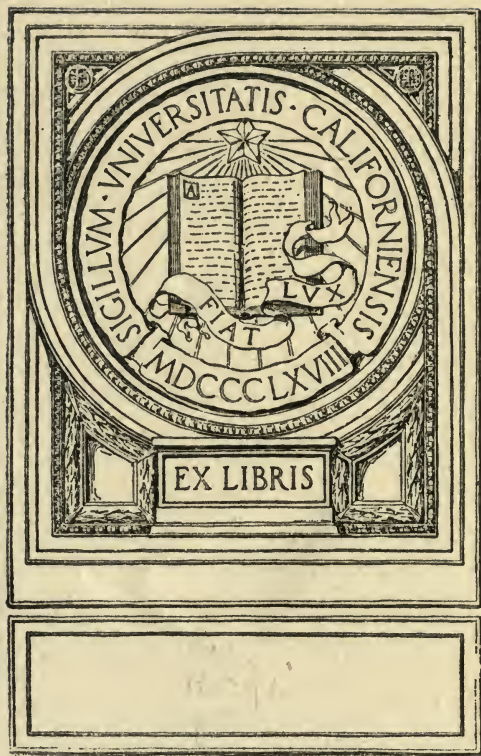


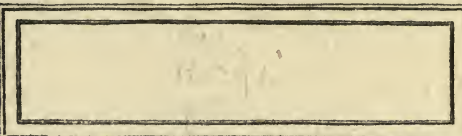
UC-NRLF



QB 743 822



EX LIBRIS





Digitized by the Internet Archive
in 2008 with funding from
Microsoft Corporation

FIRST VIOLATIONS OF
INTERNATIONAL LAW
BY GERMANY

COMMITTEE FOR THE DEFENCE OF INTERNATIONAL LAW

President

- M. LOUIS RENAULT, Member of the Institute ; Professor of International Law in the Law Faculty of the University of Paris and at the Free School of Political Sciences ; Member of the Hague Court of Arbitration ; former President of the Institute of International Law.

Members

- MM. BARTHÉLEMY, DE LEPRADALLE, LARNAUDE, LESEUR, PIEDELIVRE, PILLET, SOUCHON, WEISS, of the Law Faculty of Paris ;
MM. BRY, JOURDAN, SÉGUR, of the Faculty of Aix ;
MM. GÉRARD, LARCHER, MALLARMÉ, MORAND, of the Faculty of Algiers ;
M. DE BOECK, of the Faculty of Bordeaux ;
M. CABOUAT, of the Faculty of Caen ;
MM. DELPECH, GAUDEMET, SCELLE, of the Faculty of Dijon ;
M. BASDEVANT, of the Faculty of Grenoble ;
MM. LAMEIRE, LÉVY, PIC, of the Faculty of Lyons ;
MM. MOYE, VALÉRY, of the Faculty of Montpellier ;
M. CHRÉTIEN, of the Faculty of Nancy ;
M. AUDINET, of the Faculty of Poitiers ;
M. GIDEL, of the Faculty of Rennes ;
MM. MÉRIGNHAC, RONARD DE CARD, of the Faculty of Toulouse ;
M. BUREAU, Professor of the Free Faculty of Paris ;
[The Professors whose names precede are teaching or have taught International Law.]
M. CLUNET, Avocat of the Court of Paris, Editor of the "Journal of International Law" ;
M. DUPUIS, Professor of International Law at the Free School of Political Sciences ;
M. FAUCHILLE, Editor of the "General Review of Public International Law."

FIRST VIOLATIONS OF
INTERNATIONAL LAW
BY GERMANY

LUXEMBOURG AND BELGIUM

BY

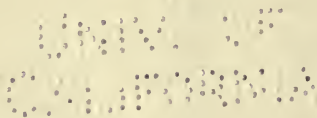
LOUIS RENAULT

MEMBER OF THE INSTITUTE; PROFESSOR OF INTERNATIONAL LAW IN THE FACULTY
OF LAW IN THE UNIVERSITY OF PARIS AND AT THE FREE SCHOOL OF POLITICAL
SCIENCES; MEMBER OF THE PERMANENT COURT OF ARBITRATION OF THE
HAGUE; FORMER PRESIDENT OF THE INSTITUTE OF INTERNATIONAL LAW

TRANSLATED FROM THE ORIGINAL BY

FRANK CARR

DOCTOR OF LAW OF TRINITY HALL IN THE UNIVERSITY OF CAMBRIDGE;
OF LINCOLN'S INN; BARRISTER-AT-LAW



LONGMANS, GREEN AND CO.
39 PATERNOSTER ROW, LONDON
FOURTH AVENUE & 30TH STREET, NEW YORK
BOMBAY, CALCUTTA, AND MADRAS

1917

• D615
R42

THE NEW
MUSEUM

P.

PREFACE

THIS brochure is to be the first of a series devoted to the re-establishment of legal truth in a certain number of directions in which it has been distorted by theorists in the service of our enemies.

From the moment that it is affirmed that force is law, that necessity goes before everything (Need has no law, according to the notorious maxim), it seems that there is no room for argument, but only for action. And yet defenders have arisen who have claimed to plead Not Guilty, and even to justify everything. "Germany," says one of them, "has in this war observed International Law in all essential matters, and by reason of that very fact demonstrates its value afresh every day. That in minor matters there may have been infractions—I do not know if such be the case—our conscience has nothing to worry about. In truth, our legal conscience is without stain." And again: "We desire, however great be the temptation, not to render like for like, not to return barbarism for barbarism, but to finish the war, as we have commenced it, in a knightly way and in conformity with the customs of International Law and with the duties assumed by treaties."¹

¹ Zitelmann, *Haben wir noch ein Völkerrecht?* Another (Dr. Beer, *Völkerrecht und Krieg*) concludes thus: "Germany will remain conscious of her condition and character as a civilizing nation, she will carry the war to a happy end within the limits of International Law; she will remain before and during the war, the safest refuge of the German science of International Law."

Doubtless it is difficult to ask a jurist to condemn in express terms the conduct of his own Government, even when he regards it as blameworthy in the highest degree. He is naturally inclined to defend it, more or less to identify the rule of law with the interest of his own country. But, nevertheless, there is a limit imposed on men devoted to the study of law and entrusted with its teaching. Not everything should be approved, or, in accordance with prejudice, declared lawful and honourable. In the presence of certain acts silence can be demanded and laudation condemned. After the violation of law, in the presence of actions illegal or barbarous nothing is more detestable than the attempt to justify them by unreal arguments; this leads to a downright perversion of the moral sense.

The men who in France are concerned with International Law, who, despite the spectacle which for two years our enemies display before the eyes of the civilized world, have kept their faith in the existence and need of rules for the relations between nations in time of peace and in time of war, who have a sure confidence in the final triumph of justice, have resolved to unite themselves in order to make their protests heard. It is not in vague or violent language that they wish to denounce the attacks on law committed by our enemies. They propose to study scientifically some of the questions raised by the war, to apply to them solutions dictated by legal principles generally recognized and by the conscience of the civilized world. Not indulging in loud declamation, they will fight the opinions of their enemies with keenness, and sometimes even with passion, but without permitting themselves to be drawn into abuse.

Doubtless we do not forget that we are Frenchmen, that our country is engaged in a terrible war, but we will always remember that we are lawyers and that we must respect our science even in the fiercest struggles. To enlighten our conscience, and that of our allies and neutrals, to state our common faith in the justice of our cause, such is the task that we set before us, and which we shall endeavour to accomplish in all plainness.

THE COMMITTEE.

July 1916

CONTENTS

	PAGE
PREFACE	v
INTRODUCTION	i
THE GRAND DUCHY OF LUXEMBOURG	5
BELGIUM	14
THE REPLY OF BELGIUM	31
THE ATTITUDE OF THE GERMAN GOVERNMENT	36
THE QUESTION OF THE FORTRESSES	52
THE PLEA OF NECESSITY	58
THE DOCUMENTS FOUND AT BRUSSELS	65
THE SPEECH OF DECEMBER 2, 1914	73
CONCLUSION	76

MEMORANDUM

TO : [Illegible]

FROM : [Illegible]

SUBJECT : [Illegible]

[Illegible text follows, consisting of several lines of faint, mostly illegible text.]

FIRST VIOLATIONS OF
INTERNATIONAL LAW BY
GERMANY

(LUXEMBOURG AND BELGIUM)

INTRODUCTION

SOME may be astonished at seeing a further treatment of this subject after the many publications which it has already produced, especially after the remarkable studies due notably to MM. Van den Heuvel, Waxweiler and Weiss. I make no sort of claim to bring to light any new matters either of fact or law, but rather to make certain points still more clear. But according to a passage from Goethe happily quoted by the lamented Waxweiler : " It is necessary constantly to repeat things that are true, because error renews her statements without ceasing around us, and her channels are not mere individuals but masses of people."

In newspapers, in reviews, in special monographs, the Germans cease not to recur to the invasion of Belgium, to explain it, to justify it by the most unexpected arguments. It seems that it amounts with them to an obsession; I cannot, unfortunately, say a remorse. " It is this which has to the greatest degree compromised our

reputation with neutrals," says one of them.¹ They realized that dazzling and speedy victory on which they counted to avoid all explanation with regard to their brutal act not having materialized, it was therefore necessary to concern themselves with public opinion outside Germany.² They have learned that neutrals, despite the silence of their Governments, have not been indifferent witnesses of the crime committed against two small independent countries possessing the right to live; they feared a manifestation of their sentiments when the criminal should appear less to be feared, and they have endeavoured to check the explosion by a torrent of quibbles and calumnies.

Luxembourg has been somewhat neglected, almost forgotten, for various motives, but nevertheless it has also been the victim of German violence and treachery. It is not only her rights that have been ignored, but also those of the States in whose interests its neutrality was established. Consequently a legal protest is not superfluous in so far as they are involved.

But Belgium, who has so heroically defended her

¹ Zitelmann, *Haben wir noch ein Völkerrecht*. See also Schohnborn, Professor at Heidelberg, in his work on "The Neutrality of Belgium," which is contained in the publication *Deutschland und der Weltkrieg*. "No reproach has been employed more vigorously among our enemies and neutrals to create a movement of opinion against Germany than that of the arbitrary attack committed by Germany in violating the neutrality of Belgium. No reproach has had so much success." And the author is astonished in verifying the decisive justifications furnished by Germany.

² "The conscience of International Law has acquired in the present condition of civilization such a power that it is impossible with impunity completely to lose sight of it." This aphorism of a man little suspect in this matter (Bernhardi, *Our Future*) explains the efforts of German jurists to reconcile the conduct of their country with International Law.

At the moment of sending this work to the Press I receive a little book, *Belgium and the German Jurists*, by Ch. de Visscher, Professor of the Faculty of Law in the University of Ghent, a perusal of which I cannot too strongly recommend. There will be found therein a very close refutation of the various sophisms by the aid of which certain German jurists have tried to excuse the conduct of their country.

independence, after having asserted her right and her duty in the most vigorous terms, has attracted attention to a higher degree. It is the cry of Belgium that it was necessary to stifle, and they have tried to succeed therein by a method well known to those who frequent the Court of Assizes. To prove the innocence of, or at least to excuse the criminal, his defenders seek to establish the unworthiness of the victim, and have no scruple in reversing the characters. Many jurists, nearly all German, however, have delivered themselves to this task with a downright frenzy. They have exceeded all measure, have had recourse to the most inapposite arguments, have lavished calumnies and insults.¹ Belgium is a political abortion and Belgian nationality an object of mild hilarity, says Professor Sombart. Many go to the length of proclaiming the guilt of Belgium.² One can only regret meeting certain neutrals in this sad chorus;³ they reproach Belgium for her heroism and speak of her suicide, without thinking that their own country is exposed to the same fate if interest demands, or perhaps to show that non-resistance to force is the most profitable part. To these sad showings apply the fine words of the great Swiss poet Spitteler: "After the blow, to appear whiter, Cain blackened Abel. Now it was amply enough to have slain him. Thereon to slander him was excess."

¹ Professor Schücking does not fear to say, "The patriotic propaganda of our Professors has been conducted with so little tact that the explanations and monographs have produced, in my opinion, an effect clean contrary to that on which they had counted" (*Die deutschen Professoren und der Weltkrieg*).

² Title of the brochure of Dr. Richard Grasshoff, *Guilty Belgium*, a feeble answer to the remarkable work of Waxweiler, *Belgium Neutral and Law-abiding*. "The Guilt of Belgium," by Baron von Welck (*Jahrbücher für die deutsche Armee und Marine*, December 1915). This work only relies on the brochure of Norden, due, it is said, to a Belgian pen, and the work of a Swiss, Edouard Blocher (*Belgian and Swiss Neutrality*), who appears to possess singular ideas on neutrality in general and Swiss neutrality in particular.

³ The Swiss Blocher, the American Burgess.

4 VIOLATIONS OF INTERNATIONAL LAW

I propose first to establish the guilt of Germany, which is not a very difficult thing, since she commenced by pleading guilty, then to reply to the various accusations brought against Belgium, many of which are later in date than the works cited in the beginning of this Introduction. I shall restrict myself to the essential both as regards fact and law; I shall not enter into the entire detail of the subtle arguments in which they indulged; I give notice that I shall not shrink from repeating what has already been said so as to present a complete case, permitting myself to form a deliberate idea of the respective positions of Germany and her two victims. I think that I can assert in all sincerity that there occurred *an undeniable crime* in the very beginning.¹ It heralded clearly the various crimes that have subsequently been perpetrated on land, on sea, and in the air. When a belligerent only concerns himself from the very beginning with his own immediate interest, without permitting himself to be checked by solemn undertakings or the demands of humanity, he is capable of all crimes, as the course of the war has shown.

This work is confined to the double violation of International Law which marked the beginning of the war. It advisedly neglects the many crimes committed by the German military authorities in the conduct of the war, and on which light has been cast by many official publications.

¹ "Since the partition of Poland does humanity find itself in a plight more worthy of pity?" says the former Attorney-General of the United States, James M. Beck (*The Proof: An Enquiry into the Moral Responsibility for the War of 1914*, p. 254; Paris, 1915).

THE GRAND DUCHY OF LUXEMBOURG

ASSUMING a knowledge of the history of the Grand Duchy, I confine myself to the last diplomatic document which governed the international situation of the country. It is the treaty, signed at London on May 11, 1867, by Austria-Hungary, France, Great Britain, Italy, Prussia and Russia.

The following is the second article of this treaty—

The Grand Duchy of Luxembourg, in the limits settled by the document annexed to the treaty of April 19, 1839, under the guarantee of the Courts of Austria, France, Great Britain, Prussia and Russia, will constitute henceforth a perpetually neutral State.

It will be bound to observe this same neutrality with regard to other States.

The High Contracting Parties undertake to respect the principle of neutrality stipulated for by the present article.

This principle is and remains placed under the sanction of the collective guarantee of the signatory Powers of the present treaty, with the exception of Belgium, which is itself a neutral State.

It is to be noted that it is on the demand of Prussia that Luxembourg has been neutralized, and in the session of the Diet of the North German Confederation, September 27, 1867, Bismarck further indicated the value which he attached to this neutralization: "In exchange for the fortress of Luxembourg we have obtained a compensa-

tion consisting in the neutralization of the country, and in a guarantee which will be made good—I entertain this conviction despite all cavillings—on the date of its full maturity. *From the military point of view, this guarantee is for us an ample compensation for the surrender of the right of occupation.*”

The neutralization of Luxembourg had this individual character, that the fortress of Luxembourg was to be dismantled, and that it was forbidden to the Grand Duchy to fortify itself or to have an army.

