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Article

Swords into Plowshares: A Pilgrimage for the CSS Alabama

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They shall beat their swords into plowshares, and their spears into pruning hooks.
Nation shall not raise sword against nation, nor will they study war anymore.[1]

ABSTRACT

During the American Civil War, Britain sold ships to the Southern Confederacy in breach of neutrality obligations, triggering a dispute with the United States carrying threats of armed conflict. Some American politicians saw the dispute as an opportunity to annex Canada, then a weak assemblage of British colonies. Ultimately, arbitration in Geneva averted war, opening an era of long Anglo-American cooperation. The historical consequence of this landmark 1872 arbitration remains difficult to overstate. In addition to its diplomatic importance, the case introduced significant procedural precedents for international arbitration, including dissenting options, reasoned awards, party-appointed arbitrators, collegial deliberations, and arbitrators' declarations on their own jurisdiction. The saga of the CSS *Alabama*, the vessel from which the arbitration took its name, provides a narrative as griping in detail as the arbitral proceedings prove meaningful in legal legacy.

1. ARBITRATION AND INTERNATIONAL LAW

In September 1872, an arbitral tribunal in Geneva directed Great Britain to pay the United States US$15.5 million in gold, an amount near US$330 million in today's money.[2] The arbitral award fixed damages for Britain's role in building, fitting, and servicing ships to help the secessionist Southern Confederacy during the American

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1 Isaiah 2:4. Biblical references to 'swords into plowshares' also receive mention by other Hebrew prophets: Micah 4:3 and Joel 3:10. In farming, the 'share' of a plow comprises a cutting edge to break soil for planting. The prophets evoke an image of destructive instruments, swords, transformed into tools for productive work, the plowshares.

2 Alabama Claims, *United States v Great Britain*, 29 RIAA (Reports of International Arbitral Awards/Recueil des Sentences Arbitrales) 125–34 (Nations Unies-United Nations), Award of 14 September 1872 rendered by tribunal established under art 1, Treaty of Washington, 8 May 1871, accessible with related documents on website of Historian of the US Department of State: <https://history.state.gov/historicaldocuments/frus1872p2v4/d34> accessed 30 June 2021.

Civil War, creating a naval force that inflicted significant harm on the Northern Union merchant fleet.[3]

That Civil War split the United States in a bloody fratricidal conflict lasting from 1861 through 1865. During much of that time, the sailing vessel *Alabama* circled the globe under command of its charismatic captain, Raphael Semmes, commissioned by the South to attack Northern shipping. The great wheel of the *Alabama* bore an ambitious motto engraved in bronze: *Aide-toi et le ciel t'aidera*, equivalent to 'God helps those who help themselves'.

Following the Civil War, the United States sought reparations for damages caused by the CSS *Alabama* and other vessels supplied by Britain to the South during that conflict. By the 1871 Treaty of Washington, the two countries agreed to arbitrate their differences in Geneva, averting military action and setting paradigms for international dispute resolution.[4]

In the British peace movement of that day, many saw the Geneva proceedings as a model for ending war through arbitration.[5] British acceptance of arbitration also owed much to the unfortified borders of Canada, then a weak assemblage of British colonies presenting easy pickings for invasion by the United States.[6]

3 For ease of expression, the terms 'Confederacy' and 'South' refer to the eleven states that seceded during the Civil War, with 'Union' and 'North' designating states not in rebellion. The term 'United States' applies to the entire country before and after the War, or to the Union's diplomatic presence in wartime. Thus, in 1863, one might refer to the 'Union' navy or the 'Confederate' navy, but to the 'United States' embassy in London.

4 On the significance of the arbitration, one authority notes as follows: 'Settling the Alabama Claims is an obscure episode that has receded in history and sounds a trifle dated and musty, of interest only to professional historians. Yet its dramatic importance cannot be overstated, for it showed the value of international arbitration, banished lingering ill will between the United States and Great Britain, and launched a new fraternal relationship of major consequence.' Ron Chernow, *Grant* (2017) 727.

5 See Paul Laity, *The British Peace Movement 1870-1914* (2001). The British Peace Society adopted 'Swords into Plowshares' (Isaiah 2:4) for the masthead of its journal *Herald of Peace*. Hopes of 'peace through arbitration' overlapped 19th century Messianic movements with analogous aspirations. See Yaakov Ariel and Ruth Kark, 'Messianism, Holiness, Charisma and Community: The American-Swedish Colony in Jerusalem' 65 Church History 641–57 (1996), describing pilgrimages to Jerusalem from Chicago and from Dalarna (Sweden) in 1881 and 1896, respectively, which triggered the 1902 novel *Jerusalem* by Selma Lagerlöf, the first woman to receive a Nobel Prize for Literature. See also Tom Powers, *Jerusalem's American Colony* (2009).

6 Annexation of Canada had been pressed by the irascible Bostonian, Charles Sumner, who during much of the treaty negotiations with Britain had served as Chair of the US Senate Foreign Relations Committee, although ousted from that position in March 1871, prior to conclusion of the Treaty of Washington. Sumner initially demanded not only annexation of Canada, but British withdrawal from the entire Western Hemisphere including the Caribbean and the Falkland Islands. See Chernow (n 4) 722. Sumner's bad temper derived in part from a beating by South Carolina Congressman Preston Brooks, whose kinsman Sumner had disparaged. See Stephen Puleo, *The Caning: Assault that Drove America to Civil War* (2012); Arthur T Downey, *Civil War Lawyers* (2010). A vignette about the war threat appears in memoirs of a woman whose plantations were burned by Union troops. Recounting 'talk of war' between England and the United States because of the *Alabama*, she adds that 'ex-Confederate soldiers would have gladly aided [England] to whip the United States.' Cecilia Lawton, *Memoir of Plantation Life, War, and Reconstruction in Georgia and South Carolina* (Karen Stokes ed, Mercer U Press 2021) 74, review by C Michael Harrington, 'A Southern Plantation Mistress's Account of Sherman's March and Reconstruction' *Civil War News* (2021).

Johnny Veeder, to whom this essay pays tribute, described the *Alabama Arbitration* as lying at 'the origin of what international arbitration is today'.[7] Beyond cavil, few arbitrations impose more lasting traces than these proceedings arising from depredations of British-built vessels.[8] The arbitration's starring role in the development of international adjudication derives not only from the nature of the conflict and the magnitude of the debates, but also from how the arbitrators addressed significant procedural and jurisdictional questions. Legacies of the case touch both the substance of international law and the procedural evolution of international dispute resolution.[9] Attributes of modern arbitration derived from the *Alabama Arbitration* include reasoned awards, party-appointed arbitrators, dissenting opinions, collegial deliberations, and arbitral declarations on their own jurisdiction, to which we shall turn after a short introduction to the facts giving rise to the proceedings.

