

DEFECTIVE STATE OF INTERNATIONAL LAW.

obligation where there is not a conventional, but there is scarcely a conventional without the natural element bound up with it. Unfortunately, however, of the two elements the natural, that which is the most unchangeable and universal, is also the less certain in its operations and authority. Could we give to the universal principles of natural law the same certainty as is possessed by the conventional, we should not have to lament the weakness and uncertainty which characterise by far the greater part of the law of nations. As it is, the structure of International Law is most defective and unsatisfactory. If, as according to some, the law of nations in reality consists of the practice of nations, for what practice, however unhalloved, can we not find ample precedents? If, as according to others, it consists only of the aspirations of philosophers and moralists, or of the dictates of natural or revealed religion, we have always the ready answer, that its principles, however wise and beneficent in theory, are not suitable in practice.

For many of the evils and difficulties which often disturb the intercourse of nations International Law is certainly not responsible. It is the political system that is at fault. It is from the defective organisation of States that the greatest troubles arise. International Law takes the States composing the great commonwealth of nations such as they are, but it cannot guarantee their permanent existence. Since the Treaty of Vienna, which was supposed to have settled the public law of Europe, and established a balance of power among its different States, Italy has become a kingdom, the German Confederation has been destroyed, the Republics of Frankfort and Cracow are extinct, Belgium is parted from Holland, and another Napoleon has reigned in France. Matters connected with the internal government of a State and matters relating to its external relations appertain to political science, and not to International Law, and in practice there is, alas, too great a difference between politics, which are too often prompted by the lust of power or expediency, and International Law, which proposes to set forth the dictates of eternal justice. In the relations of States in time of peace International Law enjoins the observance of all those duties which the safety of the general society requires, and commends the performance of those offices of humanity which may tend to the preservation and happiness of other States, and to promote their intelligence, power, and freedom; but how often the political system of States has been based on selfishness and exclusiveness. Nor would it be right to attempt to enforce what are simply moral duties, whether in international or social relations, for they are duties which do not produce corresponding rights, or rights which do not produce corresponding duties. It might be an act of enmity on the part of a State to refuse to trade with another, but no one could compel it to do so without

violating its own right of freedom. We had no more right to compel China to take our opium than China would have to compel us to receive her tea duty free.

It is, however, when we come to a state of war that the defective character of International Law becomes most apparent. Amongst the many works on the subject, Grotius's "*De Jure Belli ac Pacis*" holds certainly the first and highest rank, and this work was suggested, as he said, by the natural horror with which he beheld the frequency and atrocity of the wars in which every State was engaged on the most trifling pretext. "I have been for a long time convinced," he said, "that there is a God common to all nations, who watches both the preparation and the course of war. I have remarked, on all sides in the Christian world, such a wanton license as regards war, that even the most barbarous nations should blush for. People turn to arms without reason, and for the slightest object, and they trample under foot all Divine and human laws as if they were authorised, and were quite resolved to commit all sorts of crime without any check." Grotius wished to put a stop to such barbarism, and he conceived the thought of bringing the precepts of Scripture, as well as the dicta and sayings of philosophers and moralists, having a direct bearing on matters relating to peace and war, clearly before the civilised States of the world, in the hope that these might, by their own moral force, succeed in establishing a law which no civilised State might feel itself at liberty to disregard. That great influence was exercised by that and subsequent works on International Law is incontestible.

What we lament is, that whilst, on what may be considered insufficient and unsatisfactory ground, at least in that religious aspect in which Grotius first discussed the question, both he and the other principal writers of the law of nations declared that, under certain circumstances, war is lawful, neither Grotius, nor any other writer, sufficiently defined the precise circumstances under which war may be justifiable. Following the analogy of criminal law, Lord Bacon said:—"As the cause of a war ought to be just, so the justice of that cause ought to be evident, not obscure, not scrupulous; for, by the consent of all laws in capital cases, the evidence must be full and clear, and if so where one man's life is in question, what say we to a war which is even the sentence of death upon many?" It is, I conceive, too loose a statement to say that war is lawful to prevent or redress a wrong, to obtain a reparation against an injury committed or threatened, or for any act committed or expected to be committed affecting the independence of a State, or the free enjoyment of its rights. What, if the wrong be of a most trivial character? What, if the threat be imaginary and not real? Looking back to the ordinary cases of war, how few of them can be resolved into wars simply of self-defence!