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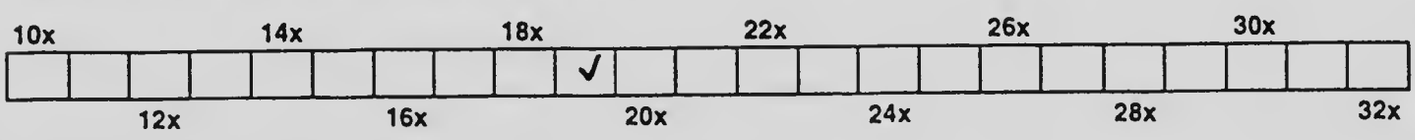

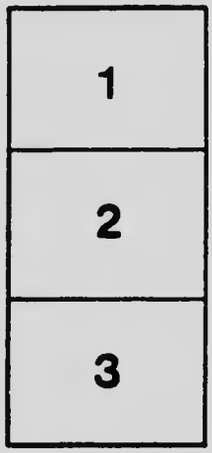

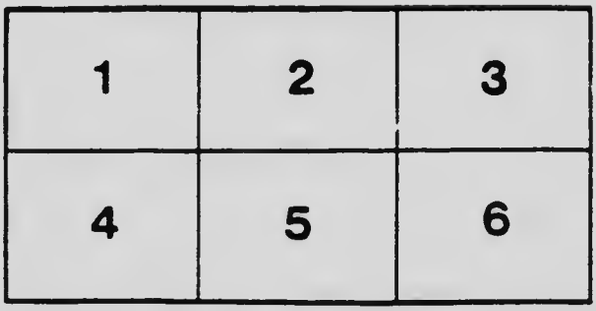

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THE LAW OF NATIONS AND THE WAR

BY

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THE LAW OF NATIONS AND THE WAR[1]

THE German Chancellor, in his speech in the Reichstag on August 4, said: 'Gentlemen, we are now in a state of necessity, and necessity knows no law. Our troops have occupied Luxemburg, and perhaps are already on Belgian soil. Gentlemen, this is contrary to the dictates of International Law.' We start, then, with a clear admission that Germany commenced the present war with a violation of the Law of Nations by entering the territory of two States the permanent neutrality of which had been guaranteed by all the Great Powers of Europe, including Germany herself. The entry of German troops into Luxemburg and Belgium was not only a violation of the treaties guaranteeing their neutrality, but was contrary to Article 2 of the Fifth Hague Convention of 1907, which forbids belligerents to move across the territory of a neutral Power troops or convoys either of munitions of war or of supplies. We might, I think, add to the violation of treaties and of the common law of nations the further acts of entering French territory with armed forces, and so commencing hostilities, without any previous ultimatum to France or without any previous declaration of war, in accordance with the Third Convention signed at the Hague in 1907 by Germany and France, and subsequently ratified by both Powers. We might, I think, also add that, before war was declared by either Germany or

[1] A lecture delivered at the London School of Economics and Political Science on the 8th October, 1914.

Great Britain, the former laid mines in the North Sea, in waters open to the traffic of all the nations of the world, and, in particular, waters in which thousands of fishermen of all the northern States of Europe earn their livelihood, and from which they provide food for millions of their fellow countrymen.

But I prefer to deal first with the violation of International Law, which is admitted by the highest official of the German Empire, and to examine the excuse which he offers for it. The defence is necessity.

The German doctrine of Necessity put forward by Dr. von Bethmann-Hollweg is no new doctrine; it is to be found in the writings of several German international lawyers and is a military maxim they have adopted. It is worth while spending a little time in examining the principle which, by making necessity a rule instead of an exception, would, if accepted, result in an annihilation of the laws of war, written and unwritten. This doctrine is stated by one German writer in the following terms: 'A violation of the laws of war must be regarded as not having taken place if the military operation is necessary for the preservation of the troops or the averting of a danger that threatens them and cannot be averted in any other way, or even if it is advantageous either for the effectual carrying out of a military enterprise not inadmissible in itself or the securing of its success.'[1] 'The laws of war cease to be binding,' says another authority, Lueder, 'when the circumstances are such that the attainment of the object of the war and the escape from extreme danger would be hindered by observing the limitations imposed by the laws of war.'[2] These views are in accordance with

[1] Meurer, cited by H. Wehberg, *Capture in War*, p. 4.
[2] Lueder, in *Holtzendorff's Handbuch*, p. 255.