2. THE CONFEDERATE NAVY

The narrative of the CSS *Alabama* starts with agents of the Southern Confederacy travelling to London early in 1861, just after the start of the American Civil War. The secessionist states dispatched representatives seeking ships to prey on Union merchant vessels, with the aim of crippling Northern commerce. The Confederacy obtained two dozen gunboats, cruisers, and transports. Three vessels later gained fame as the *Alabama*, the *Florida*, and the *Shenandoah*, each designated 'CSS' to indicate Confederate States Ship.

2.1 The Alabama

The CSS *Alabama* had the privilege of giving her name to the arbitration in Geneva. Built as *Hull 290* by the Laird shipbuilders at Birkenhead near Liverpool, the ship

7 VV Veeder, 'The Historical Keystone to International Arbitration: The Party-Appointed Arbitrator' in David Caron and others (eds), *Practising Virtue: Inside International Arbitration* (Festschrift for Charles Brower 2015) 127, 147, adapted from (2013) 107 Proc Am Soc Int'l Law 387. In any set of essays to Veeder's honor, comment on the *Alabama Arbitration* commends itself by virtue of Johnny's links both to Britain and to the United States , as well as his love of the sea. Veeder's ties to Britain include a Cambridge education and practice as a London-based barrister. No less significant, Johnny's ties to the United States include an American wife named Marie, and a sailboat named *Hurricane*, moored in the coastal New England village where his wife was raised.

8 In his magisterial treatise on international law, Professor John Bassett Moore of Columbia University wrote that the *Alabama Arbitration* 'was justly regarded as the greatest [arbitration] the world had ever seen'. JB Moore, *History and Digest of the International Arbitration to Which the U.S. has been a Party* (vol 1 1898) 652–53. Of course, the 'greatest ever seen' label affixed itself more easily at a moment when the world had observed fewer arbitrations than today.

9 See Tom Bingham, 'The Alabama Arbitration' (2005) 54 Int'l & Comp LQ 1; Charles Brower II, 'Alabama Arbitration' in R Wolfrum (ed), *Max Planck Encyclopedia Public International Law* (2012); Bruno de Fumichon and William W Park, 'Retour sur L'Affaire de L'Alabama' (2019) 2019 Rev de l'Arbitrage 743; A Ouedraogo, 'La Neutralité Et L'émergence du Concept de due Diligence en Droit International - L'affaire de l'Alabama revisitée' (2011) 13 J Hist Int'l L/J D'Hist Droit Int'l 307; Jan Paulsson, 'The Alabama Arbitration: Statecraft and Stagecraft' in U Franke, A Magnusson and J Dahlquist (eds), *Arbitrating for Peace: How Arbitration Made a Difference* 7 (2016); A de La Pradelle and N Politis, *Recueil Des Arbitrages Internationaux*, vol II (1923) 902. For a note focusing on the legacy of the 1872 proceedings, see Bruno de Fumichon, 'The *Alabama* Arbitration: From Compromise to Legacy' in Neil Kaplan and Robert Morgan (eds), *Lawyer, Scholar, Teacher and Activist, A Liber Amicorum in honour of Derek Roebuck* (2021) 229.

initially took the name *Enrica* in order to give credence to the ruse that she was meant for the Italian government, not the Confederacy. The ruse did not go unnoticed by the American Ambassador to London, Charles Francis Adams, who urged Britain to detain the vessel.

Relying on false information from the shipbuilders, British Foreign Secretary Lord John Russell said he could not act without evidence of subterfuge. In response, the United States consul at Liverpool gathered copies of letters by Confederate agents and affidavits from British sailors already recruited, demonstrating that the ship was built for hostilities. Ambassador Adams forwarded the documents to Lord Russell.

In the interim, Confederate agents, alerted to possible detention of the vessel, worked to accelerate her departure. The ship put to sea under pretence of a trial run, celebrated with music and lady guests, permitting escape before orders from London to stop the departure. The vessel sailed to Terceira in the Portuguese Azores, to be armed and outfitted. On 24 August 1862, she was commissioned CSS *Alabama* with two dozen officers and over a hundred enlisted men, most British nationals, all under command of Captain Semmes.[10] Subsequently, the CSS *Alabama* went around the world, preying on Union commercial shipping in the Atlantic and Indian Oceans, as well as the South China Sea. The vessel approached victims under a British flag, boarded the ships by surprise, seized cargo, and later freed the crew in a neutral port. In two years, the CSS *Alabama* took sixty Union transports and whalers, and sank the USS *Hatteras* off Galveston, Texas, while that Union gunboat attempted to blockade Southern ports.

The CSS *Alabama* met her end on 19 June 1864, sunk by a Union gunboat, the USS *Kearsarge*, off the Normandy coast near Cherbourg, France, where the Confederate vessel had come for repairs. Crew of the CSS *Alabama* were rescued by British yachts and welcomed with enthusiasm in England, following which they were released to fight again.

The press in London and Paris had given advance announcement of the battle, which took the character of a medieval joust, watched by onlookers arriving from Britain on private yachts, one of which rescued Semmes. Trains from Paris brought French spectators, among them the Impressionist painter Édouard Manet whose tableau of the naval engagement took the title *Le Combat du Kearsarge et de l'Alabama*.[11]

The CSS *Alabama* maintains a special cultural legacy in South Africa. When the Confederate raider docked for supplies in Cape Town, then a British colony, the

10 A graduate of the US Naval Academy at Annapolis, Raphael Semmes worked after the Civil War at a multitude of jobs, including professor of philosophy and literature at Louisiana State University. He edited a newspaper and practiced law in Mobile, Alabama. His *Memoirs of Service Afloat, During the War Between the States* was published in 1869 and republished by Alacrity Press in 2012. On the life of Semmes, see Warren F Spencer, *Raphael Semmes: The Philosophical Mariner* (1997). See also the account by one of his officers, in Arthur Sinclair, *Two Years on the Alabama* (1896).

