

Shortly afterwards his Excellency the Governor arrived, accompanied by Lady Galway, Lady Lodge, Miss d'Eranger, and the Hon. G. J. Mulholland (Private Secretary). The Governor was conducted to a seat on the platform by the Vice-Chancellor, and the National Anthem was played on the grand organ by Professor Ennis. The audience joined with great fervor in the singing of the Anthem, and at its conclusion gave three ringing cheers for the King.

Professor Stirling then delivered an address, prior to presenting the candidates to the Chancellor for degrees. He said the acceptance by the British Association of the invitation of the Commonwealth Government to hold their 84th annual meeting in Australia was a gratifying incident in the history of the Commonwealth. The hearty welcome that had been, and would be given to this distinguished body by all classes of the community would assuredly reflect the general interest taken in their visit. To no institution was the visit more welcome than to the Universities of the various States, for it was acknowledged that Australia had earned for itself a place worthy of recognition in the world of science and of intellectual thought. To mark, therefore, their sense of the significance of this event, the Universities of Sydney, Melbourne, and Adelaide, acting in friendly concert, had resolved to confer their degrees upon a number of the visitors, distributing the recipients in fair proportion between the Universities concerned. In this arrangement the only difficulty had been to select where so many were worthy. The University wished it to be understood that when it conferred its degrees upon distinguished visitors, the honor was intended to be in recognition of achieved distinction. In honoring the visitors the University of Adelaide felt it was honoring itself. (Applause.)

The Register
August 17th 1914

INTERNATIONAL LAW IN TIME OF WAR.

Its Binding Force.

[I.—By Professor W. Jethro Brown, LL.D.,
L.H.D., Professor of Law in Adelaide
University.]

One of the most debated questions among jurists in times past has been whether the term "law" can be appropriately used as descriptive of the customs which regulate the relation of civilized nations inter se. To-day that question can be regarded as settled in the affirmative. Although the Society of Nations has not yet attained to that degree of organization which distinguishes the State, it has its rules of law as well as its rules of morality. The former are binding in a sense that the latter are not. The immunity of non-combatants in time of war falls under the one class. The other class is illustrated by rules of politeness and goodwill which, though generally observed, are not established in such a way as to justify us in regarding their violation as an infringement of International Law. While jurists, publicists, and statesmen to-day admit that International Law is binding, the man in the street is apt to be sceptical. He is constantly hearing, especially in time of war, of violations of International Law. He declares that there is no international legislature, no international tribunal, and no international policeman. He concludes that International Law will be observed by a nation only so long as it pays that nation to observe it; and that it is, therefore, law in name only.

There are several fallacies here. Although we have no international legislature, the Society of Nations has its organs for the formulation of legal rules. Conferences, International Associations, Groups of States, statesmen, jurists, diplomatists, admirals, and generals have all contributed to the work of formulating International Law. Again, although there is no international tribunal clothed with the authority of a Supreme Court, a great deal of International Law is administered by legal tribunals of civilized States. The law of maritime prize is in point. Other rules are enforced by groups of States, or by the consensus of public opinion throughout Christendom; or, in the last resort, by appeal to arms. Again, although there is no international policeman, there is a practical equivalent in an effective, if informal vigilance society. The layman is right, however, when he says that a nation to-day will only observe the rules of International Law so long as it chooses to do so. But he is wrong in concluding that the law is therefore not binding. The real fact is that the rules have acquired such a degree of authority that no nation can with safety choose to disregard them. This is so even in time of war. If German warships to-day bombard unfortified towns, Germany hits below the belt, invites reprisals on the part of its enemies, alienates the sympathy of public opinion in neutral States, provokes neutral intervention, and sows the seed of a harvest which she will reap some day — if not during the conduct of the war; at any rate, when it comes to making a treaty at the end of the war. Even if she win, the time is past when a victorious country can impose its own terms. Other countries will claim to have a say, and a people which has wantonly disregarded the established rules of war is as likely as not to find herself deprived of the fruits of her victory when the war is over.

—Obvious Facts.—

But we need not go to hypothetical facts. When Germany poured her troops into Belgium, Belgium might have officially protested while her citizens were making a good commercial bargain with the invading host for the supply of foodstuffs. But to use neutral territory as a means of gaining access to the enemy is a violation of international law. Belgium resented the violation, and her resentment has taken a practical form, which is likely to linger in the German memory for some time to come. Great Britain also regarded the violation of Belgium neutrality as a *casus belli*; and the mischief, from the German point of view, did not stop here. He is thrice armed who knows his quarrel just, but a nation which violates established principles can hardly know her quarrel to be just. She may, as Germany has already done, juggle with her conscience by appealing to the specious plea of military necessity, but there exists an obvious difficulty in the way of persisting in the conviction that one is right, when one knows that one's actions are regarded as criminal by the common consensus of opinion throughout Christendom.

