibles of the personalities involved.

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Gerald Minor Stanglin
TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>PREFACE</td>
<td>iii</td>
</tr>
<tr>
<td>PROLOGUE: THE SLAVE TRADE QUESTION IN 1840</td>
<td>1</td>
</tr>
<tr>
<td>Chapter:</td>
<td></td>
</tr>
<tr>
<td>I. THE QUINTUPLE TREATY AND THE TREATY OF WASHINGTON, 1841-1842</td>
<td>20</td>
</tr>
<tr>
<td>II. CONTROVERSY AND FAILURE, 1843-1857</td>
<td>49</td>
</tr>
<tr>
<td>III. RENEWED CONFLICT AND FINAL SOLUTION, 1858-1862</td>
<td>71</td>
</tr>
<tr>
<td>IV. THE SLAVE TRADE QUESTION: A RETROSPECT</td>
<td>94</td>
</tr>
<tr>
<td>EPILOGUE: THE SLAVE TRADE: A CONTINUING CURSE</td>
<td>99</td>
</tr>
<tr>
<td>APPENDIX</td>
<td>104</td>
</tr>
<tr>
<td>BIBLIOGRAPHY</td>
<td>123</td>
</tr>
</tbody>
</table>
PROLOGUE

THE SLAVE TRADE QUESTION IN 1840

No issue disturbed Anglo-American relations as long as the Slave Trade Question, a dispute which involved not only the suppression of the infamous traffic, but also the right claimed by Britain to "visit" a suspected slaver on the high seas to determine by its papers the legality of its colors. This controversy continued until the American Civil War, when the Lincoln administration signed a treaty with the London government granting the mutual right of search and settling at last a vexatious question which had caused friction between the two nations for more than twenty-two years and had at times brought them to the brink of war.

The Atlantic slave trade was a problem which had plagued the British cabinet since 1807, when it became illegal for Englishmen to engage in the black commerce. Urged on by abolitionist groups, the London government attempted to make its interdiction effective. The United States, too, was faced with the same problem, after its abolition of the slave trade became official on January 1, 1808.¹ But persuading other

¹For a good general account of British efforts to declare the slave trade illegal, see Daniel P. Mannix, Black Cargo: A History of the Atlantic Slave Trade, 1518-1865 (New York, 1962), pp. 171-90.
nations to adopt similar measures against flesh merchants was a difficult task, as the British Foreign Office and Admiralty soon learned.

After Napoleon's first surrender (April 1814), Robert Steward, Viscount Castlereagh and second Marquess of Londonderry, lost no time in obtaining a general declaration against the slave trade at the Congress of Vienna. Since Britain was the world's greatest maritime nation, she was more interested in this issue than the continental powers, which were jealous of her supremacy and envious of her prosperity. At Vienna, Aix-la-Chapelle, and Verona, therefore, they refused to give her the right to search their ships, the indispensable concession needed by the British navy to suppress the slave trade. Consequently, Britain negotiated with the smaller states of Europe bilateral agreements which abolished or restricted the slave trade and granted a mutual right of search. The Netherlands, Portugal, Spain, Sweden and Denmark signed such conventions. But so long as one nation refused to concede to England the right of search, the slave traffic continued. British diplomacy achieved greater success in 1831 and 1833, when France granted Britain the right of visitation within certain geographical limits, and in 1835, when Spain signed a right-of-search treaty with His Majesty's government which included a powerful "equipment clause" (see note 5). Portugal refused to sign a treaty, but in 1839 a Parliamentary act authorized the British navy to seize
suspected Portuguese slavers under certain conditions. By 1840, most countries whose flags had covered the slave traffic had signed treaties with Great Britain allowing her to police this commerce. There was, however, one major exception—the United States.2

The Washington government, mindful that a dispute over search and seizure had been a fundamental cause of the War of 1812, was reluctant to grant this privilege to the Royal Navy, regardless of how noble the motive. But that America detested the slave trade is indicated by its declaring this traffic piracy in 1820 and, as such, punishable by death, the first nation to do so. In Britain, participation in this commerce had been a felony since 1311 (51 Geo. III. Cap. 23), with the maximum punishment fourteen years in a penal colony, but when the United States suggested that Britain, too, declare it piracy, the Foreign Office responded in 1823 by proposing a right of search treaty. Not wishing to have British cruisers search ships on the coast of America, the Washington government requested that this stipulation be deleted from the proposed agreement. But George Canning, the new foreign secretary, refused to consider such a change and the next year abandoned the attempt to negotiate an Anglo-American anti-slave trade convention. In 1831 and again in

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1833, the London cabinet renewed its démarche to induce the United States to accept a right of search treaty, but to no avail. American officials explained that the president did not want to aggravate the 'excited feelings of the Southern States.' The abortive attempts of the two nations to reach an agreement only played into the hands of the slave traders.3

Britain, meanwhile, made small, but steady, progress in suppressing the Atlantic slave trade. As she concluded treaties with various European maritime powers to search their ships, this commerce under their flags declined. When slavers could operate no longer under the French, Spanish, Portuguese, or Brazilian flags, they sought protection under Old Glory. In 1840, the slave trade was still a major activity along the west coast of Africa. In the 1820's, American states had imported an annual average of over 50,000 blacks, but by 1840 the volume had declined to less that 37,000, of whom two-thirds entered Brazil to work on the expanding sugar plantations. Spanish and Portuguese were the main offenders, but after 1839, slavers increasingly took refuge under the American flag. Recognizing this abuse, The Times (London) observed that an Anglo-American treaty on this issue was very much desired by Her Majesty's government and was the

only way for the slave trade to be completely suppressed. On October 30, 1839, Henry S. Fox, British minister at Washington, decried the "suprising and deplorable extent to which the American flag is now employed for the protection of the inhuman traffic in African slaves." He reminded Secretary of State John Forsyth that only in the last two or three years had this ensign been used in the black commerce, because all other major powers had entered into a "league" with Britain to permit the mutual right of search. Noting that use of the Stars and Stripes would worsen, since slavers had no other method of protection, he hoped that the United States would take immediate steps to stop the abuse, either alone or in concert with Great Britain. 4

Not only did slavers abuse the American flag, but many carried authentic United States papers. Henry John Temple, third Viscount Palmerston and British foreign secretary, instructed Fox on February 24, 1840, to "remind" President Martin Van Buren of the many times the British government had had to communicate with the Washington cabinet upon the slave trade carried on throughout the world in ships covered by American papers. Because the United States did not enforce

its own laws, unscrupulous persons sold American slave ships to foreigners, ostensibly for legal commerce. The purchase was kept secret until a slave cargo had been picked up on the African coast, and the American papers were retained until then. Although everything in such a transaction looked legal, it violated American law.

The Trist affair is a case in point. Nicholas Trist, U.S. consul at Havana and a pro-slavery southerner, ignored violations of American slave trade laws. According to Fox, he received "with reluctance and ill will" any evidence of violations and evasions of American slave trade laws. Palmerston also accused him of signing his name to blank forms for Portuguese crewmen while the Portuguese consul was absent, without investigating the possibility that the ship was a slaver. Trist, however, protested that the slave trade is a pursuit denounced in every possible way by the LAW—by law FOREIGN made and FOREIGN imposed—and

5 The reason for this maneuver was simple: American naval officers did not have authority to capture a ship which did not actually have slaves on board. Britain, however, in her treaties with Spain and Portugal, had included an "equipment clause" whereby a ship could be captured and condemned for being equipped to carry slaves. On a voyage to Africa to acquire slaves, therefore, the safest things to have were an American flag and, if possible, American papers. For a detailed account of this practice and its consequences, see Chapter II. See also William Law Mathieson, Great Britain and the Slave Trade, 1839-1865 (London, 1929), pp. 15, 16, 22, 163n.

supported by an overwhelming PUBLIC OPINION....Is it not in the nature of man that such an effect should follow from such a cause?

Because of the British charges, Trist was recalled to Washington early in 1840 to defend himself against the allegations, but he never was convicted. A. H. Everett replaced him. 8

In 1839, at a time of renewed British interest in the black commerce, Parliament passed an anti-slave trade act which authorized British cruisers to detain and search neutral vessels at sea suspected of being slavers. This law was obviously aimed at Portugal and the United States. 9 In obedience to orders, British cruisers proceeded to detain suspected ships flying the American flag to determine if they were, in fact, American. This attempt to stop the fraudulent use of the Stars and Stripes renewed a controversy between the United States and Great Britain which lasted for twenty-

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7Quoted in Howard, Slavers and Federal Law, p. 111.

8Forsyth to Stevenson, Jan. 25, 1840, "Seizures," p. 23; Forsyth to Everett, Feb. 1, 1840, ibid., p. 468; Fox to Forsyth, Oct. 29, 1839, Parliamentary Papers, XLVII (1840), 173 (hereafter cited as PP); Howard, Slavers and Federal Law, pp. 31-34; Bandinel, Trade in Slaves, pp. 254-55. Nicholas Trist signed the Treaty of Guadalupe Hidalgo (Feb. 2, 1848) which ended the Mexican-American War, on which occasion he again became the center of controversy.

9The Duke of Wellington, among others, spoke out in Parliament against insisting on the right of search in time of peace. He noted that Americans might be divided on slavery and the slave trade, but they were united against the right of search. Niles National Register, LVII, No. 1459 (Sept. 14, 1839), 45.
three years. Thrown into the midst of other differences between the two antagonists, the dispute at times threatened to push them into war.¹⁰

Unfortunately, the controversy erupted at a time when a very forthright and unyielding man was British foreign secretary: Viscount Palmerston, whose manners "were detested alike by the subordinate whom he drove with untiring energy and the foreign representatives whom he badgered with bluff resolution..."¹¹ He was an arrogant and self-righteous man. When his opinion differed from that of someone else, he "never doubted for an instant...that he was right and that they were wrong."¹² His general policy was the advancement of British power and prestige, while the suppression of the slave trade was to him a personal crusade. He had, moreover, little sympathy for any country which did not do everything in its power to abolish the iniquitous traffic. On the other hand, Andrew Stevenson, American minister to Great Britain, was a Virginian, a pro-slavery man, and one who was

¹⁰ Among the issue yet unresolved in 1840 between the United States and Great Britain were the cases of the Creole and Amistad, the highly explosive McLeod case, the Main-Brunswick boundary, the Oregon Question, and Texas. ibid., No. 1483 (Feb. 29, 1840), 417; W. E. B. DuBois, The Suppression of the African Slave Trade to the United States of America, 1638-1870 (New York, 1896), p. 141; John R. Spears, The American Slave-Trade (New York, 1900), pp. 180-81; Soulsby, Right of Search, p. 51.


equally adamant in his opinions. The relations between Palmerston and Stevenson were precarious and at times became strained almost to the breaking point, especially near the end of the Melbourne ministry in 1841.  

In an effort to stop the British from searching American ships, President Martin Van Buren in 1839 ordered a naval patrol of two ships to sail along the African coast and search vessels flying the American flag. Their instructions were to keep any United States ship from being bothered by those of another nation. They were not to "molest" non-American vessels, but in turn were to prevent a foreign country from enforcing U.S. laws on the slave trade. The smallness of the squadron, however, prevented it from carrying out its mission, with predictable results: British cruisers occasionally stopped bona fide American ships engaged in legal commerce, and Stevenson protested these violations of international law to Palmerston. On February 5, 1840,


14 The American squadron consisted of the Brig Dolphin, commanded by Lieutenant Bell and the Schooner Grampus, commanded by Lieutenant Paine. Their mission was to keep the slave trade from being carried on under the American flag in order to end the right of search controversy. When they returned in the summer of 1841, the Secretary of the Navy reported that the patrol had "performed all that could have been reasonably expected of so small a force," but the slave trade was "still carried on to a considerable extent," despite American and British efforts to stop it. "Report of the Secretary of the Navy," House Exec. Doc. 2 (Dec. 5, 1840), 26th Cong., 2nd sess., p. 5 (hereafter cited as "Navy Report");
the American minister denounced one of these incidents as savoring of "an aggravated and unwarrantable character."

The United States could never allow British ships to search American vessels for any reason, whether for the purpose of suppressing the slave trade or for the "fulfillment of treaties between Great Britain and other nations for its abolition, to which the United States are not a party." But without boarding a ship flying the American flag and examining its papers, a British officer had no way of knowing whether it actually was American or one owned by a citizen of another nation with which Britain had a right of search treaty.15

The problem was simple, but unsolvable. The London cabinet was committed to the extinction of the slave trade. It had signed right of search treaties with every major maritime power, except the United States, leaving its flag as the only protection for slavers. There was, of course, no way for a British officer to look at a ship's papers without boarding her, and America resisted every violation of its


15Stevenson to Palmerston, Feb. 5, 1840, "Seizures," pp. 24-25; Forsyth to Fox, Feb. 12, 1840, "Message from the President...communicating...copies of the correspondence between the government of the United States and that of Great Britain on the subject of the right of search; with copies of the protest of the American minister at Paris against the quintuple treaty, etc.," Senate Exec. Doc. 377 (June 6, 1846), 29th Cong., 1st sess., p. 5 (hereafter cited as "Right of Search Message"); Willson, American Ambassadors, p. 220.
commerce. Palmerston assured Stevenson that officers of the British African squadron had been given "strict orders" not to stop any ship belonging to a non-treaty nation. But they were charged, too, with stemming the black tide, which involved detaining suspicious looking ships that sometimes turned out to be authentic American vessels. Deploring the extent to which the United States flag was involved in the slave trade, Palmerston requested that America take effective action against it. The American minister replied that the United States was doing all it could do constitutionally to suppress the traffic, but he confided to Forsyth that it appeared Britain would search American ships so long as the slave trade continued. Since these violations threatened U.S. commerce along the African coast, Stevenson feared that the American public would "not stand for it much longer."

In Palmerston's constant search for a more effective means to suppress the slave trade, he evolved a new doctrine:

16 On May 2, 1843, however, Sir Robert Peel, speaking in the Commons, accused Palmerston of not limiting search to suspected vessels flying the American flag. "But the noble Lord captured or authorized the capture of American vessels." Peel based his assumptions on hearing Palmerston order the Navy not to capture American ships in February 1841, and surmised that they must have had orders to do so before that time. Palmerston did not reply to the charge. Parliamentary Debates (Commons) LXVIII, 1222; Lawrence, Visitation, p. 64.

17 Palmerston to Stevenson, Feb. 15, 1840, "Seizures," p. 25; Stevenson to Palmerston, Feb. 17, 1840, ibid., p. 26 Stevenson to Forsyth, Apr. 28, 1840, "Right of Search Message," p. 20. Stevenson added that out of three or four cases involving British search of American vessels, in not one "have satisfactory explanations or redress been given." ibid., p. 19.
the right of visit. In May 1841, he assured Stevenson that Britain did not want to violate the United States flag and that instructions had been given to British officers to refrain from stopping ships of nations which had no right of search treaty with Her Majesty's government. But unless some method were devised whereby the nationality of a ship flying the American flag could be verified, British treaties and laws regarding the slave trade would be unenforceable.

To Daniel Webster, the new Secretary of State, Stevenson reported:

His lordship then intimated an opinion that the right existed of ascertaining in some way or another the character of the vessel and that by her papers, and not the colours on flag, which might be displayed. I at once assured him that under no circumstances could the government of the United States consent to the exercise of the right on the part of any foreign nation, to interrupt, board, or search their vessels on the high seas....His lordship said that it could not be regarded as amounting to a right of search. That it was the wish of both governments to see the traffic in slaves abolished, and he did not see how it could ever be accomplished unless some mode was adopted of ascertaining the real character of vessels suspected of being slavers and preventing the abuse of our flag....It is however beyond my ken to imagine upon what principles of international right or law such a claim of power can be maintained by one nation over the ships and flag of another, on the high seas and in a time of profound peace.18

Palmerston's suggestion was a good idea from the British standpoint. But lacking a relevant treaty, the London

18 Stevenson to Webster, May 18, 1841, quoted in Soulsby, Right of Search, pp. 58-59. Stevenson's presentation of the American position met with President John Tyler's complete approval. Webster to Stevenson, June 8, 1841, "Right of Search Message," p. 50.
government had no right under international law to interfere with American shipping. Indeed, what the foreign secretary called a right of visit—i.e., boarding a ship to examine her papers, not to search her cargo—was indistinguishable from a belligerent's right of search. Stevenson charged that, as Palmerston had invented the term, it had no basis in international law. American and European lawyers, diplomatists, and publicists debated for many years whether a nation actually possessed a right to visit the ships of another. American and French writers often referred to the case of the French ship Le Louis, captured and condemned in 1817 for engaging in the slave trade and for killing eight British seamen while resisting search. Sir William Scott (later Lord Stowell), one of Britain's most renowned judges, ruled in the case that the right of search was inconsistent with the law of nations in time of peace. Since the slave trade then was not universally acknowledged as piracy or criminal, all visit and search had to be carried out by a nation's own ships. Henry Wheaton, in his classic work, Elements of International Law (first published in 1836), rejected the idea of any kind of search in time of peace. In a revised edition printed in 1866, he wrote:

The African slave-trade, though prohibited by the municipal laws of most nations, and declared to be piracy by the statutes of Great Britain and the United States...is not such by the general international law; and its interdiction cannot be enforced by the exercise of the ordinary right of visitation.
and search. That right does not exist in time of peace, independently of special compact.\textsuperscript{19}

William Lawrence, a nineteenth-century American publicist, observed that a nation's ship on the high seas is regarded as a portion of its territory; therefore, another country had no more jurisdiction over the vessel than it did over part of the nation itself. Some English authorities, however, viewed the problem differently, noting that when Lord Stowell made his famous decision, a recognized distinction between a right of visit and right of search did not exist. John George Phillimore, whom Lawrence referred to as "the most eminent among recent English commentators," declared that 'it is unquestionable that the visit for the purpose of ascertaining the nationality of the vessel must be exercised with the right of search, which is exclusively incident to a belligerent.'\textsuperscript{20}

The Palmerston-Stevenson controversy over the right claimed by Britain grew sharper as each approached the end of his term in office. As each faced replacement by an opposition party member, he apparently expressed himself more freely. The viscount informed the American minister on August 5, 1841, that several months before, the officers on the African squadron had been ordered "with great pain and


\textsuperscript{20} Soulsby, \textit{Right of Search}, p. 62; Mathieson, \textit{Britain and Slave Trade}, p. 67; Lawrence, \textit{Visitation}, pp. 4, 22, 75, 79.
regret" not to interfere with any American ship engaged in
the slave trade. 21 He did not believe the United States
would wittingly let its flag be a shelter for every kind of
criminal of all countries, but unless America entered into
an agreement "with the other powers of Christendom," the
Stars and Stripes would come to be the exclusive protector
of the slave trade. On August 27, only three days before
his departure from office, the foreign secretary again tried
to persuade Stevenson to acknowledge the difference between
a belligerent's right of search and Britain's claim to the
right of visitation. Palmerston admitted that England did
not have the right to search bona fide U.S. ships, but he
refused to accept the proposition that "a merchant man can
exempt himself from search merely by hoisting a piece of
bunting with the United States emblems and colours upon it."
A ship must have legitimate American registry, which could
not be determined without boarding her. To exempt a ship
from visitation merely because she flew the American flag
would pronounce a doctrine which the London cabinet never
could or would accept. Concerning the difference between
the right of search and the right of visit, Palmerston
declared:

Her Majesty's Government would fain hope that the
day is not far distant when the government of the United
States will cease to confound two things which are in

21 See n. 16.
their nature entirely different, will look to things, not words... 22

In conclusion, he again denounced the United States for its refusal to join a "Christian League" for the suppression of the slave trade. Such undiplomatic language, of course, served only to harden the American position. 23

Stevenson's reply to Palmerston did not reach the Foreign Office before he left it on August 30. By the time of its arrival on September 10, George Hamilton Gordon, fourth Earl of Aberdeen, headed the Foreign Office in the Tory Peel ministry. To Aberdeen, Stevenson deplored Palmerston's note with its indication that the London government not only approved the conduct of British officers in boarding American ships, but also claimed a right over the vessels and flag of the United States involving high questions of national honor and interest, of public law and individual rights... Now of all the principles ever attempted to be established in the past history of the dominion of the sea, few probably could be selected of more offensive and objectionable character than those asserted in Lord Palmerston's note. Indeed, it is difficult to believe that his lordship or Her Majesty's government could seriously expect that any independent nation could for a moment acquiesce in doctrines involving the extravagant supposition of yielding to another the right of determining... the terms and conditions upon which it should navigate the ocean in


23 Palmerston to Stevenson, Aug. 5, 1841, "Report... on the Memorial of the Friends of African Colonization... with all the Diplomatic Correspondence... with Great Britain on the subject of the African Slave Trade," House Report 283 (Feb. 28, 1843), 27th Cong., 3rd sess., p. 735 (hereafter cited as "Slave Trade Report"); Soulsby, Right of Search, pp. 59-61; Lloyd, Navy and Slave Trade, p. 54.
a time of general and profound peace. Such a power once submitted to, and there would be no species of national degradation to which it might not lead. 24

The fall of the Melbourne ministry in August 1841 raised the possibility that the new Tory government would not endorse Palmerston's insistence on the right of visit. But Aberdeen's policy differed little from that of his predecessor. While recognizing that a mutual right of search treaty would be the best way to suppress the slave trade, he emphatically disclaimed any British right to search an American ship outside such an agreement. But, like Palmerston, he reaffirmed the right of a British ship to visit a suspected vessel to determine her nationality. Seeking to allay American fears, the conciliatory Aberdeen observed that even if a slave ship were proved to belong to the United States, British officers could do no more than notify a nearby American cruiser of its existence. The right of visit, moreover, would be "limited to cases of strong suspicion." But Stevenson still refused to acknowledge the difference between the right of visit and the right of search.

