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—Enemy Character.—

In my article on the liability of private property at sea to capture, I stated that enemy goods in an enemy ship, together with the ship, were confiscable. The Declaration of London, in Chapter VI., defines "enemy character." As a rule, the character of a vessel is to be determined by the flag which she is entitled to fly. The character of goods on board an enemy vessel is determined by the neutral or enemy character of the owner. The mere fact that goods are found on an enemy vessel creates a presumption that they are enemy goods; and, as a general rule, enemy goods on board an enemy vessel retain their enemy character until they reach their destination, notwithstanding any transfer of the goods effected on the voyage and after the outbreak of hostilities.

—Convoy and Compensation.—

Neutral vessels under national convoy are exempt from search. The commander of a belligerent warship must obtain his information from the commander of the convoy. But the latter commander, if there be reason to suspect that his confidence has been abused, must investigate the matter. If, in his opinion, facts show that the capture of one or more of the vessels is justified, he must withdraw his protection. Compensation must be given to interested parties where the capture of a vessel or goods is not upheld by a prize Court, unless there was good reason for capturing the vessel or goods.

ARTICLES PREVIOUSLY PUBLISHED.

- I.—International Law—Its Binding Force, August 17.  
 II.—Liability of Private Property to Capture, August 19.  
 III.—Blockade, August 22.  
 IV.—Contraband of War, August 25.

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INTERNATIONAL LAW IN  
 TIME OF WAR.

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 VI.—Mines at Sea.

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In the life of the State, inventions and discoveries create new social problems which defy even the feverish activities of democratic Legislatures. In the life of the Society of Nations, a like phenomenon is even more apparent owing to the absence of any permanent legislative organization. Too often, alas, some much desired change in international law, which has been effected after prolonged controversies, is valueless for all practical purposes owing to changed conditions. In the whole field of international law there is perhaps no more striking illustration of the failure of law to cope with new conditions than is afforded by the use of mines. Let us begin by looking at some of the facts. Earl Loreburn, in his work on "Capture at Sea," refers to the several classes of mines. Electric mines are discharged by an electric current from the shore or some stationary ship, but will not explode merely by contact. Automatic contact mines, which explode whenever any hard substance strikes them may or may not be anchored. If they are not anchored, they drift wherever wind and tide may carry them. Even if they are anchored, they may break loose from their anchorage. Anchored or not, any vessel which strikes them is almost certain to be destroyed, and the mines may infest the seas for months, or even years. They can, by proper methods, be so constructed as to become harmless in a very short time—if the mechanism acts. "When," writes Earl Loreburn, "there is no anchor and no provision for rendering harmless these engines of destruction, the possible consequences of their use are so dreadful and so undeniable that even those who habitually deride what they call pacifists have been moved to language of horror and indignation."

Clearly, the necessity for rules of international law, which shall define the condition under which mines may be employed, is apparent and imperative. Unfortunately, the necessity finds a very inadequate recognition in the existing code. The question first assumed a really grave character during the Russo-Japanese war in 1904. Both belligerents employed mines, some of which drifted into far Eastern waters. When, as late as 1907, the question of mines came before the Hague Conference, Chinese delegates stated that their compatriots were still obliged to furnish their coasting ships with instruments for picking up and destroying mines, which encumbered both the high seas and Chinese territorial waters! They added that, notwithstanding all precautions, a considerable number of small vessels had perished with all hands. And China, be it remembered, was no party to the war!

—The Hague Conference.—

At the Hague Conference in 1907, British delegates made a great effort to protect shipping from mines. On the other hand, nations with a less powerful navy were predisposed from motives of policy to regard the mine as an inexpensive retort to the Dreadnaught. Interests were so divided that the results of prolonged deliberations and debate only resulted in the adoption, at the full sitting of October 9, 1907, of a convention which was to be in force for seven years. It was provided that six months before the expiration of this period the contracting Powers should resume the question of automatic mines. I am not aware that any such resumption has taken place. By the most important articles of the 1907 convention it is prohibited (1) to place unanchored contact mines not so constructed so as to become innocuous within an hour after those who have placed them have lost control over them; (2) to place anchored contact mines which do not become innocuous as soon as they have broken their moorings; and (3) to employ torpedoes which do not become innocuous when they have missed their aim. Powers in possession of mines not answering to the above requirements undertook to convert the material as soon as possible. On behalf of the British delegates, Sir Ernest Satow then read a remarkable statement affirming that the compromise arrived at could not be regarded as a final solution, that no adequate account had been taken either of the rights of neutrals to protection, or of humanitarian sentiments, and that no restriction was imposed on the belligerent as to the placing of mines wherever it chose, even in the high seas. The protest concluded with the significant words:—"As, in our opinion, this constitutes only a partial and insufficient solution of the problem, the legitimacy of a given act cannot be presumed for the mere reason that the convention has not forbidden it." The German delegates made a retort, in which was revealed the disposition of Germany to maintain that the laws of war are liable to be overridden by necessity. "I have no need to tell you," declared Baron Marschale von Breberstein, "that I entirely recognise the importance of the codification of the rules to be followed in war. But it would be well not to issue rules, the strict observance of which might be rendered impossible by the force of things." Read between the lines, this means that Germany meant to retain her rights to employ mines freely; and her conduct during the present war is an interesting commentary.