After the war of 1870, on the occasion of the surrender to Germany of a part of the System of the Eastern Railway Company, difficulties arose between Germany and the Grand Duchy. The treaty of June 11, 1872, which the German Empire enforced on Luxembourg to put an end to them, contains the following clause, which expressly recognizes the neutrality with its consequences.

“The German Government is *bound* never to employ the Luxembourg Railways, over which running powers are exercised by the general imperial management of the Alsace-Lorraine Railways, for the transport of troops, arms, materials of war, and munitions, and not to make use of them during a war in which Germany shall be involved for the provisioning of troops in a manner incompatible with the neutrality of the Grand Duchy, and, generally, not to commit or allow to be committed, in the exercise of running powers over these lines, any act which is not in perfect accord with the duties incumbent on the Grand Duchy as a neutral State.”

This provision occurs again in Article 2 of the Convention of November 11, 1902, renewing and continuing the contract for running powers over the Guillaume-Luxembourg railways.

Such was the legal situation, such were the engagements undertaken by *Germany*, and there is no need to stop for the argument of certain over-zealous officials who have dared to contend that the engagements assumed

by Prussia are not binding on the German Empire; the latter, as one sees, in 1902 recognized the neutrality of Luxembourg and the consequent duties that resulted therefrom.¹

For the rest, I am resolved to affirm this clearly, and I shall insist on it with regard to Belgium, that it is not merely the ignoring of positive texts that can be alleged against Germany, it is the violation of the most elementary principles of International Law. The neutrality of Luxembourg ought to have been respected even in the absence of any treaty; every State, great or small, having a natural right to the inviolability of its territory.

Let us now consider the facts.

On July 31, 1914, M. Eyschen, President of the Grand Ducal Government, asked of the German Minister at Luxembourg for an official declaration from his Government undertaking the engagement of respecting the neutrality of the Grand Duchy. "That follows from itself," answered M. von Bach, "but it is necessary for the French Government to make the same promise." This engagement was officially entered into on August 1st.²

During the forenoon of the 1st of August a German detachment seized the Luxembourg railway of the Three Maidens, unbolted the rails, and went back into Germany. They said it was the result of misconceived instructions. "I am bound to admit," telegraphed M. Eyschen to Berlin, "that there has been a mistake. I am waiting for excuses."

During the night of August 1st and 2nd German forces penetrated into Luxembourg in automobiles and by railways. On August 2nd there arrived a telegram addressed by Herr von Jagow, Minister of Foreign Affairs in the German Empire, to the Grand Ducal Govern-

¹ On the special question of the subsistence of treaties entered into by Prussia, see the precedents indicated in *The American Journal of International Law*, October 1915, pp. 952-958.

² Yellow Book, No. 111, p. 129.

ment: "To our great regret the military measures that have been taken have become inevitable by the fact that we have received certain news in accordance with which French military forces were on the march against Luxembourg. We were forced to take measures for the protection of our army and the security of our railway lines. No hostile act against Luxembourg is in our intentions. In the presence of the imminence of the danger, it has unfortunately been impossible for us to enter upon previous discussions with the Government of Luxembourg."

The German military authority effected the posting of the following proclamation¹—

"All the efforts attempted by His Majesty our Emperor and King with a view to the maintenance of peace have failed. The enemy has forced Germany to draw the sword. France, having violated the neutrality of Luxembourg, has commenced hostilities—as has been established without the least doubt—from the territory of Luxembourg against German troops. In view of this urgent necessity His Majesty has *also* ordered the German troops—the Seventh Army Corps in the first place—to enter Luxembourg.

"The occupation of Luxembourg, however, has the sole object of opening the way to future operations, and with the express assurance: (1) That it will only be temporary; (2) that the personal liberty and the property of all the Luxemburgers shall be absolutely guaranteed and respected; (3) that the German troops are accustomed to obey an iron discipline; (4) that all requisitions shall be paid for in cash.

"I anticipate that the spirit of justice of the people of Luxembourg will not lose sight of the fact that His Majesty only ordered the entry of troops into Luxembourg on constraint of the direst necessity and being com-

¹ See the German text followed by the translation, Comte de Jehan, *L'Invasion du Grand Duché de Luxembourg*, p. 58.

pelled by the violation of the neutrality of Luxembourg on the part of France."

Impudence could not go to further lengths. Germany, without any semblance of proof, lays to the charge of her enemy the fact which serves her as a pretext and presents herself as being on the defensive. The truth is that there was no other motive than military advantage for disregarding engagements taken in the most formal manner, as has been seen above. The Grand Ducal Government without delay gave the lie to the German allegations, and protested against the invasion. Before the National Representative Assembly on August 3rd, M. Eyschen said clearly: "The two facts on which the occupation is based and of which the proclamation signed by a general speaks, are false. . . . France must have already violated the neutrality of Luxembourg; on our territory hostilities must have already been commenced against German troops: but amongst us no one has seen or heard anything. And yet, all this is found in an official document!"

In the famous sitting of the Reichstag of August 4th, where the Chancellor of the Empire set forth the situation, he expressed himself with more frankness—

"Our troops have occupied Luxembourg and have, perhaps, already penetrated into Belgium. *This is in contradiction of the rules of International Law.* We have been forced to disregard the lawful protests of the Luxembourg and Belgian Governments. The wrong, I admit it openly, the wrong that we are committing in this action, we shall repair as soon as our military object shall be attained."

I will content myself with this admission, which proclaims the falsehood of all allegations relative to the violation of the neutrality of Luxembourg by the French troops; if this violation had taken place, as German military authorities assert, there would have been no illegality on the part of Germany in also penetrating

into Luxembourg territory. The truth recognized by the Chancellor is, that the neutrality of Luxembourg was violated simply because this was in conformity with German military interests. I restrict myself to establishing this fact, which appears to me not to need any elaboration; I shall return to it with reference to Belgium. I note, however, that if in the case of the latter, the Chancellor later tried to unsay his own admission and to pretend that Belgium, because of her own conduct, had no lawful right which she could oppose to the action of Germany; no claim of this kind has been made as far as Luxembourg is concerned; there is no statement at all with regard to the manner in which she observed her neutrality. It follows, then, that we are in the presence of a violation of International Law of the most downright and least excusable type. The weakness of the little State of Luxembourg is the sole explanation.

What was Luxembourg able to do in order better to protest against the attack on her legal rights? Can we reproach her in that she did not resist the aggressor with arms in her hands? We cannot with reason contend this, it being conceded that the Grand Duchy was both in law and in fact disarmed in virtue of the treaty of 1867. The few people who carry on police duties could only have procured their own useless murders.

I note in passing that the remark has been made "that there are other means of resisting invasion than by the resistance of armed forces. Defences which can be called passive are not forbidden to a small country placed by its geographical situation in a position of particular jeopardy"; and they cite the destruction of certain bridges or tunnels.¹ But the invasion was too sudden, and it would have required more speed than heroism to have acted in this way.

That the Government and the country more or less

¹ Comte de Jehan, *op. cit.*, pp. 24 and 25.

easily resigned themselves to the inevitable is a point on which there has not hitherto been sufficient investigation.¹ But it is not possible to accept the explanation given by a German diplomatist, the Baron de Richthofen, in an interview.² According to him the violation of the neutrality of Luxembourg is justified from the legal point of view by the tacit consent of the Government of Luxembourg, and also by the fact of having accepted an indemnity.

The explanation is over-candid.

To commence with, the consent of Luxembourg to her own invasion would not be enough to negative the violation of law, because, as I have already remarked, Luxembourg was not alone interested in the question. It is not for her exclusive profit that the neutrality was established, and in consequence, her abandonment of all complaint cannot annul the infraction. The allegation, moreover, of a tacit consent—that is to say, of a downright collusion between the invader and the invaded—can be characterized as slanderous. It is not in accord with that declaration of Herr von Bethmann-Hollweg that no account should be taken of the *justified protest* of the Government of Luxembourg. It is impossible to speak any longer of a resigned attitude.³

As for the indemnity, can it be said that it was a redemption of the illegality committed so as *ex post facto* to exculpate the fact of the invasion and the subsequent occupation? A statement of the Grand Duchess

¹ In a German propagandist brochure, *Die Wahrheit über den Krieg*, it is said: "In Luxembourg the Government and the people yielded reasonably to military necessity. The Luxemburgers were not the friends of the Germans, but they became such after learning how the German soldiers behaved themselves, those who are said to be blackguards who are really good fellows." This statement is to be received with caution.

² *L'Echo de Paris*, March 25, 1915.

³ See Comte de Jehan, *op. cit.*, p. 26. Cf. the explanations given by M. Wampach in his interesting article in the *Revue des sciences politiques*, August 15, 1915, pp. 105, 110.

of November 10, 1914, declares: "A promise has been given that the damage caused shall be repaired, and promptness has been shown in the payment of a number of debts that had been contracted, and of reasonable indemnities for damage occasioned by the passage of troops." I see nothing in these facts which can, as the Baron de Richthofen says, justify the injury done to the independence of the country by the invasion and occupation.

According to the Treaty of London of 1867 the neutrality of Luxembourg was not merely recognized, but guaranteed by the six Great Powers. Shortly after the signature of the treaty, a debate arose in the British Parliament as to the scope of the clause which stipulated for that guarantee. It was to this debate that Bismarck alluded in the passage quoted above, when he spoke of quibbles (*ergoteries*). I cannot share the opinion put forth by English statesmen as to the particular character of the collective guarantee set forth in the treaty of 1867, but I make the observation that the difficulty then raised has little concern with the question that I am discussing here. There is no question of determining the extent of the guarantee from the point of view of the obligation to cause it to be respected, but from the point of view of the obligation to respect it, which is very different, and could not admit of any doubt. Whether the guarantee be joint or several matters little; it is evident that a guarantor cannot affect ignorance of the situation guaranteed by him. We say in private law: "He who warrants cannot himself evict."

The matter of the guarantee has not been raised for Luxembourg in the present war. All the guarantors save one were engaged in the struggle from the beginning. Italy, at that time neutral, uttered no protest. Moreover, we do not know whether or no the Grand Ducal Government made any appeal to its guarantors.

The conclusion arrived at in this review is that in

invading Luxembourg on August 2, 1914, Germany, without any possibility of denial, violated International Law, since she attacked the independence and sovereignty of a State that contemplated remaining neutral. This violation had a singularly grave character from the fact that Germany had solemnly promised to respect and to enforce respect for the neutrality which she disregarded without being able to invoke any ground for the nullity of or discharge from her engagement.¹

¹ In the *Journal of Geneva* of January 27, 1915, Colonel Feyler says that, "Of the three possible violations of perpetual neutrality, that of Luxembourg is the most serious and the least justifiable. The German Empire which bound itself to take up the defence of Luxembourg, has not fulfilled that engagement. . . . The political fault is undeniable, and the moral fault is not less so, for in all times the most elementary civilization has considered as a cowardly and traitorous act the unprovoked attack, by the strong, of a being feeble and unarmed, and whom he had promised to defend."

BELGIUM

As in the case of Luxembourg, I leave on one side the history of the country, and only deal with the documents that have regulated its international situation; and which I take as the basis of my explanations, without enquiring whether their regulation has or has not been a happy idea of Diplomacy.

The Treaty of London of November 15, 1831, between Austria, Belgium, France, Great Britain, Prussia and Russia contains the two following settlements—

Article 7. "Belgium, within the boundaries set forth in Articles 1, 2, and 4, will form an *independent and perpetually neutral State*. She will be bound to observe the same neutrality towards all other States."

Article 25. "The Courts of Austria, France, Great Britain, Prussia and Russia *guarantee* to His Majesty the King of the Belgians the carrying out of all the preceding articles."

The King of the Belgians soon had occasion to invoke this Article 25 in order to be placed in possession of the Citadel of Antwerp still occupied by the Dutch troops. In accordance with the Convention of October 22, 1832, "the Kings of France and Great Britain having recognized that all the efforts made in common by the five Powers who signed the treaty of November 15, 1831, to carry it into effect by means of negotiations have up to the present remained without result, have resolved, despite the regret which they experience in seeing that Their Majesties the Emperor of Austria, the King of Prussia and the Emperor of all the Russias are not

prepared at this moment to take part in the active measures which the execution of the aforesaid treaty demands, to fulfil with regard thereto, without excessive delay, their own engagements." It was in consequence of this Convention that the Citadel of Antwerp was taken by the French troops and handed over to Belgium. Hostilities ceased, but the crisis was only definitely settled by the treaty signed at London, April 19, 1839, which establishes the acceptance by the Low Countries of the regulation made in 1831 by the five Great Powers for the separation of the two countries. The twenty-four articles of the treaty of 1831, including Article 7 relative to the neutrality, are annexed to the treaties signed by the five Great Powers, on one side with the Low Countries, on the other with Belgium. The five sovereigns declare that the aforesaid articles are considered as having the same weight as if they were inserted textually in the present document (that is to say, the treaty of April 19, 1839), and that *they are thus placed under the guarantee of their said Majesties.*

The state of things created by the treaty of December 15, 1831, is then purely and simply maintained and consolidated by the cessation of the resistance of the King of the Low Countries. The five Great Powers have guaranteed to Belgium, in the boundaries fixed for her, her independence and neutrality. Here is the text, which is definite and clear. We shall have to consider the subtleties that have been devised with regard to this treaty, which to me appears decisive, to show that Germany has violated her positive engagement in invading Belgium.

From now on it is possible to establish that, contrary to what is affirmed by certain authors,¹ there is no question here of a collective guarantee like that which

¹ See notably Fuehr, *The Neutrality of Belgium*, ch. vi., which affirms that legally the guarantee assumed by the Powers in 1839 with regard to Belgium was the same collective guarantee assumed in 1867 with regard to Luxembourg.

was formulated in the treaty of 1867 for Luxembourg, and the *quibbles* of which Bismarck spoke with regard to this last treaty cannot be produced in the case of the treaty of 1839.

Germany has not raised any doubt as to the validity of the treaty of 1839 as far as she is concerned. We can find, however, an American jurist ¹ to contend that Germany could not be bound by a convention concluded at a time when she had no existence. German jurists declare that the objection has no weight, Germany having recognized on many occasions the treaty of 1839, and not having repudiated it even during the war. In a dispute with the United States, Germany has, moreover, in the course of the war, invoked a treaty concluded by *Prussia* with the United States in 1828.

On the occasion of the struggle carried on in 1870 between France and Prussia, Great Britain was uneasy with regard to Belgium. She addressed herself to the two belligerents, who alike promised her to respect Belgian territory. These promises were embodied in two distinct treaties signed at London on August 9 and 11, 1870. These are the chief dispositions of the Anglo-French Treaty, identical with those in the Anglo-Prussian :

Article 1. "The Emperor of the French, having declared that, despite the hostilities in which France is now engaged with the North German Confederation and its allies, her definite intention is to respect the neutrality of Belgium as long as that neutrality shall be respected by the North German Confederation and its allies, the Queen of the United Kingdom of Great Britain and Ireland declares, on her side, that if, during hostilities, the armies of the North German Confederation and its allies come to violate the said neutrality, She will be ready to co-operate with His Imperial Majesty for the defence of that same neutrality in the manner which

¹ Professor John W. Burgess.

shall be mutually agreed, employing for this object her naval and military forces, with the aim of assuring and maintaining, in concert with His Imperial Majesty, at once or later, the independence and neutrality of Belgium."

