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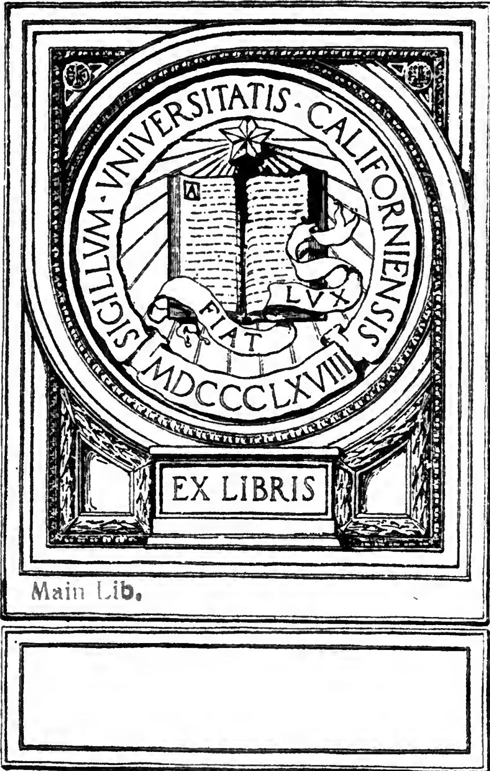


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# THE BINDING FORCE OF INTERNATIONAL LAW

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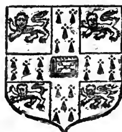

Edinburgh: 100, PRINCES STREET
London: STEVENS AND SONS, Ltd., 119 and 120, CHANCERY LANE
Berlin: A. ASHER AND CO.
Leipzig: F. A. BROCKHAUS
New York: G. P. PUTNAM'S SONS
Bombay and Calcutta: MACMILLAN AND CO., Ltd.

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# THE BINDING FORCE OF INTERNATIONAL LAW

INAUGURAL LECTURE IN INTERNATIONAL LAW AT THE LONDON SCHOOL OF ECONOMICS AND POLITICAL SCIENCE. SESSION 1910—11


BY

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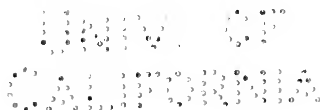


Cambridge:
at the University Press
1910

JX1246
.H5

Cambridge:
PRINTED BY JOHN CLAY, M.A.
AT THE UNIVERSITY PRESS

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CALIFORNIA

P. R. S. 2442513

# SYNOPSIS

Objections to International Law as *law*. What is International Law? Its origins: custom and treaties. Still in process of development, incomplete in several departments. Reasons for its observance, the social and political instincts of men. The force of public opinion, difficulties in concentration. Public opinion and treaties, difficulties regarding their termination, Russia in 1870, Austria in 1908. The observance of the laws of war. International Law has not abolished war. Cynicism and the growth of the power of law. The moral basis of rules of law. Some weaknesses in the present situation. War and diplomacy. The growth of arbitrations and the increase in armaments. The present a transition stage. The future of International Law; its value as a unifying power; the education of nations; the importance of the study of existing rules as a means to the extension of the reign of law. Forces at work in this direction. Backward position of study in Great Britain.

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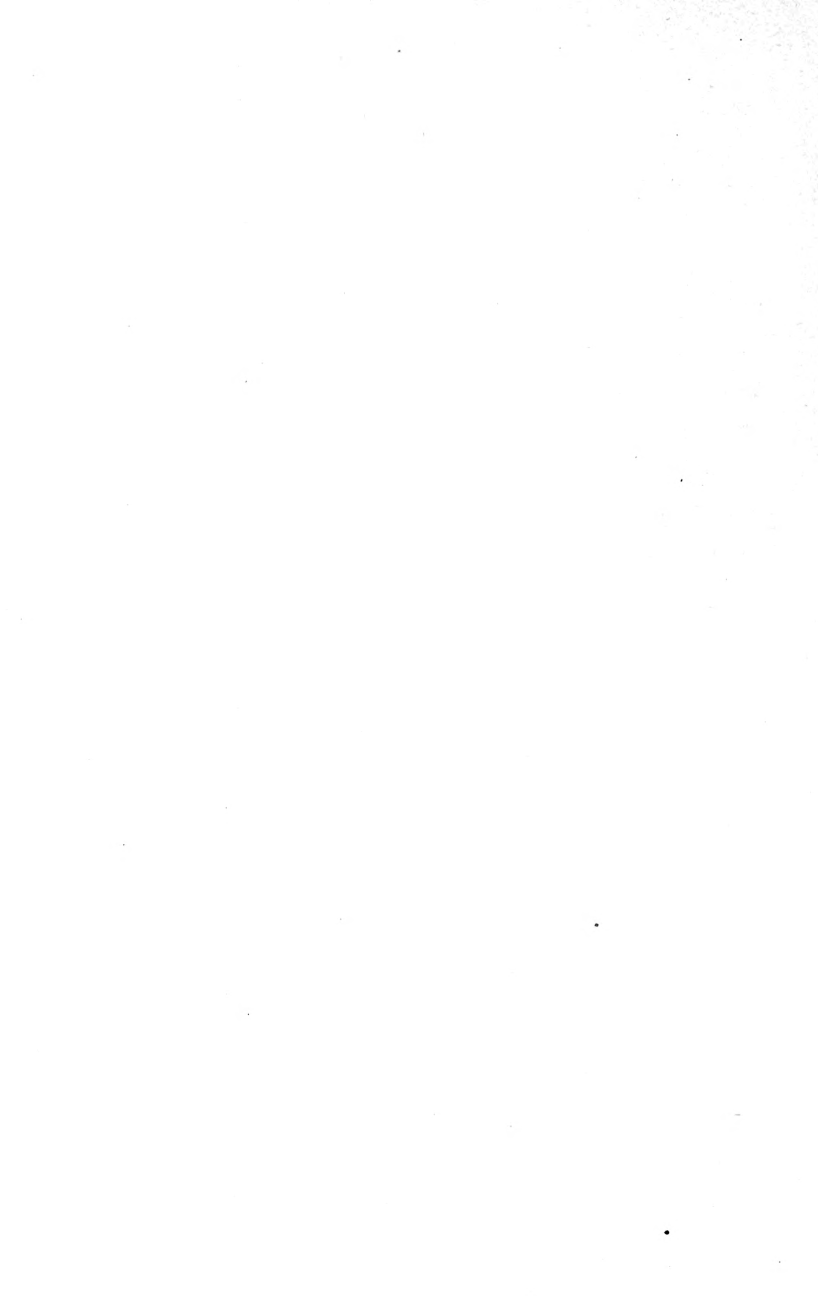