11 The Manet now hangs in the Philadelphia Museum of Art. Other depictions of the battle include *Sinking of the CSS Alabama*, painted later by American artist Xanthus Russell Smith, now in the Franklin D Roosevelt Presidential Library, Hyde Park, New York.

ship made such an impression on the populace as to give rise to an Afrikaans folk-song *Daar Kom Die Alibama*, still sung today with dancing at holidays.[12]

2.2 The Florida

Initially presented by her builders as the *Oreto*, ordered for a British subject as agent of a Palermo firm purporting to represent the Italian government, the vessel's true nature as a warship had been difficult to disguise, given lack of storage for transport of commercial goods, and an outfitting to receive six large guns. She left Liverpool in early 1862 with a British crew, destined for Nassau, Bahamas, a British colony relatively close to ports of the Confederacy. In Nassau she received arms, additional crew, and her captain.

Prior to her arrival in Nassau, the United States consul in the Bahamas requested the ship's seizure on arrival, in accordance with Britain's declaration of neutrality. The British governor in Nassau directed inspection of the *Oreto* by an officer of the Royal Navy, who found her unsuitable to mercantile shipping due to lack of storage. The officer also noticed guns, ammunition, and a large Confederate flag.

Notwithstanding the report of the Royal Navy, a Nassau admiralty judge found no violation of the neutrality declaration, suggesting as pure speculation a report of the ship's aim to join the Confederate navy. Following fraud in her departure from Liverpool, and complicity by the judicial authorities in Nassau, the ship left under British colours in August 1862, travelling through the Union blockade of Southern ports to receive a commission in the Confederate Navy with the name CSS *Florida*.

After running the Union blockade to reach Nassau again, the CSS *Florida* proceeded to prey on Union merchant shipping, taking two dozen Northern ships with a value estimated at more than US$6 million at the time. In October 1864, she was finally captured in Brazilian waters by the Union warship, the USS *Wachusett*, built in Boston and named for a small mountain in central Massachusetts.

2.3 The Shenandoah

The last of the three major ships to figure in the Geneva arbitration, CSS *Shenandoah*, was built in Scotland as the *Sea King*, allegedly for transport in the China trade. Initially registered to a British subject fronting for the Confederacy, the ship left for Madeira, a Portuguese island in the Atlantic, where she received armament, crew, and captain. Renamed CSS *Shenandoah*, the vessel took a new flag and commission. The vessel docked in Melbourne, then a British colony, to recruit crew in violation of Britain's neutrality. In response to inspection attempts by port authorities, the captain pledged his 'word of honor as a gentleman' that no recruitment took place. Britain accepted the representation, an act that proved 'too polite' according to Count Sclopis, president of the *Alabama Arbitration* tribunal.

The *Shenandoah* remains unique among the ships implicated by the Geneva arbitration, in that she roamed the Pacific for months after the surrender of the main Confederate army by General Robert E Lee at Appomattox. Without telephone or

12 In Afrikaans, the song runs: 'Daar kom die Alibama, Die Alibama kom oor die see. Daar kom die Alibama, Die Alibama kom oor die see.' In English: 'There comes the Alabama, the Alabama comes over the sea. There comes the Alabama, the Alabama comes over the sea.'

email, the ship's captain believed that Confederate President Jefferson Davis continued the war independently of Lee's army.[13]

This iron-framed teak ship operated in North Pacific whaling grounds, before heading towards the Arctic Ocean, capturing dozens of Yankee whalers. Only in August 1865, after the Civil War ended, did the ship's captain learn that all Confederate armies had surrendered. The *Shenandoah* then sailed via Cape Horn to Britain, entering the River Mersey in November 1865, where all her officers and crew were released on parole.

3. NOTIONS OF NEUTRALITY

3.1 British ambivalence

Early in the 19th century Britain ended the slave trade and abolished its colonial slavery. Nevertheless, many in Britain remained sympathetic to the Confederacy, given that Lancashire mills depending on Southern cotton to make textiles.

Against that backdrop, Britain on 13 May 1861 issued a proclamation of neutrality in the American Civil War.[14] At that time, the relevant law of naval neutrality derived largely from the British Foreign Enlistment Act of 1819, prohibiting recruitment of British subjects for service in a foreign navy. Nonetheless, British seamen enlisted in the Confederate navy after being recruited by employment companies operating for the South. British shipyards remained ready to help the South build and service its fleet.

Rightly or wrongly, English courts sometimes interpreted the Foreign Enlistment Act in a way that assisted the South. A ship initially named the *Alexandra* had been launched in 1863 after being built in Liverpool. The American ambassador in London gave Lord Russell, British Foreign Secretary, evidence of the ship's military purpose and Southern destination.[15] In subsequent legal proceedings, a court found the law prohibited only fitting and arming of ships, not their construction. Since the *Alexandra* had not yet been fitted or armed, she was released. After a change of name to the *Mary*, the ship (now fitted and armed) set sail as a privateer for the Confederates, capturing Union shipping while visiting British ports such as Halifax and Bermuda, until seized in December 1864 at Nassau.

3.2 Benevolent neutrality

In hindsight, neutrality often bears a chameleonlike character, changing colour, morally and legally, depending on the background of neutrality violations. Turning a blind eye to construction of ships for the Confederacy, Britain manifested a neutrality 'benevolent' towards the South that later presented itself in a

13 See Amanda Foreman, *A World on Fire: British Involvement in the American Civil War* (2010) 719, recounting details of the *Shenandoah*'s surrender.

14 Derived from a proclamation issued 13 May 1861, the British neutrality commitment appears uncontested, as confirmed by the 1872 award itself issued in the *Alabama Arbitration*.

15 See generally Frank J Merli, *The Alabama, British Neutrality, and the American Civil War* (David M Fahey ed, 2004), edited by Professor David M Fahey after an illness shortened completion by Professor Merli.

most unfavourable light, given the North's victory in a Civil War fought largely over slavery.[16]

In contrast, consider the 'benevolent neutrality' in a vignette about an officer in the US Navy during the Second World War, assigned to gunnery duty on the merchant ship *Julia Ward Howe* in convoy across the Atlantic Ocean. In late January 1943, blown off course by heavy weather, the isolated ship was torpedoed by a German submarine. Floating in rafts, survivors were rescued by a Portuguese vessel and taken to Ponta Delgada in the Azores, then Portuguese territory, northwest of Terceira where eighty years earlier a British-built ship had been transformed into the CSS *Alabama*.