Article 2. (No engagement by England to take part in the war.)

Article 3. "This Treaty shall be binding on the High Contracting Parties during the present war between France and the North German Confederation and its allies, and for twelve months after the ratification of the Treaty of Peace concluded between the belligerents; *and at the expiration of this time, the independence and neutrality of Belgium shall continue, as far as the High Contracting Parties are concerned, to rest, as hitherto, on the First Article of the Quintuple Treaty of April 19, 1839.*"

One may ask if the conclusion of this double treaty by England shows any real utility; but to claim that thereby the engagements of 1839 became obsolete in truth requires a singular audacity. The German jurists themselves did not possess such. An American jurist or at least one calling himself such,¹ has not recoiled before it. In his opinion there is no need to confine oneself to the formal terms of treaties which exclude the idea of putting an end to the treaty of 1839; the individual Governments might well treat it as they understood it, but they had not necessarily the power to make their agreement binding to the extent of affecting the validity of a treaty entered into between different parties. It is an essential characteristic of the Quintuple Treaty that its dispositions should be placed under the guarantee not of two or three, but of all the Great Powers.

¹ *The Neutrality of Belgium*, by Alexander Fuehr; New York and London, 1915. See especially chap. viii.: "Effect of the Treaties of 1870 on the Quintuple Guarantee." This thesis has also been supported by the American Professor John W. Burgess, whose opinion has been reproduced by the German Press. See notably *Frankfurter Zeitung*, February 5, 1915.

This is a singular instance of misapprehension, the strangeness of which can only be explained by prejudice. In August 1870 there is no question of superseding the treaty of 1839, of making a *novation*, as has been said by a historian who is not a lawyer; in that case, evidently, the intention of the contracting parties would have been inoperative. It was merely a question of regulating the execution of the treaty of 1839 in a given hypothesis, and two of the guarantors could come to an understanding with regard to this subject as if it had occurred in 1839 just as I have stated above: this agreement has not affected the validity of the Convention of December 15, 1831, and has not produced any opposition on the part of the other guarantors whose position has not been modified.

According to the author with whom I am dealing, the conclusion of the treaties of 1870 is the strongest possible confirmation that England did not then regard as binding the treaty of 1839; even if she had regarded it as binding, the original guarantee necessarily came to nothing, in spite of declarations to the contrary, because the quintuple bond on which it rested was destroyed and replaced by two separate treaties. As far as the guarantee of the Quintuple Treaty is concerned, the contracting parties of 1870 were not qualified to stipulate for anything. Only the signatures of the five contracting parties of 1839 could re-establish the original guarantee after the expiration of the treaties of 1870.

We can establish here at once a misapprehension of elementary principles and a contradiction. How could the agreement of 1870 destroy the agreement of 1839? The contracting parties of 1870 could not affect the intention of Austria and Russia, signatories of the treaty of 1839 and strangers to the arrangements of August 1870. Consequently the treaty of 1839 continued in full being, whatever were the intentions of Great Britain, France and Prussia; this treaty had not to be restored after

the expiration of the treaties of 1870, and consequently no manifestation of the intention of Austria and Russia was necessary.

The conclusion, then, is that the engagements of 1839 have not been in any respect invalidated by the treaties of 1870.¹ The explanations given by the British Government show clearly that it did not conclude the treaties of 1870 because it regarded the treaties of 1839 as lapsed. It will be enough to quote what Mr. Gladstone said in the House of Commons on August 10, 1870: "It is said that the treaty of 1839 would have sufficed, and ought to have announced our intention to abide by it. In what, then, is the difference between the two treaties? It is in this, that, in accordance with our obligations, we should have had to act under the treaty of 1839 without any stipulated assurance of being supported from any quarter whatever. The treaty of 1839 loses nothing of its force even during the existence of this present treaty."²

I have dwelt on this argument, which they claim to base on the treaties of 1870, in order to clear the ground and to show what arms they thought to be able to employ,

¹ The Belgian Minister of Foreign Affairs, in the sitting of the Chamber of Representatives of August 16, 1870, said: "The identical and separate treaties concluded by England with the two Powers at war do not either create or modify the obligations resulting from the treaty of 1839; they regulate, for a contemplated case, the practical method of execution of these obligations; they do not at all weaken the engagements of the other guaranteeing Powers, and their text recognizes it, and leaves unaffected for the future the obligatory character of the previous treaty with all its consequences."

² I cannot prevent myself from quoting the fine words which in the same debate Gladstone used with regard to Belgium: "What is that country? It is a country containing four or five millions of people with much historic past, and imbued with a sentiment of nationality and a spirit of independence as warm and as genuine as that which beats in the hearts of the proudest and most powerful nations." This opinion of such a man can be opposed to the disdainful expressions of those who, after having outraged Belgium, have insulted her in her patriotism and have refused her the right to live.

after the crime, to weaken the position of Belgium and diminish the injustice committed by Germany.

One is astonished that Belgium was not a party to the treaties of 1870, although it was a question of her security; she did not intervene to any greater extent in the convention of 1832, whose object was to assure to her all the guaranteed territory.¹

Granting the opinions professed by the great military theorists of Germany,² it is not astonishing that, when a crisis appeared to threaten, the Belgian Government was concerned with what Germany would do in the event of a war with France. That is what happened notably in 1911 in the course of the discussion aroused by the project of the Netherlands Government to fortify Flushing. The Belgian Minister of Foreign Affairs had suggested the idea of a public declaration of the German Government relative to the neutrality of Belgium. Herr von Bethmann-Hollweg made it known that Germany had no intention to violate it, but that a public declaration would weaken its military position with regard to France, who, thus enlightened, would keep all her forces on the eastern frontier.³

To the Budget Committee of the Reichstag, April 29, 1913, Herr von Jagow, Minister of Foreign Affairs, pressed for an explanation on Belgian neutrality, answered *that*

¹ On December 20, 1870, Leopold II. complimented William of Prussia on his elevation to the Empire, believing that he saw in that event "the re-establishment of the rule of law in Europe." The Crown Prince Frederick, who records the incident in his memoirs, says also: "The King adds that he constrains himself to fulfil the duties that his neutrality imposes on him, but that the advantages which this situation affords are not without a counterpart in heavy charges and grave difficulties. Bismarck expresses himself with much gratitude with regard to Leopold's letter, and begs me to demonstrate in my answer the security that Belgium gains in a strong Germany from whom she has nothing to fear, nor from France as long as Germany shall be strong." (Quoted by M. Welschinger in the *Revue des Deux Mondes* of September 1, 1914, p. 11.)

² Notably by General von Bernhardt.

³ Grey Book, No. 11.

this question was settled by international conventions, and that Germany would respect those conventions. It is said that he refused to say more, but this was a sufficient recognition of international agreements with regard to the neutrality of Belgium, which puts on one side all the grounds of nullity which, according to certain claims, had existed previously.

On the eve of the outbreak of war the British Government questioned the Governments of France and Germany with regard to the neutrality of Belgium. The answer given at Paris was very definite: "The French Government is resolved to respect the neutrality of Belgium, and it is only in the event of another Power violating that neutrality that France would feel herself compelled to act otherwise with the object of assuring her own safety."¹ At Berlin the Secretary of State informs the English Ambassador that "before he is able to reply he must consult the Emperor and the Chancellor." "By the manner in which he expressed himself I thought I understood," said Sir Edmund Goschen, "that in his opinion any answer on their part would risk the revelation of at least a part of their plan of campaign in the event of war. Consequently it appeared doubtful whether it was possible for them to give any answer whatever."²

In the forenoon of the 2nd of August the German Minister at Brussels went to the Ministry of Foreign Affairs in order to obtain facilities for the departure of Germans recalled to their country by mobilization. On the same day, interviewed by a newspaper, he offered to guarantee the friendly disposition of Germany towards Belgium. "Perhaps the roof of your neighbours will burn," he said, "but your house will be saved."³ Finally on the same day the Germany military attaché asked a newspaper categorically to deny that Germany had declared war on France, and even on Russia. To a

¹ Blue Book, No. 125.

² *Ibid.*, No. 122.

³ Waxweiler, *Belgium Neutral and Law-abiding*, pp. 38-40.

question of the editor with regard to the invasion of Luxembourg, he answered that it is wild fancy. "Our troops have not occupied the Grand Duchy. Perhaps a detachment has, by mistake, overstepped the Grand Ducal frontiers. There is nothing to alarm the Belgians." The Brussels public was reassured on the faith of these categorical declarations.

It was in the evening of the same day, at seven o'clock, that the German Minister made to M——, the Minister of Foreign Affairs of Belgium, a communication characterized as *very confidential*, and which was nothing but an *Ultimatum*.¹

This document is of such importance from the political, legal, and moral points of view, that I think it indispensable to reproduce it at the beginning in its entirety before analysing it and setting forth its value.

"The German Government has received sure information in accordance with which French troops *have the intention* of marching on the Meuse by Givet and Namur. This information leaves no doubt as to the intention of France to march on Germany through Belgian territory. The Imperial German Government cannot but fear that if Belgium is not assisted, despite her best intention she will not be in condition to repel with success a French advance with such great forces, so as to assure to Germany a sufficient security against this threat. It is a paramount duty of self-preservation for Germany to anticipate this attack of the enemy."²

¹ Grey Book, No. 20, original German text followed by the French translation.

² In the *Deutscher Krieger Zeitung*, the official organ of the German Army League, No. of September 2, 1914, under the signature of Major Spahn, you read as follows—

"The plan for the invasion of France was a plan settled in advance; it was to be carried out in the North by way of Belgium, by turning the powerful line of forts by means of which the enemy had protected his frontier against Germany, and which, to force, would have cost an infinity of bloodshed. The plan has succeeded in every respect, as the positions of the different armies make manifest."

“ The German Government would regret very keenly that Belgium should regard as an act of hostility against her the fact that the plans of the enemies of Germany oblige her *in her turn* to violate Belgian territory.

“ In order to dissipate all misunderstanding the German Government declares as follows—

“ 1. Germany has not in contemplation any act of hostility against Belgium. If Belgium consents, in the war that is about to commence, to adopt an attitude of friendly neutrality with regard to Germany, the German Government on its side engages entirely to guarantee at the conclusion of peace the present condition and independence of the Kingdom of Belgium.

“ 2. Germany engages by the above condition to evacuate Belgium as soon as peace is concluded.

“ 3. If Belgium observes a friendly attitude, Germany is prepared, with the consent of the Belgian authorities, to purchase for cash everything necessary for her troops and to pay an indemnity for damage caused in Belgium.

“ 4. If Belgium conducts herself in a hostile fashion with regard to the German troops, and particularly causes difficulties in their advance, by the resistance of the fortifications of the Meuse, or by the destruction of roads, railways, tunnels, or other works, Germany will be compelled to consider Belgium as an enemy.

“ In this event Germany will not be able to enter into any engagement with regard to the Kingdom, but will be bound to leave the subsequent regulation of the relations of the two States to each other to the decision of arms. The German Government has a sure hope that this event will not occur, and that the Belgian Government will be able to take suitable measures to prevent the occurrence of matters which have just been mentioned. In this case the relations of friendship which

This is hardly in accordance with the declarations in accordance with which Germany only decided to enter into Belgium when she learned that a French attack was imminent.

unite the two neighbouring States will be maintained in a lasting manner.”¹

The pretexts invoked by German diplomacy as reasons for its lapses from correctness are not very varied. Faithful to the method of the wolf in his conversation with the lamb, she constantly imputes to her adversary acts of violence to which she is only making reply. We have seen that the case was the same for Luxembourg, whose invasion by the Germans is explained by a French invasion that had preceded it. In the case of Belgium the German Government has received *sure information* in accordance with which French forces *had the intention* . . . the measures taken by the enemies of Germany compel her *on her side* to violate Belgian territory. At first it is only a matter of an intention attributed to the French military forces, and later it is an accomplished fact to which German action must reply.² Is there need to recall the statement in the declaration of war on France of the flight of French aviators in Germany, a fact recently denied by the German authorities themselves? There is, then, no need to linger over the untrue allegations of the beginning of the Note.³

¹ The official telegram addressed by Herr von Jagow to the Imperial Envoy at Brussels contains in addition the following passage—

“Your Excellency will be good enough to make very secret communication of this to the Belgian Government this evening at eight o'clock, and ask it to deliver in twelve hours, that is to say, to-morrow morning at eight o'clock at latest, an answer leaving no room for any doubt. Of the manner in which your declarations there shall be received and of the definite answer of the Belgian Government, Your Excellency will be good enough to give me immediate information by telegraph.”

For the alterations in the document introduced by the German Government in the official publication of the *Aktenstücke* (March 1915), see *Critical Essay and Notes on the Official Alteration of Belgian Documents*, by F. Passelecq, pp. 21-25.

² On different unjustified allegations see Waxweiler, *Neutrality*, pp. 138, etc.; *Le Procès de la Neutralité Belge*, pp. 117, etc.

³ A few hours after having sent the Note the German Minister came to the Ministry of Foreign Affairs and said to the General Secretary that he is charged by his Government to inform them

The German Government wishes to clear away all misunderstanding, and has not in contemplation any act of hostility against Belgium. All that she demands of her is to preserve an attitude of friendly neutrality in the struggle which is about to begin. In what will this neutrality consist? It is very simple: it is a matter of allowing a passage over Belgian territory to the German Army which will march on France. In doing this, Belgium will then remain neutral, and the author of the Note does not concern himself in any fashion either with the justification of such a demand, or of explaining how Belgium would remain neutral in acceding thereto. Germany has an enormous military power, especially if one compares it with Belgium; she has a military interest of the highest order in passing over Belgian territory: this must suffice, and there will be found authors to affirm that the German Government did its best to save Belgium from the imminent strife, to write that her proposals would have spared her the evils of war!

And meanwhile, what the Note demanded was to abdicate her sovereignty by permitting the German Army to employ Belgian territory for its operations against France; it was, moreover, to fail in her primordial duties as a neutral State by rendering herself the accomplice of an attack on one of the guarantors of her own neutrality. But these are considerations of a legal and moral kind in which Germany finds hindrance, and of which she loves better to take no account.

In return for this enormity which she demands, what

that French dirigibles had dropped bombs and that a French cavalry patrol in violation of International Law, seeing that war was not declared, had crossed the frontier. To the request for information where these events occurred, Herr von Bülow answered, "In Germany." The General Secretary having remarked that in this case he could not explain the object of the communication, Herr von Bülow said that these acts contrary to International Law were of a nature *to give rise to the supposition that other acts contrary to International Law would be committed by France* (Grey Book, No. 21).

does Germany offer to Belgium? She undertakes at the moment of peace to guarantee the Kingdom and all her possessions; she undertakes to evacuate Belgian territory as soon as peace is concluded. Was Germany sure of being able to carry out the promised guarantee? In any case, what confidence could she inspire in Belgium for the performance of her promise after the conduct of which she had just been guilty, and which bore witness to the manner in which she fulfilled her promises?

From the pecuniary point of view, Germany was ready to buy for cash everything that would be necessary for her troops, and to pay indemnities for damages committed in Belgium.

