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INTERNATIONAL LAW IN TIME OF WAR

A Review.

[IX.—By W. Jethro Brown, LL.D.,
Litt. D.]

The purpose of preceding articles has been to state the more important rules of international law as they affect Imperial or Australian interests in the present war. These rules may be regarded as rules of the game in warfare. They condition the form and scope of belligerent operations, and some general acquaintance with them is necessary if we are to understand the course of present events, the significance of past achievement or failure, and the probable developments of the near future. By way of introduction I referred to the binding force of international law. I have little to add to what I said on that subject. Neither the laws of the State nor the laws of nations are invariably obeyed. In neither is disobedience invariably punished. But in both there is a code of rules sufficiently established and sufficiently enforced to make disobedience bad policy. True, whenever a cable announces a real or alleged disobedience in the present war, some people will ask "What is the good of international law now?" Such people do not pause to ask if the cable states the actual facts; or, presuming the cable to be correct, whether the alleged violation is a real violation in all the circumstances of the case; or, again, presuming the violation to be real, whether it is typical or very exceptional, when viewed in relation to the conduct of belligerent operations as a whole. They are—like the reporter who credited Sydney with being in a condition of anarchy because four burglaries had been committed in the city in one night—somewhat lacking in a sense of proportion. They ignore the fact that even statesmen like to be consistent, and that in the long run, a nation stands to lose by infidelity to treaty obligations or by disclaiming duties as a belligerent, which she has officially recognised as such at some previous time, whether as a belligerent or as a neutral. A nation stands to lose by such things, not only because national prestige and national credit are involved, but also because of the restraining and consistent influence of neutral States upon the exercise of belligerent operations, and because of the fact that civilized humanity has some, though a very imperfectly developed conscience—a conscience which it pays a belligerent to respect if it desires to win ultimately in the field, or to retain the results of its victories when the war is over. Germany violated the neutrality of Belgium, and so brought both Belgium and Great Britain into the field against her. What this has meant can be judged by reflection on the value of the German Fleet and the conditions of German sea commerce as they are to-day, and as they might have been but for British intervention. I say nothing of our expeditionary forces by land, or of the heroic resistance of Belgium to the progress of German arms. I also think it likely that the violation of Belgian neutrality has affected very materially the view taken by Italy with respect to her treaty obligations as a member of the Triple Alliance. Again, with respect to later acts by Germans, only the other day a cable reported that President Woodrow Wilson had informed the Kaiser that if the wanton destruction of the property of non-combatants is continued, the United States will increase the taxes upon German residents and institutions in America in order to provide an indemnity for Belgium! This means that if Germany is not very careful she will have to reckon with the immense resources of the United States, naval, military, and economic. I have not space to speak of the law of reprisals as between the belligerents themselves; but if Germany in a war against Russia is guilty of violating international law, she will find that anarchy is a game that two can play at.

—Liability of Private Property to Capture at Sea.—

In my articles on this subject I referred first to the liability of enemy private property at sea to capture when found on board enemy vessels. The results of this liability are illustrated in the recent cable

which announces that the German vessels and cargoes held up in British ports represent £13,000,000, while those interned at neutral ports represent about £47,000,000. Even neutral private property at sea is liable to capture when on its way to a blockaded port, or when it comes within the definition of contraband of war, or when guilty of unneutral services. But the justification for these forms of neutral liability is to be found in the pressure and deprivation imposed on the enemy. So far, in the present war, we have heard little of either blockade or contraband. But they are likely to be important subjects if the war continues to any great length of time, or if Turkey chooses to join forces with Germany and Austria. Potentially, blockade may have already played an important part in affording to Italy an additional reason for not joining Germany and Austria. Her extensive coastline rendered her peculiarly vulnerable to attack by a strong naval power like Great Britain. As regards the liability of enemy merchantmen to capture a cable which arrived on Sunday throws some light on the attitude which will be adopted by British Prize Courts in the present war. Article 1 of the Hague Convention affirms that it is "desirable" that enemy ships in the ports of a belligerent at the outbreak of a war, or entering a port in ignorance of hostilities, should be allowed certain days of grace within which they may take their departure. Article 2 affirms that if an enemy ship is prevented from leaving the port, it shall not be confiscated, but shall be retained till the end of the war without indemnity, or requisitioned with indemnity. Article 3 affirms a like option, with the added alternative of destruction subject to indemnity, in the case of enemy vessels met at sea after the outbreak of war, but ignorant of the hostilities. The first of these articles expresses no absolute liability on the part of a belligerent, and Sir Samuel Evans is now reported to have decided that a German steamer, which was apparently in Cardiff at the outbreak of the war though not confiscable, shall be retained till the end of the war. Previous British practice has been in favour of allowing the "days of grace." On the other hand, the same Judge is reported to have decided that another German steamer, which was captured in the Channel, but presumably ignorant of the outbreak of hostilities, is confiscable as prize. This is contrary to article 3 above quoted; but as Germany had refused to ratify that particular article, it is binding on neither Germany nor Great Britain during the present war. The decisions cited throw some light upon questions which are of immediate interest to British merchants, and often involve very difficult matters of interpretation for the lawyer—difficult because they demand a knowledge of the meaning of International Conventions, which are only intelligible when read in relation to the general principles of international law and the history of foreign diplomacy in recent years. And, as if these difficulties were not enough, an additional uncertainty results from the fact that British prize law is subject to general considerations of public policy of which the nature depends upon the personnel of the belligerents, and the views of the British Admiralty for the time being.