Officially Portugal remained neutral during the Second World War. Thus, the officer should have been kept in the Azores for the war's duration, preventing return to combat on behalf of the American Navy. The benevolent attitude of Portugal towards the Anglo-American wartime alliance led to a different outcome, however.[17]

During his time in the Azores, for which he retained a life-long affection, the rescued American officer read and re-read the one English-language book he could find: *Beware of Pity*, a translation of the novel by Austrian writer Stefan Zweig. That novel narrated a relationship between a Hapsburg cavalry soldier and the paralyzed daughter of a Hungarian landowner on the eve of the First World War.[18]

That Austrian novel led the author of this present essay to a fuller appreciation for shades of naval neutrality. During an American Thanksgiving dinner in New England, years after the shipwrecked officer's internment in the Azores, my father noticed his elder son reading *Beware of Pity* and remarked: 'Years ago I read that book four times. The only book in English on Delgada.' Our family then listened to the tale of benevolent neutrality in relation to the torpedoed ship and the officer's escape from the Azores.

As the officer read and re-read the book by Zweig, the Portuguese grew weary of feeding the American. Reciprocal internment fatigue led to an exit plan, with the local mayor turning his back while the officer boarded a steamer for London, rejoining the American Navy for the rest of the war: precisely what neutrality obligations aimed to prevent.

The incident illustrates how context affects the moral tone and the legal consequences of a neutral country's aid to belligerents. In one instance a Portuguese mayor permitted an American naval officer to rejoin his command to struggle against

16 On the law of neutrality, see generally Robert W Tucker, *The Law of War and Neutrality at Sea* (1955) 165–95, reprinted in International Law Studies series published by the Naval War College of Newport, Rhode Island.

17 The alliance between Portugal and England goes back to the 1386 Treaty of Windsor, sealed by the marriage of King John of Portugal and Philippa of Lancaster, a treaty which in turn affirmed an earlier pledge of perpetual friendship between the two seafaring nations.

18 After publication in 1939, Zweig's *Ungeduld des Herzens* ('Impatience of the Heart') received translation into English as *Beware of Pity* and into French as *La Pitié Dangeureuse*. The remarkable work of Stefan Zweig did not limit itself to fiction, but included significant historical essays, including comment on religious freedom through narrative of the life of Spanish physician Michael Servetus, in *Castellio gegen Calvin oder Ein Gewissen gegen die Gewalt* (1936), taking a 16th century Geneva heresy trial as the springboard for reflection on the Nazi menace present in Europe at the date Zweig was writing.

Nazis. In another case, Britain helped a rebellious Confederacy in a war linked to maintaining slavery.

4. THE ARBITRATION

4.1 The Treaty of Washington

On 8 May 1871, Britain and the United States concluded the Treaty of Washington,[19] instituting tribunals and commissions to settle several disputes arising from the American Civil War, chief of which were the so-called *Alabama Claims*. The proceeding avoided war between Britain and the United States, and established procedural precedents to guide international arbitrations.[20] The Treaty combined an agreement to arbitrate with provisions for the law to be applied by the arbitrators. Building on principles elaborated over the prior half century, Article VI of the Treaty set forth three so-called '*Rules*' to cover British actions in respect of the Southern Confederacy during the American Civil War.[21]

The *First Rule* provided that a neutral government must use 'due diligence' to prevent the fitting, arming, or equipping, within its jurisdiction, of any vessel which it had reasonable ground to believe was intended for war, and to prevent departure from neutral territory of vessels specially adapted for war. The 'due diligence' requirement covered situations that had remained ambiguous in prior law, but did not *per se* preclude construction of vessels. The *Second Rule* forbade a neutral from allowing a belligerent to use its ports as a base of naval operations, or for renewal or augmentation of military supplies or recruitment of crew. The *Third Rule*

19 A contemporaneous account of negotiation of the Treaty appears in Caleb Cushing, *Treaty of Washington* (1873) (appending the texts of the 8 May 1871 Treaty and the 14 September 1872 award). Congressman from Massachusetts, Cushing served at the Geneva arbitration as counsel to the United States, appointed by President Grant. Four decades later, Cushing's secretary wrote his own account. See Frank Warren Hackett, *Reminiscences of the Geneva Tribunal of Arbitration* (1911), Introduction at ix (observing that 'time cannot lessen the interest with which the statesman must look back upon it.').

20 The notion of 'precedents' remains problematic for arbitration. In national legal systems precedent often provides a measure of certainty permitting people to regulate their affairs. In international law, precedent plays a softer role, with past decisions guiding future conduct in a less binding fashion. The extent to which arbitrators must follow precedent has been explored by Pierre Mayer, 'Reflections on the International Arbitrator's Duty to Apply the Law' (2001) 17 Arb Int'l 235. See also, W Michael Reisman, 'Case Specific Mandates v Systemic Implications: How Should Investment Tribunals Decide?' (2013) 29 Arb Int'l 131; William W Park, 'Arbitration's Protean Nature: The Value of Rules and the Risks of Discretion' (2003) 19 Arb Int'l 279. See also Gabrielle Kaufmann-Kohler, 'Arbitral Precedent: Dream, Necessity or Excuse?' (2007) 23 Arb Int'l 357, 358, and 374, distinguishing legal and moral duties for arbitrators to follow prior cases.

21 In passing, one notes that determination of applicable law for state actors has long been problematic. See award in *Aramco Arbitration* of 23 August 1958, (1963) 27 Int'l Law Rep 117, discussed in Stephen M Schwebel, 'Kingdom of Saudi Arabia and Aramco Arbitrate the Onassis Agreement' (2010) 3 J World Energy Law & Bus 245. A 1933 concession between Saudi Arabia and a subsidiary of Standard Oil of California, later Aramco, triggered disputes when King Abdul Aziz, son of the Kingdom's founder, awarded transport contracts to Greek shipping magnate Aristotle Onassis. When Aramco contested the contracts, a 1955 agreement between Aramco and Saudi Arabia referred the dispute to arbitration pursuant to Islamic law 'as interpreted by the Hanbali school'. One expert said the Hanbali school did not permit private appropriation of liquid underground minerals, preventing Aramco from receiving exclusive rights. Another expert endorsed a view that Muslim leaders could grant control of minerals. The Geneva arbitral tribunal found the Hanbali school 'embryonic' on the question, ruling the Onassis agreement incompatible with the Concession.

required a neutral to exercise due diligence in its own ports or waters, and with respect to all persons within its jurisdiction, in order to prevent violation of the obligations and duties set forth in the two earlier rules. This 'catch-all' obligation aimed at the type of behaviour in which British ports had provided assistance favourable to Confederate cruisers.

Britain did not assent to the three *Rules* as representing international law during the period of the American Civil War. Rather, Britain accepted that the arbitrators would apply those principles to the then–current disputes, describing articulation of the *Rules* as a British concession to friendly relations with the United States. The Treaty committed Britain and the United States to observe these *Rules* in the future.[22]

Britain's partial acceptance of the *Rules* may owe something to concerns about Europe's balance of power. In 1870 Prussia defeated France in war, founding a Reich ambitious for naval as well as land supremacy. In any conflict with the emerging German empire, Britain would have sought from the United States a neutrality more genuine than that demonstrated by Britain towards the Southern Confederacy.