Things are thus presented in a mild way.¹ Belgium has only to be friendly, to put up with a passing annoyance; she will be compensated and re-established after the war in her previous condition. It seems that the only persons concerned were Germany and Belgium, that everything could be settled between them without any need to trouble themselves about other persons. If, by a miracle, Belgium had yielded, is it sure that she would have escaped the horrors of war? But the belligerents whose rights Belgium would have ignored would have been able to direct their operations on Belgian territory, which would thus become the theatre of war despite all the promises of the German Government, and the affirmations of authors who regret for Belgium the lot of the submissive Luxembourg.

This, then, is the position offered to Belgium if she preserves a friendly neutrality, or, if one wishes to express things frankly, if she consents to become the accomplice of Germany.

If she demeans herself in hostile fashion against the German troops—that is to say, if she exercise her right

¹ Fuehr (*op. cit.*, chap. v.) insists on the extreme kindness shown by the German Government and to which Belgium only responded with ill will.

of sovereignty and defend her territory, if she keep the engagement entered into by her in 1831 and 1839, if she cause difficulties to the advance of German troops—Germany will, with regret, be constrained to regard Belgium as an enemy; she will not assume any obligation with regard to the kingdom, and will leave the subsequent regulation of the relations of the two States one to the other to the decision of arms. Thus Belgium will be at the mercy of Germany, who will use force to traverse her territory, and in the event of victory, shall dispose of her as shall seem good to herself.

Germany, with the singular mentality of her statesmen, cannot suppose that Belgium would hesitate for a moment in the presence of two such different results, and has a *reasonable expectation* that her demand will be granted.

Twelve hours were given for the answer, and it may be mentioned that the Note was sent at seven o'clock in the evening. It was during the night, then, that the decision must be made.

I will note also, and this is important, that Germany imputes no fault to Belgium, does not have recourse to any complaint, does not insist on any right peculiar to Germany. It was appropriate to the case, however, that if Germany had special rights against Belgium, she should urge them so as to make her conduct more acceptable. If she said nothing, then it was because she had nothing to say. I shall return later to this point with regard to various reproaches subsequently made to the Belgian Government.

It is not without interest to note, in passing, the attitude of Germany with regard to Switzerland at the very moment when Belgian neutrality was violated. This is the answer which she made to the notification of the neutrality of the Federal Government: "The Government has had the honour of receiving the circular Note addressed on the 4th of August this year to the signatory Powers

of the treaties of 1815, in which the Federal Council declares that in the course of the present war The Swiss Confederation will defend and maintain by all means of which she has control, the neutrality and inviolability of her territory. The Imperial Government has taken cognizance of this declaration with a sincere satisfaction, *and it anticipates that the Confederation, thanks to its strong army and the unshakable will of the whole Swiss people, will repel every violation of its neutrality.*" Thus we have two States analogous in the conditions and object of their neutralization¹: Germany, which is bound by treaty to respect them and to make them respect one another, asks one of them to violate her neutrality for Germany's profit, and declares to the other that she counts surely on her resolution to repel every violation of her neutrality! Can one deny that State-interest alone is involved? that they are deliberately putting on one side all idea of justice and morality? If another strategic combination had been adopted by the German authorities, the situation would have been reversed and the Swiss Federal Council would have received the Ultimatum sent to Belgium. They have not taken sufficient count of this in Switzerland.

In presence of the actual text of the Ultimatum and after these observations, it is not necessary to insist further on the character of the Note of August 2nd. The German Government asked Belgium to co-operate in a criminal act, to commit an act of cowardice² under the title of benevolent neutrality.

It has been contended that Belgium could, at her own free will, grant or refuse the passage; that the concession demanded was quite insignificant (the expression of Professor Köhler). Germany would only have committed

¹ There is this difference, that Belgium was neutralized by the will of the Powers, while the neutrality of Switzerland was rather recognized by them.

² The expression of Baron Beyens.

a violation of law if she had invaded Belgian territory with the intention of acquiring it for herself, which was not the case after her formal declaration. Nothing bound Belgium to resist by violence in any event, she could have satisfied herself by a protest; if she had acted thus she would have been treated like Luxembourg and have been compensated for damage sustained.¹

What would have been said in Germany if Belgium had made to France a concession such as that which the German Note demanded of her? There is no need to answer the question. Germany is not, whatever she may say, a privileged nation, and has no right to demand what would necessarily be refused to another State. The foregoing contentions refute themselves both in fact and law; they are only understood by those for whom notions of honour, law and morality are negligible when a material interest is involved.² Belgium was able to grant or refuse the passage in the sense in which a State is always free to do or not to do her duty, to face or evade the risks of the course adopted by her. Belgium was not in the position of Luxembourg from whom the Powers had taken away the means of resistance; she had the means

¹ Baron de Welck, "The Guilt of Belgium" (*Jahrbücher für die deutscher Armee und Marine*, December 1915). Fuehr, *op. cit.*, p. 36.

² The resistance of Belgium is incomprehensible, says Grasshoff, (*op. cit.*, p. 6), it is an error of policy which must have been its cause. And Fuehr (*op. cit.*, p. 191) says very definitely: "For the statesman who takes full account of his responsibility towards his people, *not the honour but the welfare of the country is and must be the guiding principle of his decisions.*" Against this maxim of materialist politics I am glad to set a passage from the Charge of Cardinal Mercier for Christmas 1914: "We can say without pride, my Brothers, our little Belgium has attained the first rank in the esteem of nations. It is, I know, easy to meet, in Italy and Holland notably, clever persons who have said: Why expose Belgium to this immense loss of wealth and men? Would it not have been enough to protest verbally against the enemy invasion, or to fire, if need be, a cannon-shot on the frontier? But all men of courage will be with us against the inventors of these base calculations. Material advantage is not, either for individuals or for societies, the rule of Christian citizenship."

and was bound to use them to fulfil her duty. As an American juriconsult says,¹ independently of all considerations of morality and self-respect, we can ask what guarantee had Belgium that her territory would thus be kept free from hostilities.

¹ Th. Ion, p. 7.

THE REPLY OF BELGIUM

BELGIUM had no hesitation in answering.¹ As a Belgian publicist has said, her decision was imposed on her by her Duty and her History.

This is the text of the Note delivered at seven o'clock in the morning of August 3rd to the German representative. After a short summary of the German Note, the Belgian Note goes on²—

“ This Note has aroused in the King's Government a deep and painful astonishment.

“ The intentions which it attributes to France are in contradiction with the formal declarations that have been made to us on August 1st in the name of the Government of the Republic.

“ Moreover if, contrary to our expectation a violation of Belgian neutrality had been committed by France, Belgium would fulfil her international duties, and her army would oppose the most vigorous resistance to the invader.

“ The Treaties of 1839 confirmed by the Treaties of 1870 make the Independence and Neutrality of Belgium sacred under the guarantee of the Powers and notably of the Government of His Majesty the King of Prussia.

“ Belgium has always been faithful to her international obligations; she has fulfilled her duties in a spirit of loyal

¹ See the moving story of what happened at the Belgian Ministry of Foreign Affairs during the historical night from August 2-3, 1914 (*Revue des Deux Mondes*, February 15, 1916, pp. 847-907). The author, M. Albert de Bassompierre, has reproduced it in a brochure published by the Librairie Perrin.

² Grey Book, No. 22.

impartiality; she has spared no effort to maintain or to exact respect for her Neutrality.

“The attack on her Independence with which the German Government threatens her would constitute a flagrant violation of International Law. No strategic interest justifies the infraction of Law.

“The Belgian Government, in accepting the proposals notified to her, would sacrifice the honour of the nation at the same time as she would betray her duties towards Europe.

“Conscious of the part that Belgium plays for more than eighty years in the civilization of the world, she refuses to believe that the Independence of Belgium can only be preserved at the price of the violation of her Neutrality.

“If this hope was vain, the Belgian Government is firmly decided to repel by every means in her power every attack on her right.”

As an American says,¹ few diplomatic documents are drafted in language so noble. There has been rendered to Belgium an echoing homage by my colleague Bergson, whose appreciation I am happy to set down. “I have for a long time taught, that History was a school of immorality. I will repeat this no more after the example that Belgium has just given to the world. An act like this redeems the greatest villainies of humanity and makes one feel prouder of being a man.” Whether Germany was struck by the lofty terms of the answer to her Ultimatum we do not know, but it is sufficiently curious that she did not make this answer known to the German public. The *Frankfurt Gazette* of August 8th, after reproducing the German Note of August 2nd, adds (another lie): “The German Note remained without an answer.”²

¹ Beck, *The Proof: An Enquiry into the Moral Responsibility for the War of 1914*, p. 225.

² A propagandist monograph already quoted, *Die Wahrheit über den Krieg*, shows in an annexe the German Note of August 2nd, but not the Belgian answer. See also F. Passelecq, *op. cit.*, p. 27.

“For a country conscious of her honour and independence there could be no different answer to the German Ultimatum. This Note, framed in language at once firm and restrained, is instinct with justice and humanity, and offers the most dazzling contrast with the language of the German Ultimatum with its impress of violence and trickery. Belgium has an international situation definitely established by treaties to which Prussia was party; she has always fulfilled her international obligations, she is determined to exercise her right to carry out her duty, which she will do at the cost of the hardest sacrifices. In the sitting of the Belgian Parliament on the next day, the King insisted on this last point. “If we are bound to oppose the invasion of our soil and defend our threatened hearths, this duty, however hard it may be, will find us armed and with our minds made up for the greatest sacrifices.”

Let us examine this clear statement of the Belgian Government that it has always fulfilled her international obligations. Surely if that statement could be contested, it was right for the German Government to do it then, since it would thus have diminished the gravity of the act which it was committing against Belgium. It failed to do so.¹ It limited itself to making the answer on August 4th at six o'clock in the morning through its Minister at Brussels, that, in answer to the refusal opposed by the Belgian Government to the well-inten-

¹ In the last conversation which he had with the Belgian Minister at Berlin, von Jagow, the Secretary of State, declared: “Germany had no reproach to make against Belgium, and the attitude of Belgium had always been perfectly correct.” To which Baron Beyens answered: “Admit, then, that Belgium could not make you any other answer than that which she did without losing her honour. Honour is for nations as for individuals, and there is not for peoples a kind of honour different from that of individuals. You ought to admit it; the answer is what it ought to be.” “I admit it as a private man; but, as Secretary of State, I have no opinion to express.” (Waxweiler, *Belgium Neutral and Law-abiding*, pp. 66-67; Beyens, *Germany before the War*, p. 342.)

tioned proposals made to it by the Imperial Government, "the latter will see itself, to its very keen regret, compelled to carry out, if need be, by force of arms, the measures of security set forth as indispensable against the French threats."¹

Two hours after the despatch of this Note, Belgian territory was violated by German troops at Gemmenich, a few kilometres from Aix-la-Chapelle.² I will not speak of the events which followed, and of the ruthless character given by Germany to the war against Belgium. This is outside my subject.³

Before showing the attitude of the German Government at the very moment of the occurrence of the facts which have just been set forth, I think I should speak of a new measure that it adopted with regard to the Belgian Government. This is the Note transmitted by the kindness of the Minister of Foreign Affairs of the Low Countries, on August 9, 1914.⁴

"The fortress of Liège has been taken by assault after a brave defence. The German Government regrets most deeply that, as a result of the attitude of the Belgian Government against Germany, they have come to bloody encounters. Germany does not come as an enemy to Belgium. It is only by the force of events that she is compelled by reason of the military measures of France, to adopt the grave determination to enter into Belgium and to occupy Liège as a point of support for her ulterior military operations. Now that the Belgian Army has,

¹ Grey Book, No. 24.

² The Belgian Government waited till German troops had entered into Belgian territory before appealing on August 4th for the co-operation of the guarantors. It was on August 5th, when the Belgian armies had been fighting for twenty-four hours, that it learned the answer of England to its appeal.

³ See the precise explanations given by Waxweiler, *op. cit.*, p. 118, etc. *The Infraction of International Law in Belgium*, official publication of the Belgian Government, preceded by a remarkable preface by M. Van den Heuvel.

⁴ Grey Book, No. 62.

in heroic resistance against a largely superior force, maintained the honour of its arms in the most brilliant manner, the German Government begs His Majesty the King and the Belgian Government to avoid for Belgium the further horrors of war. The German Government is prepared for any agreement with Belgium which can in any way be compatible with her plans with regard to France. Germany once again makes solemn assurance that she has not been inspired by the intention of appropriating Belgian territory, and such intention is far from her. Germany is still always ready to evacuate Belgium as soon as the state of the war shall permit."

Could Germany delude herself with regard to this offer which she presented as being inspired by feelings of humanity? It is hardly probable. The motives which had dictated the answer of the Belgian Government to the German Note of August 2nd, existed for this Note of August 9th, as the answer to the latter remarks—

"The proposal which the German Government makes to us repeats the proposal which had been formulated for us in the Ultimatum of August 2nd. Faithful to her international duties, Belgium can only reiterate her answer to that Ultimatum, the more so in that since August 3rd her neutrality has been violated, a grievous warfare has been waged on her territory, and the guarantors of her neutrality have loyally and at once answered her appeal."¹

In his speech in the Reichstag on the 2nd of December, the Chancellor has declared that the offer was made on the demand of the military administration; the interest of Belgium, as one might suppose, was in no sense involved. By yielding to the solicitation of Germany she would have given the lie to herself and would have facilitated German military operations.

¹ Grey Book, No. 65.

THE ATTITUDE OF THE GERMAN GOVERNMENT

How has the German Government described its own attitude with regard to Belgium?

This is what is established by actual documents, well known, but which could not be too often read or quoted to set free the truth from the mass of accusations directed subsequently against Belgium by the apologists of Germany who, often when carried away by their zeal, even go beyond the claims of their client.

On the 4th of August, in the afternoon, the English Ambassador at Berlin, Sir E. Goschen, called on the Secretary of State and asked him in the name of his Government, if the Imperial Government would abstain from violating the neutrality of Belgium. Herr von Jagow immediately answered that he regretted to have to give an answer in the negative; the German troops having crossed the frontier that very morning, Belgian neutrality was from that time already violated. He gave the reasons which have obliged the Imperial Government to adopt this measure; to wit: *that it was necessary for them to get into France by the quickest and easiest way, so as to seize a good advance in their operations and to compel the striking of some decisive blow as soon as possible. It was, for Germany, a question of life or death, for, if she had taken the more Southerly route, she would not be able, having regard to the lack of roads and the strength of the fortresses, to hope to progress without meeting formidable resistance involving a great loss of time.*¹

¹ Blue Book, No. 108.

The German Secretary of State on this occasion spoke with all frankness; he made no further allusion to hostile acts imputed to France or Belgium, he alleged no grievance against the latter (which agrees with the conversation held by him with Baron Beyens); he invoked purely and simply the reasons of a military character which inspired the conduct of the German Government.

Some hours later Sir E. Goschen again saw Herr von Jagow, and informs him that unless the Imperial Government could, before midnight, give the assurance that it would not pursue any further its violation of the Belgian frontier and stop its advance, the Ambassador had received instructions to ask for his passports. Herr von Jagow answered that to his great regret he could not give any answer other than what he had already given, to wit, *that the safety of the Empire made the advance of the Imperial troops through Belgium absolutely necessary*. As one sees, still there are no other reasons alleged than strategic ones, to which I shall return.

