

dered." The passenger on an enemy's ship resisting visitation or search is involved with the fate of the ship. Noncombatants who remain in a bombarded town must take the risk of *stray* explosives, although deliberate fire on its residential parts to expedite surrender through the terror of the inhabitants would be illegal. Subject to "exigencies" of this nature the innocent noncombatant, even of the enemy, has hitherto been regarded as beyond the range of personal harm in war—the neutral non-combatant, *a fortiori*.

Modern history affords no parallel of the destruction of non-combatants on the ground of "military necessity," and lawyers are familiar with the safeguards with which positive law surrounds this defence (*e.g.*, *Reg. v. Dudley*, 14 Q.B.D. 473). Necessity, in law, implies immediate, imminent peril, leaving no place for choice or deliberation. The plain facts of the case and the unanimous verdict of mankind have negated any such plea. And it is wholly immaterial to the issue whether the "Lusitania" was, or was not, in the sense that, in certain events, she was at the disposal of the British Government, an auxiliary cruiser. At the moment of attack she was a passenger vessel, and nothing else, with over 2,100 human beings on board, secure from harm on established principles of International Law, to whom suffering and death were the natural (and inevitable) consequence of her destruction as carried out.

Utterly beyond the pale of any recognized principles of law, the German position that the "necessity of war must override its rules," or, in other words, that the accepted law of nations is subordinate to, and may be *validly* overridden by, the opinion of a commanding officer as to the military requirements of his particular operation, is a direct challenge to the foundations of International Law on which our modern civilization is largely based. Students of International Law are not wholly taken by surprise. German jurists have proclaimed this pernicious doctrine.

In the discussion of floating mines at the last Hague Conference, the German delegate is reported to have said: "Military acts are not governed solely by principles of International Law.