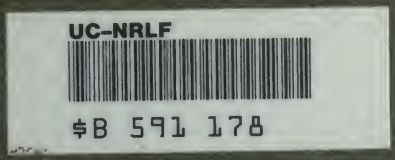

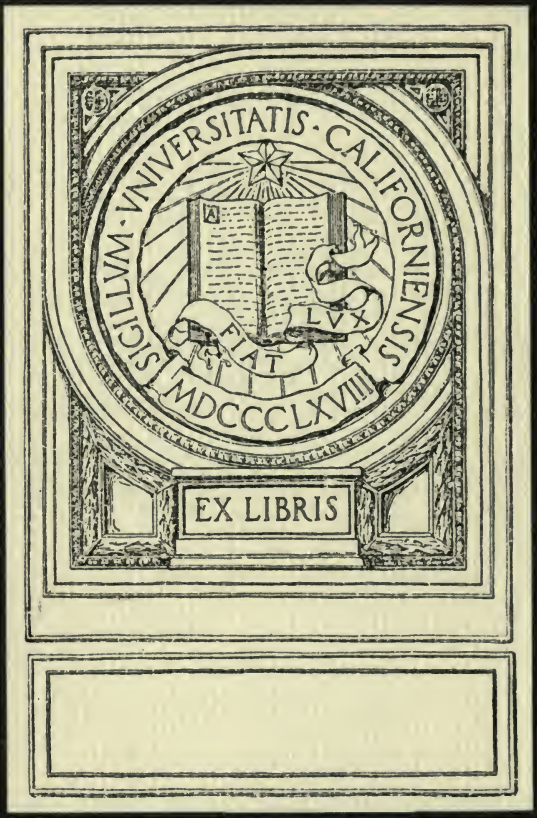
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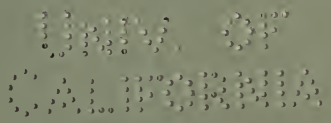
A SUPPLEMENT
TO
LETTERS TO "THE TIMES"
UPON
WAR AND NEUTRALITY

SECOND EDITION (1914)

BY

T. E. HOLLAND

CONTAINING, BY PERMISSION, LETTERS
FROM 1914 TO 1916



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A

SUPPLEMENT

TO

LETTERS TO "THE TIMES" UPON WAR AND NEUTRALITY

EDITION OF 1914

By T. E. HOLLAND

Containing, by permission, letters from 1914 to 1916

PREFATORY NOTE

The following letters, addressed to *The Times* from 1914 to 1916, in continuation of those so addressed from 1881 to 1913, are, for the present, reprinted in a merely chronological order; instead of being, as was the case with their predecessors, distributed under the various topics of "War" and "Neutrality" which each was intended to illustrate.

It is, however, desirable to point out the bearing of these later letters upon such a scheme as that under which the earlier letters were assigned to specific chapters and sections.

It will be found that the chapters and sections of the work to which the new letters are now appended are illustrated by these letters as follows:—

CHAPTER II (p. 22). Steps Towards the Codification of the Laws of Warfare.
See Letters I, IV, VIII, XII, XV, XVII, XVIII.

CHAPTER IV. The Conduct of Warfare.
Section 3 (pp. 54–60). *Aerial Warfare.* See Letters II, III.
Section 4 (p. 60). *Lawful Belligerents.* See Letters V, VI, VII, X, XI.

THE TOPICS DEALT WITH IN THE NEW LETTERS ARE AS FOLLOWS:—

The "Second Peace Conference Conventions" Bill, in No. I.
Attack from the Air, Nos. II, III.
The Authority of International Law, Nos. II, III.
Undefended Places, Nos. II, III.
"Declarations," generally, Nos. IV, XIX, XX.
The Declaration of Paris, Nos. IV, XX, XXI.
The Declaration of London, Nos. IV. XIII, XV (postscript), XVII, XIX, XX.
Civilians in Warfare, Nos. V, VI, VII.
The Hague Conventions in the Present War, Nos. VIII, XVIII.
The German "Blockade," Nos. VIII, IX.
Submarines, Nos. VIII, IX, XII.
"Piracy," Nos. X, XI.
Mr. Wilson's Diplomacy, No. XII.
Cotton as Contraband, No. XIII.
Undesirable Peace Talk, No. XIV.
Miss Cavell's Case, No. XV.
The Rights and Duties of Neutrals, Nos. IV (postscript), XVI, XVIII.

T. E. H.

August 26th, 1916.

I

HAGUE CONVENTIONS

The Present Bill in Parliament

Sir,—In reintroducing their Bill "to make such amendments in the law as are necessary in order to enable certain conventions to be carried into effect," the Government has justified the criticisms which I addressed to you upon the way in which this measure was first presented to Parliament.

I pointed out that neither in the preamble nor elsewhere was any information vouchsafed as to which of "the various conventions drawn up at the second Peace Conference" were within the purview of the Bill. Still less was any clue given to those articles, out of nearly 400 contained in the 13 conventions in question, which are relevant to the proposed legislation. Members of Parliament, sufficiently inquisitive not to be inclined to take the measure on trust, were left to puzzle out all this for themselves, but proved so restive under the treatment that the Bill, which was introduced in June, 1911, had to be withdrawn in the following December.