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# THE BINDING FORCE OF INTERNATIONAL LAW

RATHER more than twenty years ago, during the course of a correspondence in the *Times*, one of the writers remarked that International Law was "all nonsense" and that "when we are at war with an enemy he will do his best to injure us; he will do so in what way he thinks proper, all treaties and so-called International Law notwithstanding." The same correspondence also brought into prominence the fact that some of the writers had very little respect for "old-fashioned treaties, protocols and other diplomatic documents."[1] Some few years previous to this correspondence a French Admiral in an Article in the *Revue des deux Mondes* had spoken of "cette monstrueuse association de mots : les droits de la guerre." Clausewitz in his monumental work on war also wrote of "self-imposed restrictions, almost

imperceptible and *hardly worth mentioning*, termed the usages of international law." This manner of looking at International Law is not confined to any one class of the community. International lawyers are told often enough that the rules they expound have none of the requirements of Positive Law, that apart from rules based on treaties, the rest are merely moral aspirations, and as for the treaties themselves, there is no permanence in them and no power to enforce their observance. Now it may be as well at once to admit that viewing International Law from the standpoint of students adopting the principles of Hobbes and Austin it lacks the marks of Positive Law which they predicate. There is no superior lawgiver (but Hague Conferences contain the embryo of a possible International legislature), no International Court (though that deficiency is gradually being made good), no International policeman, no definite punishment for breaches of the rules, self-help is the only remedy[2]. Notwithstanding the absence of these factors I am prepared to contend that the body of

principles known as International Law, or the Law of Nations, is fully entitled to the name of Law, and that it is of binding force among the nations of the civilised world. It is not perfect, it is not complete, it is still in the making, but its rudimentary principles are increasingly appearing in more definite form.

What is International Law and whence are its rules derived?

International Law is *not* a body of rules which lawyers have evolved out of their own inner consciousness: it is *not* a system carefully thought out by University Professors, Bookworms, or other theorists in the quiet and seclusion of their studies. It is a living body of practical rules and principles which have gradually come into being by the custom of nations and international agreements. To the formation of these rules, Statesmen, Diplomatists, Admirals, Generals, Judges and publicists have all contributed. It is also of comparatively modern origin, for the existing state system of the world dates in effect from the end of the Middle Ages. So long as the

states of Europe acknowledged the supremacy of a great world power, whether the spiritual domination of the Papacy or the temporal overlordship of the Emperor, there was no possibility of the existence of a system of International Law, but with the Reformation and the termination of the wars of religion in the middle of the 17th century, and the coming into being of a large number of independent sovereign states freed from the trammels of religious and political obedience to external authority, Pope or Emperor, the principles which Grotius and other writers had advocated became capable of realisation. The way was opened for the Supremacy of a new power, the Reign of Law.

Rules for the mutual intercourse of states came into being, principles which they would observe in the acquisition of territory, in the conduct of negotiations, and even rules for the great struggle of war gradually were evolved.

The earlier writers assumed an ethical basis for the existence of the rules. Natural Law or the Law of God, the *jus gentium*

of the Roman Law and the principles of morality were appealed to as the basis of the rules of conduct of states. Reason, expediency, custom and convention have all played their part in the erection of the edifice we are considering. The building is not yet complete, its parts are sometimes disconnected, portions of it are only in skeleton, but its foundations have been laid, the plan prepared, and it is for the future to complete the erection and fill the Courts of the Temple of Justice.

International Law is then the law of the society of states, for independence and interdependence were soon found to be correlative. The notion of a family of nations, of a society of states, which has long been accepted, first by the Christian Powers of Europe and subsequently by other Powers, carried with it the need for intercommunication and for rules for their mutual transactions, rules—the observance or non-observance of which marked a state as being a good or bad member of the international family. At first they were inde-

finite; states laid down rules for their own guidance, and these were dictated by policy. They were not internationally binding. Several states adopted the same or similar rules, an international usage was found to be in process of formation; the smaller states followed the example set by their more powerful neighbours and gradually a custom was formed and that custom became a rule of binding force. Custom is the prime source of International Law. We need not seek to go behind it nor ascertain its causes; when once a practice is shown to be of general acceptance among the nations of the world we have a rule of customary International Law.

