CIHM
Microfiche
Series
(Monographs)

ICMH
Collection de
microfiches
(monographies)

Canadian Institute for Historical Microreproductions / Institut canadien de microreproductions historiques

Technical and Bibliographic Notes / Notes techniques et bibliographiques

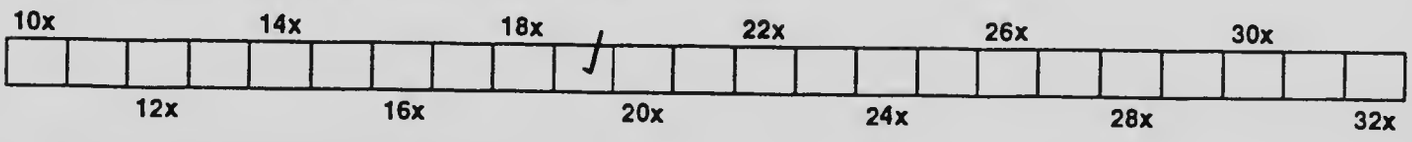
The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming are checked below.

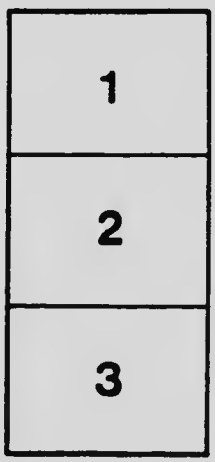
- ☐ Coloured covers / Couverture de couleur
- ☐ Covers damaged / Couverture endommagée
- ☐ Covers restored and/or laminated / Couverture restaurée et/ou pelliculée
- ☐ Cover title missing / Le titre de couverture manque
- ☐ Coloured maps / Cartes géographiques en couleur
- ☐ Coloured ink (i.e. other than blue or black) / Encre de couleur (i.e. autre que bleue ou noire)
- ☐ Coloured plates and/or illustrations / Planches et/ou illustrations en couleur
- ☑ Bound with other material / Relié avec d'autres documents
- ☐ Only edition available / Seule édition disponible
- ☐ Tight binding may cause shadows or distortion along interior margin / La reliure serrée peut causer de l'ombre ou de la distorsion le long de la marge intérieure.
- ☐ Blank leaves added during restorations may appear within the text. Whenever possible, these have been omitted from filming / Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.
- ☐ Additional comments / Commentaires supplémentaires:

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- ☐ Coloured pages / Pages de couleur
- ☐ Pages damaged / Pages endommagées
- ☐ Pages restored and/or laminated / Pages restaurées et/ou pelliculées
- ☑ Pages discoloured, stained or foxed / Pages décolorées, tachetées ou piquées
- ☐ Pages detached / Pages détachées
- ☑ Showthrough / Transparence
- ☑ Quality of print varies / Qualité inégale de l'impression
- ☐ Includes supplementary material / Comprend du matériel supplémentaire
- ☐ Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image / Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.
- ☐ Opposing pages with varying colouration or discolourations are filmed twice to ensure the best possible image / Les pages s'opposant ayant des colorations variables ou des décolorations sont filmées deux fois afin d'obtenir la meilleure image possible.

This item is filmed at the reduction ratio checked below /
Ce document est filmé au taux de réduction indiqué ci-dessous.





OXFORD PAMPHLETS

1914

DOES INTERNATIONAL LAW STILL EXIST?

BY

SIR H. ERLE RICHARDS

K.C., K.C.S.I.

CHICHELE PROFESSOR OF INTERNATIONAL LAW

Price Twopence net

OXFORD UNIVERSITY PRESS

HUMPHREY MILFORD

LONDON EDINBURGH GLASGOW

NEW YORK TORONTO MELBOURNE BOMBAY

DOES INTERNATIONAL LAW STILL EXIST?