As now resuscitated, the Bill is accompanied by a memorandum containing information which will enable the reader, even though no specialist, supposing him to have the necessary documents at hand, though probably only after several hours of labour, to ascertain what would be the result of passing it. Is it too much to hope that similar aids to the understanding of complicated legislative proposals will be systematically provided in the future?

I am, Sir, your obedient servant,

T. E. HOLLAND.

Oxford, April 13 (1914).

Cf. supra, p. 83, for the criticisms in compliance with which the Bill was reintroduced in 1914. It has not become an Act.

II

ATTACK FROM THE AIR

The Enforcement of International Law

SIR,—In his interesting and important address at the Royal United Service Institution, Colonel Jackson inquired: "Can any student of international law tell us definitely that such a thing as aerial attack on London is outside the rules; and, further, that there exists an authority by which the rules can be enforced?" As one of the students to whom the Colonel appeals I should be glad to be allowed to reply to the first of his questions.

The "Geneva Convention" mentioned in the address has, of course, no bearing upon aerial dangers. The answer to the question is contained in the, now generally ratified,

Hague Convention No. iv. of 1907. Article 25 of the regulations annexed to this Convention runs as follows :—

"It is forbidden to attack or to bombard *by any means whatever* (*par quelque moyen que ce soit*) towns, villages, habitations, or buildings which are not defended."

It clearly appears from the "Actes de la Conférence," *e.g. T.* i., pp. 106, 109, that the words which I have italicized were inserted in the article, deliberately and after considerable discussion, in order to render illegal any attack from the air upon undefended localities ; among which I conceive that London would unquestionably be included.

I cannot venture to ask the hospitality of your columns for an adequate discussion of the gallant officer's second question, as to the binding force attributable to international law. Upon this I may, however, perhaps venture to refer him to some brief remarks, addressed to you a good many years ago, and now to be found at pp. 101 and 105 of the new edition of my "Letters to *The Times* upon War and Neutrality (1881–1913)."

I am, Sir, your obedient servant,

T. E. HOLLAND.

Oxford, April 24 (1914).

On aerial warfare, *cf. supra*, pp. 54–60 and *infra*, No. III. The war of 1914 has definitively established the employment of air craft for hostile purposes, and, as evidenced by the reception given by belligerents to neutral protests, the sovereignty of a state over its superincumbent air-spaces.

On bombardment of undefended places, *cf. supra*, pp. 97–109.

On the authority of International Law, pp. 25, 27, as well as pp. 101, 105.

III

ATTACK FROM THE AIR

The Rules of International Law

SIR,—In reply to Colonel Jackson's inquiry as to any rule of international law bearing upon aerial attack upon London, I referred him to the, now generally accepted, prohibition of the "bombardment, *by any means whatever*, of towns, &c., which are not defended." This rule has been growing into its present form ever since the Brussels Conference of 1874. The words italicized were added to it in 1907, to show that it applies to the action of *aéronefs* as well as to that of land batteries. It clearly prohibits any wanton bombardment, undertaken with no distinctly military object in view, and the prohibition is much more sweeping, for reasons not far to seek, than that imposed by Convention No. ix. of 1907 upon the treatment of coast towns by hostile fleets.

So far good; but further questions arise, as to which no diplomatically authoritative answers are as yet available; and I, for one, am not wise above that which is written. One asks, for instance, what places are *prima facie* "undefended." Can a "great centre of population" claim this character, although it contains barracks, stores, and bodies of troops? For the affirmative I can vouch only the authority of the Institut de Droit International, which in 1896, in the course of the discussion of a draft prepared by General Den Beer Pourtugael and myself, adopted a statement to that effect. A different view seems to be taken in the German *Kriegsbrauch*, p. 22. One also

asks :—Under what circumstances does a place, *prima facie*, "undefended," cease to possess that character? Doubtless so soon as access to it is forcibly denied to the land forces of the enemy; hardly, to borrow an illustration from Colonel Jackson's letter of Thursday last, should the place merely decline to submit to the dictation of two men in an aeroplane.

I read with great pleasure the colonel's warning, addressed to the United Service Institution, and am as little desirous as he is that London should rely for protection upon The Hague article, ambiguous as I have confessed it to be; trusting, indeed, that our capital may be enabled so to act at once in case of danger as wholly to forfeit such claim as it may in ordinary times possess to be considered an "undefended" town. Let the principle involved in Article 25 be carried into much further detail, should that be found feasible, but, in the meantime, let us not for a moment relax our preparation of vertical firing guns and defensive aeroplanes.

I am, Sir, your obedient servant,

Oxford, May 2 (1914). T. E. Holland.

Cf. supra, p. 55, and No. II.

IV

THE DECLARATION OF PARIS

Sir,—Mr. Gibson Bowles resuscitates this morning his crusade against the Declaration of 1856. It is really superfluous to argue in support of rules which have met with general acceptance for nearly sixty years past, to all of

which Spain and Mexico, who were not originally parties to the Declaration, announced their formal adhesion in 1907, while the United States, which for well-known reasons declined to accede to the Declaration, described, in 1898, all the articles except that dealing with privateering as "recognised rules of International Law."