But custom was not sufficient for all cases, and treaties for special practices between some states were entered into. Gradually others would agree in like manner, and later there might come into being a treaty to which many states were parties whereby special rules were stipulated for, and provision made for the accession of non-signatory states. It is only necessary to mention as an example the De-

claration of Paris of 1856. Thus gradually, by means of custom and convention, there has come into being a body of "rules of conduct which modern civilised states regard as being binding on them in their relations with one another with a force comparable in nature and degree to that binding the conscientious person to obey the laws of his country."[3]

But much remains to be done before all departments of state life are duly provided with rules of general acceptance, and this is especially true in relation to war and its cognate subject of neutrality. Meantime, can it be seriously contended that the rules, the origin of which I have rapidly and slightly sketched, have no binding force, and cannot be dignified by the name of Law? What are the rules which for weeks were being discussed and argued with matchless skill and ability by the ablest lawyers of Great Britain, Canada and the United States before the Hague Tribunal during the course of this summer if they are not recognised as being of legal binding force? Again, every Foreign Office of the world is

daily engaged in endeavouring to convince some other that the rules of International Law require that certain courses of action shall be taken, or that certain acts must not be done. And these endeavours are nearly always successful.

Furthermore, when unfortunately two states find it impossible to continue to discuss some point in dispute between them in a friendly manner, and have recourse to the arbitrament of the sword, even then the old Roman maxim of *silent leges inter arma* no longer holds good; for the great international duel between the combatants is governed by settled rules which, in the main, are well observed in modern times; any alleged infraction of these rules is at once strongly resented, and the party accused of such breach immediately endeavours to justify its action by reference to conventions, publicists and custom. The manifestoes which it has become the practice for states to issue to the world at the outbreak of war or when they are about to undertake some enterprise which is likely to raise hostile

criticism on the part of the others, are in fact the pleadings of such states before the Tribunal of the world's opinion, from which they hope to win a favourable verdict, and to avoid the consequences of violating it.

The time has long passed since every state was a law unto itself, and did what seemed right in its own eyes. Licence has given place to international liberty within the law. States have brought themselves within the limits of rules which they have voluntarily adopted. Peace is the normal, war the abnormal, condition of the world, but both come under the dominion of the law of nations.

There are however still many divergent practices, and not every alleged breach of International Law attributed to a state is really so. This is especially true of practices in maritime war, both those which have regard to belligerents and neutrals, though even here order is gradually appearing, and should the results of the Hague and London Conferences meet with general acceptance the weaknesses of these departments of International Law will

to a great degree be removed. It is especially necessary that Englishmen should remember that the rules of neutrality which we have observed, and the practices of maritime war which have been sanctioned by our Prize Courts, are not all of universal acceptance. We should hesitate before we stigmatise as a law breaker every state whose practice is not in accordance with our own, though we may wish that it were.

In endeavouring to ascertain the reasons why International Law is on the whole well observed, and I am going to assume that it is, the different parts might be separated, but there are certain general observations which are applicable to the whole body of rules.

Man is a gregarious animal, his instincts are social, and with the development of the race they become political. As in the case with separate collections of men which we call states or nations, so in the case of the aggregation of these collective masses, man has found his fullest development to lie in subordination to rules of law. Men often

voluntarily band themselves together for social, political and religious purposes, and both the philosopher and the religious teacher have seen the need for rules to regulate these associations. The punishment for breach of the rules may be social ostracism, or religious excommunication. Force is unnecessary to procure the observance of the rules of such associations. Men and states which are collections of men actuated by the passions and motives of the individuals composing them desire to have the approbation and good will of their fellows. Isolation is feared, not only because it means weakness and renders the individual or state open to attack but also because of an inherent desire to take part in movements affecting the general evolution of the race. The consensus of the opinion of the world moves in a certain direction: there is a mysterious action and reaction at work among states as amongst individuals. Both alike recognise that the sum of the opinions of a mass has a force which is mighty in volume and cannot event-

ually be ignored. The social forces of the world are more and more becoming organised, directed and regulated, and the pressure of the public opinion of the world cannot if it be steadily persevered in and directed be resisted in the long run. This public opinion may be slow to assert itself in a given case, the question at issue between two states may be one which it is difficult for the world at large to appreciate, but unless it be one which the world-opinion recognises as containing vital issues for the states involved, that opinion is more persistently demanding that recourse be had to the peaceful settlements of disputes by arbitration which the Hague Conferences or Treaties have provided. Even in the most vital cases, attempts are made by mediation and good offices to avoid a breach of the world's peace[4].