—The Oxford Conference of 1913.—

The Institute of International Law, at its Oxford session in 1913, agreed to the following articles. Article 20, prohibits the placing of automatic mines in the open sea, whether moored or not. Article 21 concedes the rights of a belligerent to place mines in its own or in enemy territorial waters. But it is forbidden, even in territorial waters, (1) to place automatic mines not moored, unless they are so constructed as to become inoffensive within an hour after they have passed out of control; (2) to place automatic mines which are moored unless they are of a kind to become harmless on breaking their moorings. By article 22, a belligerent can only place mines before enemy coasts or ports for naval or military purposes. Mines cannot be employed for the purpose of maintaining a commercial blockade. By article 23, belligerents are required to adopt all possible precautions for the security of peaceful navigation. In particular, they should only use mines which become inoffensive after a limited time, and they should give warning where the mines have ceased to be under their immediate surveillance to navigation and to other States.

Notwithstanding the high authority which attaches to the Institut de Droit International we cannot accuse Germany of a violation of international law merely because she is not observing the rules which the institute has formulated. The real sources of international law are treaties and custom. With regard to mines the institute has codified the rules which ought to be recognised, rather than the rules which have been recognised, either in treaties or in practice. On the other hand, if the cables be correct, Germany has already violated the more modest provisions of the Hague Convention of 1907 to which she was a contracting party, and which she has since formally ratified subject to a reservation as to the use of mines for the mere purpose of effecting a commercial blockade. She has also violated the spirit of the generally recognised rules of international law, which require that belligerents shall carry on their operations with a due regard to the rights of neutrals. Her plea is "necessity." But while neutral nations may tolerate this plea within limits, their patience is not inexhaustible. Every neutral ship that is sunk by German mines in the high seas, and without the area of immediate belligerent operations, means a new menace to Germany. The mills of God grind slowly, but they grind exceedingly small. Cables report that the British Admiralty announces that it has so far laid no mines in the present war. This, of course, must not be taken as a complete and conclusive indication of future policy. But the British attitude is in striking contrast with the wanton use of mines by Germany, and in various ways will redound to the advantage of the mother country.

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- I.—International Law—Its Binding Force, August 17.
- II.—Liability of Private Property to Capture, August 19.
- III.—Blockade, August 22.
- IV.—Contraband of War, August 25.
- V.—The Declaration of London, August 28.

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Orchestral Concert.

At the Elder Conservatorium last night an orchestral concert with more than one outstanding feature was given. The orchestra was led by Mr. Eugene Alderman, and was under the able and experienced conductorship of Mr. H. Heinicke. Undoubtedly the most interesting work presented was Schumann's majestic and inspiring "Symphony in B flat, No. 1." The presentation showed earnestness and minute attention from every section of the orchestra, which resulted in a fine performance. Beethoven's "Leonora overture, No. 3," in C, Op. 72, was played with intense-ness, and at times wonderful brilliancy. Berlioz's "Marche Hongroise," Op. 24, founded upon a Hungarian war song, was full of bizarre effects and vivid orchestration of a martial character. A Tchaikowsky, "Adagio," for strings only, stood apart as exquisite in score and interpretation alike. Miss Dorothy McBride earned for herself a brilliant success in Grieg's "Concerto for piano and orchestra in A minor." Of the many pianists heard in Adelaide this young player stands apart as an absolutely sure exponent of piano-forte literature. Miss Muriel Day sang a Coleridge Taylor bracket, "When I am dead, my dearest," and "Unmindful of the roses." Her contralto voice has gained considerably in power and quality of late. Miss Myrtle Ingham and Miss Hilda Simcock sang two duets. Marzial's "Friendship" and Blumenthal's "Venetian boat song." Both vocalists did excellent work in these numbers.