a German maxim, *Kriegsräson geht vor Kriegsmanier*—'Necessity in war overrules the manner of warfare'. It is justified by Lueder on the ground that commanders will act on it whatever is laid down. 'It ought to happen because it must happen, that is, because the course of no war will in such extreme cases be hindered and allow itself to end in defeat, perhaps in ruin, in order not to violate formal law,' thereby, as Professor Westlake says, reducing law from a controlling to a registering agency.[1] The German theory introduces a new meaning of the term necessity different from that which finds acceptance in the Hague Conventions. These Conventions everywhere recognize that circumstances may occur when a commander finds himself unable to comply with the strict letter of their provisions. It was with a view of diminishing the evils of war, 'so far as military necessities permit', that the Powers adopted the regulations for land warfare. But the content of this term as it is used therein may be understood from the preamble to the Convention, which admits the incompleteness of the Code and declares that in cases not included the populations and belligerents remain under the protection and rule of the principles of the law of nations, as they result from the usages established between civilized nations, from the laws of humanity and the requirements of the public conscience. The ordinary laws of war, with the occasional exceptions due to military necessity, are acknowledged by the German authorities, but on them they superimpose their own theory of *Kriegsräson*, by virtue of which they may all be cast to the winds. 'It is not, then,' as Westlake says, 'a question of necessity of war, but of necessity of success'—a very different thing, and results, as he

[1] *International Law, War*, p. 127.

points out, in this, that 'the true instructions to be given by a State to its generals are: Succeed—by war according to its laws, if you can—but at all events, and in any way, succeed'. 'Of conduct suitable to each instruction,' he adds—and the words have surely a prophetic ring—'it may be expected that human nature will not fail to produce examples.'[1]

The German doctrine is subversive of all the laws of warfare which have grown up during the past century in the interests of non-belligerents and of the combatants themselves: it leaves these rules mere discretionary ideals to be obeyed or broken according to the will of a government or commander determined to win by any means and at any costs.

'We are in a state of necessity,' said the German Chancellor in regard to the violation of the neutrality of Belgium, but it was a necessity of the kind contemplated by the German maxim. It was a 'necessity' prepared by the Germans themselves ten years ago! There is clear and irrefutable evidence that the German move was no sudden manœuvre called for by the anticipated violation of Belgian territory by France. The plan of campaign had been settled by the general staff as long ago as 1904; strategic railways were built for the purpose, the plan was set forth in a memorandum of General von Schlieffen and sanctioned by the German Emperor in 1909. It was no secret, it had been published.[2]

To justify the violation of the territory of a friendly State, said the Government of the United States in 1838—and their view was accepted by our own Govern-

[1] op. cit., p. 128. See also L. Oppenheim, *International Law War*, § 69; T. E. Holland, *War on Land*, p. 12.

[2] See *Spectator*, September 19, 1914.

ment—it is needful 'to show a necessity of self-defence, instant, overwhelming, leaving no choice of means and no moment for deliberation'. Such a necessity as this the Germans could not show. From whatever point of view we examine the necessity for the attack on Belgium, the evidence of treachery, and complete and callous disregard for international obligations by Germany, is overwhelming.

There is in German law a defence allowed in certain cases which are covered by the term *Notwehr*, a term which I understand cannot be properly translated. It is—according to Article 53 of the German Criminal Code—'such defence as is necessary to avert an immediate unlawful attack on oneself or another'. It is not, strictly speaking, identical with self-defence or self-preservation, but approximates to it. The meaning of the speech of Dr. von Bethmann-Hollweg seems to be clearly this: 'We have guaranteed the neutrality and inviolability of these two small States; we find that the observance of the guarantee would inconvenience us in a course of action on which we have decided; it is therefore necessary for us to ignore this word "neutrality", and to disregard this "scrap of paper", for if we do not, France will. Self-preservation stands as the first law of individuals and States; our existence may be irreparably threatened unless we take this step, therefore International Law must on an occasion such as this be broken.' I take, then, the German standpoint for the moment—let us assume the German Chancellor had consulted some English text-book on International Law to see what was said there on the subject of self-preservation. 'The right of self-preservation,' says Hall, 'in some cases justifies the commission of acts of violence against

a friendly or neutral State, when from its position and resources it is capable of being made use of to dangerous effect by an enemy, when there is a known intention on his part so to make use of it, and when, if he is not forestalled, it is almost certain that he will succeed, either through the helplessness of the country or by means of intrigues with a party within it.'[1] Grotius, also, the founder of the science of modern International Law, allows the occupation of neutral territory in certain cases under his law of necessity.

Hall, however, to illustrate his proposition, discusses the British operations against Denmark, and the bombardment of Copenhagen, in 1807.