Is it not...? asked Aberdeen, prescribing the terms upon which other nations are to participate in the freedom of the seas? Is it not, in effect, a claim of jurisdiction over the whole of the African coasts and seas, as exclusive as that which could only be enjoyed within the acknowledged limits of local sovereignty? 25

25 Stevenson to Aberdeen, Oct. 21, 1841, ibid., pp. 751-55.
If each nation could not control the abuse of its own flag, then the violations would just have to exist. America, moreover, could never submit to a mutual right of search treaty, because it would be a contract between two unequal partners, Britain being a much stronger seapower.\textsuperscript{26}

When Stevenson left London in October 1841, the Slave Trade Question stood almost where it had in 1820, despite the fact that the theories of both governments on the right of visit almost coincided. Neither Palmerston nor Aberdeen had ever \textit{publicly} claimed the right to search or visit an American ship, even if it were known to be a slaver. But Britain did not recognize a flag as being \textit{prima facie} evidence of a ship's nationality. America, too, agreed that a ship's papers determined her nationality, not only her flag. The United States, of course, did not claim immunity from search for ships falsely using her flag. The two nations disagreed on practice, not theory. America was content to let Britain visit ships flying the Stars and Stripes so long as they were not \textit{bona fide} American vessels. But when a suspicious ship was boarded and was proved to be an American vessel engaged in legitimate commerce, agreement with Britain ended. This was interference with commerce and a direct violation of America's cherished principle--freedom of the seas. Britain, in short, could visit ships

\textsuperscript{26}Aberdeen to Stevenson, Oct. 13, 1841, \textit{ibid.}, pp. 746-48; Viscount Charles Canning to Sir John Barrow, Nov. 27, 1841, \textit{BFSP}, XXX, 1175-76; Soulsby, \textit{Right of Search}, p. 61.
so long as she made no mistakes. But British officers, of course, were not omniscient.

As 1841 drew to a close, the Slave Trade Question remained as an obstacle to cordial Anglo-American relations. While tension had eased since spring, the two governments appeared as far apart as they had in the 1820's. Only time would tell whether the Whigs in Washington and the Tories in London could find a solution to this issue short of war.

27 The Tory Quarterly Review stated that Stevenson, confusing the right of visit and the belligerent right of search, had given "an inflammatory remonstrance" to the British cabinet before he left London. This action by a minister was one of the reasons the United States was "unjustly" angry with Great Britain at the close of 1841. Qtr. Rev., LXXI, No. 142 (Mar. 1843), p. 571.

28 In March 1841, even Henry Clay believed that the United States should prepare for war against Great Britain, though he hoped that both states would keep the peace. Senate speech of Mar. 1, 1841, Congressional Globe, IX, 218.
CHAPTER I

THE QUINTUPLE TREATY AND THE TREATY OF WASHINGTON, 1841-1842

At the close of 1841, new statesmen holding office in the United States and Great Britain eased tension between the two nations. As a result of their diplomacy, many issues no longer threatened the peace, as they had only a few months earlier. But some traditional questions remained unresolved, and Aberdeen made a valiant effort to settle them by sending Lord Ashburton to Washington as his special emissary. His mission culminated in the celebrated Webster-Ashburton Treaty (August 9, 1842). But did this convention—known also as the Treaty of Washington—end the Anglo-American slave trade controversy? Did relations between the Anglo-Saxon powers improve as a result of the treaty or for other reasons? What effect, moreover, did the Quintuple Treaty (December 20, 1841), and its subsequent rejection by France, have on British slave trade policy vis-à-vis the United States?

Personalities often play an important role in diplomacy, and a better example scarcely could be found than that provided by the new administrations in London and Washington. Replacing the arrogant Palmerston was the quiet and conciliatory Lord Aberdeen, who believed that the first principle of diplomacy was to dispel distrust. Taking the Golden Rule
as his guideline, he refused to believe that either party
had a complete monopoly on wisdom. On the other side of
the Atlantic, Daniel Webster, a moderate nationalist, took
over the State Department from the less agreeable Forsyth.
Edward Everett, whom Webster appointed minister to England,
was a man like the new Secretary of State. A New England
scholar, Everett held more liberal views than Stevenson,
his predecessor, and displayed a less dogmatic attitude
toward the London government. He and Aberdeen, therefore,
enjoyed a cordial relationship.¹

Soon after the Tories took charge in London, the new
American minister inquired about British policy on the slave
trade and the right of search. Aberdeen, in response to
Everett's concern about Palmerston's obduracy on the issue,
asked that the viscount's language not be construed as that
of the present ministry. But if Aberdeen moderated the tone
of Foreign Office dispatches on the subject, their theme re-
mained the same. In the Palmerstonian tradition, he empha-
sized that Britain did not want to search American ships in
time of peace, even if they were known slavers, but the
right of search, he argued, should not be confused with
"verification of nationality." British officers had orders
not to interfere with American ships, but only through visi-
tation could they ascertain if any given vessel really was

¹Cecil, Foreign Secretaries, p. 91; Soulsby, Right of
Search, pp. 69-70; Willson, American Ambassadors, pp. 229, 232.
American. Pleading his case, the foreign secretary reminded Everett that the United States navy examined all suspicious vessels in the Gulf of Mexico; Britain merely claimed the same right along the coast of Africa that America herself practiced closer to home.  Britain, moreover, wished to visit ships "in the interest of humanity," not for any selfish reason. It did not escape Everett that the "dispassionate tone" of Aberdeen's note promising "full and ample reparation," if the right of visit were abused, contrasted sharply with Palmerston's acid attitude. The result, he concluded, would be much fewer "cases of interruption."  

Aberdeen knew, of course, that foreign use of the American flag in the black traffic was a common abuse. Like Palmerston, he considered the signing of a mutual right of search treaty with the United States as the most effective means of suppressing the slave trade. On December 20, 1841, he informed Everett that he had that day "concluded a joint treaty with France, Austria, Russia, and Prussia by which the mutual right of search, within certain latitudes, is

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2 According to Soulsby, the American navy itself practiced visitation on the African coast.

3 Aberdeen to Everett, Dec. 20, 1841, "Construction of the Treaty of Washington... Message from the President... transmitting a report from the Secretary of State..." House Exec. Doc. 192 (Feb. 28, 1843), 27th Cong., 3rd sess., pp. 8-9 (hereafter cited as "Treaty of Washington"); Everett to Webster, Dec. 28, 1841, ibid., p. 5; Viscount Charles Canning to Sir John Barrow, Nov. 27, 1841, BESP, XXX, 1175-76; Everett to Aberdeen, Feb. 21, 1842, ibid., XXXI, 673; Lloyd, Navy and Slave Trade, p. 54.
fully and effectually established forever." His dream, he declared, was that the United States should join this "holy alliance" for "the cause of mercy and justice," and thus take her rightful place "among the great Powers of Christendom...." But America never joined the famous Quintuple Treaty, and France refused to ratify it, an act which profoundly influenced Anglo-American relations.

Palmerston, not Aberdeen, was the architect of the Quintuple Treaty. France, it will be recalled, had granted Britain the mutual right of search by the treaties of 1831 and 1833. Having accepted this principle, the two kingdoms agreed in December 1838 to urge Austria, Prussia, and Russia to continue "the negotiations for the suppression of the Slave Trade that had begun at the Congress of Vienna." After two years of negotiation on the subject, the three eastern courts in the summer of 1841 announced their readiness to sign with France and Britain. An optimistic Palmerston hoped that the proposed convention would remove three more flags from the slave trade, expand the zones in which the British navy could legally search ships flying the French tricolor, and confront the United States with a united European front against the slave trade which she would feel morally constrained to join. Whether it would change America's stand on the right of visit, Palmerston never had a

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4 Aberdeen to Everett, Dec. 20, 1841, "Treaty of Wash-
chance to find out, because France did an volte-face and refused to ratify a treaty she had helped draft. 5

Why did the French National Assembly condemn the Quintuple Treaty? What role, if any, did General Lewis Cass, the American minister at Paris, play in accomplishing its defeat? His views on the right of search are extremely important because when it confronted America and Britain again in 1858, Cass was Secretary of State.

General Cass was named for Louis XVI, whose troops had helped his father fight the British in the American War for Independence. Himself a veteran of the War of 1812, he was consumed by Anglophobia. To him, all things British were suspect. The real motive for the Quintuple Treaty, he thought, was a British ambition to harass American commerce. America could not effectively resist Britain's demand for the right of search, if all major European powers agreed with her on the subject. Was it not his duty, therefore, to present this ulterior British design to the French people in order to forestall King Louis Philippe's ratification of the treaty? On February 1, 1842, he published anonymously a pamphlet entitled: An Examination of the Question, Now in Discussion between the American and British Governments, Concerning the

5 Palmerston in the Commons, Feb. 8, 1842, PD, LX (Feb. 3-Mar. 3, 1842), 145; speech of July 16, 1844, ibid., LXXVI (June 27-Sept. 5, 1844), 936-37; Bandinel, Trade in Slaves, p. 248; Mathieson, Britain and Slave Trade, p. 67; Lloyd, Navy and Slave Trade, p. 49.
Right of Search, by an American. It received wide circulation in Europe and the United States. 6

Cass contended that the issue of the right of search should be considered on its own merits, not in its relationship to the slave trade. He did not question Britain's desire to establish the mutual right of search, but the London government, he charged, wanted to establish its hegemony over the high seas, since British squadrons would do ninety-nine percent of the searching. Quoting an excerpt from the London Times which explained that Britain wanted only to police the seas, Cass asked: 'Who gives Britannia in time of peace a right which international law concedes only to a belligerent?' England, he averred, was trying to force the United States to surrender on this issue by concerting with the continental great powers and making it appear that America must fight all of Europe in order to resist the search of her ships. 7

The general's main argument, however, was based upon his recollection of a fundamental cause of the War of 1812: impressment of American seamen. Naval officers, he alleged, much abused the right of search; the ship's captain, being the sole judge in each case, could arbitrarily seize a

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7 Ibid., p. 206; William T. Young, Sketch of the Life and Public Services of General Lewis Cass with the Pamphlet on the Right of Search and Some of his Speeches on the Great Political Questions of the Day (Detroit, 1852), pp. 136-37.
prize's cargo, imprison the crew, and send them to some distant place to be tried. Search traditionally had been carried on "with little regard to justice or forebearance...." It "is not African slavery the United States wish to encourage," he protested, but we seek to prevent "American slavery, the slavery of American sailors...." With the right of search legally granted to them, British officers could board a foreign ship for a lawful purpose and then impress seamen who they claimed were British. The issue had caused war thirty years before and could again.  

Cass then demolished the alleged distinction between a right of search and a right of visit. There was no difference, he contended. Quoting Palmerston, Cass asserted that a nation did indeed have the right to search her own ships and those of another power which had signed a relevant treaty. Otherwise, the boarding party took a risk in intercepting a foreign ship, and "atonement may be demanded." A right of search was "intolerable"; "occasional trespasses" could be tolerated, but not constant ones. He conceded that a general right of search would effectively suppress the black traffic, but argued that the same goal could be achieved without jeopardizing freedom of the seas. Piracy had been stopped by other methods; why not the slave trade?

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8 Ibid., pp. 140-49.
9 Ibid., pp. 150-64.
But the American minister did not stop with writing a pamphlet. On February 13, 1842, he explained to François Guizot, French foreign minister, the position of the United States on the right of search. Recalling the position of President Tyler in his recent message to Congress, Cass declared that America "cannot consent to interpolations into the Maritime Code at the mere will and pleasure of other governments." No nation, he believed, actually planned to force the United States into alignment with the Quintuple Treaty—an assertion which contravened that of his pamphlet—but the Washington government would "see with pleasure the prompt disavowal made by yourself, Sir, in the name of your country, at the Tribune of the Chamber of Deputies, of any intentions of this nature." For if Britain interpreted the treaty as giving her the right to search American ships, it would become the "duty of France to pursue the same course." Cass thus hinted that the treaty might draw France into an Anglo-American conflict. Since the Paris cabinet probably had not contemplated all of the treaty's possible consequences, he wanted to disclose the real "views of England" before the king had ratified it in order to give France an opportunity to interpose a "remedy." He emphasized, however, that he was acting on his own volition and without the official sanction of Washington; as soon as he had obtained an answer from Webster, he would inform Guizot if he views coincided
with those of his government, or whether his mission was terminated.¹⁰

On February 15, Cass apprised Secretary of State Webster of his démarche and the reasons for it: the Quintuple Treaty, he charged, conferred upon the signatory powers "a right to violate the flag of the United States...." The convention's purpose was not to confront America with a "moral force," as Palmerston had alleged, because France and England already were cooperating under the treaties of 1831 and 1833 to suppress the slave trade, and no ships of the other signatories ever had engaged in the infamous commerce. Clearly, its aim was to compel America to follow the lead of the five European powers or to accept the imposition of new maritime laws. He doubted that the Paris government would ratify the treaty, but if England attempted to carry out her plan without France, the United States should fight.¹¹

Due to the slowness of sailing vessels, three months passed before Cass received a reply from Washington approving his actions. Meanwhile, he kept his government informed of the treaty's reception by the National Assembly. The convention stipulated that ratifications should be exchanged

¹⁰Ibid., pp. 166-69. See also, U.S. Department of State, "Despatches from United States Ministers to France, 1789-1906" (Washington, 1954) (hereafter cited as "Desp. from France"), XXIX (microfilm); Woodford, Cass, p. 207; Lawrence Visitation, p. 42.

within two months after its signing, but by late February, 1842, France still had not ratified. The whole country, Cass reported, opposed it; he rejoiced that Britain's alleged ambition to change international law through the treaty had met with 'one of the most signal defeats in modern politics.' French public opinion continued to attack the treaty, and in May both chambers urged the king to reject it. Anglophobia was so rampant in France that the abrogation of the treaties of 1831 and 1833 appeared likely.  

But why did the National Assembly denounce the treaty? Did Cass really have so much prestige in Paris, or did he merely ride the crest of French public opinion, over which he had little influence? Cass's role in the French rejection of the Quintuple Treaty has been overplayed in many accounts of the event. His greatest contribution to its defeat was his pamphlet, but the National Assembly had adopted a resolution against ratification prior to its publication. French public opinion, moreover, already had been influenced by the publication of President Tyler's message to Congress and Stevenson's correspondence with the Foreign Office. Though

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it was rumored at the time that Cass had written his pamphlet at Guizot's request, the foreign minister actually held views on the right of search quite different from those of the general. After Cass had received Webster's approbation, Guizot assured the American minister that the Quintuple Treaty did not enunciate any new principle of international law, nor did it contain any provisions that were very different from those of the Anglo-French treaties of 1831 and 1833. He even invited the United States to become a party to the treaty, observing that it would be better if all nations had one system for suppressing the slave trade.

Several factors caused France to reject the treaty, of which the most important was traditional Gallican hatred and distrust of England, that nation of shopkeepers. Palmerston's antipathy toward France in 1841 during the second Mehemet Ali

13 President Tyler approved Cass's action because it was based upon his message to Congress in which he had declared that the United States could not accept change in international law "at the mere whim and pleasure of other governments...", and honest merchants who were detained should receive reparations. Webster called Tyler's message the "true American doctrine...[which] will govern us in all future negotiations on the subject." But he also kept the door open for negotiations on any of the subjects touched by the Quintuple Treaty, "never departing from our principles, but desirous, while we carefully maintain all our rights to the fullest extent, of fulfilling our duties also as one of the maritime states of the world." Webster to Cass, Apr. 5, 1842, "Right of Search Message," pp. 195, 197; Soulsby, Right of Search, p. 88.

14 Guizot to Cass, May 26, 1842, "Right of Search Message," p. 201; Cass to Webster, May 17, 1842, ibid., p. 198;
crisis left the French government exasperated and humiliated. Guizot, moreover, resented the viscount's speech in which he had denounced French atrocities in Algeria. His dislike of Palmerston was, at least, one of the reasons why France postponed signing the treaty until Aberdeen had become foreign secretary. President Tyler seemed surprised that France had signed the treaty, because of her diplomatic defeat in the Syrian and Egyptian crisis at the hands of England and Russia, her consequent isolation, and her impotence to influence the affairs of the East. Notwithstanding Cass's intervention in French affairs, which was denounced in some quarters, most contemporary observers realized that Palmerston's anti-French foreign policy was the chief cause of France's rejecting the Quintuple Treaty.

15 Ashburton called Cass's action an "officious intervention," while Minister Fox believed it indicated his ambition to become the Democratic candidate for president. Webster, too, thought that Cass was trying to make political gain out of the issue. Woodford, Cass, pp. 209-10. But Guizot in his Memoirs of a Minister of State, from the Year 1840 (London, 1864), does not mention Lewis Cass as being a factor in France's rejecting the treaty.

16 Palmerston believed that the National Assembly had denounced the treaty because of "Guizot's pitiful spite" toward himself for his success in the Syrian affair, while Aberdeen observed that the hatred which the French parliament bore toward England was responsible for its rejection. Guizot realized, of course, that Anglo-French antipathy would make ratification of the treaty difficult. Viscount François René de Chateaubriand, moreover, declared in the Chamber of Peers: "Really it is so very lately we have been at daggers drawn with England; it is so very lately that victories have been achieved which we still feel the results of...that there exists a soreness of feeling among our people and in our Chambers, and we cannot venture to propose this right of search; it would be looked on as an
An analysis of the evidence indicates that Guizot favored the Quintuple Treaty and hoped Louis Philippe would ratify it. But a majority of the French council wanted the Chamber of Deputies to debate the issue before presenting it to the king for ratification. There it was "seized...as a party weapon of personal animosity against M. Guizot, and of national hostility to England...." Convinced that he was "morally pledged to conclude the treaty," Guizot was embarrassed by his country's reaction to it. Palmerston realized that France was on the horns of a dilemma: if she ratified the treaty, it would vex her deputies, and if she refused, it would bring "dishonour upon the Crown of France...." The French deputies, in defending their action, cited America's refusal to grant the right of search, but the British government reminded them that France, unlike America, had conceded that right in the treaties of 1831 and 1833. France, moreover, was not just a signatory to the treaty, but a co-sponsor.