The factors which produce a world-opinion are difficult to analyse, all moral forces are. There are popular and unpopular litigants in the world's forum as there are in our own law-courts. The ethical basis of International

Law on which the older publicists founded their system has been discarded by modern writers; it cannot be taken as a legal basis, but as a material or historical source of the rules which have been accepted in practice it is of considerable importance. It took a long time for the world-opinion to condemn slavery and the slave trade, and to this day the tenderness of some states, in regard to any interference with their flags, hinders the work of those who, under international convention, are engaged in suppressing it on the coasts of Africa. The conscience of the world is slow in responding to the demands of those who call for the full and complete observance of the rights given by treaty to the natives of the Congo; there are still suspicions in the minds of many that disinterested action is impossible in the domain of international politics. The irresistible force of public opinion often takes a long time to concentrate on any given international question, whether it be one of politics or law, the two are seldom separate, and it is just this difficulty

on which astute politicians seize. They endeavour to divert it into various little channels and so prevent it flowing in one mighty stream which would be able to overthrow and sweep away all obstacles to the fulfilment of its purposes. It is however just this force which in the end secures in the vast majority of cases the observance of the regularly accepted and settled rules of International Law; it is the fear of the consequences of violating the world's opinion which nearly always causes a state ultimately either to abate its demands, or to agree to submit them to arbitration.

All law must recognise that its own permanence in a given form is an impossibility. Treaties and conventions are made to be observed, but there comes a moment when even they no longer answer to the existing facts. State organisms accommodate themselves to changes in the economic conditions of the people for whom they exist, and International Law was made for nations, not nations for International Law. Changes must

occur from time to time in the contractual relations of states, and it is in regard to the abrogation and denunciation of treaties that difficult questions arise. It is extremely hard to lay down comprehensive rules for the continuance of treaties or for the circumstances of their denunciation, and political movements sometimes produce occurrences in international relations which call for reprobation on the part of all who are desirous of maintaining the obligatory force of the rules of International Law. States with whom treaties have been made are justified in strongly protesting when other states break their plighted word without first attempting to obtain the release by consent from their contractual obligations. Two striking cases have occurred within the past 40 years. In 1870 when France and Germany were engaged in a conflict which left them both helpless to take any part in the political movements in Europe, Russia took the opportunity to denounce a portion of the Treaty of Paris to which she, in common with the Great Powers

of Europe, was a party. In 1908 the world was startled by the announcements made almost simultaneously by the Emperor-King of Austria-Hungary and the Prince of Bulgaria, whereby important portions of the Treaty of Berlin were denounced. In neither case was there any preliminary attempt to obtain release from the provisions of treaties to which many other states were parties. In the first case, in consequence of the strong protest of the Powers, Russia receded from the position she had taken up, a conference was held and the concession she sought was granted: the law was vindicated. In the second case protests were also made by most of the Foreign Offices of Europe, the Austrian action was undoubtedly condemned by the public opinion of the greater part of the world, there had been a breach of law, but the moral forces at work were sufficiently strong and concentrated to compel amends to be made for the injured *amour propre* of Turkey as well as the payment of pecuniary compensation. In both of these cases the

countries in question issued the usual explanatory statements as to their proceedings and that distinguished Austrian jurist, Dr Lammasch, who has recently presided with so much dignity and ability over the Anglo-American Fishery Arbitration Tribunal, addressed a striking letter to the *Times* appealing on legal grounds to the public opinion of this country on behalf of the Austrian annexation of Bosnia-Herzegovina. But the public law of Europe had been violated and the verdict of the world was given against the state guilty of the breach of law. Such occurrences as I have just cited are evidences of the fact that International Law is not always observed, and as Hall says "render it more necessary than ever that jurists should use with greater than ordinary care such small influence as they may have to check wrong and to point out what is right." But if public opinion cannot always ensure the observance of the law, it can generally produce an amelioration in the situation which its breach has caused[5].

Of course it may happen that the world's

opinion is indifferent, it may deem the change to be inevitable, and one long foreseen, and recognise that a new situation and nomenclature only register pre-existing facts, and that mere state-paper rights must yield in the end to the inexorable law of facts. No one has accused Japan of breaking the law in the gradual steps by which the Empire of Korea has finally become the Province of Cho Sen in the Japanese Empire.

There is on the other hand the third alternative; the pressure of public opinion may not be felt to be a sufficiently strong deterrent and nothing short of war or the threat of war may compel a state to submit to a revision of arrangements it has made irrespective of other states which claim to be interested parties. It was thus that Russia in 1877 was prevented from reaping the complete fruits of her victory over Turkey, when the Great Powers compelled the cancellation of the Treaty of San Stefano and the substitution therefor of the Treaty of Berlin.

Turning to another department of Inter-

national Law it may well be asked what it is which, even when the blood is up and war grim, hideous and sombre holds the field, causes admirals and generals to refrain from certain practices, and to carry out conventions made with their adversaries it may be years previous to the outbreak of war? The Geneva Convention, the Declaration of Paris, even the Declaration of Brussels though never ratified by the Powers have in fact been observed by belligerents, and I have little doubt that the newer conventions of the Hague, and the Declaration of London, if ratified,—and even if unratified, as to its main principles—will be observed in any future war. Why? Because in a large number of the cases to which they apply their provisions were actually rules of warfare evolved by Commanders themselves before they were embodied in conventions, while in those parts which are new, the combatants themselves recognise that their state's credit is at stake and that these conventions were made in their interests and the interests of humanity. Their representa-

tives assisted in the Conferences wherein these conventions were prepared, and they took care to leave them sufficiently elastic on those points where no doctrinaire can dogmatise. The qualification added to certain rules such as "so far as circumstances permit," "if possible," and so forth, "are in reality a safety-valve, intended," says Bluntschli, "to preserve the inflexible rule of law from giving way when men's minds are overheated in a struggle against all sorts of dangers."