—Frequent Violations.—

There is no doubt that rules of International Law are often violated. A violation may often escape punishment. But the same is true of the laws of a State. Probably four burglaries are committed for every one that is punished; but the law against burglary exists, and is practically of great importance. Unfortunately, so far as International Law is concerned, the man in the street only hears of the violations. He knows next to nothing of the restraining influence which is exercised upon statesmen, generals, and admirals. Again, one reason why the binding force of International Law is often denied is that many rules observed by particular nations have not yet acquired the binding force of International Law. A violation of such rules is naturally resented by nations which, for one reason or another, wish to have those rules recognised as law. But, as a recent writer remarks, we should hesitate before we stigmatize as a law-breaker every State whose practice is not in accordance with our own, though we may wish that it were. Now with regard to the class of rules under consideration—rules which are hovering on the border of law, but are not yet definitely established as law—we must anticipate a good deal of trouble in a war such as the present, where the leading European nations are active participants. Under such conditions, there cannot exist a strong consensus of opinion among neutral Powers which is so useful where only two belligerents are in the field. But this does not touch the validity

of the really established rules. Nor need we forget that the United States and Japan—not to mention other countries—are still factors to be reckoned with. A great part of International Law consists of a statement of the obligations of belligerents towards neutral States and individuals. On this subject, Uncle Sam is very "touchy." The position of Japan is peculiar. She is rapidly absorbing Western ideas; and the immediate future is likely to see Japan in the strange position of championing, in opposition to a Christian country, rules and principles which owe their origin to the consensus of opinion among nations professing to apply and observe, as far as may be practicable, the doctrines of the Christian faith to international relations.

—A Summary.—

To sum up, we are at the beginning of what promises to be the greatest war since Napoleonic times. But, since the period of Reformation, and especially since the dawn of the nineteenth century, civilized mankind has been surely establishing a code of rules regulating the relation of nations to one another in times of peace and war. Many of these rules are indubitable; some are doubtful; some are certainly no more than counsels of perfection. It will be my purpose in the succeeding articles to state briefly the rules which are indubitably binding, more especially so far as they relate to the position of Australia under existing conditions. These rules will generally be observed by belligerents and neutrals, for the very sufficient reason that the immediate gain to be derived by ignoring them is likely to be less than the penalties to be incurred. Belligerents and neutrals will obey those rules because it pays to do so. From day to day the cables will report some violation of a real or alleged rule of international law; but the cables will not disclose the insistent and restraining force of the rules upon the general conduct of belligerents and neutrals. The reader of these cables must read between the lines. He must keep his head. He must not lose his sense of proportion. One swallow does not make a summer. A single violation of international law does not invalidate it. A series of violations will certainly do more damage to the offender than to the enemy.

—An Outline.—

I propose to deal, inter alia, with the following subjects:—

The extent of the liability of private property to capture.

The law of blockade.

The law of contraband.

International law and the airship.

The limitations upon the right of belligerents to bombard enemy towns.

The right and duties of a belligerent in occupation of enemy territory.

A GREETING TO THE CHIEF JUSTICE.

His Honor the Chief Justice (Sir Samuel Way) wrote to The Register from Montefiore on August 15:—"The following verses were sent to me anonymously a few days after my return from Sydney. There was no attempt to disguise the handwriting, which is plainly that of Mr. Sydney Talbot Smith, LL.B., Cantab. On enquiry I found that Mr. Smith had no objection whatever to the publication of the poem, which I send to you for that purpose, as I believe it expresses the sentiments of many of your readers."

—A Greeting to Chief and Chancellor.—

Back from the world of shadows,
Back to the world of men!
Your rest is waiting, in God's good time,
But He did not call you then.
Knowing we need you greatly,
Knowing our hearts are yours,
He sent you back to the work that waits
While the steadfast will endures.
Nelson had known the shadows;
Nelson was tried like you,
But a brave heart beat in the fragile
frame,
And his best was yet to do!
His was the way of warfare;
Yours are the paths of peace;
But each has a part in a people's heart,
And their memory shall not cease.
Tread, till the evening closes,
In the path where your feet are set.
Your rest is waiting, in God's good time,
But the signal comes—not yet.