18 Palmerston to Paulet, Feb. 25, 1842, in Ashley, Life of Palmerston, I, 444; Brougham in the Lords, Feb. 26, 1843, PD, LXVI, 216, 219; Aberdeen in the Lords, Feb. 21, 1842, Ibid., LX, 717; Palmerston in the Commons, Feb. 21, 1842,
France's rejection of the Quintuple Treaty constituted, of course, a serious defeat for British diplomacy. The London cabinet, as aforesaid, had hoped to confront the United States with the "moral force" of a united league. Whether Aberdeen would have continued this Palmerstonian policy toward America is unclear, but without France, the treaty was virtually worthless. French rejection had the effect of encouraging American resistance to British demands for the right of visitation, while weakening London's position. Correctly analyzing this situation, the Foreign Office adopted a new slave trade policy vis-à-vis the Washington government.

In December 1841, after signing the Quintuple Treaty, Aberdeen took a "decisive step" toward settling all questions in dispute between the United States and Great Britain by sending a special plenipotentiary to Washington with full powers to negotiate them all. The man chosen for this mission was Alexander Baring, first Baron Ashburton, whom Aberdeen thought "would be peculiarly acceptable in the United States, as well as eminently qualified for the trust...." In America, the Ashburton mission was lauded as "a highly proper and dignified and conciliatory course on the part of the British Government." The English envoy, whose wife was American, was a thirty-year veteran of Parliament and was

ibid., 723; The Times (London), Feb. 11, 1842, p. 5; ibid., May 23, 1842, p. 5.
noted for his moderation. Pleased by this new British initiative, Webster welcomed the opportunity to approach complicated questions through "calm reason," a negotiation he expected to succeed.19

On February 8, Aberdeen transmitted instructions to Ashburton which established guidelines on the right of visit question. The foreign secretary believed that the excitement in the United States over the controversy stemmed from misapprehension of the British position, which, if explained and understood, would cause the agitation to subside. Not anticipating that France would refuse to ratify the Quintuple Treaty, Aberdeen directed Ashburton to keep the idea of a right of search treaty with the Quintuple nations constantly before the Americans. He believed that the United States eventually would sign such an agreement, but advised his minister not to discuss Washington's present objections to it, because "the right itself, being manifestly founded on justice and common sense, they [the British government] are determined to maintain." Ashburton himself thought that he

19 Everett to Webster, Dec. 31, 1841, "Treaty of Washington," pp. 6-7; Webster to Everett, Jan. 29, 1842, ibid., pp. 11-12; "Chronicle," Annual Register, LXXXIV (1842), 313; Ashburton to Webster, Dec. 3, 1842, The Private Correspondence of Daniel Webster, ed. Fletcher Webster (Boston, 1857), II, 157; New York Journal of Commerce, quoted in The Times (London), Feb. 14, 1842, p. 3. By the time the negotiations had ended, Webster and Ashburton were fast friends and mutual admirers. Ashburton to Webster, Dec. 3, 1842, Webster, Corresp., pp. 157-58; Webster's Buffalo speech, May 21, 1851, Works of Daniel Webster (Boston, 1851), II, 540.
could come to terms with the Americans on this issue because of the precedents of the stillborn Treaty of 1824 and the Paine-Tucker agreement of 1840.\textsuperscript{20}

The Paine-Tucker entente was an understanding between Lieutenant Paine of the U.S.S. Grampus and Commander Tucker of the H.M.S. Wolverine, both stationed off the African coast. Realizing the necessity of a mutual visitation procedure for effectively suppressing the slave trade, they agreed that either could stop a ship flying American colors. If the vessel were American, it would be handed over to the Grampus or another U.S. ship, but if British, Portuguese, Spanish, or Brazilian, it would be turned over to the Wolverine. The arrangement pleased Palmerston, but the U.S. Navy Department quickly disavowed Paine's actions as "contrary to the established and well-known principles and policy of your Government." In negotiations with the United States, the Foreign Office frequently mentioned the Paine-Tucker agreement, to which Everett finally retorted that since Paine's actions had been disavowed by his own government, the arrangement should be regarded as nothing more than an agreement between two people.\textsuperscript{21}


\textsuperscript{21}J. K. Paulding to Lieutenant Paine, June 4, 1840, "Suppression of the African Slave Trade—Extradition: Case of the Creole, etc.," House Exec. Doc. 2 (Dec. 1842), 27th
Lord Ashburton arrived in New York on April 1, 1842, reached Washington on the fourth, and presented his credentials two days later. Very early in the negotiation, the Slave Trade Question came up for discussion. Referring to the right of visit, the British envoy asked Webster how the United States could continue to resist a system which would suppress the criminal traffic in blacks. But Webster replied by proposing an alternative to the right of visit: joint cruising. Ashburton understood Webster's suggestion as an expanded Paine-Tucker agreement whereby the ships of each nation would cruise in pairs, thus settling the right of search question. Delighted, he reported, "If this arrangement can be brought to execution by Treaty, I shall consider it to be the very best fruit of this mission."

Since by this time (April 1842) any hope of French ratification of the Quintuple Treaty had virtually disappeared, Aberdeen answered that he would prefer a mutual right of search treaty, but joint cruising now appeared the best alternative. Webster thought the proposal would end the right of search controversy by allowing a man-of-war to search only those vessels flying its own national colors. To Everett, he confided:


22 President Tyler recognized that the French rejection of the Quintuple Treaty gave the United States "more searoom with Lord Ashburton," Woodford, Cass, p. 211.
I have thought it a more manly and elevated proceeding, on our part, to make provision in this way to execute our laws, than to ask another power to do that for us, and to that end to make visits of American vessels, or vessels appearing to be such, unnecessary. 23

To obtain information on the best means to suppress the slave trade, Webster dispatched an inquiry to Captains Bell and Paine, stationed off the coast of Africa, asking them about slaves, ships, barracoons, and the nature of the trade itself. He also requested advice on the "utility" of ships of different nationalities cruising in pairs. They answered that the American squadron should cooperate with British ships by sailing together. Webster gave a copy of their report to Ashburton, but he deleted from it their recommendation of a mutual right of visitation. The passage in question specifically called for

an understanding that either of the cruisers may examine a suspicious vessel so far as may be necessary to determine her national character; while any further search would be only pursued by the vessel having a right from the law of nations or from existing treaties. 24

Impressed with the part of the Bell-Paine report he had seen, Ashburton, in transmitting it to Aberdeen, explained that it advocated "the employment of a given joint force,

23 Ashburton to Aberdeen, Apr. 25, 1842, BFSP, XXXI, 708-09; Aberdeen to Ashburton, May 26, 1842, ibid., 711-12; Webster to Everett, Apr. 26, 1842, Webster, Corresp., II, 124-25; "Chronicle," Annual Register, LXXXIV, 313; Adams, "Ashburton," AHR, XVII, 771.

leaving to the commanders of it the settlement of their plans of acting."\(^{25}\)

Closely associated with the right of search issue in the minds of many Americans was the British practice of impressment. This, indeed, was one of Lewis Cass's strongest arguments in his pamphlet against the right of search. The Royal Navy had practiced impressment during the Napoleonic Wars, taking sailors from American ships on the presumption that they really were British subjects. Having discussed this issue with Ashburton on several occasions, Webster announced that he needed a declaration against impressment in order to assure ratification of the treaty. The British plenipotentiary averred, however, that he did not have instructions to negotiate on this question. He agreed with Webster, nonetheless, and requested his government to renounce the practice. But Aberdeen refused, for he believed that it would be surrendering an "indefeasible right inherent in the British Crown to command the allegiance and services of its subjects wherever found."\(^{26}\) Impressment, however, ceased to be a real grievance in Anglo-American relations, after Ashburton's conciliatory note of August 9 expressed


\(^{26}\)Quoted in Bemis, Secretaries of State, V, 39.
the desire to settle the problem. Thereafter, most Americans no longer connected impressment and the right of search.27

The Treaty of Washington, which resulted from the Webster-Ashburton negotiations, was signed on August 9, 1842. The first seven articles of the treaty defined the boundary between Maine and New Brunswick, Canada, and provided for the mutual extradition of fugitives from justice. Article VIII called for each nation to maintain an adequate squadron on the African coast, equipped with "not less than eighty guns, to enforce, separately and respectively, the laws, rights, and obligations of each of the two countries for the suppression of the Slave Trade...." The treaty required both squadrons, while cruising independently of each other, to cooperate and share helpful information in order to suppress the slave traffic more effectively. Article IX condemned use of false flags, again denounced the slave trade, and promised joint "remonstrances with any and all Powers within whose dominions... markets are allowed to exist...."28

27Webster to Ashburton, Aug. 8, 1842, "Slave Trade Suppression," pp. 136-37; Ashburton to Webster, Aug. 9, 1842, ibid., p. 142; Soulsby, Right of Search, p. 85; Bemis Secretaries of State, V, 38-42; Adams, "Ashburton," AHR, XVII, 775-78.

28"A Treaty to settle and define the Boundaries between the Possessions of Her Britannic Majesty, in North America, and the Territories of the United States;--for the final suppression of the African Slave Trade;--and for the giving up of Criminal Fugitives from Justice, in certain cases. Signed at Washington, August 9, 1842," Hertslet, Commercial Treaties,
President Tyler quickly presented the treaty to the Senate, declaring that each squadron would enforce its own laws, since the agreement "proposes no alteration, mitigation, or modification of the rules of the law of nations." He observed, moreover, that the convention would protect legitimate American commerce against further detentions by British cruisers. The treaty received favorable reaction in the Senate, with only a small minority led by Senators Thomas Hart Benton of Missouri and James Buchanan of Pennsylvania objecting. After reviewing it for only four days, the Foreign Relations Committee returned it to the Senate, which approved it on August 20 by a vote of 39-9. Ratifications were exchanged in London on October 13, and America was officially committed to helping Britain suppress the slave trade.29

Reaction to the treaty in both countries was usually divided along party lines. In America, Democrats expressed concern that the whole story of the negotiations had not been revealed, since they had been secret, and feared that

VI, 859; "Public Documents," Annual Register, LXXXIV, 502-03.

29"Extract from the message of the President of the United States to the Senate, submitting to the consideration of that body the treaty concluded between the United States and Great Britain, Aug. 11, 1842," in "Report on the Memorial of the Friends of African Colonization...with all correspondence...with Great Britain on the subject of the African Slave Trade," House Report 283 (Feb. 28, 1843), 27th Cong., 3rd sess., pp. 762-63 (hereafter cited as "Slave Trade Report"); Bemis, Secretaries of State, V, 45; Soulsby, Right of Search, p. 88.
the United States had yielded on the right of search issue. They also observed that Britain had not renounced impressment. But the majority of Americans, relieved that the two nations had resolved their differences peaceably and thus averted war, supported the Whigs. In Britain, the treaty also became the focus of party rivalry. Viscount Palmerston, the Whig leader, led the debate against what he called the "Ashburton capitulation." He believed that the Tory government had acceded to American demands too easily. Since the issues "must one of these days, become subjects of angry discussion between the two countries," he charged, it appeared "highly unwise to consent to any arrangement now which will by-and-by give...[the Americans] a greater pull upon us." Although many Englishmen regarded the treaty as a fulfillment of Article X of the Treaty of Ghent, which had pledged the United States to put forth its best efforts to suppress the slave trade, Palmerston argued that not until America had granted the mutual right of search would she finally discharge the obligation imposed by the 1814 treaty. The Tories, however, rallied to Ashburton's defense. Aberdeen declared that he was "well satisfied" with the way in which Ashburton had settled the Slave Trade Question; the negotiator himself was "very stout and fearless" in defending his treaty. In a private letter to Webster, Ashburton confided that the critics of the treaty were

reduced to one, an ex-Secretary of State, who is laboring hard in his vocation of a fault-finding
leader of opposition, sharpened a little by the apprehension that his powers of diplomacy are questioned by the result.30

British public opinion, indeed, favored the treaty. An anonymous letter writer to the London Times expressed the view of most Englishmen when he suggested that, since it had been denounced on both sides of the Atlantic as a "capitulation...it is fair to conclude that it is not far from what it ought to be...."31

The most scathing criticism of the Treaty of Washington, however, came from Lewis Cass, who was still exulting over the defeat of the Quintuple Treaty. On August 29, 1842, the American secretary informed the minister that the United States had agreed to cooperate with Britain in suppressing the slave trade through Article VIII of the recent agreement. He emphasized that America chose "to follow its own laws, with its own sanction, and to carry them into execution by its own authority." Shortly before the arrival of this dispatch in Paris, Cass learned of the success of the Webster-

30Ashburton to Webster, Jan. 2, 1843, Webster, Corresp., II, 162.

31Benton in the Senate, Dec. 23, 1842, Congressional Globe, XII, 80; ibid., Feb. 23, 1843, p. 331; Buchanan in the Senate, Aug. 19, 1842, Works of James Buchanan, ed. John Basset Moore (New York, 1960), V, 345; Palmerston to Lord Minto, n.d., in Ashley, Life of Palmerston, I, 423; Palmerston in the Commons, May 2, 1843, PD, LXVIII (Mar. 27-May 8, 1843), 1234; Everett to Webster, June 1, 1842, U.S. Department of State, "Despatches from United States Ministers to Great Britain" (hereafter cited as "Desp. from Britain"), XLIX (microfilm); same to same, Nov. 2, 1842, ibid., L: The Times (London), Jan. 18, 1843, p. 5; Adams, "Ashburton, AHR, XVII, 782
Ashburton negotiations and requested to be relieved of his post for personal reasons, but after receiving Webster's note of August 29, he averred that the Treaty of Washington placed him "in a false position" from which he could escape only by returning home immediately. Cass observed that Britain had not given up the detested right of search in the treaty, thus her policy remained unchanged. He argued that the alleged right should have been withdrawn before the United States signed the treaty. Nothing had changed, except that America had surrendered the right to enforce her own laws in her own way. Webster, however, rejected Cass's protest and reprimanded him for criticizing in an official dispatch a governmental transaction to which he was not a party and for the results of which he was in no way answerable. The secretary, of course, believed that the United States had strengthened its position through the treaty, not weakened it. In future correspondence, Webster asserted that a British declaration against the right of search inserted in the Treaty of Washington would have been as improper as one against sacking towns or "any other outrage." The American position had been stated, and any nation which violated it would do so at its own risk. On December 11,

32 On the eve of the Webster-Ashburton negotiations, the outspoken Cass had admonished his chief: "You will not shy one single inch till the monstrous pretension is disavowed of the right to search our ships. This is the first step due to our national dignity and I think the government will commit a fatal error, if she surrenders this point." Woodford, Cass, p. 211.
Cass explained that he was not against the treaty itself, but only John Bull's refusal to relinquish the right of search. Had a renunciation of it been made a sine qua non to negotiations, the United States, he contended, could have tested Britain's sincerity with the advantage of having world opinion on Washington's side.33

What did the treaty actually accomplish? Events soon proved that it had not removed the fundamental causes of dispute and that the Washington and London governments did not share the same interpretation of the treaty. In President Tyler's annual message to Congress, he declared that the United States equated the right of visit with the right of search, save only that the former was presented "in a new form, and expressed in different words...." The new treaty, he assured Congress, would remove all cause for British "interference with our commerce," since Aberdeen had disclaimed all right to detain an American ship on the high seas. The United States, moreover, had now fulfilled her obligation to suppress the slave trade, while maintaining the freedom of the seas.34


The London cabinet, however, disagreed with this interpretation. In reply to the president’s message, Aberdeen complained that it tended to convey the impression that Webster and Ashburton had discussed the right of search issue, when they had not. Britain, moreover, had made no concessions on the point, because the United States had asked for none. Restating the British position, the foreign secretary declared that he held no brief for interference with bona fide American shipping, when it was known to be such. "But we still maintain, and will exercise, when necessary, our right to ascertain the genuineness of any flag which a suspected vessel may bear." Sir Robert Peel, British prime minister, also criticized the president’s message, claiming that it did "not give a correct account of the negotiations relative to the right of visit." He insisted that Britain had not given up a single principle in Aberdeen’s note of December 20, 1841, to Everett, which the United States had not answered and, therefore, had not challenged. Did the Washington government believe that Britain had given up the right of visit in exchange for an American squadron on the coast of Africa? This was not his understanding. Finally, Everett attempted to settle the dispute in October 1844, when he explained that President Tyler—in his message—had referred to diplomatic correspondence which preceded the Treaty of Washington and to his own message of December 1841, not to the Webster-Ashburton negotiations. The treaty had not changed the
American position of 1841, since its architects had designed Article VIII in "close conformity" with United States policy.35

If American policy after 1842 stemmed from the diplomatic correspondence of 1841, not from the Treaty of Washington, this convention has little relevance to the suppression of the slave trade. The final solution to the problem, indeed, evolved from diplomatic intercourse over the next two decades, while mutual understanding grew apace. Even the nationalistic President Tyler admitted that the Tory policy of "prompt and ample remuneration" was just. But in an attempt to find a permanent solution to the controversy, Webster, in concert with the president and the cabinet, conceded to Aberdeen on March 28, 1843, that the right of search had not been discussed in the Washington negotiations and that no concessions had been made on either side in order to avoid the vexatious disputes which already had arisen.

What Britain claimed as a right, however, the United States could never accept. Webster then proceeded "to prove" the illegality of the right of visit. Referring to the British policy of paying reparations in case of mistake, he observed that there was no need to pay an indemnity, if the right of visit were truly a right. Upon studying Webster's mémoire,

35 Aberdeen to Fox, Jan. 18, 1843, PP, XLVIII (1844), 23-24; Peel in the Commons, Feb. 2, 1843, PD, LXVI, 86-91; Niles National Register, LXIII, No. 1639 (Feb. 25, 1843), 402; Everett to Aberdeen, Oct. 15, 1844, "Desp. from Britain," LIII. Ashburton affirmed that "not a single argument or discussion had taken place during the negotiation involving the right of search," Ashburton in the Lords, Feb. 2, 1843, PP, LXVI, 58.
Aberdeen acquiesced and admitted to Everett in April 1843 that there was essentially no difference between the right of visit and the right of search.36

The United States had won its case; thereafter, Britain did not abandon visitation, but regarded it as a risk, not a right. When faced with the obligation of paying reparations for every incursion upon American commerce, the Foreign Office became more cautious about visiting ships flying the American flag.37 For the next decade and a half (1842-1857), the United States, indeed, protested only one new case of a British visit. Almost all correspondence on the subject, meanwhile, involved the slowness of the London government in paying reparations for the visitation of American ships before 1842, not new infractions.38

36 President Tyler to the House of Representatives, Feb. 27, 1843, "Treaty of Washington," pp. 1-3; Webster to Everett, Mar. 28, 1843, "Right of Search Message," pp. 132-35; Everett to Webster, Apr. 27, 1843, ibid., p. 142; Soulsby, Right of Search, pp. 100-03.

37 In order to keep the number of complaints to a minimum, Aberdeen instructed naval officers engaged in suppressing the slave trade to be courteous and to cause a visited vessel "as little delay or inconvenience as possible..." in "Instructions for Captain John Foote,... senior officer on Her Majesty's ships...on the west coast of Africa," in "Message from the President...communicating...information relative to the operations of the United States Squadron...," Senate Exec. Doc. 150 (Feb. 26, 1845), 28th Cong., 2nd sess., pp. 115-16; The Times (London), Aug. 1, 1844, p. 6.

38 "Chronicle," Annual Register, LXXXVI (1844), 301; W. O. Blake, History of the Slave Trade, Ancient and Modern (Columbus, Ohio, 1860), p. 304; Lloyd, Navy and Slave Trade, p. 56.
The treaty of Washington did not suppress the Atlantic slave trade, but it contributed, nonetheless, to this end. By committing America to cooperation with Britain in suppressing the black traffic, the treaty deterred the Royal Navy from interfering with vessels of an ally. America now had her own police force. The solution to the problem, as Soulsby has observed, was "distinctly diplomatic rather than practical...."\(^9\) Perhaps the major accomplishment of the Webster-Ashburton treaty was the creation of an Anglo-American rapprochement on the Slave Trade Question.

