THE LAWS OF WAR.

I. Maritime Capture.

A man possessed of no little foresight and penetration, the Right Hon. Mr. Grant Duff, on leaving for India, said, in his departing speech, that the question of maritime capture ought to be very seriously reconsidered. And it is indeed a fact, that the ideas prevalent in England on this subject are no longer in accordance with the notions of right and justice by which other nations are guided, nor with the existing conditions of commerce and maritime warfare. English international lawyers, even those the most open to receiving the new opinions, continue to insist on the legitimacy of capture, and the English public believes that the salvation of the country depends on the strict maintenance of this right. Several years' attentive study of the problem has convinced me that both are in error. In the first place, the principles of international law, now generally accepted by civilised nations, no longer regard capture as a right of the belligerents, and secondly, capture may be a cause of only trifling damage to other nations, but of most cruel suffering and home crises to England.

I will first examine the legal reasons given by English lawyers, and notably by Mr. William Hall, in his book recently published, entitled *International Law*.[1] In this work the notions generally accepted by English lawyers are very clearly and at the same time concisely explained, without any long or tedious passages. It is certainly one of the best books on international law that have been recently published.

It is uncontested, says Mr. Hall, that the rule of the capture of private property at sea has, until lately, been universally followed, and that it was recognised as a right by all the older writers. This affirmation is perfectly correct, but how many acts of cruelty formerly looked upon as justifiable and legitimate in warfare are now condemned by the consciences of civilised people. In ancient times conquerors made slaves of all their prisoners. As the lives of the vanquished were considered to be in their hands, this step was even looked upon as most humane. At the present day quite another spirit governs all discussions on these questions. Men of the nineteenth century, plunged as they still doubtless are in the depths of ignorance

[1] *International Law*. By W. E. Hall, Oxford. At the Clarendon Press, 1880.

and barbarity, nevertheless feel themselves to be more or less united in a common humanity, and war, with its attendant horrors, inspires them with a profound and growing repugnance. It follows therefore that we instinctively condemn any act of violence or inhumanity not necessarily inherent to the pursuit of hostilities. This feeling first engendered the spirit of opposition to maritime capture, which has considerably developed and increased since the close of the last century. Mr. Hall does not attempt to deny this; he even gives a summary of facts in which this sentiment is most manifest, and we will refer shortly to it, but he will not consent to see there the expression of the present notions of what is right, or of the legal consciences of civilised nations.

Before entering on the discussion, it is well that we should be quite clear as to the meaning of an important word of which we shall make frequent use. What is International Law?

> International law (says Mr. Hall) consists in certain rules of conduct, which modern civilised States regard as being binding on them in their relations with one another, with a force, comparable in nature and degree, to that binding the conscientious person to obey the laws of his country, and which they also regard as being enforcible by appropriate means in case of infringement.

I am willing to accept this definition in the main, but I must draw an important distinction. There are two sorts of rules by which civilised States are, to a greater or less degree, bound: those actually adopted and universally observed, as for instance the prohibition to shoot or to make slaves of prisoners, and others which are not so generally respected, but are admitted by the existing sentiment of 'right' that they *ought to be obligatory*, as for instance, never to set fire to an open town. The first rules constitute a sort of code *de facto* cited by diplomacy. The second form rather a code *de jure* compiled by science, and it is her duty to request nations in general to proclaim and submit to this. A similar distinction may be applied to all moral and political science. In morals, in law, in political economy, in politics, we may, first, consider existing facts and generally received opinions; but, secondly, we must raise our ideas to what *ought to be*. What ought to be is what is right, and this is what we must respect. This right may then be said to exist, and morally to impose itself, although mankind or governments refuse at present to submit to it.

But it may be argued: this ideal 'right,' not yet recognised, is a delusion. Not at all. It is evident that at every period in the existence of a nation, or of humanity in general, there can be conceived a certain order of things which should be the most conformable to justice, and the most favourable to the progress and happiness of mankind. All laws which are in conformity with this order of things are right, because they are the right road to perfection. Science discovers and makes these better known, legislators apply

them, and men must obey them. The respecting of private property at sea is not yet enjoined by international law *de facto*, generally recognised and accepted, but it forms part of international law *de jure*, which lawyers proclaim, and which it is the duty of all States to sanction, it being favourable to the general welfare.