Can these violations of Luxemburg and Belgium be in any degree compared with the British action in 1807? In July 1807 Canning received information that, by secret articles of the Treaty of Tilsit, Denmark, Sweden, and Portugal were to be compelled by France and Russia to join in the war against Great Britain, thereby largely increasing the French fleet. Napoleon was in great need of ships for his proposed invasion of England. Denmark was certainly powerless to resist the demands of France, the possession of her fleet would have been of the greatest assistance to Napoleon, and would have provided him with the means of making a descent on the British coasts. Such were the facts which came to Canning's knowledge, and it was evident to his Government that Napoleon had to be forestalled. He therefore instructed his agent to demand from Denmark an explanation of their policy, a treaty of alliance with Great Britain, and the deposit of the Danish fleet. Denmark was offered the most solemn pledge that if the British demand was

[1] *International Law* (fifth edition), p. 272.

complied with every ship would, at the conclusion of the general peace, be restored to her 'in the same condition and state of equipment as when received under the British flag'. Denmark, acting within her undoubted right, treated the British demand as a hostile act, and only after the bombardment of Copenhagen did the Danes decide to surrender their fleet. This high-handed proceeding of Great Britain against a small State has naturally been severely criticized, and is condemned by many continental writers. I am unable myself to join in this condemnation. I agree with Hall that the occurrence is a matter for extreme regret, but that 'the emergency was one which gave good reason for the general line of conduct of the English Government'. That being so, I have to ask whether the action of Germany can be justified for similar reasons.

In 1807, Great Britain had been at war with France for more than ten years. Napoleon had overthrown Austria, crushed Prussia, and for the moment obtained the alliance of Russia. His methods were severe and unscrupulous. It was known that he would be deterred by nothing which stood in the way of the achievement of the object dearest to his heart—the overthrow of Great Britain. It is now held that Canning acted on imperfect evidence, but the information he received was well in accord with the plans which Napoleon might have been expected to form, and Canning took a step which to the other neutral Powers seemed a violation of the principles of neutrality, which it must be remembered were not so well established then as now. But even so, England's proceeding was at the time 'regarded as little better than piratical', and the attack on Denmark was followed by a loss

of reputation which for the moment outweighed the material gain to her navy.[1] We know to-day more of the inner diplomacy which caused Canning to take this step than was known to his contemporaries, and the circumstances surrounding the seizure of the Danish fleet and the violation of Denmark's neutrality by Great Britain are, I submit, far removed from comparison with the outbreak of the present war.

To-day, Great Britain, Germany, and Russia, at the very outset of the war, issued their respective cases to the world; they entered their pleadings before the court of the public opinion of the nations. It is, therefore, no question here of secret treaties, mutilated dispatches, and imperfect information. All the Powers concerned have made public the evidence on which they rely for a justification of their proceedings. If we accept Hall's statement of the law and apply it to the German invasion of Luxemburg and Belgium, Germany, to obtain exoneration on the ground of self-preservation, would have to prove that there was clear evidence of the intention of her prospective enemy, France, to march across the territory of Belgium in order to gain a strategic advantage in an attack upon her territory, and that Belgium's condition rendered her too weak to resist such a violation of her neutrality by France. On these points the evidence against the German contention is clear. Denmark, in 1807, had no strong Power to whom to turn for defence against Napoleon, she lay at his mercy; but Belgium was not dependent solely on her own strength. Germany had in 1870 received striking proof that England would under no circumstances tolerate a violation of Belgian neutrality, for at the outset of the Franco-German

[1] *Camb. Mod. Hist.*, vol. ix, p. 298.

War she entered into identical treaties with both belligerents, whereby she undertook to co-operate with either of them against the other in defence of Belgium, if either violated its territory. But Germany had much more recent evidence of a like nature. On July 31 Great Britain asked France and Germany for engagements to respect the neutrality of Belgium. France at once gave the undertaking; Germany replied in evasive terms. Germany therefore had the clear and definite promise of France not to violate Belgian territory in case of war; she had ample evidence that Belgium herself and Great Britain as her guarantor would resist any violation of her neutrality by France. The case against Germany is further strengthened by a statement of the Belgian Minister of War, which appeared in *The Times* of September 30, 1914. The whole paragraph is as follows:

> The German Press has been attempting to persuade the public that if Germany herself had not violated Belgian neutrality, France or Great Britain would have done so. It has declared that French and British troops had marched into Belgium before the outbreak of war. We have received from the Belgian Minister of War an official statement which denies absolutely these allegations. It declares, on the one hand, that 'before August 3 not a single French soldier had set foot on Belgian territory', and, again, 'it is untrue that on August 4 there was a single English soldier in Belgium'. It adds:
>
> > For long past Great Britain knew that the Belgian Army would oppose by force a 'preventive' disembarcation of British troops in Belgium. The Belgian Government did not hesitate at the time of the Agadir crisis to warn foreign Ambassadors, in terms which could not be misunderstood, of its formal intention to

compel respect for the neutrality of Belgium by every means at its disposal, and against attempts upon it from any and every quarter.

The comparison between Belgium in 1914 and Denmark in 1807 breaks down on every point.