\(^9\)Soulsby, Right of Search, p. 87.
CHAPTER II

CONTROVERSY AND FAILURE, 1843-1857

After 1842, the question most frequently asked concerning the slave trade was 'why did the Treaty of Washington not lead to its suppression?' Despite great expectations, each year revealed that the combined efforts of the two countries were nonefficacious. While Washington and London exchanged charges and counter-charges, the Atlantic slave trade flourished until its annual volume exceeded 40,000 blacks. But prompted by each other and domestic public opinion, both nations moved toward a re-examination of their policies on this issue.

Soon after ratification of the Treaty of Washington, the American squadron of four ships, commanded by Commodore Matthew C. Perry, arrived on the coast of Africa. Its primary purpose, however, was to protect American commerce from African natives and foreign ships. A. P. Upshur, Secretary of the Navy, made it clear, notwithstanding treaty commitments, the United States did not regard suppressing the slave trade "as their paramount interest, nor as their paramount duty." By contrast, the primary object of the British squadron was to extirpate the black traffic, but British officers were restricted by orders not to visit a ship flying the flag of a non-treaty nation, unless they were confident
that the ship was sailing under false colors. They should not interrupt its voyage, moreover, unless it became absolutely necessary.¹

The U.S. squadron never was very effective in suppressing the slave trade because American officers could not search a ship, unless it flew the Stars and Stripes, and could not take it prize, unless it actually had a slave cargo. Since the penalty for slave trading under American law was death, a slaver usually would fly American colors only on his voyage to Africa. One seaman who had served in the African squadron in 1843, observed that during his cruise, the flotilla did not capture a single vessel. "What slaver," he asked, "would show the United States' flag with slaves in his hold?" An American commander, indeed, could be sued by an accused slaver who had been acquitted by an American judge, and the government might take a long time to re-emburse the arresting officer. Commander George C. Read frankly confessed to Secretary of the Navy John Mason, that his officers dreads the trouble and expense to which they are liable to be put, and they will hereafter be so very cautious as to what they seize that I have every reason to doubt the probability of your hearing of a capture.²

¹Upshur to Captain Perry, Mar. 15, 1843, PP, XLVIII (1844), 60-62; Navy Report, Nov. 25, 1843, House Exec. Doc. 2, 28th Cong., 1st sess., p. 2; Mathieson, Britain and Slave Trade, pp. 71-72; Lloyd, Navy and Slave Trade, p. 41. Captain was the highest actual rank in the U.S. Navy in 1843, but Perry was given the honorary rank of "Commodore."

²Read to Mason, Dec. 11, 1846, quoted in Howard, Slavers and Federal Law, p. 104.
Lack of support by civil authorities in the United States constituted a major reason for the American squadron’s reluctance to intercept suspected slavers. Some courts would not convict the accused unless the evidence against him was overwhelming. The failure of the patrol does not appear to have been the fault of the U.S. Navy, which operated under serious restrictions. British officers, moreover, often spoke of the eagerness and cooperative spirit of American crews. On the United States Congress rests the major responsibility for not enacting more realistic laws which would encourage the arrest and conviction of slavers, while the federal judiciary hesitated to impose the death penalty.

Another reason for the U.S. squadron’s lack of success was its long absences from the African coast. Fear of tropical diseases and the crew’s need for relaxation and recreation caused the ships to make frequent trips to the Canary Islands or Madeira. Lack of adequate funds, moreover, prevented the navy from sending supply ships and forced it to store provisions at far away Porto Praya in the Cape Verde Islands; thus reprovisioning took much time from that spent

3 Mannix attributes the U.S. squadron’s inability to suppress the slave trade to pro-slavery Southern officers, but Duignan and Clendenen cite two Southern commanders of the African squadron during the late 1850’s who earned commendations for their vigilance in pursuing slavers. Mannix, Black Cargoes, p. 223; Duignan and Clendenen, U.S. and Slave Trade, p. 41.

sailing along the coast. Finally, the American ships were too large and bulky, and too few in number, to patrol the coast effectively; consequently, the scheme for joint cruising with British ships never worked as expected. Commodore Perry, who commanded the American squadron, ruefully admitted that the small size of his fleet, its many duties, and the vast patrol area, all meant that "co-operation by joint cruising has been and will continue to be less effective than might be desired."\(^5\) A chaplain of the squadron was less discreet, declaring that "joint cruising has been from the first in spirit and letter dead...."\(^6\) Without close cooperation or a mutual right-of-search treaty, the squadron could not, of course, be of much assistance to Britain in suppressing the slave trade. Thus the black tide continued to flow westward across the Atlantic. Between 1841 and 1843, according to Foreign Office estimates, 70,100 slaves entered Latin American ports, and of this number, Brazil imported 48,500, or 69.2 per cent of the total.\(^7\)

The failure of the African squadrons to suppress the commerce in blacks exasperated British and Americans alike. As a result, public opinion in both nations demanded an end


\(^7\)Upshur to Perry, Mar. 15, 1843, PP. XLVIII (1844), 63; Howard, *Slavers and Federal Law*, pp. 41-42; Table 68, Curtin, *Atlantic Slave Trade*, p. 237. These estimates are probably low by a margin of 15 per cent.
to the Anglo-American attempt to interdict the infamous traffic by force. Arguments against the deployment of the African squadrons ranged from fears that they had increased cruelties committed against the slaves to concern for the lives, money, and ships allegedly wasted in fruitless patrolling. Because of British interference, English critics argued, slavers packed their victims more closely together in order to compensate for those ships lost. After forty years, in which Britain had spent millions of pounds and scores of lives in a vain attempt to suppress the slave trade, it was time to try a new method. 8

The debate in Britain over the efficacy of the African patrol stemmed in part from the publication in 1839 of Sir Thomas F. Buxton's *The African Slave Trade and Its Remedy*. Observing the situation realistically, Buxton, a philanthropist, abolitionist, and former M.P., contended that much money and many lives had been wasted trying to suppress the traffic in blacks, "and, in return for all, we have only the afflicting conviction, that the Slave Trade is as far as ever from being suppressed." Britain had made treaties with different countries and with African chiefs, but they had not been kept. The United States, moreover, would never yield on the right-of-search issue, and if all doors to the

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8Hutt in the Commons, June 24, 1845, PD, LXXXI (June 4-July 3, 1845), 1156; *Niles National Register*, LXVII, No. 1740 (Feb. 1, 1845), 352; *The Times* (London), Aug. 29, 1844, p. 5; ibid., July 24, 1846, p. 6.
iniquitous commerce were closed except one, "to that one outlet the whole Slave Trade of Africa will rush." Buxton's answer to the dilemma: Europeans must "raise the native mind." Africans must learn that "they will gain by selling the productive labour of the people instead of the people themselves." He did not, however, call for the immediate withdrawal of the African squadron, but called for a more efficient force, until the natives themselves abandoned the slave trade. A stronger squadron, in turn, would promote and encourage legitimate commerce.9

An articulate minority began to press the British government to institute new methods to suppress the slave trade. The British and Foreign Anti-Slavery Society affirmed that the only way to end the slave trade was to abolish slavery itself. The Foreign Office concurred, but noted that the influence of one country on the domestic institutions of another "can rarely be otherwise than slow and uncertain...." The Society argued, however, that British efforts to interdict the trade had only increased its horrors and had cost Britain dearly in money and lives. But Aberdeen and Palmerston both defended British policy and insisted that the volume of the slave trade would have been much greater.

than it was, but for the restraining influence of the African squadron.¹⁰

By the late 1840's the issue again became the subject of Parliamentary debates. Using all the previously stated arguments, William Hutt, a Tory M.P. for Gateshead, called for a committee to study the best means of suppressing the black traffic. For thirty years, he observed, Britain had pursued the same slave trade policy, spent more than £21,000,000, but had failed to enforce her own "rules of conduct" upon other nations. The slave traffic, meanwhile, continued to flourish. In response to his appeal, Parliament established a committee to study the issue, and in its second report, dated June 21, 1849, which was more moderate than the first (July 1848), it contended that the use of force to suppress the slave trade was "impracticable." To end this evil, the committee recommended the destruction of the slave barracoons on the African coast,¹¹ stricter punishment for the captains and crews of slavers, the liberation of all slaves illegally imported into Brazil and the Spanish

¹⁰ Palmerston in the Commons, July 8, 1845, PD, LXXXII (July 4-Aug. 9, 1845), 145; Aberdeen in the Lords, Feb. 22, 1848, ibid., XCVI (Feb. 3-Feb. 28, 1848), 1037-45; Niles National Register, LXVIII, No. 1750 (Apr. 12, 1845), p. 6.

¹¹ Palmerston had ordered the slave barracoons destroyed as a necessary step to suppressing the slave trade. Aberdeen, however, had submitted the issue to the Crown's legal advisers. Their decision was that the barracoons could not be destroyed unless by treaty with the local chief, who was regarded as the sovereign of an independent country. Mathieson, Britain and Slave Trade, pp. 61-62; Ward, Navy and Slavers, pp. 178-79.
colonies, and the abrogation of all treaty provisions which authorized British participation in an African squadron. The committee adopted the report by Hutt's deciding vote, but the House of Commons rejected it by a division of 232 to 154. By contrast, the House of Lords, a month later, adopted its own committee's report, which favored forceful suppression. At the urging of Lord John Russell, the Whig prime minister, the upper house recommended not only the continuation, but the increase, of forceful efforts to suppress the slave trade. Some Whig peers even favored war with Brazil, if no better alternative suggested itself, for to surrender on the Slave Trade Question would be to sacrifice national honor.  

In the end, the advocates of the African squadron won. The Whig Edinburgh Review apparently reflected the views of most Englishmen when it declared that the squadron had not failed because it had, indeed, diminished the slave trade. If Britain withdrew her patrol, the price of slaves would decrease, and more blacks would be subjected to the horrors of human bondage. Confident of the imminent success of British policy, Lord John Russell suggested in the Commons.  

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12 Hutt in the Commons, Feb. 22, 1848, PD, XCVI (Feb. 3-Feb. 28, 1848), 1091-96; "Reports on the Slave Trade from Lords and Commons, 1848-1849," Edinburgh Review, XCII, No. 185 (July 1850), 241-42; The Times (London), Mar. 20, 1848, p. 8; Ibid., July 6, 1849, p. 8; Ibid., Aug. 26, 1850, p. 4; Mathieson, Britain and Slave Trade, pp. 104-05.
on June 7, 1852, that the slave traffic would be completely suppressed within "a few years...."\textsuperscript{13}

In the United States, the movement to abandon the African squadron came after the issue already had been settled in England. Armistead Burt, of South Carolina, in the House of Representatives, proposed in May 1850 a resolution to change U.S. policy toward the slave trade, but the House refused to receive it. The attempt to recall the patrol, however, received support in January 1851, when Senator Henry Clay of Kentucky affirmed that the squadron had not achieved the desired result. "The only effective remedy for the suppression of the slave trade," he declared, "\textit{Was}...the establishment of colonies upon the western coast of Africa...." Despite his anxiety to see this curse removed at once, he thought suppression must come about as a result of civilizing the natives along the coast. In harmony with these views, H. C. Carey suggested in his book, \textit{The Slave Trade, Domestic and Foreign}, that "to terminate the African slave trade, we need...only to raise the value of man in Africa...." In 1854, another attempt was made to change American policy, when Senator John Slidell of Louisiana proposed to the Foreign Relations Committee that Article VIII of the Treaty of Washington be abrogated. Like others before him, he argued that it had not achieved its objective, while it had cost

\textsuperscript{13}Russell in the Commons, June 7, 1852, \textit{PD}, CXXII (June 4-July 1, 1852), 109; "Slave Trade Reports," \textit{Edin. Rev.}, XCII, 245-62.
America in money and lives. But Commander Andrew H. Foote, who had commanded the U.S. squadron from 1849-1851, came to its defense and denied that its cost was excessive. Abrogation of Article VIII of the Webster-Ashburton Treaty, he contended, would provoke the renewal of the right-of-search controversy with Britain and thus endanger legal U.S. commerce. In the face of governmental opposition, Slidell's efforts to amend the Treaty of Washington failed as did all other attempts to change American slave trade policy during the decade of the 1850's.\footnote{Burt in the House, May 6, 1850, Congressional Globe, XIX, 910; Clay in the Senate, Jan. 15, 1851, ibid., XX, 246-47; Bulwer to Palmerston, Jan. 27, 1851, \textit{PP}, LVI (1851), 841; Crampton to Clarendon, June 26, 1854, \textit{ibid.}, LVI (1854-55), 860; H. G. Carey, \textit{The Slave Trade, Domestic and Foreign} (Philadelphia, 1853), p. 196; Andrew H. Foote, \textit{The African Squadron: Ashburton Treaty: Consular Sea Letters} (Philadelphia, 1855), pp. 4-7; DuBois, \textit{Suppression of Slave Trade}, pp. 185-86.}

Anglo-American relations, however, continued to be disturbed by a feeling of mutual distrust on the Slave Trade Question. England questioned America's sincerity, when her flag, citizens, and money were still employed extensively in the black commerce. Americans, on the other hand, doubted that Britain's efforts at suppression stemmed solely from humanitarian motives and criticized her treatment of recaptured slaves, whom she rarely returned to their homes. English captains sometimes carried the unfortunate people to the British West Indian colonies, where they worked as indentured servants. Some were impressed into the British
army, while others were "liberated" to Cuba or Brazil, where they lived under slave-like conditions. Americans generally denounced these practices, and the Washington government, to shame the London cabinet, pointed with pride to its policy of returning all recaptured slaves to the African continent, where many settled in the free colony of Liberia. In reply to these charges and admonitions, Sir Robert Peel, the Tory prime minister, affirmed that all recaptured slaves were taken to Sierra Leone, where they were allowed to decide for themselves whether or not they wanted to go to the West Indies. But as Niles National Register observed, the Negroes might have an option, but lacking knowledge of what awaited them in the Americas, they usually let British authorities persuade them.  

Another British policy which incited American criticism was free African immigration to the West Indies. Since Britain had outlawed slavery in her colonies after 1833, she had to find other sources of cheap labor in order to protect their economies. "Free immigration" was, however, a euphemism for the strange practice of buying immigrants from an African chief on the ground that he deserved compensation.

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15Wise to Hamilton, Dec. 1, 1844, "Message from the President...transmitting Copies of despatches from the American minister at the Court of Brazil relative to the slave-trade, etc.," House Exec. Doc. 148 (Feb. 20, 1845), 28th Cong., 2nd sess., p. 61 (hereafter cited as "Brazilian Desp."); Niles National Register, LXVIII, No. 1751 (Apr. 19, 1845), 112; ibid., No. 1758 (June 7, 1845), 221; Curtin, Atlantic Slave Trade, p. 249; Bemis, Secretaries of State, V, 316; Soulsby, Right of Search, pp. 41-42.
for the loss of his subjects. If Britain paid for them, the scheme only perpetuated the slave trade under another form.\textsuperscript{16} Secretary of State John C. Calhoun, indeed, accused England, on August 12, 1844, of reviving the slave trade under the specious name of transporting free labourers from Africa to her West India possessions, in order, if possible, to compete successfully with those who have refused to follow her suicidal policy \textsuperscript{17} of abolishing slavery in her colonies.

But British policy also came under criticism in August 1846, when Parliament, at Russell's request, reduced duties on slave-produced sugar--tariffs which had been levied in 1833 to protect the prosperity of English colonies which cultivated sugar cane with free labor. Britain's increasing need for raw materials, however, caused her to reverse this policy, and lower the sugar duties. British West Indian planters and philanthropists immediately protested that this action would stimulate the sugar production of Brazil and Cuba and thus increase the slave trade. The Tory Quarterly Review attacked the Whig ministry in March 1847 for its decision and claimed that this step had caused a great demand for sugar refining machinery in Cuba, compared with almost none in the British colonies. A British officer on the west coast of Africa aptly summed up the situation in a letter dated October 1847: "Since the sugar-duty has been

\textsuperscript{16}Niles National Register, LXVIII, No. 1758 (June 7, 1845), 222; Soulsby, Right of Search, p. 41.

\textsuperscript{17}Calhoun to W. R. King, Aug. 12, 1844, quoted in Bemis, Secretaries of State, V, 209.
taken off, the demand for slaves in South America has been very extensive. We are keeping a large squadron for little or no purpose at all...."18

The laxity with which the United States enforced its anti-slave trade laws and the frequency with which American citizens participated in the trade caused many Englishmen to doubt that the Washington government really wanted to suppress this traffic. American clipper ships, moreover, were regularly used for slave voyages because their great speed made them difficult to capture. One method employed by Spanish or Portuguese slavers to circumvent U.S. laws was to "charter" a ship in the United States with the understanding that they would buy the vessel when it had reached the African coast, or in some cases, Cuba or Brazil. Taking along an American, who posed as the captain, the ship would fly the Stars and Stripes in order to escape British cruisers. Upon reaching the African coast, the ship changed hands, officially becoming the property of the Spanish or Portuguese captain, who then laid a slave deck in the hold. The American now became a "passenger." With the slaves safely aboard, the ship began its voyage westward under any flag except the American in order to escape the harsh penalties, if caught by a U.S. patrol ship. In a case thus described, the violation of American laws began beyond the limits of United States

jurisdiction, after the transfer of the property had taken place.\textsuperscript{19}

During the decade of the forties, the slave trade flourished, especially south of the equator to Brazil, where American ministers and consuls in Rio de Janeiro got a first-hand look at how the United States unwittingly assisted the slave trade. George W. Slacum, U.S. Consul at Rio de Janeiro, stressed the great need for further legislation to prevent abuse of the American flag, and Henry A. Wise, the American minister to Brazil, [despite his southern heritage], complained of his country's involvement in the slave trade. Wise suggested that U.S. consuls should be armed with more authority to keep American ships from being sold in Brazil and transferred thence to the African coast: "Thus it is," he explained to Secretary of State John C. Calhoun on November 1, 1844, "that our flag is made to protect a Brazilian vessel, with a crew and perfect outfit of slave-deck, water-casks, irons, etc."\textsuperscript{20}

\textsuperscript{19} Everett to Aberdeen, Dec. 2, 1843, BPSP, XXXII, 503; J. F. Crampton to Buchanan, July 23, 1847, \textit{PP}, LXIV (1847-48), 1053; Wise to Calhoun, Nov. 1, 1844, "Brazilian Desp.," p. 39; Willson, \textit{American Ambassadors}, pp. 218-19; Duignan and Clendenen, \textit{U.S. and Slave Trade}, pp. 36-37.

\textsuperscript{20} Slacum to Webster, Sept. 14, 1841, "Message of the President...transmitting a report from the Secretary of State, together with the correspondence of George W. Slacum, relative to the African slave trade," \textit{House Exec. Doc. 43} (Dec. 22, 1845), 29th Cong., 1st sess., p. 11; Slacum to Upshur, Oct. 6, 1843, "Message from the President...communicating...information in relation to the abuse of the flag of the United States in...the African slave trade, etc.," \textit{Senate Exec. Doc. 217} (Mar. 14, 1844), 28th Cong., 1st sess., p. 28;
As the slave trade to Brazil grew in volume, Wise further indicted the laxity of U.S. laws and unscrupulous Americans who participated in the African slave trade for profit. "Without the aid of our citizens and our flag," he declared, "it could not be carried on with success at all." He suggested several measures for reducing American involvement in the black commerce and appealed to America to cleanse herself of the guilt and shame of supporting indirectly such an infamous traffic:

I beseech, I implore, the President of the United States to take a decided stand on this subject. You have no conception of the bold effrontery and the flagrant outrages of the African slave trade, and of the shameless manner in which its worst crimes are licensed here. And every patriot in our land would blush for our country did he know and see, as I do, how our own citizens sail and sell our flag to the uses and abuses of that accursed traffic, in almost open violation of our laws. We are a 'by word among nations'--the only people who can now fetch and carry any and every thing for the slave trade, without fear of English cruisers; and because we are the only people who can, are we to allow our proudest privilege to be perverted, and to pervert our own glorious flag into the pirate's flag--the slaver's protection...to a criminal commerce against our own laws and the municipal laws of almost every civilized nation upon earth?