I AM honoured by the invitation of this Union to address them on the subject of International Law. It is a subject which is attracting much attention at the present time, and deserves that attention. There are some who say that International Law has ceased to exist by reason of recent events; on the other hand we see in our papers, day by day, appeals made to the law and issues raised as to whether this or that action of this or that belligerent is in accordance with law; and that could not be done if in fact there were no law. I propose to-night to present to you some considerations on this point; to tell you briefly what International Law is and what it purports to do, and then to ask you to consider to what extent, as a system, it is affected by this war. Legal matters are not always easy to explain in a popular way, but I will endeavour to make the main points as clear to you as I can within the limits of time at my disposal.

International Law is the law which regulates the rights and duties of States; it defines their property, declares their mutual powers and privileges, and controls their relations and their dealings with each other. In time of war it is concerned in the first place with the respective

[1] An Address delivered to the Workers' Educational Union at Birmingham, December 2, 1914.

rights of belligerents—that is of the States actually engaged in the war, and of neutrals—that is of States who take no part in it: in the second place it imposes limitations on warfare in the interests of humanity, and seeks to protect non-combatants and private property in the area occupied by an enemy force. Among individuals, rights and duties are regulated by the law of each particular country: here in England we are under the control of English law; if we cross the Atlantic, we come under the control of the law of the United States or of one of the Republics of South America, and so forth. But the rights and duties of a State cannot obviously be left to be determined by the legislative body of any other State; they are controlled by a common system of law which applies to all States equally and is known as International Law.

And to explain somewhat more fully what International Law claims to do, let me first say a word or two about its origin and development. As to its origin, we need not go back for practical purposes further than the seventeenth century. Before that time the society of European States was based on the supposition that there existed a common superior who could secure order among the community of States—Rome and those who claimed to succeed to the power of Rome, the Pope and the Emperor of the Holy Roman Empire. And in those conditions, as you will readily understand, the necessity for any system of law was less apparent. As long as a schoolmaster has control, no law is wanted, save his will, to regulate the relations of his scholars. But about the time I have mentioned, and I am only dealing with the matter broadly, this state of things came to an end from causes to which I need not refer. From that time onwards there ceased to be any common superior

and the civilized world became a community of States, equal in all respects so far as concerned their rights and their mutual relations: from that time, consequently, it became essential to have some common laws, since without law there must be anarchy. This conclusion became accepted by the nations of Europe, but only as the result of some discussion. Two views were current: the first that each State was entitled to set its own advantage before any other end; that it was not bound to consider the rights of other States, and that the necessity of any particular State was a sufficient justification for action taken by it; in short, that if necessity compelled States were entitled to disregard obligations and to break their faith; they were under no duty in regard to other States or to the community of States which could stand in the way of their advantage; for since each State must be the judge of its own necessity, advantage was for all practical purposes the same thing as necessity. This is, put broadly, the doctrine with which the name of the Italian Machiavelli had become associated. The other view was that each State owed a duty to the other members of the international community which could not be displaced in this way; that it was impossible for States to carry on mutual relations unless that was so, that there must be a law to regulate these relations, and that such a law was to be found in the precepts of the law of nature and of religion and in international usage. This law bound all States, and between States good faith was essential. Of this view the Dutchman Grotius was the chief exponent at the time. And it was this view which prevailed. The doctrine that necessity justifies the overriding of the law was explicitly rejected. Indeed it seems clear to us now that no society of States could continue to carry on mutual

relations if any member of it was to be entitled to disregard all considerations other than those of its own advantage. Nor can any society of States exist unless faith be kept; for if promises are not to be binding, if pledges can be broken with impunity, there can be no real international intercourse. And there was another fact, too, which did much to convince the statesmen of the time that some International Law was necessary, it was the horrible cruelties and destruction inflicted by the warfare of that period. Between combatants some sort of restraint existed: there were codes of honour observed among the fighting men; there were rules of war more or less accepted between them, at least on some points. But there was little or nothing to restrain excesses in the treatment of non-combatants. The troops of an invading force lived upon the country through which they passed; they seized all cattle, foodstuffs and money, and left the peasants to die of hunger or to seek safety in flight. We read that the track of an invading army was marked by devastated fields, by smoking villages, by the corpses of the inhabitants done to death by the soldiers or perished of starvation. The public opinion of civilized nations had become shocked by these practices and was determined to put some check upon them. These, then, were the two main causes which brought International Law into being: the first the rejection of the doctrine of 'necessity' and the acknowledgement that some code of laws must be brought into being if the intercourse of nations was to continue; the second, the conviction that some restraint must be imposed on the excesses of warfare for reasons of humanity and civilization. I ask you to bear this history in mind, for it is not without a bearing on the position of International Law to-day.