The position of Great Britain in the great European war is different from that of her allies. Germany declared war against Russia on August 1 and against France on August 3, though war between Russia and Austria—for we must remember that Austria is, ostensibly at any rate, the prime cause of the whole catastrophe—did not commence till August 6. As against Russia and France, Germany was the aggressor. But the Declaration of War, or rather the ultimatum with a conditional declaration of war, was made by Great Britain to Germany on August 4, and a state of war commenced as from 11 p.m. on that day. Technically Great Britain took the aggressive against Germany. International Law, unlike municipal laws, is destitute of a judiciary ; there is no legal court before which nations can be arraigned, it leaves it to them to decide when they must resort to force to support their demands. It cannot determine the various causes for which war may justly be waged, but it can lay down that under given circumstances there has been a violation of a rule of International Law or international obligations. Whether such violations are of a sufficiently grave character to justify resort to war is a matter for international morality, but, as I pointed out in an inaugural lecture in this place only just three years ago, situations sometimes arise in which the acceptance of peace would be felt by a nation to be an intolerable humiliation, and when a State could have no alternative but war to preserve its legitimate

self-respect and dignity.[1] War is sometimes the only means by which the liberty of a people may be preserved or obtained. The Chancellor of the Exchequer, in his famous Mansion House speech during the Agadir crisis in 1911, emphasized the fact that Great Britain had more than once in the past redeemed continental nations from overwhelming disaster and even from national extinction. That is the position to-day.

'We are at war to-day,' said the German Chancellor in the now historic interview with Sir Edward Goschen in Berlin on August 4, 'just for a word—"neutrality", a word which in war time had so often been disregarded—just for a scrap of paper.' But this scrap of paper represents the very fundamentals on which the law of nations is based. It represents a treaty of guarantee entered into by the Great Powers of Europe for a small State whose position as a buffer between two Great Powers, France and Germany, would necessarily have been precarious without a guarantee of the Powers. It represents an obligation 'which', as the Prime Minister has said, 'if it had been entered into between private persons in the ordinary concerns of life, would have been regarded as an obligation not only of law but of honour, which no self-respecting man could possibly have repudiated'. The manner in which the violation of a solemn pledge is viewed by the parties to this dispute is the measure of the spiritual and moral forces on both sides; war becomes a struggle between these forces, and as Clausewitz, perhaps the greatest of all writers on military strategy, says, 'in war such a struggle is the centre of all'.[2]

Underlying the observations made by the German

[1] *War and the Private Citizen*, p. 8.

[2] See S. L. Murray, *The Reality of War*, p. 13.

Chancellor, both in his interviews with the British Ambassador and in his speech in the Reichstag, there is a principle which, if accepted, would shatter not only the whole fabric of the Public Law of Europe but of Public International Law in general. This principle, too, is the groundwork of the basis of the policy which has been systematically pursued by both Austria and Germany since the former with the latter's assistance in 1908 tore to shreds a large part of the Treaty of Berlin without the assent of their co-signatories, and entered on the path which led direct to the Austrian ultimatum to Servia, an ultimatum launched with the connivance of Germany by a Great Power which denied to the smaller the elementary rights of an independent sovereign State. Ever since the close of the Russo-Japanese war in 1905, when the balance of power in Europe was for the time disturbed to the advantage of the Powers forming the Triple Alliance, Germany and Austria have acted in defiance of the principles which normally underlie the whole code and system of international intercourse. The visit of the German Emperor to Tangier in 1905, the Congress of Algeciras, the annexation of Bosnia and Herzegovina in 1908, the visit of the *Panther* to Agadir in 1911, were all steps downward from the standard of international ethic which deems war to be but the last resort of nations, and only to be appealed to when diplomacy has failed. These acts afford evidence of the application of the doctrine that war is 'politics par excellence', and lead direct to the enunciation of the principle that 'might is right'; that the Society of States or Family of Nations based upon equal justice and equality before the Law of Nations is a useless and unworkable fiction; that there is no room in the world for International Law to regulate

the mutual intercourse of sovereign independent States. They show the increasing insistence on the part of Germany for a dominating and supreme control in European politics.