In short, after the Imperial Chancellor had made in the Reichstag the famous declaration set forth later, the Ambassador had a last interview with him. It is there that was enunciated the notorious phrase very characteristic of the moral and legal conscience of the German statesman. "The Chancellor said that the measures taken by His Britannic Majesty were terrible to the last degree; for the sake of a mere *word*, neutrality, a word of which in time of war men had so often taken no account, for nothing but a *scrap of paper* Great Britain was about to make war on a nation of the same family, who asked for nothing better than to be her friend."¹ Thus for Herr von Bethmann-Hollweg neutrality does not connote an entirety of rights and duties, *it is only an expression*; a treaty containing solemn engagements is only a *scrap of paper*. It is difficult to talk of International

¹ Blue Book, No. 160.

Law or of Law at all with a man who gives token of such a mental attitude.

After reflection the Chancellor thought that he had gone too far, when he was able to judge the effect produced on neutrals by his hardened cynicism. The 'scrap of paper' has had no success abroad,¹ it was impossible brutally to deny it, it was necessary to try and explain it, which the Chancellor did some months later, on January 24, in an interview with an American journalist : ² ' *I am surprised to learn* that the expression ' a scrap of paper,' which I used in my final conversation with the British Ambassador with regard to Belgian neutrality, has produced so unfavourable an impression in the United States. That expression was used by me with an intention and in a form quite different from that which is attributed to them, and it is necessary to attribute that impression to the biassed commentaries of our enemies." It required no great effort to make prominent the disquieting character of the expression of the German Chancellor; to regard a treaty as a scrap of paper is to sap at their base all relations between men, between nations as between individuals. It is surprising that it required six months for Herr von Bethmann-Hollweg to learn *with surprise* the bad effect produced by his words. Let us now consider the explanation he gave. The day which preceded the conversation, Sir Edward Grey had made a speech which left room for doubt as to the intentions of England. The latter was guided by her interests alone; she drew the sword only because she believed that her interests demanded it. For Belgian neutrality she would never have entered the war. " That is what I meant when I told Sir Edmund Goschen that, among the reasons which had impelled England to go into the

¹ According to the brochure, *Die Wahrheit*, the Chancellor had a complete right to say that he regarded the principle of Belgian neutrality as a mere piece of paper.

² See the account published by the *American Journal of International Law*, July 1915, p. 717.

war, the Belgian neutrality treaty had for her only the value of a scrap of paper."

We can leave the reader to judge of the value of the explanation. I shall be moderate in saying that this is an insolent inversion of the characters, and that, in the interview of the 4th of August, the tenor of which the Chancellor does not in any way deny, nothing can give the idea of this sophistical explanation.¹

On the same historical date of the 4th of August, marked by the invasion of Belgium and the diplomatic interviews set forth above, occurs also the statement made to the Reichstag by the Chancellor, a statement whose importance could not be exaggerated, and whose every word is worthy of being remembered.

"Gentlemen, we are in the necessity of defending ourselves, and necessity knows no law. Our troops have occupied Luxembourg, perhaps they have already trodden Belgian territory. This is contrary to the rules of International Law. The French Government, it is true, has declared at Brussels that she would respect the neutrality of Belgium as long as her adversary respected it. But we knew that France was ready to attack it. France could afford to wait, but we could not. A French attack on our flanks, on the lower Rhine, would have been fatal for us. Thus we were forced to disregard the lawful protestations of the Governments of Luxembourg and Belgium. The illegality—I speak frankly—the illegality which we are thus committing we shall seek to repair as soon as our military object shall be attained. When one is threatened as we are, and when one fights for a supreme advantage, *one makes what arrangements one can.*"²

¹ See what Beck, the American, says (*op. cit.*, pp. 248, etc.) with regard to these explanations of the German Chancellor.

² The propagandist brochure, *Die Wahrheit über den krieg*, says that, after the speech of August 4th, "The whole Reichstag rose; all parties drowned with long, frenzied and unanimous applause the voice of the orator in the course of the finish of his speech."

The declaration is as definite, the avowal is as brutal, as possible. The Chancellor does not seek to justify the action of Germany, he speaks of *necessity* as an explanation of the fact, without seeking to extract from that necessity the juridical theory which his apologists will endeavour to erect later. Germany violates International Law and commits an illegality, it is her best qualified representative who expressly avows it. Have we really anything to add in order that the matter may be understood?

For the rest, how could one hesitate in condemning Germany? If there is but one sacred right for every independent State, it is the right to respect for her territory, and for that there is no need of a formal text: it results from the nature of things. As an American jurist¹ has remarked with reason, we set ourselves on too narrow a ground, when we criticise the action of Germany, in taking our stand only on the treaties signed by her. She was bound to respect Belgian territory independently of all treaties, and by penetrating therein she has committed, by that very fact, an attempt condemned by International Law. Men have invoked the First Article of the Fifth Hague Convention of 1907, by the terms of which *the territory of neutral powers is inviolable*; Germany has violated it. But the partisans of Germany, who use everything as a weapon, have answered that the Fifth Convention was not binding on Germany because it had not been ratified by all the belligerents. Without inquiring whether at the moment of the invasion of Belgium the Convention was not strictly binding because it had not been equally signed

The brochure adds: "It is true that we have violated the neutrality of Belgium, because stern necessity compelled us thereto, but we have promised Belgium the maintenance of her complete integrity and an indemnity if she were willing to take account of this necessity. Belgium would have suffered no more than Luxembourg. England ought to have bound Belgium to accept our proposal." If that had been the case, the treaty of 1839 would have been for England merely a scrap of paper.

¹ Beck, *op. cit.*, pp. 237 and 238.

and ratified by the States concerned, I will remark that the rule in question does not obtain its validity from its incorporation in the Hague Convention : this only ascertained the law, it did not create it ; it sets forth an obvious principle for the purpose of deducing therefrom certain practical consequences.

What aggravates the culpability of Germany is that this neutrality, which she violated, she had solemnly promised to respect, and to see that it was respected. This is what has peculiarly struck public opinion in the entire world ; this is what ought still further to influence it, since, apart from the sentiment caused by violated right and the sympathy felt for an unhappy people, there can and ought to be on the part of certain states the perfectly natural idea that each was threatened with an analogous proceeding when the interest of Germany demanded it.

In order that Germany should not hesitate to plead guilty before the tribunal of humanity, in order that she should limit herself to the statement that she was committing an illegality in trying to excuse it, it was necessary that she should have nothing to allege to exonerate herself or to lay to the charge of her victim. She was bound to study for a long time their respective situations, and set down all the charges of a character to be set against Belgium, if the latter did not consent to what was demanded of her. She had a great interest in causing the more easy allowance, at first by Belgium and by the other States afterwards, of the extraordinary act she desired. The fact that she has found nothing, alleged nothing of this manner of things seems to me to constitute a final bar of non-admissibility against the arguments imagined by the apologists of Germany, and extracted from previous facts known to all. Is it meant seriously, for example, to make the claim that the treaties of 1839 had been suppressed by the treaties of 1870? That the neutrality of Belgium had disappeared in consequence of the incor-

poration of the Congo? ¹ That Germany was not bound by an engagement contracted by France? These are the contemptible quibbles that the German Government has disdained, and which controversialists, more zealous than honourable, have not feared to pick up, thinking, no doubt, that of a crowd of even bad pretexts something always remains.

The frank attitude of the Chancellor has not been unhelping for the apologists of Germany; therefore they have tried to explain it. One of them ² says: "The

¹ Rathgen, *Preussischen Jahrbücher*, December 1915. Article on the External Policy of Belgium and the Congo. A statement very much crowded with various incidents which took place with regard to the Congo, and intended to show the disinterested and benevolent policy of Germany: "We have not sought to get possession of the Belgian Congo, we have only desired economic collaboration. But if the Belgians have ranged themselves on the side of our enemies, they must bear the consequences."

Schoenborn says: "The first duty of a State subjected to permanent neutrality is to avoid everything that might bring about a war with another State. Therefore by annexing the Congo Belgium allowed herself to become involved in the difficulties of international policy."

Men have discussed, and can continue to discuss, the question to know if a neutralized State like Belgium could acquire a colony. It is quite evident that the guarantee of neutrality does not extend to the colony, which would have been contrary to the actual text of the treaties of 1831 and 1839, since the guarantee was strictly confined to the territory delimited by the treaty. But were it compatible with neutrality that Belgium should acquire a colony, the colony is not bound either to be neutral or guaranteed. This has given rise to very keen discussions. Even if the negative had been admitted, this could not entail, as its consequence in full law, the suppression of Belgian neutrality and of its guarantee; that could only involve the representations of its guarantors. But all this is now mere idle discussion, since the guaranteeing powers have recognised, without reserve, the annexation of the Congo by Belgium. This took place long before 1914, and, in consequence, cannot at present constitute a grievance, and the German Government has not previously regarded it so.

² Beer, *Völkerrecht und Krieg*, Leipzig, 1914. Maximilien Harden held forth on this subject with his wonted brutality: "At the moment when the war was about to burst forth the master fault was the resounding admission that Germany had violated the neutrality of Belgium. From this admission neither God nor the devil will ever set us free. The attempts made afterwards to insinuate that others were ready to violate that neutrality

Chancellor has twice admitted the violation of Belgian neutrality, and declared it contrary to International Law. Despite this declaration it is permissible to ask if the use of Belgian territory to penetrate into France was an act contrary to International Law, or whether it were lawful. It is another matter to inquire whether the Chancellor would not have done better to have refrained from this admission; we have no reasons for valuing our diplomacy." It is a curious situation, in which a Government judges its own conduct from the legal point of view more severely than does a juriconsult: generally it is the very opposite.¹

Another² has wished to enlarge more on detail and to profit by the occasion to make for the Chancellor a somewhat unexpected panegyric. "The words often cited as admitting officially the inexcusable wrong of Germany against Belgium cannot, according to him, be well understood unless one takes account of the circumstances and the exceptional personality of the orator. Little known in America, Doctor von Bethmann-Hollweg enjoys an European reputation for his honesty and straightforwardness. The whole world is agreed on this subject. He is the *Philosopher Statesman*. The philosopher could not regard the invasion of Luxembourg and Belgium otherwise than as constituting a regrettable wrong in itself and a violation of International Law notwithstanding the perfectly valid legal excuses invoked by himself—that is to say, the right of lawful defence. To a statesman other considerations present themselves. We cannot forget that it was he who had drafted the Note of August 2nd.

on their side do not excuse us. I believe that France had no intention of attacking our Rhine Provinces by way of Belgium" (*Die Zukunft*, October 14, 1914).

¹ Schoenborn, *op. cit.*, says that we can agree that the speech of August 4th made a painful impression on neutrals, but that it was in reality a political manœuvre. Its object was to facilitate a conciliating attitude for Belgium and a mere formal protest on her part; moreover, it gave to Great Britain, who had not yet pronounced, a guarantee for the final evacuation of Belgium.

² Fuehr, *op. cit.*, pp. 101, etc.

In his honest desire to keep Belgium out of the struggle he had tried to render that Note acceptable to Belgium; without doubt, when he spoke in the Reichstag he still hoped that the Belgian people would yet be able to submit themselves to the inevitable demands of Germany, and he desired to pledge himself publicly that the temporary wrong done to Belgium would be repaired as quickly as possible." ¹

I felt myself bound to reproduce, in its entirety, this explanation of the speech of August 4th. This anxiety of the Chancellor for Belgium may appear touching; it is only an additional betrayal. No doubt Germany would not have asked better than to have Belgium as her accomplice, but she at once realized that it was not possible, and avenged herself for the deception by making war on her, without taking count of rules agreed upon and of the demands of humanity. On the 4th of August the Chancellor thought that the resistance of Belgium would be trifling, and would hardly check the onward march of the conquering German armies; there was then no need to fetter oneself about the explanation to give. That which was furnished to the Reichstag was of a character to please the German people, accustomed to regard force as law, and neutrals would not think of protesting against a victorious belligerent. When he had ascertained that affairs were not happening as he had wished, that attention was being directed to the circumstances in which the war had begun, then it appeared necessary to explain the excessive candour of the words of the 4th of August. The complaisant controversialists have done their best, and the Chancellor himself, in a speech of December 2, 1914, to which reference

¹ Baron Richthofen, in an interview at which he had made the allusion quoted above, said with regard to this declaration of the Chancellor: "The Chancellor knew perfectly what to expect from the action of the Belgian Government, but at that moment he was still hoping to bring Belgium to agreement, and the regrets which he expressed were with the object of preparing the future."

will be made later, has tried to hark back on his speech of August 4th. But the attempt is vain. Nothing can efface the fact itself and the admission of the character of the act.

How could there be any hesitation as to the attitude of Germany with regard to Belgium? It is not necessary to engage in very subtil arguments to classify it, or to justify the resistance of Belgium. Good sense and good faith are enough.

Belgium is an Independent State. Germany, who wishes to attack France, thinks that it is more advantageous to her not to do it directly, but to reach French territory by passing through Belgian territory. She demands passage under the form of a friendly neutrality. Supposing, for an instant, that no treaty bound Belgium, could she grant such a demand and pretend to preserve her neutrality? Evidently not; it is a quite elementary principle in conformity with good sense as with law, that one neutral cannot render herself the auxiliary of one belligerent without becoming belligerent, and it is difficult to imagine a more direct assistance, and more dangerous to the adversary, than to allow an attack at a point where, normally, he could not anticipate such an attack. If in past times, when the theory of neutrality had not emerged, there are found authors to admit that a neutral can allow a belligerent to cross his territory without breach of law, I do not think that in our days there could be found a serious jurist to utter a similar opinion, contrary to every development of the law of neutrality and to an equitable notion of the relations between neutrals and belligerents. This is less a question of law than of honesty and good sense.¹

¹ I content myself with reproducing what is said by the American Professor James W. Garner: "It is impossible to reach any other conclusion than that the German demand on Belgium for a right of way for their troops across Belgian territory was one which Belgium had no lawful right to grant. It was not only her right, but her duty to refuse the demand, and it is entirely to her honour

Belgium, wishing to remain neutral, could not grant the demand of Germany; and Holland, for example, would have found herself in the same situation. There is this, moreover, and it cannot be too often repeated: Belgium was not neutral by her own will; she was so in virtue of an international arrangement to which she was a party. She had been recognized as a neutral State. She was bound to maintain her neutrality as regards other powers, in such a manner that her conduct was imposed on her by a formal engagement, for whose violation she might justly have been reproached by the signatory powers of the treaty of 1839. And what increased the responsibility of Germany is that, not only was she bound to respect Belgian territory in virtue of general principles of law and of a special treaty, but, in addition, she was bound to compel respect for it. This is the capital point on which it is impossible to insist overmuch; this is what ought to attract, or rather to have attracted, the attention and kindle the indignation of different States, great or small, equally threatened by a like precedent. This, in short, is what explains the efforts of Germany and of her advocates to distort her acts and to present them subsequently as excused by legal principles, and even by the conduct of Belgium herself.

They have dared to contend that neutrality does not necessarily involve the inviolability of territory; that this inviolability of territory was neither imposed nor guaranteed to Belgium; that there was no obligation on her part to oppose the passage of the German Army.¹ There

that she did so to the utmost of her power" ("Some Questions of International Law in the European War," in *The American Journal of International Law*, January 1915, p. 83). You can see also the very decided opinion of the Swiss, Rivier, *Principles of the Law of Nations*, p. 399, and of the German, Geffcken, *Handbuch des Völkerrechts of Holtzendorff*, IV., p. 139.