But Wise did not confine his protests to the Washington government. In December 1844, he attempted to test British

Wise to Calhoun, Nov. 1, 1844, "Brazilian Desp.," p. 39; Bemis, Secretaries of State, p. 205; Howard, Slavers and Federal Law, p. 44.

21Wise to Calhoun, Feb. 18, 1845, "Correspondence between the consuls of the United States at Rio de Janeiro, etc., with the Secretary of State, on the subject of the African Slave Trade...," House Exec. Doc. 61 (Mar. 2, 1849), 30th Cong., 2nd sess., pp. 70-84 (hereafter cited as "Consuls' Corresp.").
sincerity on the Slave Trade Question by informing Charles James Hamilton, British minister to Brazil, that England had no right to rebuke the United States for the fraudulent use of her flag by slavers, while British industry provided the necessary hardware for their iniquitous occupation. He emphasized that the laws of both nations should be strengthened to convict the offenders at home, such as shippers, manufacturers, merchants, dealers, and vessel owners. Wise did not stand alone in this charge, for three years earlier, Lord Henry Brougham, a maverick Whig, had accused British banking companies and merchants of financing and shipping goods which they knew "were used and could be used only as barter in the purchase of slaves." In a letter to a merchant commission in Rio, the American minister bluntly charged that there was no commerce between Brazil and Africa which did not concern, directly or indirectly, the slave trade. No ships were chartered in the United States for the African coast except for the purpose of exporting goods to be exchanged for slaves or carrying crews for slave ships. He charged that American merchants knowingly chartered or sold ships to notorious slave dealers, who used American colors and papers to cover their illegal venture, and accused the State Department of failing to inform businessmen of laws governing participation in the slave trade. American apathy on the subject, he attributed to ignorance. 22

22Wise to Hamilton, Dec. 1, 1844, "Brazilian Desp.," pp. 60-61; Wise to Maxwell, Wright, and Company, Dec. 9,
Henry Wise's successor, David Tod, was equally "horri-
fied" by the extent to which the United States flag and
citizens were engaged in the slave trade. Observing that
the volume of legal trade between Brazil and Africa was
"trifling," he recommended that all commercial voyages be-
tween the two points in American ships be outlawed. In
January 1850, he estimated that 50,000 African slaves were
imported into Brazil annually, and that at least half of
them were transported under the American flag. The United
States Congress, he hoped, would intervene to protect "the
integrity of our flag and the cause of humanity."23

The magnitude of the slave trade to Brazil caused the
British Foreign Office to ask the American State Department
several times during the late 1840's to act under Article IX
of the Treaty of Washington. In December 1845, Lord Aberdeen,
foreign secretary in Peel's cabinet, called for a united
remonstrance against Brazil, because so many flagrantly vio-
lated her slave trade laws. The United States, he hoped,
would "not be less inclined to take this step, from their

23 His estimate of the number of slaves imported into
Brazil was too high. See Table 67, Curtin, Atlantic Slave
Trade, p. 234. Tod to Buchanan, Oct. 16, 1847, "Message of
the President...communicating...a report of the Secretary
of State, with documents relating to the African slave trade,"Senate Exec. Doc. 6 (Dec. 17, 1850); 31st Cong. 2nd sess.
pp. 2-3; ibid., Jan. 11, 1849, p. 10; Tod to Clayton, Jan. 8,
knowledge of the degree to which U.S. vessels and crews have of late been made subservient to the purposes of the Brazilian slave dealers." Secretary of State James Buchanan reported, however, that Henry Wise already had approached the Brazilian foreign minister on the subject, but without constructive results. Since Anglo-American protests could not improve the situation in Brazil, Aberdeen concluded that Britain must resort to firm action to stop the flow of slaves into that empire.24

In March 1845, the Brazilian government provoked British wrath when it announced that it would annul the Convention of July 28, 1817, which granted England the right of search. Aberdeen retorted that Britain would act under the Convention of 1826, which allowed British officers to seize on the high seas all Brazilian subjects engaged in the slave trade, try them as pirates, and confiscate their possessions. The Foreign Office announced, moreover, that the Royal Navy would enter Brazilian waters to arrest suspected slave vessels. But the new get-tough policy did little good; the slave trade south of the equator, indeed, greatly increased between 1845 and 1847. British threats, moreover, almost caused a break

24 Palmerston to Richard Pakenham, British minister at Washington, May 11, 1847, BESP, XXXVI, 738; Aberdeen to Pakenham, Dec. 29, 1845, PP, LI (1846), 178-79; Buchanan to Crampton, Sept. 2, 1847, ibid., LXIV (1847-48), 710; Crampton to Palmerston, ibid., LV (1850), 864.
in Anglo-Brazilian relations before the London government in the fall of 1850 reduced the pressure.25

Brazil herself, not foreign protests and threats, interdicted the Brazilian slave trade boom. For several reasons, the Brazilian government began to enforce its slave trade laws. First, most slave dealers were Portuguese, and Brazilians resented this foreign clique which monopolized the slave trade and kept slave prices up. Secondly, by mid-century, slaves constituted two-thirds of the population, and fear of a black insurrection haunted the white minority. Thirdly, Brazilians had come to realize that slavery was retarding industrialization; consequently, as they replaced foreigners in the government, they imposed restraints on the slave trade. In 1850, the anti-slave trade party in Brazil passed a law "punishing those engaged in the slave trade, declaring them guilty of piracy...."26 As the Brazilian slave trade declined, so did American involvement in it. By April 1852, U.S. officials in Rio could boast that during the previous year not a single Brazilian ship had engaged in the black traffic under the American flag and that nearly all U.S. citizens in Rio formerly connected with the slave trade had


26Palmerston in the Commons, July 14, 1851, PD, CXVIII (July 1-Aug. 8, 1851), 685-86.
"failed in business" and had left. By 1853, the Brazilian slave trade had virtually ceased.27

With the black commerce to Brazil now reduced to a minor problem, Britain and the United States concentrated on closing the slave markets of Cuba. But Spain did not take seriously her treaty obligations to suppress the slave trade to this colony. For many years, the volume of the Cuban slave trade had risen or fallen according to the greed and caprice of the island's governor. But after 1850, the Cuban slave traffic increased as the Brazilian market became less accessible. The slaves' low reproduction rate and an outbreak of cholera in 1853—which killed over 16,000 blacks—created a labor shortage in the island and thus increased the demand for slaves. The Crimean War, moreover, by requiring the transfer of part of the British African squadron to the Black Sea, made it easier for a slaver to escape from the African coast with a cargo of Negroes.28

27Webster to Schenck, May 8, 1851, "Message of the President...communicating...the correspondence between Mr. Schenck, United States Minister to Brazil, and the Secretary of State, in relation to the African slave trade," Senate Exec. Doc. 47, (Mar. 13, 1854), 33rd Cong., 1st sess., p. 2; same to same, Apr. 26, 1852, ibid., p. 3; Kent to Webster, Apr. 10, 1852, "Slave and Coolie Trade: Message from the President...communicating information in regard to the Slave and Coolie Trade," House Exec. Doc. 105 (May 19, 1856), 34th Cong., 1st sess., p. 47 (hereafter cited as "Slave and Coolie Trade"); New York Times, Nov. 26, 1852, p. 4; Mathieson, Britain and Slave Trade, pp. 128-33; Andrew H. Foote, Africa and the American Flag (New York, 1854), p. 216.

28Russell in the Commons, Dec. 22, 1854, PD, CXXXVI (Dec. 12, 1854-Mar. 1, 1855), 793; Niles National Register, LXVII, No. 1732 (Dec. 7, 1844), 224; Palmerston to Lord
As the Cuban slave trade expanded, so did American involvement in it, motivated by the opportunities for profit through the sale of ships and investment of capital. As the risk of capture became greater, the price of slaves rose, and unscrupulous speculators, who would risk anything to make a successful run, superceded conventional slavers. Most of them no longer sailed from Cuba, but from such American ports as New York, Charleston, or New Orleans, apparently for legitimate trade. The crew and cargo, which were usually Spanish or Portuguese, sailed in a ship of American registry. Observing the sharp increase in the Atlantic slave trade, Palmerston, the new Whig prime minister, reported on June 5, 1856, that several slave ships had been fitted out in the United States and that Britain could anticipate more captures. With the end of the Crimean War, Britain, moreover, reinforced her African squadron and met the slavers in full force.29

The revival of the African slave trade in the 1850's and Britain's desire to extirpate it renewed the Anglo-American

dispute over the right of visit and search. Both the Treaty of Washington and long years of debate failed to settle the Slave Trade Question. As the need for slaves increased, the Atlantic slave trade grew apace with the result that the London and Washington governments resumed their 1840 positions.
CHAPTER III

RENEWED CONFLICT AND FINAL SOLUTION, 1858-1862

The increase in the slave trade in the late 1850's revived the Anglo-American controversy over the right of search. Diplomatic wrangling continued throughout the James Buchanan administration, but in April 1862, the embattled Lincoln government finally concluded a mutual right-of-search treaty with England. More than a century after the event, however, historians still debate such questions as these: What did Buchanan really want? What were Lincoln's motives—did he merely wish to gain foreign support for the North? How effective was the Seward-Lyons treaty in suppressing the slave trade? Would the infamous traffic have declined in any case? A careful analysis of Anglo-American diplomacy during the five tumultuous years--1858 to 1862--suggests answers to these questions.

The revival of the Atlantic slave trade alarmed British abolitionists, who saw a half-century of work eroding before their eyes. The last remaining imporium of slave trade activity was Cuba, where Spain allowed it to flourish. By July 1857, according to E. N. Buxton, an M.P. from Norfolk, Eastern Division, the volume of slaves imported into Cuba had increased from 1,000 in 1847 to over 13,000 in 1856.
Other estimates placed the figure as high as 30,000 annually.1

Because of American obduracy on the right-of-search question, slavers became more flagrant in their use of the Stars and Stripes. The British Foreign Office complained with justification that the slave trade continued to flourish under the American flag, flown by captains who carried genuine American papers. Realizing that some ships were not legally entitled to fly the American flag, British men-of-war began again to visit vessels sailing under Old Glory. Between 1842 and 1858, such visitations had taken place infrequently along the coast of Africa, far from American shores. As the Cuban slave trade increased, however, from less than 6,000 annually to more than 12,000 in the 1850's, Palmerston, now Prime Minister, decided to mount an offensive against the black traffic on both sides of the Atlantic.

1E. N. Buxton in the Commons, July 14, 1857, PD, CXLVI (June 19–July 17, 1857), 1492; "The African Slave Trade," Living Age, LIV, No. 691 (Aug. 22, 1857), 566; "The Slave-trade in 1858," Edin. Rev., CVIII, No. 220 (Oct. 1858), 576; Table 9B, Curtin, Atlantic Slave Trade, p. 40. Philip Curtin's recent reappraisal of the accepted volume of slaves imported into the West Indies clearly indicates the statistical problem. Because the trade was everywhere illegal by 1857, dealers kept no records. British abolitionists, on the other hand, deliberately exaggerated the volume of the slave trade in order to make it appear as evil as possible. The large figures often quoted, even when discounted by an annual average transit loss of twenty-five percent, Curtin concludes, leaves an impossible total, when it is "measured against American slave populations, agricultural production, or any other index." Ibid., pp. 233–35; Warren S. Howard estimates that Cuba imported about 6,000 slaves in 1857–58 and 11,000 in 1859–60.
Using inexperienced officers commanding small ships which had seen duty in the Crimean War, the British navy began to stop American ships in waters around Cuba, an area which the United States regarded as an American lake. As in the pre-1812 era, public opinion in the United States denounced this latest unwarranted interference with American commerce.²

Commanders of the British Cuban squadron observed that most slavers flew American colors. When a ship appeared to be a slaver, an officer would board her to examine her papers. In such cases, the inspector usually was greeted with abusive language and the threat that he would be reported. Reacting to these British naval operations, A. K. Blyth, U.S. consul general at Havana, declared that the prostitution of the American flag was not nearly as bad as giving up a principle of international law for which America had fought so long. He suggested that the United States should dispatch her own vessels to survey the area, an action which would uphold the principle of freedom of the seas. In response, President

Buchanan ordered U.S. warships into the Gulf of Mexico to protect American commerce from interference. For the maintenance of cordial Anglo-American relations at this time (March 1857-December 1860), it was unfortunate that the U.S. secretary of state was none other than Lewis Cass, who still believed that implementation of the right of search would subject American sailors to the threat of British impressment. Reaffirming his position of 1842, he declared that under no circumstance could Great Britain search the ship of another nation in time of peace, not even to suppress the slave trade. To Francis Napier, tenth Baron Napier and British minister at Washington, he declared on April 10, 1858, that his country would continue to enforce its own laws in its own way and would use force to repel any foreign seaman who attempted to board a U.S. ship in time of peace. For his minister to England, Cass chose a man of like mind, George M. Dallas, a forceful and arrogant man. As soon as British seizures began, Dallas protested to James Howard Harris, third Earl of Malmesbury and British foreign secretary, that the "sudden and systematized assaults upon United States commerce off the coasts of Cuba and Africa had enraged the American people. On June 1, 1858, Malmesbury replied that everyone, including pirates, sailed under the American flag, leaving no way to identify genuine American

3Letter from Commander Vesey of H.M.S. Styx, Havana, May 7, 1858, "Slave Trade," p. 103; A. K. Blyth to John Appleton, May 8, 1858, ibid., p. 82.
ships but to board them. Reminiscent of the Palmerston-Stevenson conversations of 1840, the foreign secretary declared that the London cabinet was just as anxious as the Washington government to bring the visitation of American ships to an end, but the practice must continue until slavers quit using the Stars and Stripes as an aegis. Surely Americans viewed with indignation this abuse of their flag. Britain would "rejoice if the United States would show what other way the slave trade could be suppressed." Secretary Cass agreed that the slave trade could be suppressed if America allowed England to stop and search her ships, but the privilege was too likely to be abused.\(^4\)

United States efforts to induce the British to abandon the visitation of American ships finally bore fruit on June 8, 1858, when Dallas and Malmesbury reached an entente whereby England admitted the illegality of the right of search in peacetime in turn for an American agreement to consider any suggestion which would "give security against the fraudulent use of the flags of either nation." Declaring that "the

\(^4\)Dallas to Cass, June 1, 1858, "Slave Trade," pp. 86-87; Malmesbury to Dallas, June 1, 1858, ibid., p. 92; Cass to Napier, Apr. 10, 1858, "Message... in Relation to the African Slave Trade," Senate Exec. Doc. 49 (Apr. 23, 1858), 35th Cong., 1st sess., p. 47 (hereafter cited as "African Slave Trade"). On June 16, 1858, the Senate passed a resolution favorable to the administration's stand which confirmed Cass's conviction that the United States would uphold the "immunity" of her ships on the high seas, "as an attribute of their sovereignty never to be abandoned, whatever sacrifices its protection may require." Cass to Dallas, June 17, 1858, "Slave Trade," p. 97; Soulsby, Right of Search, pp. 159-60; Willson, American Ambassadors, p. 294.
concessions are complete..." Dallas boasted at a Fourth of July celebration held at the London embassy that the United States had achieved "the termination of that for which we have struggled for nearly half a century." The controversy with Britain had ended, President Buchanan reported to Congress, because the law of nations did not support the British position, and "her own most eminent jurists" had ruled against her.  

With the public renunciation of the right of search, slavers sought sanctuary under the United States flag more than ever. American warships could, of course, legally board any ship flying the Stars and Stripes, but few patrolled African and Cuban waters. Confusion reigned, meanwhile, in the ranks of the Royal Navy which had conflicting orders to suppress the slave trade and to refrain from boarding American ships. To carry out the first order, British officers had to disregard the second to a certain extent, and the renewed detention of ships flying the American flag led Washington to make more diplomatic remonstrances. Complaining of the conduct of British officers, Cass argued that they

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deliberately encouraged the destruction of a slaver's flag and papers in order to take it prize themselves and thus circumvent American law. But the Foreign Office insisted that the slaver's crew, of their own volition, cast convicting evidence overboard in order to escape stricter American laws. De Bow's Review, a Southern, pro-slavery journal, countered, however, that "colusion" existed between British captains and slave traders, whereby the latter bartered their cargo for freedom and thus cheated United States justice which demanded the death penalty. The American periodical alleged, moreover, that the British Admiralty distributed the prize money among the officers and crew of Her Majesty's ships, a practice which explained why British men-of-war made so many captures, and American ships, so few.6

Protests against British seizures of "American" vessels and charges of misconduct by officers of the Royal Navy continued to flood the State Department during 1859. As a matter of policy, Cass relayed all such accusations to London, but Malmesbury observed that the evidence against British sailors often was "utterly valueless, and...given by persons whose evident connection with the slave trade...rendered their statements altogether untrustworthy...." Lord John Russell, who succeeded him as foreign secretary in June 1859, chided the Washington government for the "readiness" with which it

accepted the reports of slave traders who had discovered to their regret that the American flag did not confer immunity to British visitation. Slavers knew, of course, that the United States would listen to complaints against Britain; consequently, he urged the Washington government to study each case of visitation before filing a protest to determine if the vessel in question really was American. Such self-examination, Russell argued, would serve the cause of suppression. A Foreign Office investigation into the alleged misconduct of British naval officers revealed that of the ten seizures reviewed, four, indeed, involved irregularities serious enough to require reprimands, four instances inspired commendation, and the American registry of the remaining two ships was so doubtful that Cass withdrew his protests.7

With the increase in the Cuban slave trade, came more British and American complaints of the ineffectiveness of the United States African squadron. In May 1859, Richard Bickerton Pemell, second Lord Lyons, the new British minister at Washington who replaced Napier in December 1858, reminded General Cass that the American "squadron" consisted of only one vessel of twenty guns actually stationed off the African coast. During 1855 and 1856—at the time of the Crimean

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War—the British squadron had fallen below the requirements set by the Webster-Ashburton Treaty, a development admitted by the Foreign Office and debated in 1857 by Napier and Cass. It will be recalled that England, by 1857, had reinforced her squadron until it met treaty standards and that Cass had promised to do likewise. The use of slow sailing vessels which could not get close to the coast because of their deep draft constituted other deficiencies which decreased the effectiveness of the U.S. patrol. Furthermore, as the British blockade became more effective along the west coast of Africa north of the equator, the slave trade moved farther south, a shift which required American ships to leave their station for three or four months to resupply at the Porto Praya base. These deficiencies were finally corrected, however, in 1860, when the Buchanan administration added faster, lighter, steamers to the squadron and moved the supply base 3,000 miles southeast to Loando on the Angola coast.8