The world viewed with horror the lot of sick, wounded and prisoners, its conscience was aroused and a few humanitarians who combined zeal with discretion were enabled to obtain the formulation of definite proposals which appealed to the Governments and armies of the world. "Men of nations readily disunited and opposed......are as a rule, all of one mind as to the principles of International Law" (to quote again the great German jurist). "That is what makes it possible to proclaim an International Law of war,

approved by the legal conscience of all civilised peoples: and when a principle is thus generally accepted, it exerts an authority over minds and manners which curbs sensual appetites and triumphs over barbarism."[6]

Neither the laws of war or neutrality are, however, perfect. The latter especially are based on compromise and still leave room for divergent practice in many directions. This large body of rules is probably destined to play a considerable part in any future war, especially should it be of a naval character; but, if the International Prize Court becomes an actual fact, the last word on their observance in naval warfare will be spoken by a court, free from national bias and prejudices, and administering the law in the same way as judges in national courts.

International Law is made to be observed; good faith is postulated in all international dealings, it is a duty flowing from the possession by states of a moral nature. It is not conceivable that states would have sent delegates to sit for weeks at the Hague

Conferences if they had secretly determined that the rules which their plenipotentiaries adopted were to be blown to pieces by the first shot fired in war.

The fact that war has not been abolished and rendered impossible is sometimes adduced to the discredit both of Hague Conferences and International Law. But in my opinion this is not a legitimate deduction. Hague Conferences, International Parliamentary Unions, Federations, Unions of Workers, and such-like gatherings all conduce to a growing feeling of solidarity among the nations of the world, and tend to create an atmosphere in which the observance of the rules of International Law will be increasingly easy to be realised. But as yet I see no prospect of perpetual peace. International Law is developing, but has not yet reached the fulness of development of national laws. "We have not yet eliminated the elements of disorder from our own national life," even the presence of the policemen and the existence of the gallows have not made murder im-

possible or unknown among us, neither is punishment always the certain consequence of crime. "The preponderance of order over anarchy is all that has been attained in one case, and all that I hope for in another," says the late Professor Lorimer, who was no pessimist, "beyond this, human will as yet appears to be as impotent as when brought into conflict with the destructive forces of physical nature."[7] Federations, leagues, associations, societies, unions can all contribute something towards the binding force of International Law. Their leaders can be the apostles of law, and of morality which makes law, they may assist in preserving the peace of the world, but it must be borne in mind that war and international law are not inconsistent[8]. Peace and war are alike governed by law.

It is easy enough to point out the failures of International Law and to speak of Hague Conferences as "Fiascos." No sensible person expects that the Millennium will come in his own time, and no good, nay, considerable

harm, may be done by belittling the attempts which are being made to extend the empire of law, and to remove causes of strife among the peoples of the world. Cynicism is not a helpful attitude to assume in regard to either national or International Law, it is fatal to all progress. Imagination and idealism which will enable the present generation to dream dreams so that their children and their children's children shall see visions are the needful equipment for those who labour for the extension of the reign of law among the nations of the world. The value of law it is true diminishes in proportion as the need for its existence ceases. We have not yet got the end in sight. Much remains to be done. Economic causes both produce the observance and breaches of the law of nations. Material ends are still the determining factors in state life. Breaches of International Law can be rendered increasingly difficult only by the steady maintenance of the international ideal.

The nations of the international society

are widely different in race, language, religion, civilisation, but all alike acknowledge their allegiance to the body of laws which has gradually grown up to regulate their mutual dealings. In support of this statement it is only necessary to mention the great net-work of treaties on such subjects as arbitration, copyright, patents, money, railways, posts and telegraphs, which increased facility of communication and the growth of international trade have called into being. The acknowledgment of the obligation to conform to the requirements of International Law provides a true connecting link, a real bond, a unifying power, stronger than any other for which we can hope. It is an obligation which has not been imposed by external authority, but has arisen among the nations themselves who recognise and revere the universal virtues of good faith and justice. It was owing to the appeal which Grotius and the early writers on this subject made to what was called "natural" law that their doctrines found acceptance. They provided a common platform on which

the Christian Powers of Europe could meet, they spoke a language all understood, and appealed to moral principles which all acknowledged. There is a splendid passage in Sir James Fitzjames Stephen's *Liberty, Equality and Fraternity*, which Sir Henry Maine quotes in this connection. "The sources of religion lie hid from us. All that we know is, that now and again in the course of ages some one sets to music the tune which is haunting millions of ears. It is caught up here and there, and repeated till the chorus is thundered out by a body of singers able to drown all discords and to force the vast unmusical mass to listen to them. Such results as these come not by observation, but when they do come they carry away as with a flood and hurry in their own direction, all the laws and customs of those whom they affect." Maine then goes on to say that what is here said of religion is in a sense true of morality. That moral ideas tend sooner or later to produce a set of legal rules. International Law was founded on morality under the form of a supposed law of Nature

and was received with enthusiasm[9]. It has extended from the Christian nations among whom it originated to others whose systems of morals and religions had a different basis, and to-day the causes for its original acceptance are not infrequently lost sight of.