From that time onward the existence of a law among

nations was recognized, and as time went on the rights and duties of States under International Law became gradually formulated with more and more precision. The law was developed by the usage of nations, as established by precedent and in some cases by treaties, by the dispatches of statesmen and by the discussions of jurists. And sometimes we have had law made by a process which differs in nothing except in name from express legislation. We have had treaties making law. Such, for instance, is the Hague Convention, of which we hear so much nowadays: it is a treaty enacting and declaring the law in regard to war and other matters. Another instance is the Declaration of Paris. And as the law by these processes has become more definite, the resort to law has become more frequent. Nations have more and more resorted to arbitration to settle differences which in former days could only have been settled by the sword: you may remember how the Alabama arbitration put an end to a dispute which had brought this country almost to the brink of war with our friends across the Atlantic; and lately a question of acute difference between the same nations as to the fisheries on the Canadian and Newfoundland coasts was settled in the same way. The habit of arbitration seemed growing, and year by year the number of treaties by which nations agreed to settle their differences by arbitration was increasing. So that if you had asked me to address you on the growth of International Law as late even as last July, I should have told you that it was strengthening its hold on the world year by year, and that law was gradually displacing force in the settlement, at least of some classes, of international disputes. Then suddenly, almost without any warning, there breaks out the greatest war history has ever known. Greatest, because

of the number of the forces engaged, because of the range of hostilities, stretching as they do over every quarter of the globe, and because of the extent to which it has affected the commerce and the finance of the whole world. And that Great Britain has become involved in this war is due to the fact that her enemy has declined to be bound by International Law, and has asserted a claim to disregard legal principles, if it be advantageous to do so for military purposes. It is not too much to say that the action of Germany challenges the very existence of any law between nations. In particular it challenges the position of neutral States and the rights of small States to equality of treatment. Let us examine the effect of the war from this point of view.

We are discussing to-night the legal aspect of the matter; it is not, therefore, necessary for me to dwell on the point which has been so much in controversy as to the responsibility for the war. The papers are before the public and you can judge. I would only suggest, in passing, that one good test by which to discover the originators is the state of military preparation in which the outbreak of war found the respective parties, for no sane government provokes hostilities unless it is prepared for them. The German Army was ready to march, and did march, over the frontiers of France and Belgium on the day on which war was declared, if not before: the British Army is not yet ready, and one has only to observe the feverish haste with which our recruits have been learning the most elementary movements of drill in every open space since war began, to satisfy oneself that the British Government, at any rate, could never have contemplated immediate hostilities.

Now the reason why this country has entered into the war is stated in the ultimatum delivered to Germany.

We have done so because Germany has violated the neutrality of Belgium, and that action raises a clear issue of International Law.

Belgium was a neutral State; it was not concerned in the quarrel between Germany and France, and did not wish to take part in any hostilities between those States. That being so, the law is clear, that neither belligerent had any right to enter on Belgian territory: and the law is equally clear that Belgium, so far as she was able, was bound to prevent the troops of either belligerent from coming into her territory. If she had permitted that to be done, she would have taken sides with the belligerent whose entry she permitted, and by that very fact would have become an enemy of the other belligerent.

