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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 Australian interests in times of 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 how the course of present events, the significance of past achievement or failure, and the probable developments of the international situation. In the introduction I referred to the binding force of international law. I have little to add to what I said on that subject.

Now the principles of international law are in no way different from principles of the law of nations are invariably obeyed in neither is disobedience invariably punished. But in both there is a code of rules usually established and sufficiently enforced to make disobedience bad policy. True, whenever a cable announces a real or alleged disobedience of the law, people will say, 'What is the good of international law now? Such people do not ask if the cable states the case to be correct, whether the alleged violation is a mere violation, a violation of the case of the aggressor against the aggressor, a violation of the case of the aggressor against the neutral, or a violation of the case of the neutral against the aggressor. A nation stands to lose by such things, not only because it may be involved, but also because of the restrictions which it imposes upon the exercise of belligerent operations. The principle on which experience developed conscience, the principle by which it pays to maintain itself ultimately in the field, or to reinstate the results of its victory, is embodied in the principle of the neutrality of Belgium and, as far as both Belgium and Great Britain are concerned, can be judged by reflection on the results of the two nations' control of the sea commerce as they see today, and as they might have had if they had not been driven by the necessities of our extraordinary forces by the heroic resistance of Belgium.

It is likely that the violation of Belgian neutrality will be taken by Italy with her trivialities as a matter of right, for the conqueror of Paris. The day before, a cable reported that Japan had, if the wanton destruction of the treaty of non-aggression by Japan, has increased the taxes upon all people resident, and institutions of Germanic origin. This means that if Germany were disposed to use the consequences of the treaty of non-aggression, then that treaty does not mean what it says, and that Germany is in a war that was commenced by the violation of its engagements.]

The Liability of Private Property to Capture is discussed. The results of the
carried on with the assets of the enemy, and cargoes held up in British ports repay £32,000,000, while those in French harbours bring £70,000,000. The question of neutral private property as absolutely liable to capture is a minor point when it comes with the definition of contraband of war. When a ship is made the object of this liability, it is on the ground of its cargo, and not of its form. For these forms of neutral liability is to be found in the pressure and pressure of necessity; and the only reason why they exist in the present war, we have heard little of either blockade or contraband. But the blockade war continues to the contrary. At any rate, it is the Hague Convention which guarantees that it is "desirable" that enemy ships in the ports of belligerents should be notified to the authorities of the port or entering a port in ignorance of hostilities, otherwise the same principles of due process should be observed as in war, or the cruiser may take their destruction. Article 2 affirms that if an enemy ship is prevented from leaving the port, it shall be entitled to compensation. The Convention is thus not that another German steamer, which was captured at the Channel, and presumably ignorant of the conditions of the war, is entitled to compensation as a prize. This is contrary to the present practice of belligerents to treat, as all Germany has refused to ratify that particular Convention, which is binding on neither Germany nor Great Britain. The decision reflected upon some light upon the conduct of the belligerent, which is of immediate interest to British citizens, as Germany has adopted for its belligerent conduct, the view that British prize law is subject to general acceptance of the view that the nature depends on the conduct of the belligerent, and the views of the British Admiralty for the time being.

Ministerial, Diplomatic, Occupation. These representations lie between the lines of inflicting damage upon the enemy's military, primarily directed to the destruction or capture of military or military forces, they involve multiplicity of operations, and loss of life, upon non-combatants. These are the means of bringing an enemy to terms, and the principle is that the Government of the enemy must share in the policy of modern times, or, in Lord Brougham's terms, the war is not the concern of individuals but of Governments. The proper strategy, a military affair, as Lord Brougham put it, is that the Governments of belligerents must take the measure of the conduct of belligerents in the conduct of their war.
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; the harmony and amity in the foreign relations of the world, and the spirit of international law and diplomacy, are but an 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 of war, is, be it 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 the consciousness of her own power 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 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 disregard the instruction of Oliver Cromwell to try 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 crime, 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.
II.—Liability of Private Property to Capture, August 22.
III.—Blockade, August 22.
IV.—Contraband of War, August 25.
V.—The Declaration of London, August 28.
VI.—Olive Branch Petition, September 2.
VII.—Bom bardment, September 2.
VIII.—Territory occupied by the enemy, September &