¹ F. Norden, *Neutral Belgium and Germany*, Brussels, 1915. The author describes himself as advocate of the Court of Appeal at Brussels. . . . Köhler presents him as a Belgian; he is palpably German, and this alone can explain the tone of his

might be an impenetrable neutrality and a permeable neutrality, Belgian neutrality deserving the latter qualification. Belgium was wrong in refusing passage to Germany, who failed in no undertaking or principle of law, from the moment that she declared that she had no intention of appropriating Belgian territory.

There is truly no need to enter into long explanations to show that, when it has been stipulated on the one hand that Belgium, *within the limits indicated*, shall form an *independent and perpetually neutral State*, on the other, that this disposition, like others of the same treaty, are placed *under the guarantee* of the Contracting Powers, they were understood to recognize and guarantee the integrity of the territory of Belgium. She is at least in the situation of a State in whose case no treaty was entered into. In accordance with principles, this State would have the right of respect for its territory in an absolute manner. Had the treaty of 1839 as its object the restriction of this position, to the detriment of Belgium? Certainly not; there was no intention to diminish the rights of Belgium, but to emphasize her duty at the same time as that of the guarantors.

brochure, which, on the part of a Belgian, would amount to veritable treason.

According to Professor Köhler (*Not kennt kein Gebot*, p. 38), the independence of a State does not exclude charges which may press on it—for example, the duty of permitting the passage of troops. In that case the guarantee of the Powers, comprising therein that of Germany, does not include the prohibition of such a passage. “In this respect Belgium ought not to be treated otherwise than any other non-neutralized State, for Belgium has been guaranteed solely as a Sovereign State, but not as a State against whom no attack could be made. With regard to this there is no need to tear up the treaty of neutralization, for this document contained nothing opposed to the passage of German troops.”

One stands dumbfounded in the presence of like assertions by a jurist of renown. A neutral state would not possess the right of inviolability of territory, and belligerents might traverse this territory without disregarding their duty. A treaty guaranteeing to a State its position as a Sovereign State would not exclude, for the guarantor, the power of demanding a passage for his troops. This is a perversion of the most elementary notions of law and good sense.

Is it possible, to quibble on the difference that exists between the treaties of 1831, to claim that the treaty of November 15th only guaranteed the integrity, and not the inviolability, of Belgian soil—as if the one did not imply the other? A retired Belgian soldier, who has reproduced during the war a brochure published by him in 1889 (and this to manifest his hatred for the Government of his own country at the same time as his admiration for Germany), expresses himself thus: Neutrality has been imposed on us and has been guaranteed. But *there has not been imposed on us the duty to maintain our territorial inviolability*. At first there was a question of *guaranteeing* it to us. This is quite a different matter from the imposition of a duty to compel its fulfilment ourselves, but this guarantee has been withdrawn subsequently. *Its withdrawal has placed us definitely in this respect on the same footing of other States who enjoy in completeness their rights of Sovereignty.*"

Can one set oneself more in opposition to history, public law, and even to good sense? All Europe, including Germany, has created for itself a singular illusion if it thought that there was a neutral Belgium whose situation was analogous to that of Switzerland,¹ with regard to which there has been no controversy. But if it had pleased Germany to pass through Switzerland to attack France, there would have been found, let us not doubt it, complaisant authors to batter a breach in Helvetian neutrality and try to demonstrate that this was a permeable neutrality according to the expression of Major Girard.²

¹ In many instances, from this point of view, they have placed Belgium on the footing of Switzerland, and Talleyrand said, in a despatch to his Government: "The neutrality recognized in the case of Belgium places her henceforth in the same position as Switzerland."

² *Before the War: Two Pages of History*, by Major Girard, Brussels, 1916. See p. 100. The passages underlined are so by the author's hand. The first part of the volume reproduces a

The official records of the Conference of London give us no information on the neutralization of Belgium. Who thought of it? What consequences did he intend to be produced? We find no explanation; the neutrality was recognized by common agreement, as corresponding to the character which they intended Belgium to play, and as proceeding thereout. The diplomatists, men of tradition, were bound to think, and thought, as some of them have expressly said outside the conference, of the precedent of Switzerland. This is enough to exclude that strange idea of a permeable neutrality, that is to say, which in reality would have no existence. A system quite novel and so artificial could not have been understood.

For the rest, it matters little that neutrality was imposed on Belgium, who regarded it as an attack on her sovereignty; she finally accepted it, and the situation so created produced its natural consequences.

What a legal monstrosity would have been this permeable neutrality? To what could it correspond, if not to the German interests of the moment?

In the Belgian Senate, in the debate on the Budget of Foreign Affairs, a discussion arose with regard to these differences of text between the treaties of 1830, emphasized by certain spirits prone to subtilty, and considering too little the abuse that might be made of their peculiar conceptions. The Baron de Favereau, Minister of Foreign Affairs, explained in the most definite manner that the situation of Belgium rested on Article 1 of the Treaty of April 19th, 1839, by which the five Great Powers guaranteed to Belgium the performance of the Belgian-Dutch

brochure published in 1889, under the title of *Belgium and the Next War*. The author announced at the beginning that in an European conflict Great Britain would make one of the Italo-German group. He recognizes in a note to the new edition that events *apparently* give him the lie.

Treaty. The guarantee is indivisible; it affects all parts of the territory described in the treaty itself; every attempt aimed at the integrity and inviolability of the territory is an attempt aimed at independence, for the independence is guaranteed within the territorial limits traced by the treaty. The national soil forms a complete entity, as Article 9 indicates, and the guarantee of neutrality and independence consequently relates to the entire territory. In order that the neutrality shall be respected, the integrity and inviolability must be entire. It is one of the essential duties of neutrality to prevent territory from being employed for the purposes of a belligerent.

I am really ashamed to insist on such statements. In order to avoid them it would be necessary to establish the formal intention of the Powers to abandon their first intentions relative to Belgium to adopt this strange idea of a neutrality without precedent, which could only find its formula under the pen of Major Girard. Nothing in the Official Accounts of the Conference of London could be quoted to prove such a change. When, in 1832, Belgium wished to enter into possession of the citadel of Antwerp, she invoked the Treaty of November 15th, 1831, of which Article 7 speaks no more of the integrity of territory. The Treaties of 1870 had certainly for their object to guarantee the inviolability and integrity just as much as the neutrality and independence of Belgium. The invasion of Belgium has not been an unforeseen thing, it had entered long since into the schemes of the German political and military authorities; it must have been examined in all its aspects. No plausible arguments have been found to justify it, whether in the Note to Belgium, or in the explanation given in the Reichstag, and the Chancellor is content to speak of the military necessity.

Certain persons have been willing to go further in the direction opposed to the inviolability of Belgium, and to establish that there existed for the profit of Germany

an undoubted right of servitude over Belgian territory. This brings us to the question of fortresses, on which I am about to explain my views, although it has not been raised by the German Government, but only by several of its defenders in the Press.

THE QUESTION OF THE FORTRESSES

THE Kingdom of the Netherlands had been constituted in 1814 to serve as a barrier against France. In order to allow her to assure her own defence if need arose, it was agreed that fortresses should be constructed on the territory under the supervision of the Duke of Wellington. When, at the Congress of Aix-la-Chapelle of 1818, the Coalition regulated the conditions of the evacuation of France by the allied troops which were occupying her territory since 1815, on November 15, 1818, between Prussia, Russia, Austria, and Great Britain, there was entered into a secret treaty, in the terms of which, if war arose and were carried on in the Low Countries, "seeing that the military establishments of this Kingdom have never been calculated for the exclusive defence of a country whose preservation interests all the Powers in so high a degree, and since in addition to the fortresses in construction there are several to be occupied in the second line on the ancient frontier of Holland, it has been agreed to recommend to His Majesty the King of the Netherlands, the circumstances of the treaty having been declared to exist, to cause the occupation of the fortresses of Ostend, Nieuport, Ypres and those situated on the Scheldt, with the exception of the citadel of Tournai and the place of Antwerp, by the troops of His Britannic Majesty, and the citadels of Huy, Dinant and Namur, as well as the places of Charleroi, Marienburg and Philippeville by the troops of His Prussian Majesty."

What was going to happen to this convention after the formation of the kingdom of Belgium?

This formation changed the situation in fact and in law. As the Powers had themselves declared, Belgian neutrality was to procure for Europe the security which the Coalition Powers of 1814 and 1815 had sought in the constitution of the Kingdom of the Netherlands. Logically, the whole system of the fortresses ought to have disappeared.

The question was the subject of a Protocol of April 17, 1831, signed by the plenipotentiaries of Austria, Great Britain, Prussia and Russia.¹

“ The plenipotentiaries of the four Courts have been unanimously of opinion that the new situation in which Belgium will be placed, and the recognition and guarantee of her neutrality by France, should change the system of military defence adopted for the kingdom of the Netherlands; that the fortresses involved would be too numerous for it not to be difficult for the Belgians to provide for their maintenance and defence; that, moreover, the unanimously admitted inviolability of the Belgian territory offered a security which did not exist previously; that, in short, a part of the fortresses constructed in different circumstances might be razed. The plenipotentiaries have eventually decided, in consequence, that in the time in which there would exist in Belgium a Government recognised by the Powers who take part in the Conference of London, there should be set on foot between the four Courts and this Government a negotiation with the object of determining which of the aforesaid fortresses ought to be demolished.”

On the 14th of December, 1831, there was entered into between the four Powers and Belgium a Convention in accordance with which “ the Contracting Parties, having taken into consideration the present condition of Belgium and the changes operated in the relative position of this country by her political independence, as well as by the perpetual neutrality that has been guaranteed to

¹ Martens, *Nouveau Recueil*, x. p. 243.

her, and wishing to make in concert the modifications which this new situation of Belgium renders indispensable in the system of military defence which has been adopted in consequence of the treaties and undertakings of 1815, have resolved with regard to this to enter, in Special Convention, into a series of common determinations."

The demolition of five fortresses is prescribed in certain conditions.

"The fortresses of Belgium which are not mentioned in Article 1 of the present Convention as being destined to be demolished are preserved. The King of the Belgians undertakes to maintain them continuously in good condition."

Then came a secret article ¹—

"It is equally understood that with regard to these fortresses His Majesty the King of the Belgians is placed in the position which was occupied by the King of the Netherlands with regard to the four Courts mentioned below, save as regards the obligations imposed on his Majesty the King of the Belgians and on the four Courts themselves as to the perpetual neutrality of Belgium. Consequently, in the case when, by misfortune, the safety of the fortresses in question should be compromised, His Majesty the King of the Belgians will agree ² with the Courts of Austria, Great Britain, Prussia and Russia on all measures which shall be demanded by the safety of these fortresses, *always with the reservation of the neutrality of Belgium.*³

¹ The various conventions on the fortresses have been published in 1863 by Goblets d'Alviella, who had been their negotiator, in a volume called *The Fortresses of Belgium in their relations with the five Great Powers of Europe*. It seems that the publication produced little stir.

² Waxweiler (*The Process of Belgian Neutrality*, p. 110) raised, with reason, the difference which exists between the aforesaid secret article and the Protocol of Aix-la-Chapelle.

³ We cannot see here, as Norden has done, a servitude of passage imposed on Belgium.

What does there remain of these clauses lightly complicated and involved? Absolutely nothing. They reveal the condition of the spirit of the Powers who, really, are dissatisfied to see the overthrow of their work of 1815, and are unwilling expressly to draw the logical consequences of the new system, and partly to be disagreeable to France. They admit, however, that the obligations to which Belgium must be subjected as successor to the Netherlands ought to be reconciled with neutrality with the result of declaring them valueless, because in reality they are irreconcilable with the situation of Belgium, such as it was created in agreement with France. The arrangements of four Powers could not prevail over the arrangements of five Powers. And we understand that King Leopold I wrote to his representative: "I approve the separate article, which is drafted in such a way as to be quite inoffensive."

Without lingering over the constitutional objection drawn from the fact that the engagement in question could only bind Belgium with the approval of the Chambers, it is enough to remark that in fact things happened as if it did not exist, without objection having been raised. Belgium has used her rights of sovereignty without restriction; she has freely modified her system of defence, preserved fortresses which ought to be demolished and demolished fortresses that ought to be preserved. In 1873 M. Malou, Minister of Finances, in answer to a question relative to the famous secret Convention, said: "Belgium, in the plenitude of her liberty, of her independence and sovereignty, has razed the fortresses which it seemed good to her to suppress and has established others with the same liberty and the same independence. You see, then, that there is really here not a question of politics, but merely a matter of history." On August 13, 1891, M. Beernaert, Minister of Finances, made the remark that of the places where by agreement the Powers had been able to put a garrison, there only

remained the citadel of Namur, and that had just been dismantled without the slightest protest.

It would be, again remarked M. Beernaert, a very strange theory, in accordance with which belligerents would have the right to pass through Belgian territory, whose neutrality they have guaranteed, and he recalled a declaration made in 1870 by Baron d'Anethan, Minister of Foreign Affairs: "The territory of Belgium is inviolable in law, no foreign force could claim to penetrate therein or to traverse it against our will, and if an attempt of this kind were made, our army, finding itself in a condition of legitimate defence, would have to repel the aggressor by all means in its power."

What are we to conclude from this from the point of view of law? We dare not draw any precise consequence from this incident of the negotiations of London, which might be more or less interesting by reason of the divergences of political views that it reveals, of the rivalry of Palmerston and Talleyrand, but which has produced nothing from which one can determine a status of the condition of Belgium. This condition in reality has in no sense been modified by these arrangements relative to the fortresses, arrangements applicable with difficulty, since they suppose an agreement between the four Powers, and irreconcilable with the ostensible position of Belgium.¹

I must reproduce here the time-limit of non-admittance already indicated. I have entered, for the honour of principles, into the discussion of questions raised with regard to the text of the Treaties of 1831 or of the Conventions on the fortresses, but, in my opinion, these questions can be entirely put on one side, because all the

¹ See "Die Neutralität Belgiens und die Festungserträge" of Joseph Köhler, Professor at the University of Berlin, article in *Zeitschrift für Völkerrecht*, 1916, 3 Heft., pp. 298-309. The author nearly limits himself to a statement of the facts after d'Alviella. He quotes with complaisance the manifestations hostile to France, but draws from them this conclusion only, that the Powers did not mean to guarantee the inviolability of Belgium, that specially Germany never assumed such a guarantee.

elements thereof were known at the time of the ultimatum of August 2nd and of the declaration of August 4, 1914. It was incumbent on the German Government to make use of them then to explain its conduct; if it abstained from invoking such arguments, the reason is that it considered them without weight. Its advocates have had less scruple, and have thought that by dint of heaping up the clouds they would obscure the light and produce doubt in the minds of neutrals, especially of those who would be too happy to excuse their inertia or slackness in the presence of a fact which its author himself recognized as a violation of right.

THE PLEA OF NECESSITY

NECESSITY knows no law, said the German Chancellor on August 4, 1914, to explain the conduct of Germany, and on this excuse, lightly given, the apologists of Germany have thought fit to construct a theory by appealing to all the resources of history and subtility.¹

¹ See notably the brochure of J. Köhler, *Not kennt kein Gebot*, Berlin, 1915.