For what are the presuppositions on which International Law is based? They are the principles (advanced by Grotius in 1625, acknowledged by the Treaty of Westphalia in 1648, and extended and applied by subsequent generations of statesmen and jurists) that the independent sovereign Powers of the civilized world form a Family or *Societas*; that all the mutual intercourse of these Powers is conducted under, and their relations to each other are governed by, rules which they regard as being binding on themselves with a force comparable in nature and degree to that binding the conscientious person to obey the laws of his country. Further, that, notwithstanding the great differences which exist in size, population, wealth, and other qualities, all are, as subjects of the Law of Nations, equal. It is not contended that as regards the influence which accompanies physical strength or a highly developed civilization all States are or ever will be equal to each other, but that their equality is a legal consequence of their independence. Further, it follows that all these independent States have a moral nature, that the statesmen who conduct their business of mutual intercourse must conform to certain ethical standards, that they are actuated by a sense of right, and feel themselves under an obligation to act in accordance with it, and therefore that good faith is predicated of all their dealings. Consequently, the contracts or treaties which States make with each other they recognize as binding, and only to be terminated according to accepted rules. When several States are parties to the same transaction, any modifica-

tion must be made with the assent of all. 'We cannot recognize the right of any Power or State to alter an international treaty without the consent of the other parties to it,' said Sir Edward Grey in 1908, 'because if it is to become the practice in foreign politics that any single Power or State can at will make abrupt violations of international treaties you will undermine public confidence with all of us.'

The treaties, the breach of which Germany acknowledges, are Treaties of Guarantee, and it must be admitted that treaties of this nature have not always been enforced by the guarantors by force of arms. The interests of the guaranteeing States have always been the determining factor in their political action. All treaties of this character are made for particular political purposes, and that fact has perhaps been one of the reasons why statesmen, and text-writers dealing with the acts of statesmen, have often pointed out their weakness. Some of the guarantors must of necessity nearly always be unable to interpose by force in defence of a guaranteed State, and must limit their aid to the exercise of their influence on behalf of a State whose independence, integrity, or neutrality they have guaranteed. The cynical view of Frederick the Great that 'All guarantees are like filigree work, made rather to please the eye than to be of use' reads very like the view of the German Chancellor. Gentz takes a different view: 'I know well', he says, 'that guarantees on paper are feeble means of defence; however, one would be wrong to neglect them, for they furnish, at least to those who wish to do their duty and fulfil their engagements, a legal means of action when circumstances call them to it.' 'However,' says Geffcken, a distinguished German writer who quotes this authority, 'the interest

of the guarantor will always be a great weight in the balance. The guarantees of the neutrality of Belgium and of Switzerland have stood the test, that of the integrity of Turkey has not.'[1] This statement of Gentz is important: 'They furnish to those who wish to do their duty and fulfil their engagements a legal means of action when circumstances call them to it.' This is the British position to-day. We have interposed to defend a State whose neutrality we have guaranteed; we step in, and do our duty by so doing; we take part in the war by right; it is a war in defence of justice and good faith in international dealing; it is a fulfilment of a legal engagement.

It is contended, however, with some authority, that treaties which in their origin and from their nature were clearly intended by the contracting Powers to be perpetual are all entered into on the tacit condition known as *rebus sic stantibus*, that is, if vital changes in circumstances occur, the parties shall be exonerated from any further compliance with their terms. In other words, 'they were concluded in and by reason of special circumstances, and when those circumstances disappear there arises a right to have them rescinded.'[2] The German Chancellor did not take this ground, though his fellow-countryman Bernhardi does in reference to the treaty guaranteeing Belgium's neutrality. Dr. von Bethmann-Hollweg distinctly recognized the neutrality of Belgium and Luxemburg, and in his overtures to Belgium promised to restore her condition if she accepted his terms for the violation of her territory. Belgium rejected the overtures, and Great Britain, recognizing both the funda-

[1] A. G. Heffter, *Das europäische Völkerrecht* (ed. F. H. Geffcken), § 97.

[2] J. Westlake, *Peace*, p. 295.

mental principle of *pacta servanda sunt*—treaties must be kept, and the other doctrine of *rebus sic stantibus*—circumstances have not changed, took the only step open to her and declared war on Germany.

But we may ask, Have the circumstances changed since the Treaty of Guarantee was entered into? Would not Germany be justified in appealing to the doctrine of *rebus sic stantibus*? This involves the further question, What led to the treaties whereby Belgium's neutrality was guaranteed, and what is the special interest which calls for British intervention in the war? Why did Great Britain in 1831 and again in 1839 solemnly pledge herself to a treaty which her statesmen must have foreseen would at some time, sooner or later, lead to our having once again to take part in a war on the Continent of Europe? The answer to this question brings us to a doctrine which, if not a fundamental principle of International Law, is nevertheless, in one form or another, 'a political principle indispensable to the existence of International Law in its present condition'.[1] I mean the need for the maintenance of a balance of power among the States of Europe.

In 1813 the Powers allied to overthrow Napoleon, and with a view to limiting the power of France and its expansion to the north, and having, as they subsequently stated in a protocol of December 20, 1830, 'the object in view of forming a just equilibrium in Europe, and assuring the maintenance of the general peace',[2] they joined the Belgian provinces which had formerly formed part of the Austrian dominions to Holland. This union was subsequently confirmed in

[1] L. Oppenheim, *Peace*, § 136.
[2] C. Dupuis, *Le principe d'equilibre*, p. 217.