8Clarendon to Napier, Sept. 26, 1857, BFSP, XLVIII, 1236; Napier to Clarendon, Oct. 12, 1857, ibid., 1242; Napier to Cass, Dec. 24, 1857, "African Slave Trade," p. 15; Lyons to Cass, May 23, 1859, "Slave Trade," pp. 337-38; Howard, Slavers and Federal Law, p. 59; Soulsby, Right of Search, pp. 130-31. According to Lyons, the U.S.S. Cumberland with 24 guns patrolled the African coast only a few weeks twice a year, while the St. Louis had not visited the coast since July 1857. The Marion with 16 guns and the Vincennes with 20 guns divided the cruising between themselves, but both had to return to Porto Praya for provisions and seldom sailed together. A New York Herald reporter "aboard the U.S.S. Cumberland," declared, moreover, that during a cruise of 15 months, the ship spent only 22 days looking for slavers along the African coast, and 13 of them were spent at anchor. Memorandum from Lord Lyons, May 14, 1859, "Slave Trade," p. 337; Letter from a New York
In Britain's long quest for some measure or system by which she could obtain effectual American assistance in suppressing the slave trade, Foreign Secretary Lord Russell on February 6, 1860, proposed a new plan. He suggested that the ambassadors and ministers of the United States, France, Spain, Portugal, and Brazil meet in London "to consider what measures can be taken to check the increase of the slave trade and finally provide for its total abolition." But Cass replied on April 3 that he saw no "practical advantage" which could result from such a conference. In any case, the United States wished "to avoid participation in councils or conferences of this nature...." He promised, however, to study the proposals which the British government laid before the conference, but Russell perceived that such a meeting without the United States would be useless. In response to Cass's rebuff, he proposed a scheme which Tsar Alexander II, a neutral observer of the Anglo-American dispute, had suggested to him: the creation of an international squadron, sailing under one flag with the authority to intercept slavers. Captured suspects would be taken before an international tribunal. Cass, of course, rejected this suggestion as an infringement upon

By March 1860, however, Cass could report that the U.S. African squadron consisted of 8 ships, of which 4 were steamers, with 97 guns and 11 howitzers; in Cuban waters, there were 4 steamers with 16 guns and 9 howitzers.
national sovereignty. To him, a Parliament of Man was too utopian. 9

To understand America's inability to suppress the slave trade, one must know something about the domestic situation during the Buchanan administration. Before the fifteenth president left the White House, the issue of slavery and its extension had divided the nation. As secession and civil war became more probable with the collapse of the Compromise of 1850, some Southern leaders advocated the reopening of the foreign slave trade to assure the survival of the institution of slavery. In 1860, the pro-slavery faction founded the "African Labor Supply Association" and elected James Dunwoody Bronson De Bow (editor of De Bow's Review) president. Its object was to increase the supply of African labor. Only a few Southerners wanted to reopen the African slave trade, but they rapidly gained converts. In Congress, meanwhile, a coalition of State's rights advocates, pro-slavery forces, and Southern sympathizers, prevented the passage of measures which could have suppressed the black traffic--e.g., voting more money for this cause, enacting stronger legislation, increasing the African squadron. The Southern attitude, moreover, so infiltrated some federal courts and intimidated others that they refused to convict slavers and thereby

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encouraged American naval officers to permit slavers to escape. 10

On November 13, 1860, The Times (London) reported that the slave trade was then more active and successful than it had been at any time during the past decade. The liberal Lord Russell, foreign secretary in Palmerston's second ministry, appealed to "Christendom" to end this disgrace to Christianity. In his efforts to persuade the United States to pursue slavers with greater vigor, he frequently referred to the "obligations of humanity," to which Dallas retorted that the plea implied "a neglect of them [obligations]...and cannot but be unacceptable." Russell cited the lack of an anti-slave trade treaty between Spain and the United States as one reason for American ineffectiveness which, when combined with the slavers' free use of the American flag, paralyzed British action. Secretary of State Cass countered, however, that if England would enforce her slave trade suppression treaty with Spain, "all the difficult and dangerous questions" existing between the United States and Britain would vanish. A tighter British patrol of Cuban waters, moreover, would reduce the slave trade, for "if slaves could not be sold, they would not be bought." 11

10 DuBois, Suppression of Slave Trade, pp. 176, 188-89; Mannix, Black Cargoes, pp. 273-74; Mathieson, Britain and Slave Trade, p. 173.

But Lord Lyons regarded the problem of abolishing the slave trade as hopeless. As Southern secessionists tore at the seams of the American Union, he observed that President Buchanan went beyond public opinion in the measures he took against the black commerce. In the South, legalizing it had many advocates, while some professed Abolitionists in the North were hypocrites who engaged in the trade themselves and did not desire any efficient measures for its suppression. And most of the slavers appeared to be fitted out in New York.¹²

In April 1861, only a month after Abraham Lincoln's accession to office, the Confederates fired on Fort Sumter in Charleston harbor and plunged the nation into a bloody, fratricidal war which lasted for four years. The Federal blockade of Southern ports and the Confederacy's request for recognition immediately strained Anglo-American relations, and the Trent Affair (November 1861) almost broke them.¹³

Lincoln, nonetheless, took stern measures against the slave trade. The blockade of the South, ironically, left New York City as the world emporium of the black traffic, closely followed by Portland (Maine) and Boston. In the


¹³ For the best account of Anglo-American relations during the Civil War, see E. D. Adams, Great Britain and the American Civil War (New York, 1925).
two years preceding Lincoln's inauguration, eighty-five slavers had fitted out in New York. U.S. marshals knew of this illegal enterprise, but did not stop it, because President Buchanan habitually pardoned convicted slavers. The marshals complained, moreover, that fees granted for seizure of the vessels were less than the expenses incurred in capturing them. The Continental Monthly charged, however, that slave dealers contributed to political organizations and party leaders, who, in turn, helped them. This influence, the journal reported, explained the extreme sensitivity of the Buchanan administration on the issue of visitation.14

In May 1861, Lincoln directed Secretary of the Interior Caleb B. Smith to enforce the slave trade laws. Smith immediately summoned all federal marshals to New York for consultation on the most effective means of suppressing the slave trade in American ports. As a result of this conference, he appointed only known anti-slavery men to Atlantic ports and ordered them to enforce the law. Within three months, they had seized nine vessels and had arrested twenty-eight men. By the end of the year, President Lincoln could comment that efforts to suppress the slave trade "have been recently attended with unusual success." Five ships had been confiscated and condemned, three men had been fined and imprisoned, and one, Nathaniel Gordon (who had been arrested in 1860 and

convicted of having slaves on board his ship), received the maximum penalty: death. Charles F. Adams, the new American minister to Britain, assured Lord Russell on November 6, 1861 that the new efforts to end the slave trade had been so successful that the once thriving business "is now completely broken up...."15

With the outbreak of the Civil War, the Washington government recalled its naval units then serving on foreign stations—including Africa and Cuba—for duty in home waters. This action made it apparent that if the Lincoln administration wanted to end the slave trade under the American flag, it must allow the Royal Navy to visit suspected slavers flying it. In February 1862, Adams informed Russell that the United States would welcome British cruisers on the Cuban coast again. The foreign secretary replied non-committally that such an arrangement would only renew the old Anglo-American right-of-search controversy. To Lyons, he confided that even a "verbal agreement" such as Adams had proposed would be worthless, when the American public rose in protest.

15 Lincoln, Annual Message to Congress, Dec. 3, 1861, The Collected Works of Abraham Lincoln, ed. Roy P. Basler (New Brunswick, N.J., 1959), V, 46-47. The president received several appeals to commute Gordon's sentence to life imprisonment, but he refused. Ibid., p. 128; Report of the Secretary of Interior, Nov. 30, 1861, "Message of the President..." Senate Exec. Doc. 1 (Dec. 3, 1861), 37th Cong., 1st sess., p. 453; Adams to Russell, Nov. 6, 1861, "Desp. from Britain," LXXVIII; The Times (London), July 11, 1861, p. 9, stated that the United States had "done more to suppress the trade under their own flag than they had done for a very considerable time."
The only alternatives were for the United States to return her squadrons on the African and Cuban coasts or for her to negotiate "an efficient Slave Trade Treaty." He believed that Lincoln's offer was sincere, but he also thought the men-of-war of both nations should have orders which were "clear and precise." Such a treaty would not relieve America of her duties under the Treaty of Washington, but would only allow British ships to replace American vessels recalled for home duty. Not to overlook a chance to promote the second possibility, Russell sent a draft-treaty to Lyons, which he hoped the United States would accept as a basis for negotiation.\(^16\)

On March 15, 1862, Lyons showed the draft-treaty to Seward, who was not yet prepared to take such a step, but within a week, he had changed his mind. He insisted, however, on one stipulation: it must appear that the United States had proposed the treaty. The Senate, he feared, would not ratify a right-of-visitation convention, if it appeared that America had submitted to British pressure. Seward promised, too, that his draft would follow closely Russell's original text.\(^17\)


\(^{17}\) Lyons to Russell, Mar. 15, 21, and 25, 1862, F.O., 84/1171, ibid., pp. 519-20 (These three dispatches were marked
Lyons agreed to Seward's condition, and on March 22, 1862, by prearrangement, the secretary transmitted to him a note which admitted that the African squadrons of both countries had failed to suppress the slave trade—especially since the Civil War had required the recall of most American ships from foreign stations. He was forwarding to the British minister, therefore, "the form of a convention which the President would like to submit to the Senate." Lyons replied that the American move to suppress the black traffic greatly pleased him, for the London government believed 'the success of its own persevering labours in the cause depended primarily on the cooperation of the United States.' Seward's draft-treaty was a verbatim copy of Russell's document, except for a provision which limited its duration to ten years. Russell and Lyons preferred a perpetual convention, but Seward argued successfully that he needed the limited duration clause of the treaty to assure Senate passage; moreover, if the convention were enforced as stipulated, the slave trade would be suppressed within ten years. If not, it would be necessary to create new measures to deal with the problem.  

18Seward to Lyons, Mar. 22, 1862, "Message of the President...transmitting a copy of the treaty between the United States and her Britannic Majesty for the suppression of the African slave trade," Senate Exec. Doc. 57 (June 10, 1862),
The treaty stipulated that men-of-war of either party—if provided with special instructions—and reasonably convinced that a ship was a slaver—had the right to visit the merchant vessels of the other. They could detain or take prize such ships on the high seas, but not in territorial waters of the other country. The right of search, moreover, could be "exercised only within the distance of 200 miles from the coast of Africa, and to the southward of the 32nd parallel of north latitude, and within 30 leagues from the Coast of Cuba." Finally, the treaty provided for the creation of three mixed courts of justice at Sierra Leone, Cape of Good Hope, and New York, and for the punishment of the captain and crew of a convicted ship according to the laws of the country to which the ship belonged. If any enslaved Negroes were on board, they would be freed.19

19"Treaty between Great Britain and the United States, for the Suppression of the African Slave Trade. Signed at Washington, April 7, 1862," Hertslet, Commercial Treaties, XI, 621-26. At the request of the British government the treaty was amended to authorize the search of ships within 30 leagues of Madagascar, Puerto Rico, and San Domingo. Lord Henry Brougham was responsible for this additional article. On May 26, 1862, he had declared in Parliament that slaves would be landed in those islands, unless a modification of the treaty could be arranged, "Additional Article to the Treaty of April 1862, between Great Britain and the United States, for the Suppression of the Slave Trade. Signed at Washington February 17, 1863," ibid., p. 903; Brougham in the Lords, May 26, 1862, PD, CLXVI (Mar. 25-May 26, 1862), 2179-81; The Times (London), Apr. 11, 1863, p. 11.
On April 7, 1862, Seward and Lyons signed in Washington the slave trade suppression treaty and submitted it to their respective governments for ratification. Seward's assumptions proved correct, for the Senate, in a secret session the same month, unanimously ratified the treaty. Parliament also approved it in May 1862, upon Lord Russell's assurance that it provided the best evidence that the United States government sincerely wished to suppress the slave trade and would thenceforth "be considered as one of the main causes of the abolition of that detestable traffic." Seward had high hopes for the success of the treaty and believed that it would bring "incalculable benefits to our country and to mankind." But the skeptical Lord Lyons regarded the belated American willingness to negotiate such a convention as a maneuver to save the president in the eyes of his party, if in the future he had to make concessions to the South in reconstructing the Union, and also as a paltry attempt to obtain British sympathy for the Northern cause.20

This divergence of opinion poses the question of Lincoln's and Seward's motives for concluding a right-of-visitation treaty with Britain. John Jay's letter of October 17, 1861, undoubtedly influenced Seward. Jay argued that to win the

Civil War the federal government needed all the help it could get from European countries. By signing an anti-slave trade treaty with Britain, the United States would improve her image in the eyes of Europe and thus make more difficult the recognition of the Confederacy. (As early as August 8, 1861, Charles Francis Adams, indeed, had informed Seward that Britain regarded the division of the Union as a "fait accompli"). By allowing a mutual right of visitation for a limited period within certain zones, the United States could show her determination to end the slave trade. Another important factor was Lincoln's and Seward's abhorrence of this infamous traffic. While a member of the House, Lincoln in 1849 had introduced a bill to abolish slavery and the slave trade in Washington, D.C., and in 1858, Seward, then a Senator from New York, had proposed a bill for more stringent measures to fight the slave traffic. To accuse either man of signing the treaty of 1862 only to secure British support for the Northern cause simply ignores their congressional record. 21

Following the exchange of ratifications at London on May 20, 1862, the treaty became effective on June 7. In

October, however, the United States informed Britain that the exigencies of war prevented her from sending a squadron to Africa, but she wanted the Royal Navy to begin acting under the authority of the convention. On December 1, 1862, Lincoln reported to Congress that the treaty had been put into operation with "a good prospect of complete success," and a year later, he affirmed that American participation in the slave trade had ceased. Even by mid-1862, the black commerce on the Congo had come to a standstill for lack of slavers. So effective was the Anglo-American interdiction that the mixed courts established by the Seward-Lyons Treaty never received a case for trial, and in 1870 the signatories officially abolished them.22

Though the "Americanization" of the slave trade was evident, Seward's boast of April 7, 1862, that if "such a treaty had been made in 1808, there would now have been no sedition here, and no disagreement between the United States and foreign nations," can be discounted as self-congratulation and easily forgiven.23 But Hathieson's assessment that the treaty was "concluded so late, it served rather to signalize than to complete the collapse of a system which was everywhere crumbling into ruin," seems too disparaging.24

22Lincoln's Annual Message to Congress, Dec. 1, 1862, Lincoln, Works, V, 519; ibid., VII, 36; Howard, Slavers and Federal Law, pp. 61, 63; Mathieson, Britain and Slave Trade, p. 176; Bancroft, Life of Seward, p. 345.

23Entry for April 7, 1862, Seward, Diary, p. 52.
His appraisal, in any case, fails to take into account the great number of slaves (approximately 12,000 annually), imported into Cuba between 1860 and 1862.\textsuperscript{25}

But why did the slave trade decline so rapidly after 1862? Warren S. Howard contends that the Seward-Lyons Treaty frightened slavers, both practicing and potential, out of the black traffic, an interpretation which appears correct.\textsuperscript{26} Slavers realized that a naval police force now existed which could legally capture them. As an aegis, the American flag was worthless. An Anglo-American mutual right-of-search treaty concluded in 1824 undoubtedly would have reduced the Atlantic Black Tide to only a trickle and thus prevented a long and vexatious dispute. But American administrations from Adams to Buchanan were so imbued with Anglophobia, a legacy of the War of 1812, that they would not sign such a treaty. Lewis Cass, indeed, appeared more desirous of obtaining reparations for alleged British violations of international law than of finding a solution to the Slave Trade Question. It required civil war and an administration committed to the suppression of the slave trade to reverse traditional American aversion to a right-of-search treaty. Expediency joined forces with humanitarianism when Lincoln and Seward realized that they could not prosecute the war and put an end to the iniquitous traffic without permitting

\textsuperscript{25}\textit{Table 9B, Curtin, Atlantic Slave Trade}, p. 40.

British cruisers to search (visit) American ships. For these reasons, when Lyons proposed a right-of-visitation treaty to Seward, he readily accepted it. The Seward-Lyons Treaty ended the long Anglo-American dispute over the Slave Trade Question and helped to create a new era of goodwill between the two nations.
CHAPTER IV

THE SLAVE TRADE QUESTION: A RETROSPECT

By 1840, Great Britain had signed mutual right of search treaties with every major maritime nation, except the United States. Failure to obtain American adherence to such a convention undermined British efforts to suppress the slave trade, for slavers had only to run up the Stars and Stripes to secure its protection. Washington's sensitivity on the right-of-search issue further complicated matters, for any foreign interference with American commerce caused repercussions which could be felt across the Atlantic. London's efforts to obtain American acceptance of a qualified right of visit failed because it violated international law. While differing less in theory than in practice, neither nation would retreat from its position, and the ensuing impasse by the end of 1841 had strained Anglo-American relations.

With new administrations in London and Washington by September 1841, a more conciliatory attitude evolved which thawed these icy relations. Difficult issues such as the Slave Trade Question, which had threatened war as recently as March 1841, appeared to yield to calm reasoning and discussion. In an attempt to convert the détente into a rapprochement, Aberdeen in February 1842 dispatched Lord
Ashburton to Washington as his special envoy, to negotiate all points of differences, including a mutual right-of-search convention similar to the Quintuple Treaty (December 20, 1841). How could Washington refuse Europe's strong humanitarian appeal to suppress the slave trade? But unexpected events in Paris forced Aberdeen to change his plans.

France's rejection of the Quintuple Treaty in May 1842 dealt a severe blow to the British scheme for interdicting the black traffic. Notwithstanding Lewis Cass's efforts to win French support for American policy on the right-of-search question, Anglophobia was the primary reason for France's refusal to ratify the convention, a diplomatic defeat for England which encouraged America to stand her ground on the issue of search and seizure. As the Webster-Ashburton conversations began in April 1842, Aberdeen changed his tack and accepted as an alternative Webster's suggestion of a joint African squadron. Although the Treaty of Washington (August 9, 1842) was the focus of criticism in England and America, it was a popular convention which created a diplomatic climate in which both countries could work together to remove the curse of the slave trade. It was Aberdeen's willingness to recognize the validity of Webster's identification of the "right of visit" with the "right of search" which made the rapprochement possible.

The hopes of Aberdeen and Webster notwithstanding, the efficacy of the Treaty of Washington fell short of their
expectations. American ships were too large, their supply base too far away, and Congress too indifferent, for joint cruising to work. The failure of the treaty to suppress the slave trade caused the London and Washington governments to reassess their policies, but neither foreign and domestic criticism nor diplomatic dialogue resulted in any change of procedure or policy. As the demand for slaves in Cuba increased during the 1850's with the decline of the Brazilian slave trade, so did the volume of the black commerce—from less than 6,000 in 1850 to more than 12,000 in 1860. Since most slavers flew American colors, the Slave Trade Question appeared no closer to solution in 1860 than it had in 1842, when the Webster-Ashburton treaty was signed.

The increased volume of slave traffic and America's participation in it renewed the right-of-search controversy. The Anglophobe, Lewis Cass, now Secretary of State in the Buchanan administration, confronted the London cabinet with the same obdurate posture that he had assumed two decades earlier. Frightened by the spectre of impressment—a legacy of the War of 1812—he preferred the abuse of the American flag by slavers to the boarding of American ships by British officers. But the election of Lincoln (November 1860) and the outbreak of the Civil War (April 12, 1861) produced a change in American policy. The new president's hope to secure British support during the war coincided with his desire to end the slave trade; consequently, he agreed to a mutual
right-of-search treaty with England. But fear of Senate rejection led Secretary of State Seward to conspire with Lyons, the British minister, to create the impression that the United States had initiated the negotiation. The maneuver worked, and the Senate unanimously approved the Treaty of 1862, which stripped slavers of their last aegis and reduced the infamous traffic to a fraction of its former volume.