To give an idea of the tone of the discussion it will be enough for me to quote the following passage, p. 39, which does not seem to need refutation—

“Germany has been accused of having put in practice the maxim, Force makes Law. Some Americans, who have never understood anything of the philosophy of law, ignoramuses of all kinds, babblers and phrasemongers, have written against the Empire. They have interpreted in a calumnious fashion the declaration of the Chancellor, necessity knows no law. We can smile. The fact that the vulgarity of our enemies can display itself in so obvious a fashion proves on which side in this struggle are ignorance and barbarism. In violating Belgium, Germany has exercised her right of necessity, and has fulfilled a sacred duty towards herself and also towards civilisation: she has saved her existence. Belgium is herself responsible for her sad fate. Every fault has its punishment on earth; the faults which States commit are avenged in this world. A heavy responsibility rests on the Belgian Statesmen. One can only admit in their favour a single excuse: they did not know the great, the noble, the peerless Germany.”

Dr. Wehberg, co-editor with Köhler of the *Zeitschrift für Völkerrecht*, withdrew from the publication because of his divergence on the question of the violation of the neutrality of Belgium, a divergence which he was not allowed to demonstrate. In the dignified letter which he wrote on this subject on November 23, 1914, I quote this phrase: “What will happen to faithfulness to treaties if the attitude of Germany in the outcome is represented as justified?” In another letter, addressed to the Press to explain his conduct (*Berliner Tagblatt*, September 24, 1915), Wehberg says of Köhler in the first number of the year 1915 of the *Zeitschrift für Völkerrecht*, “He defends opinions which must ultimately

If we go to the conclusion of the captious reasonings thus presented, we arrive logically at the conclusion that a State can free itself of every engagement, contractual or otherwise, as soon as it thinks that the fulfilment of that engagement is contrary to its interest. Is it, then, necessary to attach the least importance to the plighted word, to the idea of Right, and does not all International Law cease to exist? There is no engagement, to speak strictly, no contract, if the obligor, if the debtor has the right to declare himself unbound every time that this shall be in accordance with his interest.

Belgian territory has been neutralized, which means that it has been set outside the military combinations of other States. The case in which, war having broken out between States, one of them would find it of advantage to use neutral territory to attack his adversary, is precisely the case that has been contemplated since the establishment of the neutralization. The interest of the neutral country, general interest has been deliberately considered as superior to strategic interest. If the latter can be invoked for the disregarding of neutrality, it is tantamount to saying that the convention which created it never had any value, that its signatories never attached any importance to it; this is very extraordinary, and yet it is the argument of the representatives of Germany. Bethmann-Hollweg and von Jagow have said it was necessary to carry France by speed, to attack her by the most direct way, the other way being too difficult by reason of the fortifications raised by France in Lorraine. It is not, then, a question of necessity, but of advantage; it was more advantageous to attack France

end in the negation of International Law." He adds: "He (Köhler) shares the view that an International Law based on international treaty cannot exist, because our adversaries were liars and tricksters; all the Hague Conferences were only soap-bubbles. He calls the French, in his *Review*, "a nation of clever illusionists"; the English, "a society of cheating tradesmen"; and the Italians, of whom he had said, in the end of 1914, that no one liked them more than he, he characterizes in like fashion.

in this way, and thus the rights of Belgium and the rights of France could not enter into the account.¹

That a Government accustomed to permit itself everything should yield to such military considerations² and only perceive its own immediate advantage, this is lamentable, this deserves reprobation, this ought to involve an international punishment; but, finally, this is understood as a fact, as a crime. But what of the men who, calling themselves jurists, approve the measure, and try to justify it by all kinds of reasoning? This is what is disconcerting and humiliating.³

A man who did not pass for having the sense of law, Bismarck had, however, a different idea of the neutralization of a territory and of its consequences. This is what he said in the Reichstag on May 2, 1871—

“There could be no question of our considering Alsace and Lorraine as neutral country, like Belgium and Switzerland, for that would have constituted a barrier which would have placed us in a position of incapacity to attack France: *we are accustomed to respect treaties*

¹ The brochure, *Die Wahrheit* explains this matter without ambiguity: “The German Government gave to the Belgian Government, both before entry on Belgian territory and after the conquest of Liège, the full guarantee that the frontiers and independence of Belgium should remain after the war the same as before. Belgium has preferred not to accept this faithful promise, and to make appeal to the decision of arms. No one has more regretted this necessity than the German Government; but, we repeat it, only the march through Belgium could give Germany the possibility of beating the French sufficiently quickly to enable her, after the victory in the West, to repel victoriously the numerical superiority of Russia.”

² The manual (*Kriegsbrauch*) published by the German General Staff in 1902, and which in some respects merits just criticism, yet says: “Belligerents ought to respect the inviolability of neutral territory, to abstain from all trespass on their domains, even if the necessities of warfare demand it.” (*The Laws of Continental Warfare*, Carpenter translation, 1916 edition, p. 164.)

³ Professor Lammasch has protested against the violation of treaties in the name of military necessity. See his article, “Vertragstreu im Völkerrecht,” in the *Austrian Review of Public Law*, 1915, No. 1.

and neutralities." The successors of Bismarck have other ideas.

Necessity justifies the violation of a treaty of neutrality, and no impartial judge will deny that Germany was in a condition of necessity. *She was attacked*, they intended to annihilate her, says, in substance, Schoenborn.

I will not discuss the question to know if Germany, who took the initiative of the declaration of war on Russia on August 1, 1914, and on France August 3rd, could say that she was *attacked and in a state of lawful defence on August 3rd*. This would take me outside my subject,¹ but in truth it is to count overmuch on the credulity of the public to launch such statements. Germany took the initiative in hostilities, she conducted her military operations as seemed good to her, and kept count of her strategic interest, which she made to prevail over the normal obligation to respect the territory of another State, and over the promise which she had given to respect it. This is what carries conviction over all quibblings, and is not weakened by that affirmation of Professor Köhler, "that against the right of existence of Germany, which was at stake, there only existed on the side of Belgium a quite trifling infringement of her territorial sovereignty (*ziemliche unbedeutende Schmüchlerung seiner Territorialgewalt*). A Dutch Review² says that it is sad and discouraging to hear in the mouth of a jurist of the weight of Köhler the words, "quite innocent concession" (*hoechst unschuldige Konzession*), with regard to the demands of Germany, and of their gravity from the material and moral point of view.

Of the same kind is the argument drawn from the clause *rebus sic stantibus*, which is understood in treaties, and which with a little good will could permit an un-

¹ See the decisive proof of MM. Durkheim and Denis in their brochure, *Who Wished for the War?*

² *Verklblad van het Recht*, No. of September, 1915.

scrupulous contracting party to set himself free by pretending that the circumstances have changed since the signing of the treaty.¹ They urge that the Belgium of 1914 is not the Belgium of 1839; that she has developed in population and wealth; that the political situation of Europe has changed; that the foreign policy of Belgium has developed; that the relations between the guaranteeing Powers were no longer the same as in 1839; that the annexation of the Congo has changed the condition of Belgium.

All these political considerations could have no weight as influencing the validity of the treaty of guarantee. Moreover, they existed in 1914 apart from the action of Germany, and she did not think it serviceable to urge them. Without entering on more ample explanations, this is enough to put them out of court by the time-limit of non-admittance.

Is it necessary to speak of the various extraordinary theses which have been sustained with regard to the action of Germany against Belgium? It is, perhaps, enough to mention them; it would be to lose time to discuss them.

They have said that Belgium had done more than her duty in resisting the German invasion by force of arms; that, by reason of the disproportion of forces, she could have invoked the plea of necessity, and have limited herself to a protest while yielding before irresistible violence. She did not do so, she preferred to defend her violated right at the cost of cruel sacrifices. This has been made a reproach, and it has been said that in pushing the struggle against her invader to the point where not only her neutrality, but her existence, is at stake, she renounced her neutrality and joined the enemy of her invader; it is no longer a question of neutrality. It is very singular that the exercise of lawful defence should

¹ See chap. vii. of the work of Fuehr, *Effect of Changed Conditions on the Quintuple Guarantee*.

have as its consequence the loss of the right of the being attacked, and the justification of the conduct of the aggressor. I think it is not necessary to insist further.

They have said also that Germany did not at the first onset violate Belgian territory, that she had addressed to the Belgian Government an ultimatum the rejection of which must entrain, as Belgium well knew, a state of war with Germany. Consequently, when the German troops entered into Belgium there was already a state of war between the two countries, and Belgium was no longer neutral in the sense of the Hague Convention. A *casus belli* had occurred, and Belgium had become a belligerent. Germany was no longer bound to respect the sovereign rights of Belgium, a respect imposed by Article 1 of the Convention. The other neutral States, who might have protested against the act of Germany and declared it without justification, would have transgressed their duty and international custom.¹

I do not fear to say that it is a mockery of the world to use such language. Ridicule disputes it to very odium. What! State A demands that State B shall allow it to commit an act contrary to neutrality, State B refuses and is then in a state of war with A, and consequently there is no question of neutrality; State A has not failed in any duty and is merely an ordinary belligerent. If that be so, when will there be an application of the rule which establishes the inviolability of neutral territory? when a belligerent will not take the trouble to send an ultimatum to obtain what he desires, but when he acts without giving warning. The neutrality of Luxembourg has been violated,² but that of Belgium has not. Despite

¹ Interview with the editor of a great American review, reported by an editor of the English *Standard*. See extract in *Le Temps* of September 12, 1915.

² And yet, is this quite sure? In the interview cited in the previous note, it is said that the American Government would distinguish between neutral States and neutralized States. The Fifth Hague Convention on the rights and duties of neutrals does not apply to the latter. In these conditions the American Govern-

its lack of scruple, the German Government has not dared to go to this length. On August 4, 1914, the Chancellor of the Empire has formally admitted that in each case there was a violation of International Law.

Without doubt a State may decide not to make war and to remain neutral; it can have a dispute with another State which declares war on it; by that fact the country that received the declaration is in a state of war, and there can be no question of the respect of the rules of neutrality; no Hague Convention puts a limit on the power of making war. But here the situation is different. The sole object of the aggressor is the violation of neutrality, and I think that one cannot exclude a wrong by the mere fact that one takes the previous precaution of asking in a friendly fashion for the act which is afterwards accomplished by violence. If uncertainty could admit this in the case of a State neutral by its own free will, how could it be admissible for a State whose neutrality is obligatory and should be respected and protected by the State which has recourse to the proceeding in question.

ment would consider that, in the case of the violation of the neutrality of a neutralized State, those who alone have the power to intervene are the Powers which have guaranteed the said neutrality. The United States not having been parties to the treaties which have settled the political status of Belgium, could not lawfully intervene to protest against the act of Germany. I do not guarantee the opinion here attributed to the American Government, and which has never been, to my knowledge, officially declared. I can only attest that while discussing, in 1907, the clauses of the Convention on Neutrality, I was convinced that there was no scope for distinction between neutral States and neutralized States in their application.

THE DOCUMENTS FOUND AT BRUSSELS

FOR Germany these documents appear to be the supreme and decisive argument; by means of them they would justify their conduct to Belgium, because they would prove that the latter had failed in her duties of neutrality in coming to an understanding with the eventual adversaries of Germany. This would be a subsequent justification, because Germany certainly acted in ignorance of these documents. It suits them to insist on this pretended proof.

After having announced on October 13, 1914, that the German authority had just found in the archives of the War Department at Brussels a bundle setting forth the agreements entered into between Belgium and England, the *Norddeutscher Allegemeine Zeitung* published, on the 24th of November following, the facsimile of a report addressed on April 10, 1906, by General Ducarne, Chief of the Belgian Staff, to the Minister of War.¹ The document is too long to be reproduced in full, but I am going to make a faithful analysis.

The English Military Attaché at Brussels, Lieutenant Colonel Barnardiston, informed General Ducarne of the anxiety of the General Staff of his country relative to the general political situation and to the eventualities of

¹ See this facsimile in the brochure of the Belgian Deputy, Emile Brunet, *German Calumnies, The Anglo-Belgian Convention*. See the text in the appendix in Waxweiler, *Belgium Neutral and Law-abiding*, p. 283. The German Press at first only gave extracts judged to be favourable to the German thesis; the publication *in extenso* only took place on the demand of Belgium (Brunet, p. 11).

war. A despatch of troops was projected in the event of Belgium being attacked. General Ducarne answered that, from the military point of view, this action could only be regarded with favour, but that it was a concern of the political power.

Explanations were exchanged on the mode of disembarking, on the preparations to make for the English troops who would be in Belgium (transports, military requirements, etc.), on the materials of resistance in Belgium (forts, army). They contemplated "combined operations in the event of an attack by Germany having Antwerp as its objective, and on the hypothesis of a crossing of our country to reach the French Ardennes." General Ducarne specified: "The entry of the English into Belgium would only be after the violation of our neutrality by Germany."¹ My interlocutor insisted on the fact: (1) that our conversation² was absolutely confidential; (2) that it could not bind his Government; (3) his Minister, the English General Staff and myself alone at this moment had knowledge of it." And he did not know if his Sovereign had been informed.

It is a question of the purely defensive measures to the preparations made by Germany in the neighbourhood of the Belgian frontiers (the Camp of Elsenborn, strategic railways); and the project of German generals, which included the invasion of Belgium in their plans against France, made matter for thought. A German Military

¹ On this phrase, which is inserted in the text by a reference, see Waxweiler, *op. cit.*, p. 177; *The Method of Belgian Neutrality*, pp. 53-54; Brunet, pp. 101-2; Passelecq, p. 33.

² The *North German Gazette* has translated the word "conversation" by *Abkommen*, which means convention, which is quite a different matter from conversation. The object was to create an impression on the German mind, and it was not a "mistake" in translation. The German text was terminated by the word *abgeschlossen*, which has no corresponding expression in the French text, but which gives the idea of a Convention. Corrections were made subsequently. See on this matter Passelecq, *Critical Essay and Note on the Official Alteration of Belgian Documents*, pp. 33-45.

Journal¹ has made the following avowal: "The plan for invasion into France was long ago completely established. It must be achieved with success in the north, by way of Belgium, avoiding the strong line of forts with which the enemy has protected its frontiers on the side of Germany, and which would have been difficult to break through."

There is another document referring to a conversation which took place on April 24, 1912, between the new Military Attaché, Lieutenant-Colonel Bridges, and the Belgian Chief of Staff, General Jungbluth.

After saying that England had at her disposal an army of 160,000 men able to be sent on the Continent, the British Attaché added: "The British Government, on the occurrence of the last steps, would disembark immediately in Belgium even if we had not asked help. The General objected that our consent would be necessary for this. The Military Attaché answered that he knew it, but that as we were not on the same footing to prevent the Germans from passing into our territory, England would have disembarked her troops whatever were the case."

This document proves, firstly, that they were still at the stage of conversations and giving information about intentions; nothing resembles the execution of an agreement entered into between the two Governments. On an essential point, the fact of the disembarkation of English troops, a disagreement is set forth. The English are disposed to disembark the troops on their own initiative, without the demand of Belgium, to oppose the passage of the Germans; while on the Belgian side it is objected that the consent of Belgium is necessary.

This is a very disputable question of law in which I do not intend to take part, because it has no immediate interest. In fact, as it happened, the guarantors of Belgium did not intervene until her demand, and after her

¹ *Deutsche kriegler Zeitung*, of September 2, 1914.

neutrality had been effectively violated. There is, however, an important consequence to draw from the mention made in the document that has just been analyzed, that a difference of opinion is set down. The disagreement that is recorded between the two speakers of 1912 is necessarily exclusive of every agreement like that which has been concluded according to the German contentions. It shows that there was only a very natural exchange of views, the examination of a possibility in which the two parties had an interest in looking ahead, and as to which each preserves his freedom of decision.

