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THE EFFECT OF THE WAR ON INTERNATIONAL LAW

It has been common during the past few months to meet with statements that the present war in Europe has demonstrated the ineffectiveness of international law, both conventional and customary, to bind nations in their mutual intercourse in peace and to restrict and control their actions in war. In support of these assertions, we are referred to the failure of the nations now at war to appeal to the Hague tribunal, in accordance with the provisions of the convention for the pacific settlement of international disputes, before resorting to the use of force; to the conversion of a country whose neutrality had been solemnly guaranteed by long-standing treaties into one of the principal battlefields of Europe; to the atrocities and devastation in violation of the laws of land warfare and of civilization and humanity, reported in the meager news dispatches and officially charged by the belligerent governments one against the other; and to the apparent disregard or evasion of rules which we had reason to suppose would be observed in the operations of naval warfare. The conclusion drawn from these facts, real or alleged, is that it is a waste of time further to discuss the principles of international law or to advocate their more general acceptance.

Such statements, it is believed, are those of persons whose powers of perception are limited to the single problem in hand. If war had the effect on international law which we are told the present war has had or will have, the system would never have come into being and been developed through centuries of well-nigh incessant war into the strong and well-formed body of principles in which we find it at the present day. The recurrence of war affords no more reason for losing faith in international law than the recurrence of private crime would be a justification for abolishing domestic law and substituting a reign of internal anarchy. Just as a repetition of private crime moves us to increase our legal safeguards to private life and property and points the way, so also does the

recurrence of war result in the strengthening and developing of the legal principles which nations have adopted as a check on international crime. The action of one nation or of any group of nations can not over night undo a collective work of all the nations extending over a period of time measured by centuries.

It would be pedantry to show how, through the attempt to regulate war, that system of jurisprudence which we call the law of nations has come into being. The attempts of the theologians and canonists of the Middle Ages to prevent wars that were unjust led to the examination of justice and the advocacy of its application between Christian nations, which were looked upon as forming a society requiring law for its government. It is perhaps worth while to recall, in this connection, that the principles of the law which should regulate the conduct of nations in their mutual intercourse were first stated in systematic form by the illustrious Grotius during the Thirty Years' War, and that the war itself caused him to write his treatise on the *Rights of War and of Peace*, which convinced statesmen, bound nations, and molded the thought of future generations, substituting as it did a rule of conduct based upon right reason for mere force, which, as John Bright rightly said, is not an argument.

As Grotius himself said:

* * * holding it to be most certain that there is among nations a common law of Rights which is of force with regard to war, and in war, I saw many and grave causes why I should write a work on that subject. For I saw prevailing throughout the Christian world a license in making war of which even barbarous nations would have been ashamed; recourse being had to arms for slight reasons or no reason; and when arms were once taken up, all reverence for divine and human law was thrown away, just as if men were thenceforth authorized to commit all crimes without restraint.

War has not been abolished, but warfare has taken on some of the refinements and amenities of civilization. This may seem a small matter and a trifling change to those who condemn the system and who would banish it from the face of the earth; but it is a fact that from the desire to regulate war, a sense of justice has entered into the relations of nations, and that from the regulation of war that system of jurisprudence which we call the law of nations has largely sprung. This is indeed a very happy and a very comforting, though an unexpected, result. Thus, in this evil—and war is at least an evil, often a crime—with which we are confronted, indeed enmeshed and surrounded, we may nevertheless find

this comfort—"from seeming evil still educing good"—that by the persistent regulation of that which should not exist, we have called into being a system of law by means of which peace will ultimately result.

It can not be denied, however, that wars are now less frequent than in the past, notwithstanding the greatly increased complexity of international relations and therefore of the pretexts for war. If this be admitted, as it must, it would seem that international law has been substituted for the force formerly employed in these innumerable disputes which now no longer require it for their settlement. The development of the principles of international law and the extension of their application, concurrently with the decrease in the causes and actual outbreaks of war, are convincing proof of the permanency and effectiveness of the system.

The trouble with our critics is, if their criticism be sincere, that they seem to labor under the delusion that the abolition of war, or the general substitution for it of legal methods, is the work of a single lifetime or of a single generation. A fair knowledge of human history or an average amount of experience in practical human affairs leaves no foundation for such an illusion. The lives of men are nothing as compared with the lives of nations, and each generation can only hope to witness slight and perhaps sometimes faltering steps of progress. Each war must be compared with its predecessors to determine what, if any, effect it may have upon the future of international law.

Examining the present war with this object in mind, we can already see signs of very great progress in the development of the science. If we are to believe the published documents of the different governments, we find most of the European Powers proposing and urging a recourse to the Hague tribunal, or to an informal conference of interested Powers, to avoid war, and when war was not prevented in this way we find every belligerent government, without exception, publishing its reasons, laying the documents in its case before the world at large and appealing to public opinion in all quarters of the globe to justify its actions. Such an appeal, on such a large scale, has never before been made, and we are justified in the belief that the public opinion of mankind—which is the great, indeed the only, practicable sanction for international law—is at last recognized, even by monarchs not supposed to be responsible to popular approval for their actions.

We find again that the greatest burden that some of the belligerents have to bear in the present war is the charge that they have violated

treaties and disregarded the rules of international law. It is curious to note in this connection that the country against which this charge is most frequently and violently made had, up to a few years ago, not a single chair in all its great educational system exclusively devoted to the teaching of international law.

The Congress of Westphalia, which ended the Thirty Years' War, marks an epoch in international relations, and it may well be that the peace which ends the present unfortunate war, and the means taken to prevent the violation of its terms, will likewise mark a new era in international relations. If international law, in the sense in which we understand it, entered into the practice of nations with the Peace of Westphalia, the enforcement of international law may date from the peace which we hope may not be long deferred.

THE DEPARTMENT OF STATE AND THE WAR—ADMISSION TO THE DIPLOMATIC SERVICE

The Honorable Robert Lansing, Counselor for the Department of State, delivered an interesting address at the dinner of the Amherst Alumni, held in New York on February 24, 1915, which dealt with the many and difficult problems arising out of the war upon which the Department of State is obliged to pass. In the latter portion of his address he spoke of the diplomatic service, approving examination for admission to the service for the lower positions and promotions within the lower grades, while leaving the administration free to select the higher officials, such as ministers or ambassadors, either from within or without the service as may seem advisable. It is proposed to quote these portions of the address and to make such comment as may be suggested by the subject-matter.

Reversing the order, the first quotation shows Mr. Lansing's relations to the problems arising out of the war and the way in which they are met and solved. He said:

It is my duty, as many of you know, to deal with the questions of international law and usage, which are arising every day in our relations with other countries. These questions are of absorbing interest and many of them are extremely complex because this war in its magnitude and methods is different from all the wars which have gone before. One can look in vain for precedents in many cases. In fact we have to abandon precedent, that time honored refuge of jurists and diplomatists, and lay hold of the bed rock of principle. Diplomacy today is wrestling with novel problems, to which it must apply natural justice and practical common sense.