In retrospect, this study concludes that; (1) Anglo-American policy in 1840 concerning the right of visit differed more in practice than in theory; (2) the ascendancy of Aberdeen in London and Webster in Washington in 1841 paved the way for a rapprochement on the Slave Trade Question; (3) Lewis Cass's actions had little influence on Louis Philippe's refusal to ratify the Quintuple Treaty; (4) France's rejection of this convention undermined Britain's policy on the right-of-search issue and strengthened America's position; (5) the Treaty of Washington (August 9, 1842) did not resolve Anglo-American differences on the right of visit and search but helped to create a mood of conciliation which, in turn, led Aberdeen to accept Webster's contention that the right of visit and the right of search were identical and thus illegal in time of peace without a relevant treaty; (6) joint cruising failed to stem the black tide, but the experiment gave each power almost two decades in which to re-examine her slave trade policies; (7) the renewal of the dispute in 1858 combined with Southern opposition to stronger anti-slave
trade legislation and judicial indulgence of slavers to vex Anglo-American relations until they had returned to their strained state of 1840; (8) the Lincoln administration for a variety of reasons—humanitarian, military, and diplomatic—reversed traditional American foreign policy on this issue and agreed to sign a right-of-search (visit) treaty which the London cabinet had proposed; and (9) the Seward-Lyons treaty (April 7, 1862), resulted in the immediate and rapid decline in the black traffic and ended at last the Anglo-American controversy over the Slave Trade Question.
EPILOGUE

THE SLAVE TRADE: A CONTINUING CURSE

Due to the exigencies of the Civil War, the American squadron did not appear on the African coast until the conflict had ended, but after 1865 the United States and Britain cooperated closely to interdict the slave trade. As aforesaid, the mixed courts established by the Treaty of 1862 never tried a single case, because none came before them, and in 1870, the two powers concluded another convention which disposed of the unused machinery. Instead of bringing a slaver to one of the tribunals, the new treaty provided that the captor should take his prize to a vessel or court of the latter's nationality. All other provisions of the Seward-Lyons treaty, however, were retained. The export of slaves from the coast of West Africa to the Americas diminished as Cuba began to enforce existing anti-slave trade laws, and with Brazil's abolition of slavery on May 13, 1888, the black commerce ceased to exist.¹

With the suppression of the Atlantic slave trade, only two areas remained where this traffic flourished: the Indian

¹Secretary of the Navy Welles to Seward, Feb. 26, 1866, PP, LXXIII (1867), 309; "Convention between Great Britain and the United States of America, additional to the Treaty signed at Washington, April 7, 1862, for the Suppression of the African Slave Trade," Washington, June 3, 1870, Hertslet, Commercial Treaties, XIII, 961-64.
Ocean and the Arabian Sea. The Eastern slave trade confronted Britain and America with a new set of problems, for methods used by the Royal Navy to suppress the Atlantic slave trade were useless on the East African coast, where slavers shipped their human cargo in dhows—small, shallow, fast vessels—which eluded the larger British ships with ease. Europeans, moreover, reentered the slave trade, as France revived her system of émigrés libres to work in French territories, and Australians imported Polynesian natives into Queensland and other British possessions, a practice not ended until 1898.²

As the Slave Trade Question continued to plague Europe, Leopold II of Belgium took the initiative in a movement to improve the plight of the African. In 1876, he had founded the International African Association to explore and civilize the Dark Continent. Nine years later, renewed interest in Africa prompted an international meeting in Berlin which drafted the General Act of the Berlin Conference (February 26, 1885). Signed by seventeen nations, this declaration called for freedom of trade throughout that continent, protection of the native population, encouragement of missionary endeavors, and the suppression of slavery and the slave trade. Theoretically, the Act is still in force today.³

³Ibid., pp. 173-75.
In 1889, Belgium acquired the area known as the Congo Free State (later called the Belgian Congo), and promised "to help in suppressing slavery and the slave trade within the area covered by the General Act of the Berlin Conference." The next year, however, Leopold sponsored the Brussels conference on slavery and the slave trade which drafted a convention for the suppression of "the crimes and devastations engendered by traffic in African slaves." Often called the Magna Carta of slaves, the Brussels Act (July 2, 1890), was the most comprehensive attempt ever made to suppress the slave trade by treaty. Signed by all Europe, the United States, Persia, and Zanzibar, it established a slavery bureau to coordinate efforts against the slave trade, provided for the patrol of waters around Arabia and for the search of any ship suspected of carrying slaves. From 1890 to 1914, under the authority of the Brussels Act, more was done to suppress the East African slave trade than at any time in history, because it created machinery for the systematic interdiction of the black commerce.  

World War I, however, interrupted the system, and the Convention of St. Germain-en-Laye (September 10, 1919), signed only by the Allies, undermined the 1890 agreement. The new anti-slavery treaty did not abrogate the Brussels Act but failed to provide any machinery for the extirpation

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of the slave trade. The consequent revival of the traffic in blacks prompted the British Foreign Office to declare as recently as 1956 that it still recognized the Brussels Act, which conferred upon its signatories the right to detain and search suspected slavers. 5

In an attempt to correct the deficiencies of the Treaty of St. Germain-en-Laye, the League of Nations in 1926, drew up a Slavery Convention which forty-six nations ratified. But this agreement, too, had little practical effect, because it defined slavery so loosely that such practices as the sham adoption of children and sale of wives continued to exist. Britain, meanwhile, failed to negotiate an international convention similar to the Brussels Act and to persuade all nations to denounce slave trading as piracy. Not until 1948, did the United Nations, in its Declaration on Human Rights, provide an article which specifically prohibited slavery and the slave trade. In its most recent effort to end the infamous traffic through negotiation, the U.N. sponsored the Geneva Conference of 1956 to debate the problem. The ensuing convention, approved in September 1956, denounced slave trading by whatever means of transportation as a criminal offense and declared that each nation should keep its flag, ships, ports, and aircraft from being used to convey slaves. The attempt to include a right-of-search clause was defeated, however, by the old argument that its enforcement

5Greenidge, Slavery, p. 178.
would infringe upon national sovereignty. Current anti-
slave trade laws all suffer from the same defect: dependency on the honor of a particular nation rather than on international machinery for control.  

Because no system for enforcement exists, the slave trade exists today. In the form of child and adult forced labor, serfdom, debt bondage, and the sale of women as wives and prostitutes, slavery continues to be a way of life in many countries. Where there is slavery, there is slave trading, and the largest offenders today are Moslem states, despite treaties, resolutions, and declarations against it. Slave trading is a common activity in Algeria, Saudi Arabia, and South Africa, where the primitive Bushmen are now the victims of this age-old curse, introduced by the encroachment of civilization. Because of the lack of effective international control, the work begun by the British abolitionists of the eighteenth century remains unfinished.  

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7 Greenidge, Slavery, pp. 50-56; O'Callaghan, Trade Today, pp. 159-61; Kay, Shameful Trade, pp. 193-206.
APPENDIX

A. ARTICLES VIII AND IX OF THE TREATY OF WASHINGTON (1842)¹

VIII. The parties mutually stipulate that each shall prepare, equip, and maintain in service on the coast of Africa, a sufficient and adequate squadron, or naval force of vessels, of suitable numbers and descriptions, to carry in all not less than eighty guns, to enforce, separately and respectively, the laws, rights, and obligations of each of the two countries for the suppression of the Slave Trade; the said squadrons to be independent of each other, but the two Governments stipulating nevertheless to give such Orders to the officers commanding their respective forces, as shall enable them most effectually to act in concert and co-operation, upon mutual consultation, as exigencies may arise, for the attainment of the true object of this Article; copies of all such Orders to be communicated by each Government to the other respectively.

IX. Whereas, notwithstanding all efforts which may be made on the coast of Africa for suppressing the Slave Trade, the facilities for carrying on that traffic, and avoiding the vigilance of cruisers, by the fraudulent use of flags and other means, are so great, and the temptations for pursuing it, while a market can be found for Slaves, so strong, as that the desired result may be long delayed, unless all markets be shut against the purchase of African negroes;—the parties to this Treaty agree, that they will unite in all becoming representations and remonstrances with any and all Powers within whose dominions such markets are allowed to exist; and that they will urge upon all such Powers the propriety and duty of closing such markets effectually, at once and for ever.

¹Hertslet, Commercial Treaties, VI, 859.
B. THE TRUE ORIGIN OF THE LYONS-SEWARD TREATY (1862)²

RUSSELL TO LYONS

Foreign Office, February 28, 1862

My Lord,

Mr. Adams spoke to me a few days ago on the subject of the African Slave Trade. He deplored the vigour and success with which the traffic is carried on at Cuba, and placed in my hands a Despatch from the United States Consul at Havana, of which I enclose a Copy.

This information had previously reached Her Majesty's Government from Her Majesty's Consul at Havana.

Mr. Adams went on to say, that the Government of the United States would be glad to see our Cruizers sent to the Coast of Cuba.

I did not give any formal answer, but said, "that the difficulty lay in the Question of the Right of Search, upon which so much Correspondence has taken place."

The United States are bound by Treaty to have a Squadron with eighty guns on the Coast of Africa to intercept and prevent the Slave Trade: They have now only one vessel of twenty Guns.

I know the United States Minister excuses this non-fulfillment of Treaty, on the ground of the necessity of blockading the coast of the Southern States, and thus the Blockade of the Southern Ports, which inflicts gross and serious injury on British Commerce and manufactures, is made a Reason by the United States Government for not fulfilling their Engagements towards Great Britain in a matter in regard to which the British nation have long taken the most lively Interest.

The result is that American Cruizers are taken away from the African coast on the ground of the Civil War, while British Cruizers are kept away from the Cuban Coast in deference to American jealousy with respect to the United States Flag.

I am well aware that Mr. Seward has told you, as Mr. Adams has told me, that the American Government have no objection to the overhauling of American ships by British Cruizers, provided there exist good grounds of suspicion.

But a verbal Agreement of this kind might be of little avail against a popular cry, founded on the indisputable doctrine of International Law, that the Right of Search cannot be lawfully exercised in time of Peace.

The only alternative I can perceive, is, that the United States Government should either keep up their Squadron of

eighty Guns on the Coast of Africa, with a sufficient number of Cruizers on the Coast of Cuba, or that the United States should give their Consent to an efficient Slave Trade Treaty.

I send you a Draft of a Treaty for that purpose.

It is true that the United States by agreeing to this Treaty would not be relieved from the formal obligations of the Treaty of 1842, by which she is bound to keep a Squadron with a fixed number of Guns on the Coast of Africa.

But the proposed Treaty would enable British Men of War to supply, to a certain degree, the want of American Cruizers.

In any event it would befit the United States to join in the most vigorous measures for the suppression of the Traffic in Slaves.

I am /etc./Russell.

The Lord Lyons, K.C.B.

RUSSELL TO LYONS

Foreign Office, February 28, 1862

My Lord,

Your Lordship's Despatches Slave Trade Nos. 1 and 2 of the 11th Instant, reporting the substance of a conversation which you had with Mr. Seward, relative to the search and capture by British Cruizers of American Vessels engaged in the Slave Trade, have impressed my mind still more strongly than before, with the necessity of some Agreement in the shape of a formal Convention upon this Subject.

Giving full credit to Mr. Seward for his sincerity, I cannot but feel apprehensive that upon the appearance of a British Cruizer in the Port of New York, with a Slaver as a Prize, much ingenuity would be exercised, to show that the Slaver had been subjected to search and capture, without regard to Law or Treaty.

I should be sorry to give such a pretext for Agitation and ill-will.

I hope to send you, by the present Mail, the outline of a Convention which would make the Relations of the two Countries clear, and contribute greatly to the Suppression of the Slave Trade.

I am /etc./Russell.

The Lord Lyons, K.C.B.

RUSSELL TO LYONS

Foreign Office, March 1, 1862

My Lord,

With reference to my despatch Slave Trade No. 4 of the 28 Ultimo transmitting to you the Draft of a Treaty between
Great Britain and the United States for the suppression of
the Slave Trade, I have to state to you that so much ill
feeling has been created at different times by the exercise
of a Right of Visit on the part of British Cruizers that
Her Majesty's Government deem that it would be very inex-
pedient to instruct the Lords of the Admiralty to sanction
any practice of overhauling American Merchant Ships suspected
to be Slavers on the mere Authority of an informal Agreement
with the Secretary of State of the United States.

At the same time Her Majesty's Government are fully
convinced of the sincerity of the United States Government
in their professions of a desire to suppress the Slave Trade.
This desire is in conformity with the well known sentiment
of the President and the principal Members of his Adminis-
tration.

But, if such is the case, it is much to be desired that
the rules of proceeding for the Men of War of the two Nations
should be clear and precise.

By this means all dispute on the rights of Naval Com-
manders to visit and search Vessels may be avoided.

With this view I have had drawn up the Draft Treaty of
which I desire you to give a Copy to Mr. Seward.

If he is willing to entertain the subject, you can then
discuss with him its various provisions.

I am /etc./

J. Russell.

The Lord Lyons, K.C.B.

LYONS TO RUSSELL

Washington,
March 15, 1862

My Lord,

I had this morning the honour to receive Your Lordship's
despatches of the 25th ultimo, marked "Slave Trade" Nos. 4
and 5, and Your Lordship's Despatch of the 1st instant marked
"Slave Trade" No. 6. I have since seen Mr. Seward and have
spoken to him, in the sense of those Despatches, on the sub-
ject of the search and capture by British Cruizers of Amer-
ican Vessels engaged in the Slave Trade. I said to Mr.
Seward that in the opinion of Her Majesty's Government the
only mode of providing for the safe and lawful exercise of a
power to effect such searches and captures, would be the con-
clusion of an efficient Slave Trade Treaty between the two
Countries; and I put into his hands the Draft of such a
Treaty which was inclosed in your Lordship's No. 4 already
referred to.

Mr. Seward appeared to doubt its being advisable to en-
ter at the present moment into negotiations for the conclu-
sion of a Treaty. He said, however, that he would consider.
of the Southern States by the Federal troops would, he sup-
posed, soon very much diminish the number of ships required
to maintain the Blockade and would thus enable the Govern-
ment to employ an efficient Squadron in operations against
the Slave Trade.

I have [etc.] Lyons.

LYONS TO RUSSELL
[Confidential]
Washington, March 21, 1862

My Lord,
I have to-day had the honor to despatch to your Lord-
ship a telegram, in cypher, in the following words:
"Mr. Seward is willing to propose to me to negotiate a
Slave Trade Treaty, provided the proposal have the air of
coming originally from the United States, instead of from us.
I have agreed to this. It may therefore be well not to men-
tion that we have already made a proposal. Mr. Seward says
he shall propose stipulations not materially differing from
those in your Draft." Washington March twenty one.

I have [etc.] Lyons.

LYONS TO RUSSELL
[Confidential]
Washington, March 25, 1862

My Lord,
In my despatch of the 15th Instant marked "Slave Trade"
No. 5, I had the honour to inform Your Lordship that I had
placed in Mr. Seward's hands the Draft of the Slave Trade
Treaty, which was transmitted to me in Your Lordship's Des-
patch of the 28th Ultimo marked "Slave Trade" No. 4.

On the 21st Instant Mr. Seward told me that he had
brought the question of concluding such a Treaty as that
proposed before the President and Cabinet. Finding the
President and Cabinet to be warmly in favour of doing so,
he had proceeded to sound influential Senators on the subject.
The result was that he had been led to believe that
there was at this moment a probability that the ratification
of the Senate might be obtained. One point, however, he
deemed essential to success. The proposal must originate
with the United States. The great majority, if not all, of
the present Senators were strongly opposed to Slavery and
the Slave Trade. But there were no doubt many who retained
the old jealousy of Great Britain on the Subject of the Right
of Search. They would resist all appearance of conceding
anything on this subject to pressure from the British Govern-
ment. But the question would present itself in a different
aspect,—if it should be Great Britain that acceded to a
requisition from the United States,—if it should appear
that the proposal had been made spontaneously by the Ameri-
can Government from its own desire to suppress the African
Slave Trade.

Mr. Seward went on to say that if I was willing to re-
cieve the proposal as coming spontaneously from him, and if
I considered that I had authority to enter into negotiations
on that footing, he would at once make the proposal to me
formally in writing, and would have a Draft of a Treaty pre-
pared to submit to me.

I answered that I had no hesitation in agreeing that
the proposal should originate with the Government of the
United States. Her Majesty's Government could only regard
this as conveying a more decided expression of the views
of the Government of the United States, than would be given
by a simple assent to a request from Great Britain. I should
receive the written proposal with very great satisfaction
and should immediately declare I was ready to enter upon the
negotiations—of course, however, it would be impossible for
me to say how far I could proceed without further instruc-
tions from Your Lordship, until I had seen and considered
the Draft which he proposed sending to me.

Mr. Seward said that there were some changes princi-
pally of form which would, he thought, be necessary, but
that his Draft would not differ materially from that which
I had given him. He appeared to think that with a view to
obtaining the ratification of the Senate it was very im-
portant to seize the present moment, and bring a Treaty
regularly concluded, before that Body as soon as possible.
I shall, nevertheless, be very reluctant to sign any Treaty
without further instructions from Your Lordship, except one
differing only in unimportant matters of form, from your
Lordship's Draft. It is quite true that so favourable a
conjuncture of circumstances as the present is not likely
to occur again; and that it may be of very short duration.
The events of the War will produce rapid changes in public
opinion and in the policy of the Government on the subject
of Slavery. It must be remembered that hostility to the
Slave Trade is not separated, at all events by the People
in general, from the advocacy of the immediate abolition
of Slavery in the Country itself. If the progress of the
War be slow or unprosperous, influence will be gained by
the Party who desire to keep all questions concerning Slavery
in the back-ground, in order to render an accommodation with
the South more easy. Even at the present moment there can
be little doubt that the Anti-Slavery sentiment is stronger
in Congress than among the People at large. As the season
of the Elections draws near, Members will become more anxious
to ascertain and to follow the feeling prevailing among their
constituents. Just now the majority of the Senators are what is termed abolitionists. The opponents of abolition in the Senate are likely to endeavour to conciliate and disarm their antagonists by endeavouring to establish the almost forgotten distinction between Internal Slavery and the Slave Trade, and by making a show of zeal against the latter. This might procure several votes for a Slave-Trade Treaty which would at another time be given against one, and as it requires a majority of two-thirds to pass a Treaty every vote is of consequence. To all these considerations I may add that violent irritation against England has for the moment subsided. The publication of the Correspondence laid before Parliament has indeed produced a kind of reaction against the unworthy suspicions and violent animosity lately prevalent. But a small matter might revive these feelings and make the ratification of a Slave Trade Treaty with us impossible.

Taking all these circumstances into consideration, I think your Lordship will wish me to take advantage of this favourable opportunity, if it be possible to do so. If therefore Mr. Seward is willing to conclude a Treaty which secures the great object of establishing a mutual right to search and detain Slavers, and which does not, to the best of my judgment, contain anything seriously objectionable, I shall be ready to assume the responsibility of signing it at once, in virtue of the general Full Powers transmitted to me with Your Lordship's despatch No. 19 of the 18th July, 1859. I shall have the less hesitation in doing so because as it is the practice of the Senate of the United States not simply to accept or to reject but also to amend and alter Treaties already signed when submitted for its ratification, no offence, could reasonably be taken if Her Majesty's Government should pursue the same course. I shall not, however, affix my signature without further instruction from Your Lordship, unless I shall be convinced that any delay in submitting the Treaty to the Senate would materially diminish the probability of its being ratified.

Mr. Seward, at the conclusion of our conversation, said that he supposed no question would be raised by Great Britain on the present occasion similar to that which had been fatal to the negotiation for the adherence of the United States to the Declaration of the Congress of Paris on Maritime Law. If there was to be any question of a Declaration such as that which Your Lordship and M. Thouvenel had proposed to make previous to affixing your signatures to a convention on that subject, it would be much better not to enter upon any negotiation. I replied that I could not conceive that there could be the least cause for apprehension on this point. It was absolutely necessary at the time at which the negotiation respecting maritime rights took place, to prevent misunderstanding on a practical question which could not be avoided. The British and French Governments could
not bind themselves to treat the Southern Privateers as Pirates, and it would have been a breach of good faith to leave any doubt on the subject. I could not see that any similar question could possibly arise with regard to the proposed Slave Trade Treaty. Mr. Seward said that he was of the same opinion, but that he had thought it prudent just to mention the matter.

Mr. Seward particularly requested me to consider the whole of our conversation as confidential.

I have [etc.] Lyons.