After this analysis of the famous documents found at Brussels, which, as it appears, are reducible to a transcript of conversations between an English Military Attaché and the Belgian Chief of Staff, who are neither of them plenipotentiaries, who cannot engage the policy of their respective countries, who consider beforehand, from the military point of view, an eventuality of which it was impossible not to think in presence of the intentions manifest in Germany; ¹ can one linger with the objection founded upon the fact that the back sheet containing the documents had thereon an inscription, Anglo-Belgian agreements? ²

Can one admit, like Professor Schulte,³ that this endorsement constitutes something very essential (*etwas sehr wesentliches*) and like the North German Gazette:⁴ "In face of this endorsement, there can no longer be any doubt as to the meaning in public law that by Belgium herself was attached to the documents"? Supposing that the inscription in question emanates from a Belgian

¹ Why did the Belgian Staff study with the English Military Attachés the technical problem of a German invasion? See the precise explanations of Passelecq, *op. cit.*, p. 121.

² See the facsimile in Brunet (*op. cit.*, p. 15), who doubts the authenticity of the endorsement.

³ *Von der Neutralität Belgium*; Bonn, 1915.

⁴ March 10, 1915.

official,¹ it cannot prevail over the contents of the documents in which nothing establishes the existence of a Convention; quite to the contrary, the commencement of the second, as is indicated above, is exclusive of its existence.

In the facts which followed the German invasion of Belgium, nothing reveals the existence of a previous agreement between Belgium and Great Britain, and it does not seem that there was any question of the conversations of 1906 and 1912.

They also invoke the communication that must have been made of Belgian military documents to the English authorities, the minute explanations contained in the English Military Manuals in view of operations to be carried out in Belgium. Nothing proves that secret documents concerning the national defence had been communicated to the English authorities. The latter could and ought to procure necessary information in view of an expedition regarded as possible; they could, like the German authorities, have with this object a service of espionage in Belgium. In what does all this exceed permitted limits? In what does this prove a plan worked out with a view of an attack on Germany? Everything, on the contrary, proves that the exchange of views that took place between soldiers in 1906 and 1912 only concerned a hypothetical case; that is to say, one in which England would have a duty to intervene, that in which Belgium would be attacked by Germany. And this hypothesis has not been fondly imagined; it was foreshadowed by the preparations made by Germany in the neighbourhood of the Belgian frontiers (the camp of Elsenborn, the strategic railways), and the declarations of the German generals who made the invasion of Belgium a part of their plans against France. The powers interested could then consider the situation beforehand, and

¹ See the doubts set forth by Brunet, p. 14.

discuss the measures to be taken if the hypothesis were realized.¹

Belgium, moreover, proved herself truly neutral by protecting herself against an attack from whichever side it might come. Forts had been established on the line of the Meuse: at Liège they had as their essential objective to check the march of German troops; at Namur they specially tended to prevent the passage of the French.² It is also to be noted that in Belgium all the provision of guns and munitions as well as a part of the material of war was by German purveyance. From this there resulted a situation that was very critical for the Belgian Army, which, not having received from Germany all the expected deliveries, and having been bound to transfer her base of operations into France, found herself in association with a material and stores of a type completely different from her own.³

The German newspapers have founded arguments on the correspondence of Count Greindl, Belgian Minister at Berlin, to set up the fact that this diplomatist had criticized his Government with regard to the exclusive character of its external policy and its understanding with England. This correspondence is in no way conclusive to this effect. The letter of December 23, 1911, which they quote, does not refer directly to the interviews of 1906, but to a work entitled, "What would Belgium do

¹ *Het Vederland* (Hague Journal) says in its number March 16, 1915—

"Since 1870 the course of events, notably the military increase in Germany and the creation of many strategic routes on the Eastern Belgian frontier, have more and more strengthened the opinion that it was from Germany that Belgian neutrality ran most danger.

"It is then easily to be understood, granting the generally admitted opinion and confidence in two treaties on the assistance of England, that the Belgian Government should confer with England on the reasonable eventuality of a German attack, but not on the unlikely eventuality of a French attack."

² Brunet, *op. cit.*, p. 4.

³ Waxweiler, *Neutrality*, pp. 155-156.

in the event of a Franco-German War?" The Minister expresses his view that it is also necessary to think of a French attack, and not only of a German attack; he speaks of overtures and propositions of the English Military Attachés which he characterizes as singular: nowhere does he make any allusion to a Convention.¹

I think that I ought not to pass over in silence a document which has been greeted with disdain by the German Press. "The Belgian Government declares on its honour that not only was no Convention concluded, but also that there had never been on the part of any Government whatsoever either discussions or propositions with regard to like conventions. All Belgian Ministers, without exception, can attest this on oath. No conclusion of any sort from these conversations was ever proposed, either in the Committee of Ministers or by the individual Ministers."² Evidently an attestation of this kind cannot have an absolute authority, everything depends on the moral worth of its author. The Belgian Government has not, to my knowledge, given the right to doubt its word, which is not the case with every other Government.

We can now judge of the credit which must be accorded to an official note sent from Berlin to the Press, August 6, 1915: "The military connivance of Belgium with England and France is established so irrefutably by documents that it would be superfluous to say a single word further on the subject."

Belgium had so little agreement with England that she was somewhat disquieted at the attitude that the latter might assume in the event of an international conflict, and the British Government thought it reasonable to reassure her. On April 7, 1913, Sir Edward Grey

¹ See on this subject the explanations elaborated by Waxweiler, *Neutrality*, pp. 180, etc.; *The Method*, pp. 70, etc.; Passelecq, *op. cit.*, pp. 29, etc.

² See on this matter the detailed explanations of Waxweiler, *Neutrality*, p. 180, etc.; *The Method*, p. 70, etc.; Passelecq, *op. cit.*, pp. 29, etc.

addressed the following letter¹ to the English Minister at Brussels: "In speaking officially to-day with the Belgian Minister, I told him that to my knowledge they were thinking in Belgium that we might be the first to violate Belgian neutrality. I did not think, I said, that this fear could have its origin in anything pertaining to England. The Belgian Minister explained to me that there had been a question in an English circle which he could not designate, that England would land troops with a view of anticipating the despatch of German troops through Belgium towards France. I said I was certain that the present Government would never be the first to violate Belgian neutrality, and that I believed that no English Government would do it, and that public opinion in the country would never approve it; what we have to examine, I added, and it is a sufficiently embarrassing question, is to know what would be desirable and necessary for us to do as a Power guaranteeing Belgian neutrality if that neutrality were attacked by any Power whatsoever. To be the first to violate it and to send troops to Belgium, would be to give to Germany, for example, a justification also to send troops to Belgium. What we desire in the case of Belgium as well as in the case of all other neutral countries, is that their neutrality shall be respected; as long as it is not violated by any other Power, we ourselves certainly shall not send troops on their territory."

Things happened as they were announced by the English Minister. Great Britain awaited the thing done to signify her intervention, and her troops did not enter Belgium till eighteen days later. The Belgian Government only appealed to the guaranteeing Powers after learning that her territory had effectively been invaded. No measure of prevention had been taken by France and England.

¹ It was communicated to the Press by Sir Edward Grey; December 7, 1914.

THE SPEECH OF DECEMBER 2, 1914

AFTER having prepared the ground by the publication of the documents found at Brussels, Herr von Bethmann-Hollweg thought that he could, before the Reichstag, return to the question of Belgian neutrality to retract the compromising admissions made at the sitting of August 4th. These are the terms he used—

“ When, on August 4th, I spoke of the action contrary to law committed by us by entering Belgian territory, it was not yet certain that the Belgian Government, in the moment of peril, would not resolve to spare the country and to retire to Antwerp after protest. After the capture of Liége, on the demand of our military Administration, a new demand was addressed to Brussels. For military reasons it was necessary, in any event, to keep open on August 4th the possibility of such a development of the situation. There were then presumptions of the fault of Belgium. Written and certain proofs were lacking, but English statesmen know these proofs. Now that by the documents found at Brussels and published, we have ascertained how and in what measure Belgium had abandoned her neutrality to the profit of England, two facts are certain to all the world. When our troops entered into Belgium on the night from the 3rd to the 4th, they found themselves in a country that had already violated its neutrality to the profit of England. The other fact is that England has not declared war on Germany for reasons of the Belgian neutrality which she had herself violated, but because she wished to destroy us by the aid of the two greatest military powers of the Continent.”

As an explanation it is not without difficulties. The statement of August 4th is as forcible as can be; the Chancellor declares that he wishes to speak frankly, he admits that a violation of International Law has been committed, that a wrong has been done to Belgium, that reparation is due to her. On December 2nd he says that there were already suspicions but no written proofs, that it was for military considerations that he left for Belgium an open door, and that he made new offers after the capture of Liége. There is, then, no question of the kindness of which certain apologists of the Chancellor have spoken, but of a desire to cross Belgian territory more easily. He has now those proofs which were lacking, and thus he finds that, retroactively there was no violation of neutrality, because the German troops in the night of the 3rd to the 4th of August had penetrated into a territory that had ceased to be neutral.

It is somewhat over-simple and somewhat over-bold. The Chancellor does not give himself much trouble to prove that the documents found at Brussels furnish him with the written and certain proofs of which he had need: he limits himself to stating it, and by the preceding explanations we can see that nothing was further from proof than the pretended Anglo-Belgian plot against Germany. The German newspapers themselves have not always been so peremptory; after having affirmed the existence of this plot, after having spoken of the Conventions entered into between Belgium and Great Britain, they have come simply to say that "On Germany's part it has never been said that Belgium had sold her neutrality to England, and had formed with England a plot against Germany. On Germany's side it has been affirmed and proved by the documents discovered that the Belgian military authorities, to the knowledge of the Belgian Government, have lent assistance to the military plans of England, and that thereby Belgium has rendered herself guilty of an

infraction of her duties of neutrality." ¹ I shall not return to this last point, which has been sufficiently enlightened above. There have been discussions between the military authorities of the two countries who have received no mission to that effect, interviews which explain themselves in any case by the co-operation necessary in the case provided for, that is to say, the invasion of Belgium by Germany. This is what is essential to recall, this is what is most often omitted in German argument, as if the English intervention had been foreseen with the idea of an offensive against Germany. This was so little in the intentions of the Belgian authorities that even in the contemplated case of an attack coming from Germany they specified that the English troops would only intervene on the demand of Belgium.

¹ See the article of the official *North German Gazette* of August 28, 1915. To understand the difference it is enough to compare this with articles published in the same journal on October 15, November 25, December 2 and 15, 1914.

CONCLUSION

IN no sense do I claim to have exhausted ¹ the subject that I have undertaken to treat. It would be necessary to enter into infinite details to meet the numerous arguments that have been devised to discover and develop with an extraordinary ardour those which have striven to justify the action of Germany against Luxembourg, and especially against Belgium. But I believe that I have said the essential, and have shown that the admission of August 4, 1914, corresponded with the truth and cannot be retracted. Yes! Germany began by a double violation of International Law by forcibly penetrating into Luxembourg and Belgium. No attempt has or could be made subsequently to explain the invasion of the Grand Duchy, and the condemnation pronounced by Germany against herself must be considered as definite; the submission, in fact, of the country imposed by circumstances weakens it not at all. It is not only the right of Luxembourg which has been violated, but that of the countries in the interests of whom she had been neutralized; of France, in the first place.

As for Belgium, who has fulfilled her whole duty, whose heroic resistance has awakened the admiration of the world, it was necessary to struggle against the sympathy that she had aroused. So they set to work and sought everything that could diminish those sympathies and render Germany's conduct excusable. I have passed in

¹ To complete my work I refer to the book of M. de Visscher, which I have already cited, *Belgium and the German Jurists*.

review the arguments, and I may say the quibblings, by the aid of which Belgian neutrality has been battered into holes both in its origin and in its development. I think that I have refuted them, and return to them no more. In conclusion, I wish to express my entire conviction of the guilt of Germany and the good right of Belgium. If this lawful right were not recognized in a resounding manner it would be a lamentable defeat for International Law, and I cannot see on what bases International relations could henceforth be regulated.¹ I think that outside Germany a well-informed man could not without indignation hear the words of Zitelmann: "At the return of peace it will be victorious Germany on whom will rest the great and splendid task of taking the directing rôle in the reconstruction and development of International Law."²

I associate myself with the firm conclusions of Pearce Higgins,³ which naturally concern the subject treated—

"The result of the present war must be the confirmation of the sanctity of treaties, the destruction of the German

¹ I recall the declaration made on February 11, 1916, to the Belgian Minister of Foreign Affairs by France, Great Britain and Russia, Powers that guaranteed Belgian neutrality—

"The allied and guaranteeing Powers declare that when the moment has arrived, the Belgian Government shall be called to share in the negotiations of peace, and that they will not put an end to hostilities until Belgium has been re-established in her political and economic independence, and largely indemnified for the damages that she has sustained. They will lend their aid to Belgium to assure her commercial and financial resuscitation."

Italy and Japan have adhered to this declaration.

² *Haben wir noch ein Völkerrecht?* the final phrase. Beer, at the end of his brochure, *Völkerrecht und krieg*, says (in 1914) that Germany will remain, before and during the war, the surest asylum of the German science of International Law. It is true that the brochure is dedicated to Professor Niemeyer of Kiel, who, President of the German Association of International Law, proposed to him to retire from the International Law Association, because, Germany having different interests from those of other countries, her tendencies in this field are not like those of other nations.

³ *War and the Law of Nations*, in the Collection of Oxford Pamphlets.

doctrine that necessity justifies the violation of all the laws of war, guarantees of existence for small States, the development of arbitration."

Already we can greet with joy the constitution of the American Institute of International Law which, in the month of January, 1916, strengthened its position by proclaiming certain essential principles which dominate all International Law. All are worthy of quotation, and might find their application in the present circumstances. I content myself with reproducing the first—

"Every nation has the right to exist, to protect and preserve its existence, but this right does not imply the power nor does it justify the fact for a State to commit, in order to protect or preserve its own existence, unjust acts against innocent peoples who do it no wrong."

Thus finds itself condemned the alleged Right of Necessity of which Germany has made claim against Belgium, and thus would be avoided the deplorable consequences which have been drawn from it and which are irreconcilable with a true International Law based on justice and not on force.

PRINTED IN GREAT BRITAIN BY
RICHARD CLAY & SONS, LIMITED,
BRUNSWICK ST., STAMFORD ST., S.E..
AND BUNGAY, SUFFOLK.

UNIVERSITY OF CALIFORNIA LIBRARY,
BERKELEY

**THIS BOOK IS DUE ON THE LAST DATE
STAMPED BELOW**

Books not returned on time are subject to a fine of 50c per volume after the third day overdue, increasing to \$1.00 per volume after the sixth day. Books not in demand may be renewed if application is made before expiration of loan period.

MAR 19 1923

APR 8 1924

JUN 23 1930

NOV 22 1969

REC'D LD DEC 19 '69-10 AM

REC'D REC DEPT DEC 9 '74

JAN 14 1975

34

372679

Resist

D615

R42

UNIVERSITY OF CALIFORNIA LIBRARY