Politics and law however are not always found to be compatible even in ordinary civil life, and there are certain political aspirations of states which cannot or will not submit to the curbing and restraining power of law and public opinion for its sanction. States endeavour to make their demands conform to legal principles, for all have learnt that to draw the sword hastily on behalf of claims, however strongly they may be supported by the national will, involves losses which no war-indemnity can make good. There are times when ambitions or irresistible laws of expansion cause a state to conduct its negotiations with the pen in one hand and the sword in the other. There are times also when a nation will be compelled to have recourse to force against the unjust oppression of a powerful

state. There are also wars without the rattle of the cannon, and decisive victories without the firing of a gun. We have not yet got away from the region of force as the ultimate power behind the demands of a nation bent on carrying through a given policy, or warding off an anticipated injury, real or fancied. Diplomatic negotiations have been likened to paper-money, valuable as long as there is a sufficient gold-reserve, but useless without a supply of bullion. This fact cannot be overlooked by all who take account of the forces working within the family of nations; I do not desire to lay too great stress on this point, but it cannot be neglected in any discussion of this subject. War still remains as an instrument of policy, it "is only a continuation of state policy by other means," writes Clausewitz[10], and there have been in the past and will be in the future occasions when force and not reason will be the deciding fact in international disputes. Arbitration as a means of settling disputes is, happily, largely on the increase, and although the public opinion of the world

may not be able to appreciate in all its bearings a dispute between two Powers, it can appreciate the position of, and will with increasing severity condemn, that Power which refuses to allow the peaceful application of the law of nations by an international tribunal.

The past decade has witnessed two striking features in the international situation which are not without influence in regard to the future of International Law. On the one hand there has been a great growth in the number of arbitration treaties between the Powers of the world, and a great increase in resort to arbitration. The Permanent Court established at the Hague by the first Peace Conference of 1899 has been appealed to by nearly all the great Powers of the world, and long standing disputes have been referred to it for a peaceful solution. It is true that with one or two notable exceptions all the arbitration treaties exclude from their operation questions affecting the honour and vital interests of the parties, and it is left to each state to say what

disputes come under this designation. President Taft has recently stated that personally he did not see any more reason why matters of national honour should not be referred to a Court of Arbitration than matters of property or of national proprietorship. But this, he admits, is going further than most men are prepared to go; still the idea of a Court of Honour, not unknown in countries where the duel still holds sway, represents an aspiration for which men may well work.[11] The other feature is, however, of a very different character. There has been a large and continuous growth in the expenditure of nations on armaments and military budgets. Between the years 1898 and 1906 the military expenditure of Europe, the United States and Japan increased from £251,000,000 to £320,000,000, and it has been growing since.

These two facts are of striking importance and not easy to reconcile. Arbitration treaties and resort to arbitration are increasing. Peace and Conciliation Societies are flourishing, and at the same time every nation is having its

resources continuously drawn upon for the maintenance of armies and navies and preparation for war. All Europe is living in armed camps.

In considering the binding force of International Law, its sanction and future development, neither of these two factors in the situation must be dwelt upon exclusively, but to neglect either is to take a partial, biassed and unsound view of the situation. They represent a definite stage in the development of the progress of opinion. States now recognise that in the vast majority of cases, it is to their advantage and that of the world at large that disputes should be settled by the peaceful application of the rules of law, but as yet they are not prepared to bring all possible causes of difference within its sphere. The peaceful settlement of disputed questions, and the forcible but regulated self-redress by war exist side by side, both are governed by the rules of International Law. How long will the situation continue? Will a peaceful solution of disputes ultimately be the only

solution? I do not presume to offer any prophetic reply to the first of these questions, but as regards the second, if the analogy between the growth of municipal law and International Law may be relied on, the peaceful settlement of disputes will tend to increase, and reason be substituted for force. But even this advance in civilisation will not necessarily mean the advent of an era of perpetual peace; war will remain as long as evil and injustice continue. "We should believe in the abolition of war only if we believed that some day no criminals will be left and that all the prisons will be closed, and that some day sincere differences of opinion in matters of principle will be impossible," says a writer in a recent number of the *Spectator* in an Article on the late Professor James' paper on "The Moral equivalent of War."

Meantime everyone interested in the maintenance of peace, towards which International Law certainly tends, will welcome the evidence afforded by the growth of agencies

assisting to this end. Every reference to arbitration, and every acceptance of an arbitral award, every convention clearing up difficulties and laying down definite rules for future cases, is a step in the progress of legal methods and affords further proof of the binding force of International Law. Perhaps the most noteworthy triumph of the spirit of conciliation and respect for law was seen when the dispute between this country and Russia over the Dogger Bank incident was settled by the peaceful method of a Commission of Enquiry under the Hague Convention. The recent decision of the Hague Tribunal putting an end in a peaceful and juridical manner to a dispute of over a century's standing between Great Britain and the United States of America is another striking testimony to the growth of the law-abiding spirit. Until, however, the conscience, not of a few states, but of all states, is elevated to that of the highest thinkers among them, and so long as civilisation is in varying degrees of development in the countries forming the