That being the undoubted law, Germany demanded a right of passage through Belgium; and I ask you to think what this meant. It meant that Belgium was to lend its territory as a cockpit in which the war could be fought out, for obviously if German troops passed through Belgium to attack France, the latter Power must be entitled to enter on Belgian soil to attack the German troops. Further, it meant that Belgium must take sides against France. If Germany won, then some compensation, assessed by Germany, was to be payable for damage as a matter of grace; but if France won, then Belgium would be at the mercy of France, and subject to such penalties as France at her pleasure would impose. This proposal has been called by the German Government a 'well-intentioned offer', but I ask you could any demand more unreasonable be made? It was a gross violation of International Law in the matter of neutrality; but it was more than that: it was an infringement of the principle of the law that all States have equal rights. No such demand could ever have been

addressed to a powerful State: it was addressed to Belgium because her powers of resistance were known to be limited, her army was small, her resources not large. Such a precedent, if it were to be once established, would mean that States are to enjoy rights only in proportion to the strength of their military forces. It is a denial of the cardinal principle of International Law that all States have equal rights.

So far I have dealt with the breach of Belgian neutrality as a matter resting on the common law of nations, and the illegality of the action of Germany is clear beyond doubt on that ground. But the matter does not rest there. Belgium is in an exceptional position. Her neutrality does not depend only on her rights at common law: it has been guaranteed by express treaty to which Germany and Great Britain are both parties, a treaty made in 1839 and acknowledged as continuing in 1870. Here, then, is another breach of law, and more than that, a breach of good faith. Germany is expressly pledged to treat Belgium as neutral: she has broken that pledge: she has violated the law and her honour. And this point as to the treaty is important, because it is the reason why Great Britain has been compelled to take part in the war. The nations of the world are all concerned at the violation by Germany of the common law of neutrality; but it can hardly be expected, as things are at the present, that nations will make war merely to impose the observance of law when they are not themselves affected in any particular respect by the breach. It may be that in time to come neutrals will take a higher view of their obligations and be willing to assist in preventing or punishing flagrant breaches of the law, in order to make the law more effective; but that time is not yet, and no complaint can be made if neutrals have allowed the breach to

pass without effective remonstrance. Great Britain, however, is in a different position: she stands bound by the express provisions of this treaty to maintain the neutrality of Belgium, and unless she be prepared to break her faith she must give effect to that obligation.

Now what is the defence of Germany? We have it before us. The illegality is admitted, but it is sought to excuse it. And first as to the treaty, it is said to be a scrap of paper and of no account. I need not stop to discuss such a suggestion. The question is of the breach of a formal promise: the evidence of that promise may be a scrap of paper, or it may be the testimony of those who heard the oral communication in which it was made: that matters not: the point is that a promise was given and has been broken. Is there to be no good faith among nations? is there to be no trust in pledges? That excuse comes to nothing. But then it is said that military necessity compelled the action of Germany. There are a few exceptional cases in which necessity, instant and urgent, may be a justification for action in self-defence, which would otherwise be contrary to law, but no such case arose here. The necessity alleged is that France was about to make an attack on Germany through Belgium, and that it was necessary to anticipate this by a counter-movement. But the fact on which this plea must rest is not established; on the contrary, France had given a formal undertaking not to move troops into Belgium unless Germany first did so, and Germany knew of that undertaking before she took any action, and had herself been asked and refused to give any similar undertaking, with a like qualification. And there is other evidence which disproves the suggestion. The strategic railways of Germany and her military dispositions show that

she had for long intended to attack France through Belgian territory. In truth the motive was military advantage: not military necessity. Military advantage may be, in one sense, a necessity for a State, because it is, in one sense, necessary for the State to succeed in war, but that is not the kind of necessity which alone can justify any departure from the law: if that were so there could be no law, for any belligerent could plead necessity as great as that on which Germany relies in the present case. This excuse of necessity is really nothing more than the old plea that a State can override law when it sees an advantage in doing so; but it is serious because it is no new thought adopted under the pressure of the moment: it has for some time past been adopted and defended by leading publicists in Germany. They argue, to put the matter in a sentence, that reasons of war override its ordinary rules. Now I ask you to note what that proposition must come to. It must come to this, that no laws are to stand in the way of military advantage. As the late Professor Westlake has well put it, the instructions to generals, according to these writers, must be, 'Succeed—by war according to its laws if you can—but at all events, and in any way, succeed.' The only result which can follow is the abolition of all law.