It may, however, be worth while to point out why it was that no provision was made for the ratification of the Declaration of 1856, or for that of 1868 relating to the use of explosive bullets. At those dates, when the first steps were being taken towards the general adoption of written rules for the conduct of warfare, it was, curiously enough, supposed that agreement upon such rules might be sufficiently recorded without the solemnity of a treaty. This was, in my opinion, a mistake, which has been avoided in more recent times, in which the written law of war has been developed with such marvellous rapidity. Not only have codes of such rules been promulgated in regular "Conventions," made in 1899, 1906, and 1907, but the so-called "Declarations," dealing with the same topic, of 1899, 1907, and 1909 have been as fully equipped as were those Conventions with provisions for ratification. The distinction between a "Convention" and a "Declaration" is therefore now one without a difference, and should no longer be drawn. Nothing in the nature of rules for the conduct of warfare can prevent their expression in Conventions, and the reason which seems to have prompted the misdescription of the work of the London Conference of 1908–9 as a "Declaration"—*viz.* an imaginary difference between rules for the application of accepted principles and wholly new rules—is founded in error. Much of the contents of

The Hague "Conventions" is as old as the hills, while much of the "Declaration" of London is revolutionary.

This by the way. It is not very clear whether Mr. Gibson Bowles, in exhorting us to denounce the Declaration, relies upon its original lack of ratification, or upon some alleged "privateering" on the part of the Germans. Nothing of the kind has been reported. The commissioning of warships on the high seas is a different thing, which may possibly be regarded as an offence of a graver nature. Great Britain is not going to imitate the cynical contempt for treaties, evidenced by the action of Germany in Belgium and Luxemburg, in disregard not only of the well-known treaties of 1839 and 1867, but of a quite recent solemn undertaking, to which I have not noticed any reference. Article 2 of The Hague Convention No. v. of 1907, ratified by her in 1909, is to the following effect :—

"Belligerents are forbidden to move across the territory of a neutral Power troops or convoys, whether of munitions or of supplies."

I am, Sir, your obedient servant,

T. E. Holland.

Oxford, August 12 (1914).

The true ground for objecting to the legality of the purchase by Turkey of the German warships which have been forced to take refuge in her waters is no doubt that stated by Sir William Scott in the *Minerva*, 6 C. Rob. at p. 400—*viz.* that it would enable the belligerent to whom the ships belong "so far to rescue himself from the disadvantage into which he has fallen as to have the value at least restored to him by a neutral purchaser." The point is not touched upon in the (draft) Declaration of London.

Even supposing the purchase to be unobjectionable, the duty of Turkey to remove all belligerents from the ships would be unquestionable.

Cf. on the Declaration of Paris, *supra*, pp. 65, 67, 68, 72, 184, 185, and *infra*, Nos. XX, XXI; on Declarations generally, *infra*, Nos. XIX, XX; on privateering, *supra*, pp. 64–74.

V

THE RIGHTS OF ARMED CIVILIANS

Sir,—It is interesting to be reminded by Sir Edward Ridley of the view taken by Sir Walter Scott of the right and duty of civilians to defend themselves against an invading enemy. International law is, however, made neither by the ruling of an "impartial historian," on the one hand, nor by the *ipse dixit* of an Emperor, on the other.

In point of fact, the question raised by Sir Edward is not an open one, and, even in our own favoured country, it is most desirable that every one should know exactly how matters stand. The universally accepted rules as to the persons who alone can claim to act with impunity as belligerents are set forth in that well-known "scrap of paper" The Hague Convention No. iv. of 1907; to the effect that members of "an army" (in which term militia and bodies of volunteers are included) must (1) be responsibly commanded, (2) bear distinctive marks, visible at a distance, (3) carry their arms openly, and (4) conform to the laws of war. By way of concession, inhabitants of a district not yet "occupied" who spontaneously rise to resist invasion, without having had time to become organised, will be

privileged if they conform to requirements (3) and (4). These rules are practically a republication of those of The Hague Convention of 1899, which again were founded upon the recommendations of the Brussels Conference of 1874, although, at the Conference, Baron Lambermont regretted that " si les citoyens doivent être conduits au supplice pour avoir tenté de défendre leur pays, au péril de leur vie, ils trouvent inscrit, sur le poteau au pied duquel ils seront fusillés, l'article d'un Traité signé par leur propre gouvernement qui d'avance les condamnait à mort."

An Englishman's Home was a play accurately representing the accepted practice, shocking as it must be. I remember the strength of an epithet which was launched from the gallery at the German officer on his ordering the shooting of the offending householder. It may be hardly necessary to add that nothing in international usage justifies execution of innocent wives and children.

I am, Sir, your obedient servant,

T. E. Holland.

Oxford, September 17 (1914).

Cf. supra, pp. 60, 63, and *infra*, Nos. VI and VII. This letter was, it seems, perverted in the *Kreuz Zeitung*.