family of nations, we shall have to take into account the existence of armaments as forces both assisting in the maintenance of international peace, enforcing the rules of International Law, righting wrongs and procuring the acceptance of the decrees of international tribunals. It was in this line of thought that Mr Roosevelt, whose devotion to the cause of peace has been so signally recognised by the award of the Nobel Peace Prize, was led to make the following observation at Christiania on the occasion of the presentation to him of that Prize. After advocating the formation of a League of Peace among the Great Powers to prevent the breach of the world's peace, and adverting to the difficulty in the way of the enforcement of the decrees of the Hague Tribunal, should necessity arise, he went on to say: "In new and wild communities where there is violence, an honest man must protect himself; and till other means of securing his safety are devised it is both foolish and wicked to persuade him to surrender his arms while the men who are

dangerous to the community retain theirs. He should not renounce the right to protect himself by his own efforts until the community is so organised that it can effectively relieve the individual of the duty of putting down violence. So it is with nations. Each nation must keep well prepared to defend itself until the establishment of some form of international police power, competent and willing to prevent violence as between nations."
"I think the desire is growing in Europe to see the pace of the increase of expenditure on armaments diminish," said Sir Edward Grey during the crisis of October 1908, "but you cannot expect to see the expenditure on armaments diminish, if people live in apprehension that treaties can be constantly altered without the consent of all the Powers who are parties to them."

I should however have entirely failed in my endeavour to provide an answer to the question why nations observe the rules of International Law if I had only enunciated the idea that it was from fear of punishment

be realised by the perfection of the individual. This is true not only in the case of national well-being, but also in the international society. The higher and more developed the moral sense of any nation, the better equipped it is for the enforcement of its ideals, and the more effective will be its contribution to the public opinion of the society of nations. This implies for any nation a steady continuity of purpose, an unflinching adhesion to an ideal, a disciplining of the manhood of the state and a wide diffusion of the knowledge of the existing rules of International Law. The devotion to a high international ideal is no bar to the sturdiest local patriotism. The greater the love and attachment of a man to his native land, the greater the sacrifices he is prepared to make on her behalf, the more likely is he to appreciate similar qualities in other nations.

Public opinion is, then, both the great factor in creating, in improving and in enforcing the law of nations, but it needs educating. International public opinion is

the aggregate of the opinions of the states of the world, and it behoves each state to endeavour to keep the standard high, and to diffuse a knowledge of the rules observance of which it desires and on which it will insist. The doctrine that might and right are not correlative terms is one which needs constant reiteration, for history shows that they have too often been identified in practice. Honesty is not only the best policy for individuals and states, but it is predicated of all international dealings, while deceit and subterfuge, and disregard for the verdict of the world's judgment now, will lead to the affirmation of that judgment on appeal to posterity, for as Schiller well says, "the history of the world is the Tribunal of the world." It is for the peoples of each state, guided by ethical principles and grounded in scientific jurisprudence, to work for the realisation of justice in law, till right and law become recognised as synonymous, and it shall no longer be possible for the statement to be made in regard to International Law which is sometimes heard

in regard to national law: "Such may be the law, but it is not justice."

The rapidity of the progress of the rule of law among the nations of the world will be accelerated by a more wide diffusion of the knowledge of existing rules of International Law, for law to be observed must be known, and with knowledge will come improvement. It is not out of place in this connection to render homage to the work which is being done both by the *Institut de Droit International* and the International Law Association. The contributions made to International Law by the former body might well form the subject for a separate lecture, for they have been many and valuable. Its labours are less evident to the general public, and are better known to experts than to the world at large. The work of the International Law Association, whose meeting in London during the first week of August last attracted so much attention, is more popular in character and draws upon a larger circle than that of the *Institut*. Its publicity and the fact that its annual

meetings are held in the great centres of the world's commerce do much to bring to the notice of the public both existing rules and suggested changes, and to awaken interest in topics of vital importance to the world at large. Each of these bodies is, in its own way, contributing in a striking manner to assist in the formation of a strong public opinion for the enforcement of the rules of International Law, and by meeting in various countries each is materially aiding to standardise that opinion and so bring about a real cohesion of states cemented by increasing mutual knowledge. The apostles of the propaganda of International Law must of necessity be statesmen and lawyers, but all classes of the community in every nation, journalists, clergy, merchants and artisans, must co-operate, for there is need for a fuller knowledge of the existing rules of law so that their value may be the better appreciated. The wider the diffusion of this knowledge, the greater the prospect of its obligatory character receiving full recognition, for it rests

on the fundamental basis of mutual trust and good faith. Hague Conferences and International Associations are all making for this end, but it is an undertaking to which every state must increasingly devote itself. It is a work of education. Education properly understood is a great character-forming process, and one of its greatest results is the production of a feeling of self-respect which generates a corresponding respect and courtesy to others. Thus it is with individuals, so it is with states. As self-knowledge and self-reverence grow in each state there will also grow with increasing rapidity a power of appreciation of other states, and a consequent diminution of those feelings of suspicion and distrust which are the greatest hindrance to the growth of international goodwill and the application of the rule of law to international disputes.