And that this view that necessity overrides law, is the one on which the German military and naval authorities have acted seems to be confirmed by their general disregard of the restraints imposed by law in other grave matters, such, for instance, as the rights of neutrals on the high seas or the position of non-combatants in enemy towns or in the territory occupied by the German forces.

Take the case of the mines placed by Germany in the high seas. You know that the ships of all nations have

at all times the right to navigate the high seas, which are open equally to them all. In time of war belligerents have the right to prevent neutrals from carrying contraband, or from carrying goods to a port which has been declared under blockade in accordance with the laws which regulate blockade. But apart from these and some other possible restrictions as to particular areas which do not arise in the present connexion, the use of the high seas cannot be interfered with. That is the law. But Germany in this war claims the right to anchor mines in any part whatever of the high seas, or to set adrift there floating mines over which she has no control; and she has strewn the seas with mines of the one or the other kind. The result has been the destruction of neutral vessels and the extermination of their crews. Germany claims this as a necessary part of her military operations, but it is a new claim, and it is altogether contrary to the principles of law heretofore accepted by humanity. Nor is the offence only against neutrals, for the mines may destroy enemy merchant vessels as well. There is no right to do this unless the crew and passengers be first removed to a place of safety. Again, hospital ships are immune from seizure, but the German mines will sink them with their cargo of wounded. This claim again involves departure from law. So far the only neutrals affected have been small Powers—Denmark, Norway, and Sweden; and Germany has disregarded their protests because they have not the power to enforce them. Italy remonstrated with Austria forthwith when one of her vessels was blown up by an Austrian mine, and obtained an immediate undertaking that this should not occur again. But Italy is a powerful neutral, whose good graces Austria must sue for. Great Britain

has in these last weeks herself placed mines in the high seas, but these are anchored, the position of the mine-field is notified, and neutral vessels can pass through safely on taking a British pilot. There is no harm to neutrals in this.

Take, again, the dropping of bombs on the civilian quarters of great cities. The law permits bombardment of the inhabited portions of a city, but only as part of a siege and after notice has been given, so that the inhabitants may seek shelter. The claim of Germany is to drop bombs without warning on the non-combatants and not as part of siege operations, but simply in order to terrorize them. This, again, is contrary to law and to humanity.

Take the treatment of the civilian population in Belgium. There have been many grave charges made against the German soldiers; but these are for the most part denied, and we must wait until the evidence on both sides is made public before we form a judgement upon them. But put aside allegations of particular outrages, and look at the general treatment of non-combatants. Consider the large number of civilians put to death, and in most cases not for any offence of their own but merely as a warning to others; the oppressive capture and treatment of hostages; the seizure of all foodstuffs irrespective of the wants of the population; the huge fines levied on captured towns; the general destruction of property. All these matters show an excess which cannot be justified on any view of the law. The burning of Louvain and the execution of many of its inhabitants, to take one particular case, is altogether incapable of defence; no misconduct by the inhabitants can be made out sufficient to justify such wholesale destruction, and the evidence goes to show that no one

of the various and conflicting justifications which have from time to time been put forward can be established in fact. And there are other cases equally grave. In my judgement nothing can justify the excessive severity of the general treatment of the Belgian non-combatants.