The arbitral process contemplated by the Treaty of Washington built on 'mixed commissions' used for earlier dispute settlement,[23] with the *Alabama Claims* to be decided by five arbitrators in Geneva, two appointed by the disputing parties, Britain and the United States, and the remaining three appointed by Brazil, Italy, and Switzerland. These arbitrators would decide by a majority.

The arbitral tribunal included a cavalcade of stars. Queen Victoria appointed Sir Alexander Cockburn, Britain's Lord Chief Justice, clever and learned, but arrogant even by criteria of his day.[24] Cockburn was known for his brilliant mind and his dubious reputation, having seduced one of Queen Victoria's ladies in waiting. American President Ulysses Grant appointed Charles Francis Adams, a distinguished Bostonian, son and grandson of two American presidents. Like his father and grandfather, Adams had served as American ambassador to London.

The King of Italy, Vittorio Emanuele II, named Count Federico Sclopis, a jurist from the Piedmont and later president of the Italian Senate. Brazilian Emperor Pedro II named Marcos Antonio d'Araujo, Baron d'Itajuba, Brazil's ambassador to Paris and Professor of Law at the University of Olinda. Switzerland chose Jakob

22 Treaty art VI, following declaration of the Rules, includes a statement that Her Britannic Majesty did not assent to the Rules as law in force at the time when the claims arose, but agreed that in deciding questions between the two countries arising out of Civil War claims, 'the Arbitrators should assume that her Majesty's Government had undertaken to act upon the principles set forth in these rules.' Britain and the United States also agreed to observe these rules as between themselves in future, and to bring them to the knowledge of other Maritime Powers.

23 A notable example lay in the 1794 Jay Treaty, named for John Jay, the New York jurist who served as first Chief Justice of the US Supreme Court. Traveling to London to resolve questions left open by the American Revolution, Jay helped establish procedures to address the border with Canada, American debts to British businesses, and compensation for British seizure of American ships. Mixed commissions included representatives from each side in equal number, with a chair (president) either agreed by the parties or drawn by lot, but without a casting vote. Decisions were to be unanimous.

24 Under today's standards for arbitrator impartiality, Cockburn would likely be rejected as arbitrator, having advised Lord Palmerston that the *Alabama* could leave Birkenhead.

Stämpfli, a jurist from Berne whose strong mind and personality permitted him to play key roles in brokering pivotal compromises.[25]

Claims by American citizens would be presented by the United States government, with damages paid by Britain then distributed among the private claimants. The Treaty provided for the arbitral tribunal to determine British liability with respect to Union vessels destroyed or captured by Confederate ships built or serviced in Britain in violation of neutrality obligations set forth in the aforementioned three *Rules* of the Treaty. The tribunal was to decide whether Britain, by act or omission, failed to fulfil its duties of neutrality. Liability would be fixed for each of the Confederate vessels that received assistance in violation of principles of neutrality. The arbitrators would determine the sum of damages, albeit with the caveat that questions of quantum could be sent to a board of assessors.

4.2 The Geneva Proceedings

The arbitration took place in Geneva's Old City Hall in a room now known as *La Salle Alabama*,[26] with more than twenty sessions during the three months following final written submissions in June, until issuance of the award in September. The case initially proceeded swiftly, with arbitrators meeting to organize their tribunal on 15 December 1871. The parties delivered their memorials and evidence in a timely fashion.[27] Counter-memorials were delivered on 15 April 1872. Then things began to go awry. For its closing argument, the United States met the deadline of 15 June 1872, while Britain did not.

The British submitted a note expressing regret that the governments were unable to agree on the arbitrators' jurisdiction. The United States had claimed compensation not only for the destruction of Northern ships and cargoes, but also for harm from alleged prolongation of the war after the Battle of Gettysburg in July 1863. Such indirect damages from extended warfare included lower exports, increased costs of marine insurance, and transfer of commercial shipping to non-American vessels,

25 Stämpfli had sat as Councilor in the *Bundesrat* (*Conseil Fédéral*), the cabinet of ministers for the Swiss Confederation, which transfers a presiding gavel among its members in rotation. At various times, he had headed the Swiss Ministries of Justice, of Finance, and of Military, as well as serving three terms as Chair of the Council itself.

26 The room memorializes this milestone in peaceful dispute resolution with a metal plowshare evoking the Biblical prophecy of Isaiah 2:4, to the effect that in Messianic times nations shall beat 'swords into plowshares'. *La Charrue de la Paix* ('Plowshare of Peace'), made from swords of American army officers, first appeared at the 1876 Philadelphia Centennial Exposition. After exhibition in Paris at the 1878 *Exposition Universelle*, the Universal Peace Union gifted the Plowshare to the people of Geneva. In 1864 the same room served to create the Comité International de la Croix-Rouge (CICR), responsible for humanitarian protection of war victims. See *Hôtel de Ville de Genève*, Chancellerie de l'Etat de Genève, Imprimerie Studer SA, Genève (Décembre 1968), updated by Barbara Roth-Lochner and Livio Fornara (1986). On the Swiss role in international dispute resolution, see Gabrielle Kaufmann-Kohler and Antonio Rigozzi, *International Arbitration: Law and Practice in Switzerland* 33–36, ss1.105–1.107 (2015).

27 The Treaty established a filing sequence in its arts IV, V, and VII, with the two sides to begin with simultaneous exchange of memorials and evidence, which simultaneity might be considered disadvantageous to Britain, forced to speculate on details of the claims, even before seeing the formal American submission. Then there was to be simultaneous counter-memorials four months later, with written summaries of evidence and argument delivered in another two months. The Treaty gave the tribunal authority to require further written statements, with replies, as well as oral argument.

all estimated at US$2 billion, in value today an amount more than twenty times larger, near US$42 billion.

Ultimately, on 19 June 1872, the tribunal issued a declaration that indirect claims did not constitute a foundation for compensation or damages in this particular case, and thus would be excluded from the consideration in making its award. In practice, the declaration on indirect claims constituted a jurisdictional ruling, with the tribunal limiting its authority to fixing direct damages only. Britain then filed final written submissions, and the tribunal proceeded to make decisions for each vessel.