There is in this country particularly a need for a greater study of International Law. In its teaching, we are, I think, considerably behind many of our neighbours[12]. The

Chairs and Lectureships on the subject are absolutely incommensurate with its importance, and the ignorance of it, both of the general public, and if I dare say so, even of some Members of Parliament, is colossal. This is partly due to the spirit of disbelief in its value to which I referred at the beginning of this lecture, and partly to our insular habits of thought in legal matters. It is time that this was remedied, and that in all our great centres of education and industry there should be professors and lecturers to diffuse a knowledge of the law by which the nation is bound, and whose observance is entrusted to the nation's honour: at the same time they should endeavour to combine with their teaching the aims which the distinguished founder of the professorship of International Law at Cambridge enjoined on the occupant of that Chair, namely that in all parts of his treatment of the subject he should lay down such rules and suggest such measures as might tend to diminish the evils of war and finally to extinguish war among nations.

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# NOTES

(1) The correspondence referred to related to naval bombardments of open coast towns. Professor Holland's letters are reprinted with notes on pp. 73—85 of *Letters on War and Neutrality*; see also on the same subject *Studies in International Law* by the same writer, p. 96. The correspondence and the subsequent history of the controversy are particularly interesting as showing the value of the work that jurists can do "to check wrong and point out what is right."

(2) All that can be adduced from the lack of the elements which Austin predicates which are found in national laws is that International Law is ill-defined in consequence of the absence of a legislature; and that its application may be dubious and not always effective owing to the absence of judicial authority and an ill-assured sanction; but this was the condition of national law in its early stages and only shows defective development (see F. Despagnet, *Droit International Public*, §§ 38, 39).

"The doctrines of international law have been elaborated by a course of legal reasoning; in international controversies precedents are used in a strictly legal manner: the opinions of writers are quoted and relied upon for the same purposes as those for which the opinions of writers

are invoked under a system of municipal law; the conduct of states is attacked, defended, and judged within the range of international law by reference to legal considerations alone; and finally, it is recognised that there is an international morality distinct from law, violation of which gives no formal ground of complaint, however odious the action of the ill-doer may be. It may fairly be doubted whether a description of law is adequate which fails to admit a body of rules as being substantially legal, when they have received legal shape, and are regarded as having the force of law by the persons whose conduct they are intended to guide." W. E. Hall, *International Law*, p. 14 (5th edition).

"And the different states not only recognise the rules of international law as legally binding in innumerable treaties and emphasise every day the fact that there is a law between themselves. They moreover recognise this law by their municipal laws ordering their officials, their civil and criminal courts, and their subjects to take up such an attitude as is in conformity with the duties imposed upon their sovereignty by the law of nations." L. Oppenheim, *International Law*, Vol. I. p. 14.

(3) W. E. Hall, *op. cit.* p. 1.

(4) See Article by the Hon. Elihu Root on "The sanction of international law." *American Journal of International Law*, Vol. II. pp. 451—457.

(5) The Right Hon. Sir Edward Grey, M.P., Secretary of State for Foreign Affairs, in a speech at Wooler on the 7th October 1908, is reported in the *Times* to have spoken as follows on the attitude of Great Britain on the occasion of the annexation of Bosnia and Herzegovina by Austria:

"We cannot recognise the right of any Power or State to alter an international treaty without the consent of the other parties to it. We cannot ourselves recognise the result of any such actions till the other Powers have been consulted, including especially in this case Turkey, who is one of the other Powers most closely concerned, because if it is to become the practice in foreign politics that any single Power or State can at will make abrupt violations of international treaties you will undermine public confidence with all of us."

With this may be compared the language used by Lord Granville, in 1870: "It has always been held that the right [of releasing a party to a treaty] belongs only to the governments who have been parties to the original instrument.......Yet it is quite evident that the effect of such a doctrine [as that advanced by the Russian Government] and of any proceeding which, with or without avowal, is founded upon it, is to bring the entire authority and efficacy of treaties under the discretionary control of each of the powers who may have signed them; the result of which would be the entire destruction of treaties in their essence." (Quoted by W. E. Hall, *op. cit.* p. 356.)

(6) A translation of Professor Bluntschli's letter to Count von Moltke from which these quotations are taken is given in Professor Holland's *Letters on War and Neutrality*, p. 27.

(7) J. Lorimer, *Institutes of the Law of Nations*, Vol. II. p. 184. The whole of Book V on "The ultimate problem of international jurisprudence" is worthy of study though the conclusions of the learned writer will probably be rejected by many readers.

(8) See on the subject of "War no illegality," L. Oppenheim, *International Law*, Vol. II. § 53, also W. E. Hall, *International Law*, pp. 60—61; J. Westlake, *International Law, War*, p. 3.

(9) *International Law*, p. 46.

(10) See S. L. Murray, *The Reality of War*, Chapter viii. "War as policy."

(11) See Andrew Carnegie, *Peace versus War: The President's Solution.*

(12) In Great Britain there are Professorships of International Law in Oxford, Cambridge and Edinburgh. In Trinity College, Dublin, the Professor of Political Economy combines with his duties the Professorship of International Law and Jurisprudence. An Honorary Professorship of International Law has recently been established in Liverpool. There is a Readership in Roman Law, Jurisprudence, and Public and Private International Law in the Inns of Court, London, and a Readership in International Law in the University of Bristol. There are also Lectureships in Aberdeen, Glasgow and the London School of Economics. In all, there appear to be ten Professors, Readers and Lecturers in Great Britain. In France there are twenty Professors and several Lecturers and in every German and Swiss University International Law is represented by at least one and sometimes two Professors. It is probable that both in Great Britain and France the subject is also dealt with by Professors or Lecturers whose only designation is that of "Law."

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