1815 by the Congress of Vienna, and the newly-established kingdom of the United Netherlands was declared neutral by the Powers party to that Treaty. This arrangement, which neglected all the sentiments of language and religion and the traditional hostility of the Belgians and Dutch, was destined to fail, as all artificial attempts to work out a mathematical balance of forces among the nations must, and in 1830 a revolution broke out in Belgium. The Dutch were expelled, the Powers which had established the new kingdom in 1815 met in conference, and, after lengthy and dangerous delays, they were able to solve in a peaceful way, under circumstances peculiarly difficult, a singularly complicated problem. The kingdom of Belgium was established, it was to form an independent and perpetually neutral State, it was bound to observe such neutrality towards all other States (Art. 7). This was provided by the Treaty of London of 1831, and finally ratified by the Treaty of London of 1839, to which Great Britain, France, Austria, Prussia, and Russia were parties. The object of the Powers first in creating the United Netherlands, then in creating the kingdom of Belgium, and again, in 1867, in neutralizing the Grand Duchy of Luxemburg, was to provide for the continued existence of these small States as buffers between adjacent Great Powers which, apart from such guarantee, might be tempted to acts of aggression against them to the detriment of the peace of Europe. The neutralization of Belgium was undoubtedly inspired by the fear which Europe had of seeing Belgium united with France, to the detriment of the balance of power.

There is, I venture to think, considerable misunderstanding of the meaning of this expression, and it is associated in some minds with 'an accompanying

disregard of all moral obligations', and characterized as bringing 'disgrace upon international politics'.[1] The significance attached to a balance of power has varied from time to time, but in one form or another it is as old as the beginnings of international politics. It took the form at one time of an insistence on the maintenance of the condition of the map of Europe as prepared by some international congress, first the Treaty of Westphalia, later the Treaty of Utrecht of 1713, in which the expression is used for the first time —and many wars were waged with the avowed object of preventing any change. It has played a part in our own legislation; for the Army Act in its preamble states that among the reasons for the maintenance of a standing army in time of peace was the balance of power. The doctrine in its form of the maintenance of the *status quo* has been strongly opposed by many statesmen and writers, who have laid stress on the manifold abuses to which the application of the theory has led, for it has undoubtedly been used in the past to hinder the legitimate progress and increase of States. It was an application of one view of this doctrine that led to the iniquitous destruction, by a combination of the more powerful, of smaller States which were even subdivided and split up at congresses of the Great Powers, so as to be thrown into the balance of the European equilibrium. It was seen at its worst in the policy of Napoleon III, and his demands for compensation when any of his neighbours received any accession of strength. Such a theory of the balance of power is I think worthy of condemnation. But the doctrine in the form in which it is supported by statesmen and

[1] Letter of the Bishop of Hereford in *The Times*, August 12, 1914.

publicists to-day has a meaning which is vital to the existence of the family of nations, and is intimately bound up with the principle of self-preservation and independence. It was the application of this principle which in our own history was responsible for the alliance of Queen Elizabeth with our rivals the Dutch against Philip II of Spain; it was in furtherance of its maintenance that we fought Louis XIV, that Wellington fought in the Peninsula, and Nelson at Trafalgar, and that the allies triumphed at Waterloo. It was definitely stated in the preamble to the Treaty of March 12, 1854, between France and England, that it was to maintain the balance of power that the allies in the Crimean War sought to check the aggrandizement of Russia. The reason why some form of the balance of power, as I understand it, must lie at the root of the modern Law of Nations arises from the fact that it comes into play when one of the members of the great international society so far forgets its social obligations as to engage in a course of action endangering the vital interests of the whole society. Dr. Lawrence puts the position in words with which I heartily agree, when he says:

If, therefore, a powerful state frequently endeavours to impose its will on others, and becomes an arrogant dictator when it ought to be content with a fair share of influence and leadership, those who find their remonstrances disregarded and their rights ignored perform a valuable service to the whole community when they resort to force in order to reduce the aggressor to its proper position. As the duty of self-preservation justifies intervention to ward off imminent danger to national life or honour, so the duty of preserving international society justifies intervention to bring to an end conduct that imperils the existence or healthful order of that

society. . . . The balance of power, understood in the sense just indicated, ought to be maintained not in Europe only, but in all quarters of the globe.[1]

This, it may be said, is putting the case from the point of view of an English writer, but appeal for support can successfully be made to French and other continental writers.[2]