VI

CIVILIANS IN WARFARE

The Right to Take up Arms

Sir,—I have read with some surprise so much of Sir Ronald Ross's letter of to-day as states that " the issue still remains dark " as to the right of civilians to bear arms

in case of invasion. It has long been settled that non-molestation of civilians by an invader is only possible upon the understanding that they abstain from acts of violence against him. Modern written international law has defined, with increasing liberality, by the draft Declaration of 1874 and the Conventions of 1899 and 1907, the persons who will be treated as lawful belligerents. Article 1 of The Hague Regulations of 1907 recognises as such, not only the regular army, but also militia and volunteers. Article 2 grants indulgence to a *levée en masse* of "la population" (officially mistranslated "the inhabitants") of a territory not yet occupied. Article 3, also cited by Sir Ronald, has no bearing upon the question.

The rules are, I submit, as clear as they could well be made, and are decisive against the legality of resistance by individual civilians, the sad, but inevitable consequence of which was, as I pointed out in *The Times* of September 19 last, truthfully represented on the stage in *An Englishman's Home.*

In the same letter I wrote that "even in our own favoured country it is most desirable that every one should know exactly how matters stand." There are, however, obvious objections, possibly not insuperable, to this result being brought about, as is proposed by Sir Ronald Ross, by Government action.

I am, Sir, your obedient servant,

T. E. Holland.

Oxford, October 26 (1914).

VII

CIVILIANS AND A RAID

SIR,—It is satisfactory to learn, from Mr. McKenna's answer to a question last night, that the duty of the civilian population, at any rate in certain counties, is engaging the attention of Government. I confess, however, to having read with surprise Mr. Tennant's announcement that "it was provided by The Hague Convention that the wearing of a brassard ensured that the wearer would be regarded as a belligerent." It ought surely to be now generally known that, among the four conditions imposed by the Convention upon Militia and bodies of Volunteers, in order to their being treated as belligerents, the third is "that they shall bear a distinctive mark, fixed and recognisable at a distance." Whether an enemy would accept the mere wearing of a brassard as fulfilling this condition is perhaps an open question upon which some light may be thrown by the controversies of 1871 with reference to *francs-tireurs*.

I am, Sir, your obedient servant,

T. E. HOLLAND.

Oxford, November 24 (1914).

VIII

GERMANY AND THE HAGUE

SIR,—One excuse for German atrocities put forward, as you report, in the *Kolnische Zeitung*, ought probably

not to pass unnoticed, denying, as it does, any binding authority to the restrictions imposed upon the conduct of warfare, on land or at sea, by The Hague Conventions of 1907. It is true that each of these Conventions contains an article to the effect that its provisions "are applicable only between the contracting Powers, and only if all the belligerents are parties to the Convention." It is also true that three of the belligerents in the world-war now raging —namely, Serbia, Montenegro, and, recently, Turkey— although they have (through their delegates) signed these Conventions, have not yet ratified them. Therefore, urges the *Zeitung*, the Conventions are, for present purposes, waste paper. The argument is as technically correct as its application would be unreasonable; and I should like to recall the fact that, in the important prize case of the *Möwe*, Sir Samuel Evans, in a considered judgment, pointed out the undesirability of refusing application to the maritime conventions because they had not been ratified by Montenegro, which has no navy, or by Serbia, which has no seaboard; and accordingly, even after Turkey, which also has not ratified, had become a belligerent, declined to deprive a German shipowner of an indulgence to which he was entitled under the Sixth Hague Convention.

Admiral von Tirpitz was perhaps not serious when he intimated to the representative of the United Press of America that German submarines might be instructed to torpedo all trading vessels of the Allies which approach the British coasts. The first duty of a ship of war which proposes to sink an enemy vessel is admittedly, before so doing, to provide for the safety of all its occupants, which (except in certain rare eventualities) can only be secured

by their being taken on board of the warship. A submarine has obviously no space to spare for such an addition to its own staff.

I am, Sir, your obedient servant,

T. E. HOLLAND.

Oxford, December 26 (1914).

The charitable view taken in the last paragraph has of course not been justified. *Cf.* Nos. IX–XI.

For the *Möwe*, see 1 Treherne, 60. On the restrictive article in The Hague Conventions, *cf.* No. XIX, *infra*.

IX

THE GERMAN THREAT

SIR,—It may perhaps be desirable, for the benefit of the general reader, to distinguish clearly between the two topics dealt with in the recent announcement of German naval policy.

1. We find in it what may, at first sight, suggest the establishment of a gigantic "paper blockade," such as was proclaimed in the Berlin Decree of 1806, stating that "Les îles Britanniques sont déclarées en état de blocus." But in the new decree the term "blockade" does not occur, nor is there any indication of an intention to comply with the prescriptions of the Declaration of Paris of 1856 as to the mode in which such an operation must be conducted. What we really find in the announcement is the specification of certain large spaces of water, including the whole of the British Channel, within which German ships will endeavour to perpetrate the atrocities about to be mentioned.