That this rule really conforms to the order of things which ought to be enforced, and consequently to right, and general well-being which is brought about by the execution of right, I will now endeavour to prove. Let me first recall some few historic facts showing how this rule has gained ground.

It would appear that Mably was among the first to advocate the immunity of private property at sea.

We should regard with horror (says he)[2] an army making war upon peaceful citizens and despoiling them of their goods; it would be a violation of the rights of mankind and of all the laws of humanity. I ask, then, how can what is infamous on land become right, or, at all events, be permitted at sea, and why should privateers enjoy privileges refused even to savages? . . . Question politics, and all will say that the depredations of privateers have never decided the result of a war.

Lord Palmerston said the same.

There is no other European State which possesses a commerce so extensive as that of England; I conclude, therefore, that it is to the interest of the English to invite other States to accord to commerce the greatest possible freedom.

Remarkable words these, and truer at the present day than at the time they were spoken.

In 1782 Galiani, in his Italian work entitled *Obligations of Neutral Princes in regard to Belligerent Princes, and of these to Neutrals*, advocated the same principles.

Let armies fight, let them crush one another, exclaimed Linguet; but why should peaceful and defenceless commerce at sea share the disasters of war? This iniquitous custom does not exist on land. If a town be seized upon, the shops are not pillaged. Who has founded the code establishing a separate jurisprudence for maritime matters?[3]

Dominique Azuni, in a work published in 1796: *Sistema universale dei principii del diritto marittimo dell' Europa*, draws up a programme for the reform of maritime law, the first article of which is as follows: 'For the future no merchant vessel may be seized or captured unless it be smuggling weapons of warfare.' M. G. de Martens also condemns the taking of prizes: 'While civilised nations in land warfare respect the property of an enemy's peaceful subjects, at sea the barbarous custom of depriving the enemy's subjects of both their ships and cargo has been kept up.'[4]

Napoleon the First, who certainly cannot be charged with any wish to limit the rights of war, expresses himself thus:—

[2] *Droit public de l'Europe fondé sur les traités*, 2nd edit. 1764, vol. ii. pp. 310, 472.

[3] *Les Annales politiques*, year 1779, t. v. p. 506. Linguet believed this reflection to be quite new.

[4] *Essai concernant les armateurs*, pp. 36, 37.

It is to be hoped that a time will come when the same liberal spirit will govern maritime warfare; that naval engagements will take place without entailing confiscation of merchant vessels, or the making prisoners of plain sailors, or other than military passengers. Commerce could then be carried on at sea as it is on land, in the midst of battles of hostile forces.

I will not continue to cite the opinions of authors concerning the immunity due to private property at sea: after the opening of the nineteenth century they are too numerous. I will now merely resume a few facts which show how this notion gradually penetrated and influenced international relations. The United States, where Christian feeling exercised a stronger influence than elsewhere, was the first to realise that capture was opposed to the inspirations of Christianity. As early as 1785 they signed a treaty with Prussia, engaging themselves to respect private property at sea. This took place under the auspices of Franklin and Frederic the Second.

In 1792, in the French Legislative Assembly, where the eighteenth century humanitarian ideas shone forth so brilliantly, M. de Kersaint, deputy for Paris, proposed a law granting immunity to enemy's merchant ships. On the 30th of May the Assembly voted the following decree: 'The executive power is invited to negotiate with foreign Governments for the purpose of suppressing privateering in future sea warfare, and assuring free navigation for trade.' On the 19th of June, 1792, M. de Chambonas, the French Minister for Foreign Affairs, sent circulars to all his diplomatic agents, urging them to open negotiations in conformity with the decree passed on the preceding 30th of May. The United States alone acceded to the propositions of France.

Jefferson, the Secretary of State to the Union, recollected that his Government had just sanctioned the principle by the treaty recently concluded with Prussia. In the memorandum handed to Lord Granville, the English Secretary of State, by the French mission in London, we find the following passage, wherein the generous and liberal spirit which actuated France, at this moment, is adequately reflected.