Geffcken's note to his edition of Heffter's *Europäische Völkerrecht*, a German work of deservedly high repute, emphasizes the fact that there is no possible security for the international life when one State has over the others so great a preponderance as to allow it to threaten their liberty of action, their interests, and their integrity. The desire even to obtain such a predominating position is, he holds, itself to be condemned; the fear alone of a common resistance by the other nations ought to be sufficiently strong to hold in check such aspirations. Dealing in this connexion with the position of the smaller States of the world, Geffcken points out that it is essentially one of the tasks of the balance of power rightly understood to watch over the preservation of the small States, provided they are able to fulfil the conditions bound up with independence; for the more the small States are absorbed by the great, the more frequent will collisions between the latter occur. As for the idea put forward by Lasson that the small States are a perpetual danger to peace, the apple of discord between the Powers, and the natural causes and certain theatres of war, he pertinently asks when have Holland, Belgium, or Switzerland ever fomented discord among neighbouring States. All

[1] *International Law*, p. 133.

[2] See Despagnet's *Droit International*, § 180.

their interests are bound up with the maintenance of peace.[1] We may go further, for the small States, and especially the neutralized States of Belgium and Switzerland, have played, during the nineteenth century, an invaluable part in the life of the family of nations, and have done much for the advancement of International Law. We recall that the capital of Holland has been the scene of the Hague Conferences, and is the seat of the International Court of Arbitration, that Brussels and Berne are the centres of nearly all of the international organizations which the increasing economic complexities of modern life have brought into being. We remember that various international conferences have met in the capitals of these States, that the conventions for the care of the sick and wounded of the armies in the field were signed at Geneva, and that they owe their initiative to Switzerland.

We are apt to lose sight of the fact that the immediate cause of this great European War lies in the extraordinary demands made by Austria on Servia. The ostensible reasons for Austria's ultimatum were the circumstances surrounding the assassination of the Crown Prince Ferdinand of Austria and his consort at Sarajevo in June of the present year. The Servian Government was charged with being cognizant of the conspiracy and the plot which resulted in the assassination of the Austrian heir apparent. But so far the allegation has not been proved, and we have had evidence—as in the Friedjung trial—of the capacity of Austrian officials to forge such documents as may be necessary to sustain a serious political charge. Be that as it may, the answer of Servia accepted the demands of Austria in all but two points, and these she was prepared to

[1] op. cit., § 5.

leave to the arbitrament of the Hague Arbitration Tribunal. Servia, again, is an example of a small State standing in the way of the ambitions of a Great Power, and making a valiant defence of her liberties. She bars the advance of Austria to the Aegean, she blocks the way of the Austro-German movement to control the Balkans, she impedes the desires of the Germanic world for an expansion which would include the control of the Dardanelles, Asia Minor, the Euphrates valley, and the sea routes to Egypt and India. Just as England could not be a passive spectator of the overthrow of Belgium, so Russia, for equally powerful reasons, could not silently witness the subjugation and annihilation of a small neighbouring Slav Power by her ambitious Teutonic neighbours. In the latter case especially the strong sentiment of nationality, which has been the chief mainspring of the political movements in Europe during the nineteenth century, operated as forcibly as any desire for the maintenance of the European equilibrium. In the west England has Belgium, in the east Russia has Servia, to support and maintain. In each case the Power nearest and most capable steps in to assert rights conferred on it by treaty. But though the immediate cause of the present war may be put down to Austria's menaces to Servia, every day that elapses, every new diplomatic disclosure that is made, points to a deeper and more widely rooted cause —namely the increasing domination of Europe by the German Empire. I have already referred to the stages in her movement towards the assertion of a predominance in Europe. Even had Germany left intact the territory of Belgium and Holland, and begun war by an invasion of French territory, England would, in my opinion, have been bound in the interest of self-pre-

servation to have stepped in and supported France. 'When a State remains a passive spectator of the complete overthrow of the balance of power which it could have prevented, it loses not only its political prestige, but it has to suffer the disastrous consequences of such non-intervention.' This is the opinion of Professor Geffcken on the abstract question ;[1] it is the opinion of Admiral Mahan in relation to the attitude of Great Britain in the present war.[2]

The policy of non-intervention is, as a general rule, sound, and should be the normal guide for pacific statesmen, but it is apt at times to be very short-sighted. When a State from motives of selfishness, merely because it does not appear at the time that it is in any danger itself from the aggression of one State against another, allows the weaker State to be crippled or crushed, the consequence of such a policy is apt to weigh heavily on it: it has to pay in the long run a heavy price for assuming a position of splendid isolation. Prussia, in 1805, stood aside and allowed Napoleon to overthrow Austria, but her own turn came next year in the crushing defeat at Jena and the humiliating terms of the Treaty of Tilsit. France, again, in 1866, stood aside and witnessed the overthrow of Austria, thereby allowing Germany to complete the preparations which led to her defeat in 1870. Nay, I would go further and say that had England not stood aside at that time, had she interposed her powerful assistance on behalf of the French people after the fall of the Second Empire, the whole history of the last forty-four years would have been changed. The victory of Germany, as consecrated by the terms of the Treaty of Frankfort,

[1] Note to Heffter, § 5.