2. These promised, and already perpetrated, atrocities consist in the destruction of merchant shipping without any of those decent preliminary steps, for the protection of human life and neutral property, which are insisted on by long-established rules of international law. Under these rules, the exercise of violence against a merchant vessel is permissible, in the first instance, only in case of her attempting by resistance or flight to frustrate the right of visit which belongs to every belligerent cruiser. Should she obey the cruiser's summons to stop, and allow its officers to come on board, they will satisfy themselves, by examination of her papers, and, if necessary, by further search, of the nationality of ship and cargo, of the destination of each, and of the character of the latter. They will then decide whether or no they should make prize of the ship, and in some cases may feel justified in sending a prize to the bottom, instead of taking her into port. Before doing so it is their bounden duty to preserve the ship papers, and, what is far more important, to provide for the safety of all on board.

This procedure seems to have been followed, more or less, by the submarines which sank the *Durward* in the North Sea, and several small vessels near the Mersey, but is obviously possible to such craft only under very exceptional circumstances. It was scandalously not followed in the cases of the *Tokomaru*, the *Ikaria*, and the hospital ship (!) *Asturias*, against which a submarine fired torpedoes, off Havre, without warning or inquiry, and, of course, regardless of the fate of those on board. The threat that similar methods of attack will be systematically employed, on a large scale, on and after the 18th inst., naturally

excites as much indignation among neutrals as among the Allies of the Entente.

I am, Sir, your obedient servant,

T. E. HOLLAND.

Oxford, February 12 (1915).

Cf. infra, No. XII.

X

"THE PIRATES"

SIR,—Would it not be desirable, in discussing the execrable tactics of the German submarines, to abandon the employment of the terms "piracy" and "murder," unless with a distinct understanding that they are used merely as terms of abuse?

A ship is regarded by international law as "piratical" only if, upon the high seas, she either attacks other vessels, without being commissioned by any State so to do (*nullius Principis auctoritate*, as Bynkershoek puts it), or wrongfully displaces the authority of her own commander. The essence of the offence is absence of authority, although certain countries, for their own purposes, have, by treaty or legislation, given a wider meaning to the term, *e.g.*, by applying it to the slave-trade. "Murder" is such slaying as is forbidden by the national law of the country which takes cognizance of it.

In ordering the conduct of which we complain, Germany commits an atrocious crime against humanity and public law; but those who, being duly commissioned, carry out her orders, are neither pirates nor murderers. The question

of the treatment appropriate to such persons, when they fall into our hands, is a new one, needing careful consideration. In any case, it is not for us to rival the barbarism of their Government by allowing them to drown.

I am, Sir, your obedient servant,

T. E. HOLLAND.

Oxford, March 13 (1915).

XI

SUBMARINE CREWS

SIR,—My letter in *The Times* of March 15 with reference to the conduct of certain of the German submarines has been followed by a good many other letters upon the same subject. Some of your correspondents have travelled far from the question at issue into the general question of permissible reprisals, into which I have no intention of following them. But others, by exhibiting what I may venture to describe as an *ignoratio elenchi*, have made it desirable to recall attention to the specific purport of my former letter. It was to the effect—(1) that the acts of those who, in pursuance of a Government commission, sink merchant vessels without warning are not "piracy," the essence of that offence at international law being that it is committed under no recognised authority; and that neither is it "murder" under English law; (2) that the question of the treatment appropriate to the perpetrators of such acts, even under the orders of their Government, is a new one, needing careful consideration. I was, of course, far from stating, as a general rule, that Government authority

exempts all who act under it from penal consequences. The long-established treatment of spies is sufficient proof to the contrary.

I am, Sir, your obedient servant,

T. E. HOLLAND.

Oxford, March 22 (1915).

XII

MR. WILSON'S NOTE

SIR,—I may perhaps be permitted to endorse every word of the high praise bestowed in your leading article of this morning upon the Note addressed to Germany by the Government of the United States. The frequent mentions which it contains of "American ships," "American citizens," and the like, were, no doubt, natural and necessary, as establishing the *locus standi* of that Government in the controversy which it is carrying on. But we find also in the Note matters of even more transcendent interest, relating to the hitherto universally accepted doctrines of international law, applicable to the treatment of enemy as well as of neutral vessels.

It may suffice to cite the paragraph which assumes as indisputable

"the rule that the lives of non-combatants, whether they be of neutral citizenship or citizens of one of the nations at war, cannot lawfully or rightfully be put in jeopardy by the capture or destruction of unarmed merchantmen,"

as also

"the obligation to take the usual precaution of visit and search to ascertain whether a suspected merchantman is in fact of belligerent nationality, or is in fact carrying contraband under a neutral flag."

[I assume that the word "unarmed" here does not exclude the case of a vessel carrying arms solely for defence.]

The Note also recognises, what you some time ago allowed me to point out,

"the practical impossibility of employing submarines in the destruction of commerce without disregarding those rules of fairness, reason, justice, and humanity which modern opinion regards as imperative."

Adding :—

"It is practically impossible for them to make a prize of her, and, if they cannot put a prize crew on board, they cannot sink her without leaving her crew and all on board her to the mercy of the sea in her small boats."

Nothing could be more satisfactory than the views thus authoritatively put forth, first as to the applicable law, and secondly as to the means by which its prescriptions can be carried out.

I am, Sir, your obedient servant,

T. E. HOLLAND.

Brighton, May 15 (1915).

Cf. supra, No. IX.