4.3 The award

On 14 September 1872, the arbitral tribunal announced its decision, awarding US$15.5 million in gold as an indemnity to be paid by Britain for breach of neutrality in respect of Southern vessels, principally the *Florida*, the *Alabama*, and the *Shenandoah*. The award added an interpretative wrinkle to a neutral nation's obligation to exercise due diligence to prevent fitting, arming, or equipping of vessels intended for war. According to the arbitrators, diligence must be exercised 'in exact proportion' to risks posed by failure to meet neutrality obligations.[28] Costs of action and inaction would be weighed against each other, with greater risk to the Union requiring greater diligence by Britain in respect to ships constructed in her territory.

With respect to the CSS *Alabama*, all arbitrators considered Britain in default regarding its duties as a neutral. Sir Alexander Cockburn, however, refused to sign the award and issued a lengthy separate opinion, elaborating further on notions of proportionality in the duty of diligence. The arbitral tribunal found unanimously that British authorities ignored warnings of American diplomats, failing to take measures to prevent construction in Birkenhead or departure for armament in the Azores. Detention orders came too late to be executed. After its 'escape', the *Alabama* was freely admitted into the ports of British colonies.

For the *Florida* and the *Shenandoah*, liability was found by a majority only.

Regarding the CSS *Florida*, four arbitrators, with Cockburn dissenting, judged that Britain failed to fulfil neutrality obligations, not only in allowing the vessel to be constructed in Liverpool, but also in allowing enlistment of crews and supplies when she reached Nassau.

For the CSS *Shenandoah* a majority found liability, with Brazilian Baron d'Itajuba joining Sir Alexander Cockburn in dissent. The award held Britain liable only for acts during the vessel's stop in Melbourne, then a British colony. Confederate agents had skilfully concealed her departure from Scotland, thus obviating liability at the point she left British waters. During the ship's stay at Melbourne, however, the *Shenandoah* enlisted more sailors. Britain thus failed in her duties as a neutral, permitting belligerent use of her ports for naval operations.

After determining liability for British assistance in connection with the ships, the tribunal tackled quantum of damages. By a majority (Cockburn, joined by the Italian

28 This proportionality test appeared in the award's definition of 'due diligence' (as it appeared in art VI of the Treaty of Washington), stating that a neutral must exercise the duty of due diligence 'in exact proportion to the risks to which either of the belligerents may be exposed from a failure to fulfil the obligations of neutrality on their part'. Alabama Claims Case (US v Gr Brit) 19 RIAA 125, 129 (1872).

Sclopis and the Brazilian d'Itajuba), the tribunal rejected so-called 'costs of pursuit' representing expenses of the Union Navy hunting for Southern ships, deemed indistinguishable from general war expenses. In detail, the award addressed claims not only for the three principal ships, but also for tenders and other auxiliary vessels, with exotic names like *Tuscaloosa*, *Nashville*, *Tallahassee*, *Jefferson Davis*, and even *Boston*, the last a surprising name for a Confederate ship. For each vessel, the award decided whether Britain failed in its duties as a neutral, based on factual analysis, including when vessels took coal in British ports.

After the award was read publicly at the Hôtel de Ville in Geneva, Sir Alexander Cockburn produced his separate opinion disagreeing on many matters, including the sum of damages. According to Cockburn, the American propositions demonstrated a most singular confusion of ideas, misrepresentations of facts, and ignorance of law and history.

5. CONTINUING THE PILGRIMAGE

5.1 Precedents and prototypes

The 1872 proceedings in Geneva met their objective of avoiding armed conflict between Britain and the United States. The two sides accepted the decision, even though each hoped for a different result, with Britain seeking a more modest award, and the United States expecting indirect damages for a war prolonged by British assistance to the South's navy.

During the century and a half since the award, the arbitration has taken its own pilgrimage, leaving an example of orderly international dispute resolution. The award made stops in university lecture halls, scholarly treatises, and lawyers' briefcases, with side visits to foreign offices and state departments. The arbitration paved the way for Anglo-American cooperation on strategic interests in an alliance that endures to this day, and confirmed substantive rules of international law related to naval neutrality and state responsibility.

The *Alabama Arbitration* also gave guidance for key features of modern international arbitration procedure building on compromises and among rival goals in fair and peaceful dispute resolution. As presiding arbitrator, Count Sclopis recognized the importance of such trade-offs when accepting a separate opinion from Sir Alexander Cockburn. From one perspective, a separate opinion with dissenting views might weaken the award by revealing flaws in reasoning. From another viewpoint, threat of dissent can promote more rigorous collegial exchanges within the tribunal. The *Alabama Arbitration* thus provides strong precedent for the type of 'cost-benefit' (or 'benefit-benefit') analysis now enshrined in 'soft law' norms representing a *lex mercatoria* of cross-border arbitral procedure, with each trade-off implicating diverse legal and cultural norms.[29]

29 Such 'soft law' norms often derive from cross-border institutions like the International Bar Association, implicating document production, sequencing of submissions, allocation of legal costs, and cross-examination. See William W Park, 'The Procedural Soft Law of International Arbitration' in L Mistelis and J Lew (eds), *Pervasive Problems in International Arbitration* (L. Mistelis & J. Lew eds.2006) 141. On compromise among national norms, see also William W Park, *Procedural Trade-Offs in Arbitration*, forthcoming 2021.

5.2 Contours of arbitral authority

Several attributes of international arbitration trace their lineage to the *Alabama Claims* case: party-appointed arbitrators, collegial deliberations, reasoned awards, dissenting opinions, and the opportunity for arbitrators to address limits on their own jurisdiction. Among these, few have proven more complex than the latter, implicating principles related to arbitrators' pronouncements on the contours of their own authority.

In most legal systems, the right of arbitrators to rule on their powers has been established, even if such pronouncements prove tentative, subject to later judicial review. For commercial arbitration, arbitrators' jurisdictional decisions implicate a subtle interaction between the roles of judges and arbitrators.

In respect of jurisdictional determinations, Johnny Veeder offered a vivid account of how the arbitrators in the *Alabama Arbitration* approached a challenge to their authority that might well have derailed the proceedings.[30] An inquiry into that jurisdictional challenge provides a springboard to consider bridges from past to present in relation to a predicament common to arbitrations across a broad spectrum today, whether in disputes concerning commercial transactions or investor–state expropriation claims.

After the tribunal in the *Alabama Arbitration* began hearings, the United States sought 'indirect' damages from Confederate cruisers alleged to having prolonged the Civil War for two years after the Battle of Gettysburg.