All these things, we are told, are necessary military measures. It is 'necessary' to break faith and disregard the law of neutrality: it is 'necessary' to destroy neutral ships and drown their passengers and crews: it is 'necessary' to frighten the enemy government by dropping bombs without warning on residential quarters of great towns: it is 'necessary' to make frightful examples of non-combatants. But necessity of this kind, which overrides law, is incompatible with the existence of any law at all: it must result in never-ending strife and war. Let me put a homely illustration. Suppose you have a house and a garden. It is enough for you and your wife when you marry; but as time goes on a family arrives and increases, and the accommodation is no longer sufficient. On the other side of the wall is another house and garden which would suit your increased wants. It is 'necessary' for you, in your opinion, to have something of the kind; therefore you are entitled to pull down the wall and seize the premises, and if the owner objects to put an end to him. How can a society of men or of States proceed at all on this basis? Have we not really got back to the seventeenth century and to the ideas which were rejected, and, as we hoped, rejected for ever, at that time? Is this new doctrine anything more in its essence than that of Machiavelli? The destruction of Belgium to-day is less general than that of the countries which were devastated by the wars of the seventeenth century, but it is still deplorable and shocks humanity as much

as did the warfare of those times. It is surely time for the nations of the world again to declare that there must be an International Law, and that the excesses of war must be restricted in the interests of civilization!

Now, assuming that I am right in thinking that Germany has disregarded the law of nations, then what is the result? Can the law enforce any penalty? If it cannot, then to that extent it is held to be ineffective. Individuals who offend against the laws are punished by legal process, criminal or civil; but it is the weakness of International Law that it has no sanction of this kind; there are no police to keep order, there are no courts empowered to enforce punishment unless an offender submits to them. But between individuals there is another force which can punish, and is a force of great power in many cases. That force is the opinion of others. The man who breaks his faith, or the man who commits acts of cruelty, is condemned by the judgement of his fellows; at the worst he is banished from the society of respectable persons. And in International Law we have the same sanction in public opinion. The only penalty for breach of International Law, beyond such redress as the injured party may be powerful enough to obtain by force, is the loss of the good opinion of other nations.

That sanction seems ineffective enough at the present moment, but there are signs of hope. We have to face a peculiar position in this war, because the public opinion that approves or condemns must be the opinion of neutral States: belligerents cannot pronounce in their own cause. And in this war the greater States of Europe are themselves involved. There are, however, a number of neutral States which together are a force; and there is one great Power across the Atlantic which can of

itself make its judgement felt. The fact that Germany has thought it in her interests to make strenuous efforts to obtain the good opinion of neutral States, and especially the United States, is a portent full of hope, and the more so because the United States have ever been foremost in the development of International Law. For these reasons, because it is impossible for international intercourse to be continued unless law be observed, and unless it be recognized that every State has a duty to the other members of the community of States, and because public opinion is shown to be some check even in the darkest days, I affirm confidently that International Law does still exist, and I anticipate that after the end of this war it will stand on a more secure footing than before. We cannot yet hope that nations will dispense with armaments: we have had too sharp a lesson to allow us to rely altogether on treaties or agreements, at least for some time to come; but we can hope that at the end of the war the public opinion of the world will declare in no uncertain tones that the clear principles of the law must never again be set aside as of no account, and that among nations, as among men, good faith must be observed.

Oxford: Horace Hart Printer to the University

WHY WE ARE AT WAR

GREAT BRITAIN'S CASE

BY MEMBERS OF THE OXFORD FACULTY OF MODERN HISTORY

E. BARKER.
C. R. L. FLETCHER.
L. G. WICKHAM LEGG.
H. W. C. DAVIS.
ARTHUR HASSALL.
F. MORGAN.

With an Appendix of Original Documents including the Authorized English Translation of the White Book issued by the German Government

---

THIRD EDITION REVISED (TENTH IMPRESSION)
CONTAINING THE RUSSIAN ORANGE BOOK AND EXTRACTS FROM THE BELGIAN GREY BOOK

TRANSLATIONS INTO FRENCH ITALIAN SPANISH GERMAN DANISH AND SWEDISH ARE NOW READY

Paper Covers Two Shillings net (*70 cents*)
Cloth Two Shillings and Sixpence net (*85 cents*)

OXFORD: AT THE CLARENDON PRESS
LONDON: HUMPHREY MILFORD
EDINBURGH GLASGOW NEW YORK TORONTO
MELBOURNE BOMBAY