XIII

COTTON AS CONTRABAND

SIR,—Your correspondent "Judex" will rejoice, as I do, that cotton has now been declared to be "absolute contraband." May I, however, suggest that the topic should be discussed without any reference to the fortunately unratified Declaration of London, that premature attempt to codify the law of maritime warfare, claiming, misleadingly, that its rules "correspond in substance with the generally recognised principles of international law"?

It is surely regrettable that, by the Order in Council of August 20, 1914, our Government adopted the provisions of the Declaration "during the present hostilities," and "subject to various additions and modifications," the list of which has since been considerably extended. This half-hearted course of action painfully recalls certain vicious methods of legislation by reference, and was additionally uncalled for, since, as has been shown by recent events, about two-thirds of the rules laid down by the Declaration are inapplicable to modern warfare.

The straightforward announcement made by the United States in their Note of January 25 is surely far preferable. It states in plain terms that, "As the Declaration of London is not in force, the rules of international law only apply. As to articles to be regarded as contraband there is no general agreement between nations." In point of fact, the hard-and-fast categories of neutral imports, suggested by the threefold Grotian division, as set forth in the Declaration, are unlikely ever to be generally accepted. Even Grotius is careful to limit his proposals, and Bynkershoek. in commenting upon them, points out that the test of contraband of the most noxious kind must be the, possibly exceptional, importance of objects for hostile use; their being of use also for non-hostile purposes being immaterial ("nec interesse an et extra bellum usum praebeant"). The application of these remarks to the case of cotton is sufficiently obvious.

I am, Sir, your obedient servant,

T. E. Holland.

Oxford, August 23 (1915).

Cf. supra, pp. 134–139.

XIV

UNDESIRABLE PEACE TALK

SIR,—There has been more than enough of premature discussion by groups of well-meaning amateurs, not unfrequently wirepulled by influences hostile to this country, with reference to the terms of the treaty of peace by which the world-war now raging will be brought to a close.

Movements of the kind have culminated in the action of a body rejoicing in the somewhat cumbrous title of the "International Central Organisation for a Durable Peace," which is inviting members of about fifty societies, of very varying degrees of competence, to a cosmopolitan meeting, to be held at Berne in December next. Lest the unwary should be beguiled into having anything to do with the plausible offer made to them that they should, there and then, assist in compiling "a scientific *dossier*, containing material that will be of vast importance to the diplomats who may be chosen to participate in the peace congress itself," it may be worth while to call attention to the composition of the executive committee by which the invitations are issued, and to its "minimum programme."

Of the members of this committee (of 13), on which Great Britain is represented only by Mr. Lowes Dickenson (mistakenly described as a Cambridge Professor), and America only by Mrs. Andrews, of Boston, the best known are Professors Lammasch, of Vienna, and Schücking, of Marburg. The "minimum programme" demands, *inter alia*, "equal rights for all nations in the colonies, &c.," of the Powers; submission of all disputes to "pacific

procedure," joint action by the Powers against any one of them resorting to military measures, rather than to such procedure; and that "the right of prize shall be abolished, and the freedom of the seas shall be guaranteed." The *provenance* of this "minimum programme" is sufficiently obvious. What is likely to be the character of such a "maximum programme" as will doubtless be aimed at by the proposed gathering?

I am, Sir, your obedient servant,

T. E. Holland.

Oxford, October 16 (1915).

XV

MISS CAVELL'S CASE

Sir,—The world-wide abhorrence of the execution of Miss Cavell, aggravated as it was by the indecent and stealthy haste with which it was carried out, is in no need of enhancement by questionable arguments, such as, I venture to say, are those addressed to you by Sir James Swettenham.

It is, of course, the case that Germany is in Belgium only as the result of her deliberate violation of solemnly contracted treaties, but she is in military "occupation" of the territory. From such "occupation" it cannot be disputed that there flow certain rights of self-defence. No one, for instance, would have complained of her stern repression of civilian attacks upon her troops, so long as it was confined to actual offenders. The passages quoted by Sir James from Hague Convention v., and from the *Kriegsbrauch*, relate entirely to the rights and duties of

Governments, and have no bearing upon the tragical abuse of jurisdiction which is occupying the minds of all of us.

May I take this opportunity of calling attention to the fresh evidence afforded by the new Order in Council of our good fortune in not being bound by the Declaration of London, which erroneously professed to " correspond in substance with the generally recognised principles of International Law " ? Is it too late, even now, to announce, by a comprehensive Order in Council, any relaxations which we and our Allies think proper to make of well-established rules of Prize Law, without any reference to the more and more discredited provisions of the Declaration, the partial and provisional adoption of which seems, at the outbreak of the war, to have been thought likely to save trouble ?

Your obedient servant,

T. E. HOLLAND.

Oxford, October 26 (1915).

XVI

NEUTRALS AND THE LAWS OF WAR

SIR,—The interesting address by Sir Edward Carson reported in your issue of yesterday will remind many of us of our regret that President Wilson, in Notes complaining of injuries sustained by American citizens, dwelt so slightly upon the violations of international law by which those injuries were brought about.