[2] See *The Times*, August 5, 1914.

with the annexation of Alsace-Lorraine against the passionate protests of the inhabitants, involved the whole of Europe in constantly growing expenditure for the maintenance of huge armaments, which have been an incalculable drain on the wealth of the world and a standing menace to its peace.

The maintenance of the balance of power, as I understand it, and as I have endeavoured to describe it, as a corollary of the doctrine of self-preservation of States, thus becomes in my opinion essential to liberty—liberty of States to live their own lives, to develop themselves on their own lines; liberty for every State to pursue its own ideals of excellence without rivalry or contempt for others. This freedom is threatened with overthrow and annihilation when any one State presumes to act as the arrogant dictator of other members of the family of nations, and seeks to impose by force of arms its ideals of culture and civilization on all and sundry, to the detriment of their personalities and self-development. We have lived through an era of nearly half a century of aggressive militarism; we have as a result witnessed a growing disregard for the sanctity of international obligations, and even for the decencies of international comity. 'Shining armour,' 'mailed fists', and swords rattling in their scabbards have appeared to support breaches of international obligations, and demands for economic compensation from pacific nations. The Concert of Europe broke down at the critical moment. A crisis has been reached in the development of the civilization of Europe, and on its solution depends the advance or retrogression of all the ideals which free and self-governing peoples hold most dear, both in their own internal organization and in their future international relations. Liberty and freedom of action can

only come to individuals in the truest sense when these are governed and regulated by law; and the Law of Nations, self-imposed and lacking in a central executive and administrative authority, must increasingly provide and safeguard the means of self-realization and equality of opportunity of its members. States must always remain unequal in size, power, and influence; but the maintenance of the doctrine that all the members of the international society are nevertheless entitled to equal rights and equal mutual consideration, has largely contributed in the past to the happiness of mankind, 'though it is constantly threatened by the tendencies of each successive age'.[1] The doctrine of equality witnesses to the influence of idealism in the development of the Law of Nations, but that law is still far from being in a position to give full effect to the principle. What will be the changes, if any, in the organization and rules for intercourse of the family of nations at the close of the present war is a matter for speculation by theorists, and will be one for practical solution by statesmen and diplomatists. That the present will be the last war in the history of the world no one who takes a wide view of history will be likely to affirm; that it should make wars increasingly difficult and rare in the future is an aspiration with which all will concur. 'Until there is established some form of international police power, competent and willing to prevent violence as between nations,' breaches of the Law of Nations will have to be put down by force by individual States or combinations of States; and an era of disarmament is not, in my opinion, yet in sight, though the burden may, I hope, be lightened. After each great upheaval of the nations such as we are witnessing to-day, such as was

[1] H. S. Maine, *Ancient Law*, p. 101.

witnessed in the ages of the Wars of the Reformation, of Louis XIV and of Napoleon, proposals for an era of perpetual peace have always been put forward: the projects of Henry IV and Sully, of Saint Pierre, Rousseau, Bentham, and Siéyes bear witness to the ardent desires of statesmen and philanthropists for a speedy realization of the time when the Millennium shall be reached. Unfortunately, they also bear witness to the futility of man's endeavour to hasten the slow grinding of the wheels of God.

We all of us chafe at times at the want of progress which society seems to be making by the ordinary means of development, and long for some stupendous *coup* by which the wrongs of men may be righted and injustice be for ever prevented. The infallible lesson which the history of the past centuries teaches us is the certain though sometimes slow punishment which awaits the persistent wrong-doer, the inevitable retribution which falls upon the breaker of the laws of God and nations. The criminal State is arraigned at the bar of humanity, and history records its sentence.

We do well to cherish high ideals for the future of international relations, but it is necessary that these ideals should be those not of one State only but of all the members of the international society. The Law of Nations can only progress and develop as the ethical standard of each State is steadily elevated. The death-blow must be given everywhere to the anarchical doctrine that might is right, that war is a necessity to political idealism and politics *par excellence*, instead of being the evidence of the failure of diplomacy and the last resort in case of the clash of irreconcilable national ideals. If the present war results in the firmer acceptance of the sanctity of treaties, the complete destruction

of the German doctrine of necessity justifying any and every breach of the laws of war, guarantees the safety of small States and provides means for a more general acceptance in international disputes of the Law of Nations, applied by an international body in lieu of the arbitrament of the sword, it will not have been in vain, and it will form a notable epoch in the development of the Law of Nations and the civilization of the world.

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