LYONS TO RUSSELL

Washington, March 28, 1862

My Lord,

Mr. Seward sent to me the day before yesterday the promised Draft of a Treaty for the suppression of the Slave Trade. He accompanied it with an informal Note, of which I enclose a copy, and at the same time returned to me the Draft transmitted to me by Your Lordship which I had in obedience to your orders placed in his hands. Mr. Seward's Draft is copied verbatim from Your Lordship's. But a clause is added to the last article reserving to each Party the right of putting an end to the Treaty after the expiration of ten years, on giving a year's note of the intention to do so.

I went to see Mr. Seward yesterday and asked what had been his object in adding this clause, and whether he attached any great importance to it. I said that certainly in my opinion the Treaty would be very much better without it; but that if he thought it essential in order to obtain the ratification of the Senate, I should be unwilling to insist so strongly upon its being obliterated, as to bring the whole Treaty into jeopardy, or even to cause any great delay.

Mr. Seward answered that for his own part he should very much prefer a Treaty of unlimited duration; and that his friends in the Senate took the same view as he did. He had, he said, inserted the Clause in order to disarm opposition, but he should nevertheless be glad that I should state my objection to it in writing. With a note from me to this effect which he could produce, he might be able to get rid of the clause. At any rate such a note would be useful to him. He would suggest, however, that I should say in it, that I did not intend in making the objection to obstruct the progress of the negotiation.

I readily agreed to write Mr. Seward such a note as he proposed. I am very desirous to do anything which may strengthen his hands in carrying the Treaty through the
Senate; and my note may be serviceable in this respect, even if it be used only to conciliate opponents by showing that the Government has adhered to the limitation Clause in spite of objection.

I do not think that, so far as practical results are concerned, there will be found much difference, between a Treaty without limitation of time, and a Treaty terminable after Ten Years. At all events I am persuaded that Your Lordship will consider that a very great object will be attained if we can succeed in establishing for ten years certain stipulations essential to the success of our efforts to put down the Slave Trade. I feel confident that Your Lordship will not be disposed to blame me, if I assume the responsibility of signing a Treaty in accordance with your Draft, whether with, or without, the addition of a limitation Clause.

Mr. Seward requested me to be mindful in my written communications with him that the proposal to conclude the Treaty was to be regarded as having originated with the Government of the United States.

I have [etc.]

Lyons

SEWARD TO LYONS

Washington, March 26, 1862

Enclosure. Copy. Mr. Seward presents his compliments to Lord Lyons, and has the honour to submit to his consideration the enclosed Draft of a proposed Treaty and annexes, between the United States and Great Britain for the suppression of the African Slave Trade, which is the same as the original Draft submitted by his Lordship, with the exception of an additional Clause providing for the duration of the Treaty.

Washington, March 26, 1862.

LYONS TO RUSSELL

Washington, March 31, 1862

My Lord,

Mr. Seward told me this morning that he had come to the conclusion that his best course would be to insist upon the clause limiting the duration of the proposed Treaty for the suppression of the Slave Trade. He would, he said, accordingly answer in that sense my note of the 28th instant. He thought that the correspondence would thus materially assist his endeavours to obtain the ratification of the Senate. If the Anti-Slavery Party were strong enough they might carry an amendment expunging the clause—and to this
he should readily agree. On the other hand, the clause itself, and his perseverance in retaining it, might obtain votes for the Treaty from the other Party, if votes from that Party were required.

Mr. Seward's long experience of the Senate, and his well-known tact in dealing with that Body, gives his opinion on such a point so much weight, that I naturally thought it prudent to be guided by it. I therefore made no objection to his taking his own course. I do not, as Your Lordship is aware, consider the limiting Clause as likely to be of much practical importance one way or the other, and I think you would be unwilling that I should throw away a chance which is not likely to occur again of attaining the object at which we have so long aimed.

I have [etc.]

Lyons.

LYONS TO RUSSELL
[Confidential]
Washington,
April 7, 1862

My Lord,

Since I had the Honor to address to your Lordship my Despatches of the 31st ultimo marked "Slave Trade Nos. 11 & 12" I have been in frequent communication with Mr. Seward on the subject of the proposed Treaty for the suppression of the Slave Trade. Mr. Seward has constantly urged the importance of bringing the Treaty before the Senate as soon as possible. He has expressed a very positive opinion that it would be hazardous to incur the delay necessary to enable me to receive further instructions from Your Lordship. He has stated that while confident of obtaining the Ratification of the Senate at this moment, he cannot feel so certain that he should be able to do so a month hence. He has continued to be of opinion that it is important that the Treaty should go to the Senate with the Clause making it terminable by either party, on giving notice after the expiration of ten years.

I am not so sanguine, as Mr. Seward appears to be, about obtaining the Ratification of the Senate now, but I am still more strongly, than he is, of opinion that the probability of doing so is greater at this moment than it is ever likely to be again. I have accordingly this morning signed the Treaty; and I have, in deference to Mr. Seward's opinion, admitted the Clause limiting the duration. In other respects the Treaty, as signed, differs very little from the Draft as transmitted to me with Your Lordship's Despatch of the 28th of February (Slave Trade No. 4).

It has been found necessary to make a slight change in the wording of Article IX. of the Treaty itself, in order to correct a grammatical error. I inclose herewith the Article
as amended.

The blank left in the Third Section of Article IX. of Annex B has been filled up with the words:

"The Judge of the United States for the Southern District of New York."

The blanks in the Ratification article (XII.) have been so filled up that the Article provides that the Ratifications shall be exchanged in London, and in six months, or sooner if possible.

With the exception of these particulars, the Treaty which I have signed is identical word for word, with Your Lordship's Draft. I shall transmit the original to Your Lordship to-day with another Despatch.

The mode of procedure of the United States' Senate, with regard to Treaties, appeared to render it desirable to fix a rather long period for the exchange of the Ratifications, and to provide that it should be made in London rather than at Washington. For the Senate does not always confine itself to ratifying or rejecting a Treaty absolutely. It very frequently makes amendments or alterations. It appears, therefore, to be more consistent with the Dignity of the Queen, that even if Her Majesty approve of the Treaty as it stands, Her Ratification should not be given, until it is certain that the President has been authorised by the Senate to give the Ratification of the United States.

I have etc.

Lyons.

RUSSELL TO LYONS

Confidential

Foreign Office,
April 10, 1862

My Lord,

I have received Your Despatch, Slave Trade No. 7 of the 25th Ultimo, marked Confidential, reporting that the Cabinet of Washington would not be unwilling to enter into Negotiations with Her Majesty's Government for the conclusion of a Treaty for the suppression of the African Slave Trade, provided that it should be made to appear that the overtures for such a Treaty originated with the Government of the United States, and not with Her Majesty's Government; the President and Mr. Seward being of opinion that this course is essentially necessary in order to ensure the consent of the Senate to the Treaty.

I have to acquaint you, that the object of Her Majesty's Government being the suppression of the Slave Trade, it is immaterial to them, whether the Proposals for a Treaty with the United States Government to affect this object, are made to appear as originating with the Cabinet of Washington, or, as they really did, with the Government of Her Majesty, and
I therefore approve the language held by you to Mr. Seward on this subject, as reported in your Despatch.

I am etc.

The Lord Lyons, K.C.B.

LYONS TO RUSSELL

Washington, April 25, 1862

My Lord,

I have this day sent by telegraph to Portland, in order that it may be conveyed to England by the Packet which leaves that place tomorrow, the following message addressed to Your Lordship:

The Slave Trade Treaty signed by Mr. Seward and me on the seventh has been passed unanimously without amendment by the Senate. The Ratification of the United States will be sent to London as soon as it can be written out. Washington April Twenty five.

I have etc.

Lyons.

C. THE TREATY OF WASHINGTON (1862)

Concluded April 7, 1862; ratification advised by the Senate April 24, 1862; ratified by the President April 25, 1862; ratifications exchanged May 20, 1862; proclaimed June 7, 1862.

ARTICLES

I. Search of suspected slavers by war vessels.
II. Authority and procedure.
III. Indemnity for losses.
IV. Mixed courts established.
V. Reparation for wrongful seizures.
VI. Evidences of slave trading.
VII. No compensation to vessels with slave equipments.
VIII. Disposal of vessels condemned.
IX. Punishment of owners, crew, etc.
X. Release of negroes.
XI. Instructions and regulations.
XII. Ratification; duration.

The United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, being

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3 Hertslet, Commercial Treaties, XI, 674-79.
The two high contracting parties mutually consent that those ships of their respective navies which shall be provided with special instruction for that purpose, as herein-after mentioned, may visit such merchant vessels of the two nations as may, upon reasonable grounds, be suspected of being engaged in the African slave trade, or of having been fitted out for that purpose; or of having, during the voyage on which they are met by the said cruisers, been engaged in the African slave trade, contrary to the provisions of this treaty; and that such cruisers may detain, and send or carry away, such vessels, in order that they may be brought to trial in the manner hereinafter agreed upon.

In order to fix the reciprocal right of search in such a manner as shall be adapted to the attainment of the object of this treaty, and at the same time avoid doubts, disputes, and complaints, the said right of search shall be understood in the manner and according to the rules following:

First. It shall never be exercised except by vessels of war, authorized expressly for that object, according to the stipulations of this treaty.

Secondly. The right of search shall in no case be exercised with respect to a vessel of the navy of either of the two Powers, but shall be exercised only as regards merchant vessels; and it shall not be exercised by a vessel of war of either contracting party within the limits of a settlement or port, nor within the territorial waters of the other party.

Thirdly. Whenever a merchant vessel is searched by a ship of war, the commander of the said ship shall, in the act of so doing, exhibit to the commander of the merchant vessel the special instructions by which he is duly authorized to search; and shall deliver to such commander a certificate, signed by himself, stating his rank in the naval service of his country, and the name of the vessel he commands, and also declaring that the only object of the search is to ascertain
whether the vessel is employed in the African slave trade, or is fitted up for the said trade. When the search is made by an officer of the cruiser, who is not the commander, such officer shall exhibit to the captain of the merchant vessel a copy of the before-mentioned special instructions, signed by the commander of the cruiser; and he shall in like manner deliver a certificate signed by himself, stating his rank in the navy, the name of the commander by whose orders he proceeds to make the search, that of the cruiser in which he sails, and the object of the search, as above described. If it appears from the search that the papers of the vessel are in regular order, and that it is employed on lawful objects, the officer shall enter in the log-book of the vessel that the search has been made in pursuance of the aforesaid special instructions; and the vessel shall be left at liberty to pursue its voyage. The rank of the officer who makes the search must not be less than that of lieutenant in the navy, unless the command, either by reason of death or other cause, is at the time held by an officer of inferior rank.

Fourthly. The reciprocal right of search and detention shall be exercised only within the distance of two hundred miles, from the coast of Africa, and to the southward of the thirty-second parallel of north latitude, and within thirty leagues from the coast of the island of Cuba.

ARTICLE II

In order to regulate the mode of carrying the provisions of the preceding article into execution, it is agreed—

First. That all the ships of the navies of the two nations which shall be hereafter employed to prevent the African slave trade shall be furnished by their respective Governments with a copy of the present treaty, of the instructions for cruisers annexed thereto, (marked A,) and of the regulations for the mixed courts of justice annexed thereto, (marked B,) which annexes respectively shall be considered as integral parts of the present treaty.

Secondly. That each of the high contracting parties shall, from time to time, communicate to the other the names of the several ships furnished with such instructions, the force of each, and the names of their several commanders. The said commanders shall hold the rank of captain in the navy, or at least that of lieutenant; it being nevertheless understood that the instructions originally issued to an officer holding the rank of lieutenant of the navy, or other superior rank, shall, in case of his death or temporary absence, be sufficient to authorize the officer on whom the command of the vessel has devolved to make the search, although such an officer may not hold the aforesaid rank in the service.

Thirdly. That if at any time the commander of a cruiser of either of the two nations shall suspect that any merchant
vessel under the escort or convoy of any ship or ships of
war of the other nation carries negroes on board, or has been
engaged in the African slave trade, or is fitted out for the
purpose thereof, the commander of the cruiser shall communi-
cate his suspicions to the commander of the convoy, who, ac-
 companied by the commander of the cruiser, shall proceed to
the search of the suspected vessel; and in case the suspicions
appear well founded, according to the tenor of this treaty,
then the said vessel shall be conducted or sent to one of
the places where the mixed courts of justice are stationed,
in order that it may there be adjudicated upon.

Fourthly. It is further mutually agreed that the com-
manders of the ships of the two navies, respectively, who
shall be employed on this service, shall adhere strictly to
the exact tenor of the aforesaid instructions.

ARTICLE III

As the two preceding articles are entirely reciprocal,
the two high contracting parties engage mutually to make
good any losses which their respective subjects or citizens
may incur by an arbitrary and illegal detention of their
vessels; it being understood that this indemnity shall be
borne by the Government whose cruiser shall have been guilty
of such arbitrary and illegal detention; and that the search
and detention of vessels specified in the first article of
this treaty shall be effected only by ships which may form
part of the two navies, respectively, and by such of those
ships only as are provided with the special instructions
annexed to the present treaty, in pursuance of the provisions
thereof. The indemnification for the damages of which this
article treats shall be paid within the term of one year,
reckoning from the day in which the mixed court of justice
pronounces its sentence.

ARTICLE IV

In order to bring to adjudication with as little delay
and inconvenience as possible the vessels which may be de-
tained according to the tenor of the first article of this
treaty, there shall be established, as soon as may be prac-
ticable, three mixed courts of justice, formed of an equal
number of individuals of the two nations, named for this
purpose by their respective Governments. These courts shall
reside, one at Sierra Leone, one at the Cape of Good Hope,
and one at New York.

But each of the two high contracting parties reserves
to itself the right of changing, at its pleasure, the place
of residence of the court or courts held within its own
territories.

These courts shall judge the causes submitted to them
according to the provisions of the present treaty, and
according to the regulations and instructions which are annexed to the present treaty, and which are considered an integral part thereof; and there shall be no appeal from their decision.

ARTICLE V

In case the commanding officer of any of the ships of the navies of either country, duly commissioned according to the provisions of the first article of this treaty, shall deviate in any respect from the stipulations of the said treaty, or from the instructions annexed to it, the Government which shall conceive itself to be wronged thereby shall be entitled to demand reparation; and in such case the Government to which such commanding officer may belong binds itself to cause inquiry to be made into the subject of the complaint, and to inflict upon the said officer a punishment proportioned to any wilful transgression which he may be proved to have committed.

ARTICLE VI

It is hereby further mutually agreed that every American or British merchant vessel which shall be searched by virtue of the present treaty, may lawfully be detained, and sent or brought before the mixed courts of justice established in pursuance of the provisions thereof, if, in her equipment, there shall be found any of the things hereinafter mentioned, namely:

1st. Hatches with open gratings, instead of the close hatches, which are usual in merchant vessels.

2nd. Divisions or bulkheads in the hold or on deck, in greater number than are necessary for vessels engaged in lawful trade.

3rd. Spare plank fitted for laying down as a second or slave deck.

4th. Shackles, bolts, or handcuffs.

5th. A larger quantity of water in casks or in tanks than is requisite for the consumption of the crew of the vessel as a merchant vessel.

6th. An extraordinary number of water-casks, or of other vessels for holding liquid; unless the master shall produce a certificate from the custom house at the place from which he cleared outwards, stating that a sufficient security had been given by the owners of such vessel that such extra quantity of casks, or of other vessels, should be used only to hold palm-oil, or for other purposes of lawful commerce.

7th. A greater number of mess-tubs or kids than requisite for the use of the crew of the vessel as a merchant vessel.

8th. A toiler, or other cooking apparatus, of an unusual size, and larger, or capable of being made larger, than
requisite for the use of the crew of the vessel as a merchant vessel; or more than one boiler, or other cooking apparatus, of the ordinary size.

9th. An extraordinary quantity of rice, of the flour of Brazil, of manioc or cassada, commonly called farinha, of maize, Indian corn, or of any other article of food whatever, beyond the probable wants of the crew; unless such rice, flour, farinha, maize, Indian corn, or other article of food be entered on the manifest as part of the cargo for trade.

10th. A quantity of mats or matting greater than is necessary for the use of the crew of the vessel as a merchant vessel; unless such mats or matting be entered on the manifest as part of the cargo for trade.

If it be proved that any one or more of the articles above specified is or are on board, or have been on board during the voyage in which the vessel was captured, that fact shall be considered as prima-facie evidence that the vessel was employed in the African slave trade, and she shall in consequence be condemned and declared lawful prize; unless the master or owners shall furnish clear and incontrovertible evidence, proving to the satisfaction of the mixed court of justice, that at the time of her detention or capture the vessel was employed in a lawful undertaking, and that such of the different articles above specified as were found on board at the time of detention, or as may have been embarked during the voyage on which she was engaged when captured, were indispensable for the lawful object of her voyage.

ARTICLE VII

If any one of the articles specified in the preceding article as grounds for condemnation should be found on board a merchant vessel, or should be proved to have been on board of her during the voyage on which she was captured, no compensation for losses, damages, or expenses consequent upon the detention of such vessel shall, in any case, be granted either to the master, the owner, or any other person interested in the equipment or in the lading, even though she should not be condemned by the mixed court of justice.

ARTICLE VIII

It is agreed between the two high contracting parties that in all cases in which a vessel shall be detained under this treaty, by their respective cruisers, as having been engaged in the African slave trade, or as having been fitted out for the purposes thereof, and shall consequently be adjudged and condemned by one of the mixed courts of justice to be established as aforesaid, the said vessel shall, immediately after its condemnation, be broken up entirely, and shall be sold in separate parts, after having been so broken
up; unless either of the two Governments should wish to purchase her for the use of its navy, at a price to be fixed by a competent person chosen for that purpose by the mixed court of justice; in which case the Government whose cruiser shall have detained the condemned vessel shall have the first option of purchase.

ARTICLE IX

The captain, master, pilot, and crew of any vessel condemned by the mixed courts of justice shall be punished according to the laws of the country to which such vessel belongs, as shall also the owner or owners and the persons interested in her equipment or cargo, unless they prove that they had no participation in the enterprise.

For this purpose the two high contracting parties agree that, in so far as it may not be attended with grievous expense and inconvenience, the master and crew of any vessel which may be condemned by a sentence of one of the mixed courts of justice, as well as any other persons found on board the vessel, shall be sent and delivered up to the jurisdiction of the nation under whose flag the condemned vessel was sailing at the time of capture; and that the witnesses and proofs necessary to establish the guilt of such master, crew, or other persons shall also be sent with them.

The same course shall be pursued with regard to subjects or citizens of either contracting party who may be found by a cruiser of the other on board a vessel of any third Power, or on board a vessel sailing without flag or papers, which may be condemned by any competent court for having engaged in the African slave trade.

ARTICLE X

The negroes who are found on board of a vessel condemned by the mixed courts of justice, in conformity with the stipulations of this treaty, shall be placed at the disposal of the Government whose cruiser has made the capture. They shall be immediately set at liberty, and shall remain free, the Government to whom they have been delivered guaranteeing their liberty.

ARTICLE XI

The acts or instruments annexed to this treaty, and which it is mutually agreed shall form an integral part thereof, are as follows:

(A.) Instructions for the ships of the navies of both nations, destined to prevent the African slave trade.

(B.) Regulations for the mixed courts of justice.
ARTICLE XII

The present treaty shall be ratified, and the ratifications thereof shall be exchanged at London, in six months from this date, or sooner if possible. It shall continue and remain in full force for the term of ten years from the day of exchange of the ratifications, and further, until the end of one year after either of the contracting parties shall have given notice to the other of his intention to terminate the same, each of the contracting parties reserving to itself the right of giving such notice to the other at the end of said term of ten years; and it is hereby agreed between them that, on the expiration of one year after such notice shall been received by either from the other party, this treaty shall altogether cease and determine.

In witness whereof the respective Plenipotentiaries have signed the present treaty, and have thereunto affixed the seal of their arms.

Done at Washington the seventh day of April, in the year of our Lord one thousand eight hundred and sixty-two.

[Seal]

William H. Seward
Lyons
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