—Mines, Bombardment, Occupation.—

These represent more direct means of inflicting damage upon the enemy. Although primarily directed to the destruction or subjugation of naval or military forces, they involve multitudinous hardships and even loss of life, upon non-combatants. International law with respect to these means of bringing an enemy State to terms represents a compromise between the humanitarian sentiment of our time and the barbarous usages of the middle ages. "In the enlightened policy of modern times," said Lord Brougham, "war is not the concern of individuals but of government." Alas, this is but very partially true. "The proper strategy," said Gen. Sherman, "consists in the first place of inflicting as telling blows as possible on the enemy's army, and then in causing the inhabitants so much suffering that they must long for peace, and force their Governments to demand it. The people must be left with nothing but their eyes to weep with over the war." Somewhere between the optimism of Lord Brougham and the savagery implied in the war policy as expressed by Gen. Sherman, we find the measure of right conduct which international law of to-day prescribes to belligerents in the conduct of their hostilities.

In my last article I expressed the view that the real troubles of Germany were about to begin. Time will show how far this prediction is justified. But I do not predict a short war. I am not sure, in view of recent developments, that a short war is a thing to be desired. I have just received a letter from a distinguished authority in the history of international law and diplomacy. My correspondent

writes:—"As to the war, much as I hate war, it seems to have been inevitable. Ever since Sedan, Germany (I should prefer to say the German autocracy) has been the bully of Europe, the main cause of the intolerable burden of ever-increasing armaments, and the chief obstacle to the extension of the spirit of legality and humanity in international relations. If the German dominance is overthrown as a result of the war that is being waged, it will have been worth the sacrifice, but if Germany should prevail, the results would be disastrous to the future of international relations." With this statement I humbly concur. But the statement appears to involve the conclusion that the continuance of the war for at least many months, however disastrous and terrible the immediate consequences may be, is almost to be looked upon as a necessary condition of a better state of things. Germany has invaded Belgium and France. Her expulsion is likely to be a long, grim, and costly business. Not until she is expelled will Great Britain be free from the menace which has darkened our horizon for at least a decade. What appears to be the need of the present is a war, not so prolonged as to crush either Great Britain or Germany, yet long enough to impose on Germany a burden so heavy as to involve the overthrow of the autocracy which has been responsible for the war. Should this overthrow come about, it would mark the dawn of a new era in the development of that spirit of legality and humanity to which international law of the present gives some though a very inadequate expression. But, however these things may be, it is clear that the British citizen who has the cause of the Empire at heart, or who would see justice and right maintained among the nations, or who believes in peace with honour, must recognise that the day is not yet past when he can afford to discard the injunction of Oliver Cromwell to trust in God and keep his powder dry. Only the other day Mr. Asquith said at the Guild Hall, when speaking of the German action in Belgium—"For my part I say that sooner than be a silent witness—which means in effect a willing accomplice—of this tragic triumph of force over law, brutality over freedom. I would see this country of ours blotted from the page of history." Ill will be the day for the Empire when there cannot be found both Imperial statesmen to express such convictions, and also Imperial citizens who will respond to their appeal.

ARTICLES PREVIOUSLY PUBLISHED.

- I.—International Law—Its Binding Force, August 17.
- II.—Liability of Private Property to Capture, August 19.
- III.—Blockade, August 22.
- IV.—Contraband of War, August 25.
- V.—The Declaration of London, August 28.
- VI.—Mines at Sea, August 29.
- VII.—Bombardment, September 2.
- VIII.—Territory occupied by the enemy, September 5.