Sir Edward seems, however, to have made use of certain expressions which might be taken to imply a view of neutral responsibility which can hardly be accepted. The United

States were warned in the address that they will not "by a mere Note maintain the obligations which are put upon them, as parties to international law, which are to prevent breaches of civilisation and to mitigate the horrors of war." Neutrals were spoken of as "the executives of international law," and as alone standing "behind the conventions" (for humanising warfare). "Abolish," we were told, "the power of neutrals, and you have abolished international law itself."

Is this so? The contract into which a State enters with other States, by adopting the customary laws of war and by ratifying express Conventions dealing with the same subject, obliges it, while remaining neutral, to submit to certain inconveniences resulting from the war, and when belligerent to abstain from certain modes of carrying on hostilities. It is assuredly no term of the contract that the State in question shall sit in judgment upon its co-contractors and forcibly intervene in *rebus inter alios actis*. Its hands are absolutely free. It may remain a quiescent spectator of evil, or, if strong enough and indignant with the wrongdoing, may endeavour to abate the mischief by remonstrance, and, in the last resort, by taking sides against the offender. Let us hope that at the present crisis the United States may see their way to choosing the better part.

I am, Sir, your obedient servant,

T. E. Holland.

Oxford, November 28 (1915).

XVII

THE DECLARATION OF LONDON

SIR,—After Tuesday's debate in the House of Lords it may be hoped that not even "the man in the street" will suppose the Declaration of London to be anything more than an objectionable draft, by which no country has consented to be bound. Every day of the war makes more apparent our debt to the House of Lords for having, four years ago, prevented the British Government from ratifying either the International Prize Court Convention or this Declaration, which, while misleadingly professing that its provisions "correspond in substance with the generally recognised principles of international law," contains, interspersed with truisms familiar to all concerned with such matters, a good many undesirable novelties.

This being so, it was surely unfortunate that our Government, with a view apparently to saving time and trouble, decided, in the early days of the war, to adopt the Declaration *en bloc* as a statement of prize law "during the present hostilities," subject, however, to "certain additions and modifications"; to which it, of course, retained the power of making additions. This power has been so freely exercised, and large portions of the Declaration, not thereby affected, have proved to be so inapplicable to modern conditions, as disclosed by the war, that the document, so far from providing reliable guidance, is now a mere source of hopeless confusion.

To put an end to this confusion, I venture to suggest that, in concert with our Allies, the Declaration should be

finally consigned to oblivion. Either let its place be taken by some clear and simple statement of unquestioned prize law, for the use of commanders and officials (something like a confidential document in the drafting of which I had a hand some years ago, but, of course, brought up to date), or let established principles take care of themselves, certain doubtful points only being dealt with, from time to time, by Orders in Council.

While heartily concurring in Lord Portsmouth's description of the unratified "Declaration" as "rubbish," I regret that he seems to relegate to the same category even those generally ratified "Hague Conventions" which, as far as they go, mark a real advance upon previously accepted rules. Still less acceptable is his advice to "sweep away juridical niceties" in the conduct of hostilities. Did he intend thus to describe the whole fabric of the rules by which international law has endeavoured, with considerable success, to restrain barbarity in warfare?

I must mention that this letter was written before seeing this morning the letter of Mr. Gibson Bowles, my worthy ally in attacks upon the Declaration.

I am, Sir, your obedient servant,

T. E. Holland.

Oxford, December 3 (1915).

Cf. supra, pp. 181–192, 195, 196, and Nos. XIII, XV (last par.) XVII, XIX, XX.

XVIII

THE *APPAM*

SIR,—It is satisfactory to learn that the United States Neutrality Board has decided adversely to the contention that the *Appam* is a German ship of war. Her treatment as a prize would then, *prima facie*, seem to be governed by Article 21 of The Hague Convention, No. xiii., which provides for her being released, together with her officers and crew, while the prize crew is to be interned. This Convention has been duly ratified both by Germany and by the United States. Its non-ratification by Great Britain is, I conceive, irrelevant.

But Germany contends that the situation is governed by Article 19, the text of which has been several times set out in your columns, of the old Convention of 1799. This may startle those who are acquainted with what occurred at The Hague in 1907, and I have seen no reference to what must be the gist of the German argument on the point. They no doubt argue that the old Convention remains unrepealed by No. xiii. of The Hague, because the latter Convention is of no effect, in pursuance of its common form Article 28, to the effect that :—" The provisions of the present Convention do not apply except between contracting Powers, and then only if all the belligerents are parties to the Convention " (which is by no means the case).

Your obedient servant,

Oxford, February 4 (1916). T. E. HOLLAND.

Certain reservations on ratification do not affect arts. 21 or 22.

The State Department ruled that the case did not fall

within the protecting clauses of the Treaty of 1799, which granted asylum only to ships of war accompanying prizes, whereas the *Appam* was herself a prize. Proceedings by the owners in the local Federal Court for possession of the ship resulted in a decision in their favour, against which the Germans are appealing in the Supreme Court. They do not seem to have raised the objection, mentioned in the letter, as to the applicability of Convention viii. *Cf. supra*, No. VIII.

XIX

THE DECLARATION OF LONDON

Sir,—You have allowed me, in a good many letters, to criticise the Declaration of London, both in its original inception and in its subsequent applications. Thanks to the House of Lords, the Declaration, which erroneously professed to "correspond in substance with the generally recognised principles of International Law," has remained unratified, and therefore diplomatically of no effect.