Veeder recounts how the two party-appointed arbitrators, Charles Francis Adams and Sir Alexander Cockburn, worked behind the scenes in collegial cooperation to achieve consensus on a declaration that would overcome an impasse. Adopted on 19 June 1872, four days after hearings had begun, the consensus constituted neither an order nor an award, but a unanimous declaration announced by the tribunal president that claims for indirect damages did not constitute good foundation for an award of compensation between the two nations, and should be excluded from consideration of the tribunal.[31]

The arbitral tribunal has made a simple jurisdictional declaration, rather than a formal ruling, should not hide the arbitrators' boldness in restricting their own authority. Setting limits to its power, finding competence to fix direct but not indirect damages, the arbitral tribunal created precedent for arbitrators' addressing the scope of their jurisdiction.

Thoughtful observers will rightly note the need for caution in suggesting bridges from 19th century inter-state proceedings, on the one hand, to modern commercial and investment arbitrations, on the other. Today, arbitration implicates frameworks for judicial and institutional review not applicable to the Geneva proceedings in the *Alabama Arbitration.* Nevertheless, appreciation of where we came from can augment

30 Veeder (n 7) 132–47. Veeder reacts to comments on the practice of party appointment of arbitrators by scholars including Jan Paulsson, 'Moral Hazard in International Dispute Resolution' (2010) 25 ICSID Rev 339; Albert Jan van den Berg, 'Dissenting Opinions by Party-Appointed Arbitrators in Investment Arbitration' in Mahnoush Arsanjani and others (eds), *Looking to the Future: Essays in International Law in Honor of W. Michael Reisman* (2011) 821.

31 Hackett (n 19) 393, Appendix III.

understanding of how arbitration works at present.[32] Even if one cannot build today on an assumption of yesterday's permanence, we must build on something, with yesterday providing a key analytic building block.

The *Alabama Claims* tribunal did not deal with the very existence of an agreement to arbitrate, clearly contained in the Treaty of Washington. Rather, the arbitral tribunal addressed the scope of consent to arbitrate: whether or not the agreement proved broad enough to cover claims for indirect damages. Similar wrangling about the scope of an arbitration arises in modern commercial proceedings, albeit with the significant wrinkle that resolution of today's business disputes unfolds in the shadow of potential judicial review by national courts pursuant to established legal frameworks.[33]

Judicial review of arbitrators' jurisdictional rulings often finds discussion under the much-vexed term *Kompetenz-Kompetenz*,[34] rendered 'jurisdiction to decide jurisdiction' in an English formulation. The details of arbitrators' 'jurisdiction to decide jurisdiction' vary from one legal system to another. In its simplest application, the principle means only that arbitrators can continue their work even if a party challenges arbitral jurisdiction, exactly what happened when the arbitral tribunal in the *Alabama Arbitration* considered depredations by the British-built vessels that had served the Southern Confederacy. Some observers see distinctions between 'positive' *Kompetenz-Kompetenz*, allowing arbitrators to resolve jurisdictional challenges without reference to national courts, and 'negative' *Kompetenz-Kompetenz*, telling judges when to refrain from hearing jurisdictional challenges in arbitration. Arbitration does not necessarily stop just because one side challenges arbitral authority. Neither do related judicial actions necessarily cease, although they may be deferred.[35]

For commercial contracts, allowing arbitrators to address their own jurisdiction may trigger judicial review implicating choice-of-law clauses and designation of arbitral seats against the backdrop of multiple treaty networks. In some instances, different national courts apply similar choice-of-law analyses that bring divergent conclusions about what

32 One recalls the admonition of French historian Jules Michelet, that those who would confine their thoughts to present time will not understand present reality: *Celui qui veut s'en tenir au présent, à l'actuel, ne comprendra pas l'actuel*. Introduction to Jules Michelet, Le Peuple (1846) xvii. In his study of the French laboring class, Michelet recounts his own origins working at his father's printing press, which led to a deeper understanding of their present condition on the eve of the 1848 Revolution.

33 For an example of courts addressing the contours of arbitral jurisdiction, see *Lesotho Highlands v Impregilo* [2005] UKHL 43, upholding the arbitrators' award in a basket of European currencies, in a contract dispute initially implicating Lesotho Maloti, significantly depreciated since payment had been due. See William W Park, 'The Nature of Arbitral Authority: A Comment on Lesotho Highlands' (2005) 21 Arb Int'l 483.

34 The phrase derives from a court decision in Germany where an arbitral tribunal had ruled on its own jurisdiction pursuant to a clause agreed by both parties, implicitly dispensing with subsequent judicial review, with the *Bundesgerichtshof* finding that parties to a commercial contract could submit the question of arbitral authority to binding arbitration. BGH, 5 Mai 1977, III ZR 177/74, reported in 68 BGHZ 356, 358. See Peter Schlosser, *Das Recht der Internationalen Privaten Schiedsgerichtsbarkeit* (1989) s556.

35 Emmanuel Gaillard, 'L'effet Negative de la Competence-compétence' in J Haldy, J-M Rapp and P Ferrari (eds), *Études de Procédures et D'arbitrage en L'honneur de Jean-François Poudret* (1999) 385. Cf William W Park, 'The Arbitrator's Jurisdiction to Determine Jurisdiction' in *Arbitration of International Business Disputes* 231 (2nd edn, 2012). For relevant case law on what in the United States has come to be called 'the arbitrability question', see *First Options v Kaplan*, 514 US 938 (1995).

claims arbitrators may hear.[36] In certain countries, courts apply local contract law principles to determine the extent of an arbitration clause.[37]

Notwithstanding divergences in national law, the import of the jurisdictional precedent in the *Alabama Arbitration* can hardly be overstated. Without an option for an arbitral tribunal to continue work despite jurisdictional challenges, a party wishing to sabotage an arbitration could stop proceedings simply by questioning the arbitrators' authority.

Modern arbitration remains workable in part because an 1872 arbitral tribunal in Geneva set a precedent for giving arbitrators a first word on their jurisdiction, even if courts get the last. The journey towards workable principles for determining arbitral jurisdiction, set in motion by the *Alabama Arbitration*, takes special significance as international arbitration has moved beyond government-to-government disputes, increasingly pressed into service for resolution of high-value private commercial and investment disputes.