Its admirers have, however, too long preserved it, perhaps *sub spe rati*, in a state of suspended animation, using it by way of, as they supposed, a convenient handbook of maritime law for the purposes of the present war, though subject to such variations as might from time to time be found convenient by the Allies. The mistake thus made soon became apparent. The elaborate classification of contraband had to be at once thrown overboard, and most of the remaining provisions of the Declaration proved to be inapplicable to modern warfare.

In December last I accordingly wrote as follows :—

"To put an end to this confusion, I venture to suggest that, in concert with our Allies, the Declaration should be finally consigned to oblivion. Either let its place be taken by some clear and simple

statement of unquestioned prize law, for the use of commanders and officials, . . . or let established principles take care of themselves, certain doubtful points only being dealt with from time to time by Orders in Council."

I need hardly say that to anyone holding the views thus expressed, yesterday's Order in Council must be most satisfactory; getting rid, as it does for good and all, of the unfortunate Declaration, leaving the application of established principles to those acquainted with them and promulgating authoritative guidance on specific novel questions.

I may perhaps add a word or two on the undesirability of describing as "Declarations" documents which, being equipped with provisions for ratification, although they may profess to set out old law, differ in no respect from other conventions. Also, as to the need for greater caution on the part of our representatives than has been shown by their acceptance of various craftily suggested anti-British suggestions, such as were several embodied in the Declaration in question, and notably that of the notorious cl. 23 (*h*) of The Hague Convention iv., the interpretation of which has exercised the ingenuity of the Foreign Office and, more recently, of the Court of Appeal.

I am, Sir, your obedient servant,

T. E. HOLLAND.

Brighton, July 9 (1916).

Cf. supra, pp. 181–192, 195, 196, and Nos. XIII, XV (last par.), XVII, and *infra*, No. XX.

On July, 7 1916, an Order in Council was made, revoking all Orders by which the provisions of the Declaration had been adopted, or modified, for the duration of the war; stating the intention of the Allies to exercise their belligerent rights at sea in strict accordance with the law of nations; but dealing specifically with certain doubtful points. The Order was accom-

panied by a memorandum, drawn up by the British and French Governments, explaining how their expectation that in the Declaration they would find "a suitable digest of principles and compendium of working rules" had not been realised. See also Lord Robert Cecil in the House of Commons on August 23, with reference to the *Zamora* case, [1916] 2 Ch. c. 77.

On "Declarations" generally, *cf. supra*, No. IV and *infra*, No. XX.

XX

THE DECLARATION OF PARIS

Sir,—The resuscitation, a few days ago, in the House of Commons of an old controversy reminds one of the mistaken procedure which made such a controversy possible. It can hardly now be doubted that the rules set forth in the Declaration of Paris of 1856, except possibly the prohibition of privateering, have by general acceptance during sixty years, strengthened by express accessions on the part of so many Governments, become a portion of international law, and are thus binding upon Great Britain, notwithstanding her omission to ratify the Declaration. This omission is now seen to have been a mistake. So also was the description of the document as a "declaration." Both mistakes were repeated in 1868 with reference to the "Declaration" of St. Petersburg (as to explosive bullets).

In those early attempts at legislation for the conduct of warfare it seems to have been thought sufficient that the conclusions arrived at by authorised delegates should be announced without being embodied in a treaty. Surely, however, what purported to be international agreements upon vastly important topics ought to have been

accompanied by all the formalities required for "conventions," and should have been so entitled. In later times this has become the general rule for the increasingly numerous agreements which bear upon the conduct of hostilities. Thus we have The Hague "conventions" of 1899 and 1907, and the Geneva "convention" of 1906, all duly equipped with provisions for ratification. Such provisions are also inserted in certain other recent agreements dealing with aerial bombardments, gases, and expanding bullets, which it has nevertheless pleased their contrivers to misdescribe as "declarations." Equally so misdescribed was the deceased Declaration of London, with a view, apparently, to suggesting, as was far from being the case, that it was a mere orderly statement of universally accepted principles, creating no new obligations.

Is it not to be desired that all future attempts for the international regulation of warfare should not only be specifically made subject to ratification, but should also, in accordance with fact, be described as "conventions"?

I am, Sir, your obedient servant,

T. E. Holland.

Oxford, August 13 (1916).

XXI

THE DECLARATION OF PARIS

Sir,—If Mr. Gibson Bowles, whose courteous letter I have just been reading, will look again at my letter of the 13th, I think he will see that I there carefully distinguished between the Declaration of Paris, which, as is notorious, must be accepted as a whole or not at all, and the rules set

forth in it, "except, possibly, the prohibition of privateering," which I thought, for the reasons which I stated, might be taken to have become a portion of International Law.

I must be excused from following Mr. Bowles into a discussion of the bearing of those rules upon the Order in Council of March 11, 1915—a large and delicate topic, which must be studied in elaborate dispatches exchanged between this country and the United States.

I am, Sir, your obedient servant,

T. E. HOLLAND.

Oxford, August 17 (1916).

Cf. supra, pp. 65, 67, 68, 72, 184, 185, and No IV.

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