The relationship between public and private arbitration brings to mind the Greek sea god Proteus, who could alter his outward shape at will, notwithstanding that his substance remained the same. Just as Proteus could reinvent himself, so arbitration can alter its form to adapt to new circumstances. When examined through the lens of the legal culture for each age and context, arbitration gives rise to procedural elements both transient and permanent.[38]

In some instances, arbitrators decide public law conflicts, like those arising from British support for the Southern Confederacy through supply and service of commerce raiders during the American Civil War. In other cases, arbitrators address contract breaches, oil price revision, or royalty rates in cross-border licences. Arbitrators might also determine hybrid public/private disputes such as expropriation claims arising from international investment, or allocation of fiscal jurisdiction under income tax treaties.[39]

36 See, for example, *Dallah Real Estate & Tourism Holding Co v Ministry of Religious Affairs, Gov of Pakistan* [2011] 1 AC 763. The UK Supreme Court refused to enforce an ICC award made in Paris in favor of a Saudi company, reasoning that under French law the Pakistani government was not bound by an agreement signed by a trust established by the government. A year later, a French court came to the opposite conclusion, rejecting an application to vacate the award in favor of the Saudi creditor, reasoning that contract negotiations by Pakistani government officials made the government the true contracting party. *Gouvernement du Pakistan c Société Dallah*, Cour d'appel de Paris, 1ère Chambre, 17 février 2011.

37 *GE Energy Power Conversion France SAS v Outokumpu Stainless USA, LLC*, 140 S Ct 1637 (2020). When a non-signatory attempted to compel arbitration, the US Supreme Court instructed lower courts to employ choice-of-law analysis looking at doctrines like 'estoppel' and third-party beneficiary. A separate opinion by Justice Sotomayor cautioned that those seeking to enforce arbitration agreements 'may not rely on domestic non-signatory doctrines that fail to reflect consent to arbitrate'. ibid 1648. Compare *Henry Schein Inc v Archer & White Sales Inc*, 139 S Ct 524 (2019), where the court had to determine whether a contract 'delegated' to the arbitrator authority to decide if the case implicated injunctive relief, such relief arguably precluded by the contract.

38 By way of analogy, public and private international law tackle different questions. Yet each remains law. Private international law (sometimes 'conflicts of law') addresses choice of law, jurisdiction, and enforcement of judgments. Public international law looks at problems like the standards for naval neutrality. Likewise, chess and baseball remain games even though played quite differently. Other comparisons come to mind. The label 'tax' applies to real estate levies as well as to fiscal withholding on dividends paid to foreign corporations, notwithstanding disparity in the object of each assessment.

39 See William W Park, 'Tax and Arbitration' (2020) 36 Arb Int'l 157; William W Park and David R Tillinghast, *Income Tax Treaty Arbitration* (2004).

In each context, arbitration can promote global well-being, whether in state-to-state disputes by providing an alternative to war, or for commercial and investment disputes by enhancing confidence in wealth-creating economic cooperation through providing adjudicatory *fora* more neutral than the hometown justice of the other side's courts. Although public and commercial arbitration remain distinct, each sits on the same foundation: consent to binding adjudication by individuals chosen directly or indirectly by the parties.

In state-to-state arbitration, an agreement waives resort to armed conflict. In private arbitration, consent to arbitration renounces recourse to national judicial power, even if courts might annul a decision tainted by procedural irregularity or seize assets to satisfy an award. In each context, the disputants seek to vindicate legitimate expectations through fair determination of facts and law pursuant to a model set in the *Alabama Arbitration*.[40]

5.3 The larger hope

The *Alabama Claims* process spurred hopes beyond avoidance of war between Britain and the United States. The larger hope rested on a prospect that arbitration might deliver dividends of peace and justice on a broader scale, serving as a vehicle to transform implements of war into tools for productivity.

Humankind stubbornly resists Isaiah's prophecies that swords will be beaten into plowshares, at least on a scale that makes war obsolete. The century following the *Alabama Arbitration* saw two World Wars with armed conflict of almost unimaginable proportion.

Hopes deferred, however, need not mean hopes defeated. Nor does lack of seamless success detract from the value of incremental achievement. Even against a backdrop of continuing cross-border conflict, the arbitral process plays a fundamental role in peaceful resolution of commercial and investment disputes with a cross-border component. For international transactions, arbitration increases the participants' confidence that legitimate expectations will be met, through dispute adjudication both principled and reliable, even if not perfect or universal. In turn, enhanced confidence in transactional predictability promotes economic teamwork that can help take profit out of warfare.[41]

Setting an example of principled international dispute resolution, the *Alabama Arbitration* provided building blocks for welfare-enhancing collaboration among peoples from diverse backgrounds, serving as a harbinger to many milestones in

40 Jan Paulsson suggests the 'idea of arbitration' to include binding resolution of disputes accepted with serenity by those who bear its consequences because of their special trust in chosen decision-makers.' Jan Paulsson, *The Idea of Arbitration* (2013) 1. In a section of his book titled 'Untidy Realities', Paulsson notes that some adjudicatory processes get labelled 'arbitration' although their nature belies that description, as for example, Koranic negotiation by friends of disputants, while others take a different label but with a core that remains arbitration, such as 'recommendations' by mediators so respected in the relevant community that their advice takes on a *de facto* bindingness. ibid 18–19.

41 In this connection, one recalls the observation of 19th century French political thinker Claude Frédéric Bastiat, that if goods do not cross borders, armies will: *Si les marchandises ne traversent pas les frontières, les soldats le feront.*

international law.[42] Notwithstanding the scarcity of Messianic concord for international relations, fruits did grow from the arbitration endorsed by Queen Victoria for Britain and President Ulysses S Grant for the United States. With twists and turns, the pilgrimage to peace continues through a model of dispute resolution set by the *Alabama Arbitration.* The next steps of the journey remain a story for another day.

42 Milestones for international teamwork include the 1899 and 1907 Hague Peace Conferences; establishment of the Permanent Court of Arbitration in 1899 and the Permanent Court of International Justice in 1920; the Geneva Arbitration Treaties of 1923 and 1928; creation of the International Court of Justice in 1945; the New York Arbitration Convention of 1958, along with the Washington and Panama Arbitration Conventions of 1965 and 1975, respectively. For an exploration of the role of the *Alabama Arbitration* to establishment of the Permanent Court of International Justice, see Martti Koskenniemi, 'The Ideology of International Adjudication and the 1907 Hague Conference' in Yves Daudet (ed) *Topicality of the 1907 Hague Conference* 127 (Hague Academy of International Law, Leiden, Martinus Nijhoff 2007).

APPENDIX: THE CSS *ALABAMA* AT GALVESTON

The replica of the *Alabama*, housed in a bottle once home to a half gallon of Johnnie Walker Scotch Whiskey, sits amid a diorama showing the lighthouse at Galveston, Texas, where in January 1863 the *Alabama* engaged Union forces and sank the USS *Hatteras*.