To allow navigation, maritime commerce and merchandise, belonging to individuals, always to enjoy the same protection and the same liberty that peoples' rights and the universal consent of the European Powers assure on land to the communications between, and property of individuals; in a word, to suppress that calamitous custom which, on the occasion of a dispute between States and princes, interrupts in all waters the most essential communications, and causes transactions on which often the very existence of people entirely foreign to the quarrel depend, to come to nought, which suppresses human discoveries, and, arming individuals one against the other, delivers goods to pillage and dooms the navigator to death,- such is the honourable object of the proposition that the King makes to his Britannic Majesty.

England did not reply to the proposal of France, and we know with what excesses the maritime warfare which commenced shortly after between these two Powers was stained.

After the treaty of 1785 between the United States and Prussia,

France proclaimed and practised the principle of immunity for private property at sea. In 1823, at the time of the French expedition in Spain, Chateaubriand, Minister for Foreign Affairs, on the 12th of April addressed to the French foreign representatives a circular, in which he declares that the royal navy will not seize on Spanish men-of-war, and that she will stop neither Spanish nor other trading vessels unless they attempt to run a blockade.

Seeing the principles that the United States had always defended thus applied, and 'desirous that the example of France in the war recently terminated should not be lost to humanity,' the President of the Union, James Munroe, submitted to the French, English, and Russian Governments, 'a project of international convention to regulate the principles of commercial and maritime neutrality.' The provisions of this project were excellent. It proposed to exempt from capture or confiscation the trading vessels and cargoes belonging to the subjects of belligerent powers. Russia alone received favourably the excellent proposals of the United States, but the Chancellor, M. de Nesselrode, called attention to the fact, that to be efficacious they ought to be generally adopted. 'Russia,' said M. de Nesselrode, 'shares the opinions and aspirations specified in M. Middleton's memorandum, and as soon as the Powers whose consent she considers indispensable have expressed themselves agreeable to the same, she will not fail to authorise her Minister to discuss the different articles of a memorandum which would be a glory to modern diplomacy.'

The Crimean War was the occasion for considerable progress in maritime law. Until then France had defended and practised the system of seizing, with an enemy's vessel, all the goods on board, even if they belonged to a neutral State; but she respected neutral vessels and their cargo, even when the latter belonged to the enemy. England, on the other hand, respected neutral cargo even under an enemy's flag, but seized enemy's goods on a neutral vessel. France attacked the vessels, England the merchandise. When war was declared against Russia, the allied Powers thought it advisable to adopt the same course of conduct, and in order to obtain the sympathy of neutral Powers, each decided to sacrifice what might prejudice the latter, and to adopt a very broad system, renouncing even the receiving authorisations for privateering. This new system, drawn up in precisely similar terms by the English and French Governments, and dated the 30th of March, 1854, was definitely sanctioned in the Paris Declarations of 1856.

1. Privateering is definitely and altogether abolished.

2. A neutral flag protects enemy's goods, with the exception of arms or weapons of war.

3. Neutral goods, arms always excepted, may not be seized upon under an enemy's flag.

4. Blockades, to be obligatory, must be effective, that is to say a

sufficient force must be maintained to prevent *absolutely* an enemy's access.

All the Powers, with the exception of the United States, Mexico, and Spain, acceded to these proposals, the two latter reserving to themselves the right to arm privateers. The United States demanded that private property should be rendered inviolable at sea. In his Message of the 4th of December, 1854, the President of the United States refers to the traditional policy of his country on this subject in the following terms: 'If the great European Powers will, with common accord, propose, as a rule of international law, the immunity of private property at sea, and freedom from capture for merchant vessels, either by men-of-war or privateers, the United States will willingly join them on this broad basis.'

The proposal of the United States was favourably received by all the countries who had signed the treaty of Paris, and especially by France and Russia. Piedmont and Holland were loud in applause, and even England did not reject it. We see in a letter from Count Creptowich, Russian ambassador in London, to his Government, that the chief Cabinet Minister favoured the suggestion. The general inclination was so much for humanitarian reforms, that England dared not completely oppose the current; but she tried to gain time, raised objections, and finally the proposal of the United States, without being absolutely refused, was not officially accepted. Nevertheless the notion was not entirely abandoned.

The Press, Academies, and the Boards of Trade of the different countries gave their support to the principle of absolute immunity for private property at sea. In 1859 Mr. Lindsay, an important English shipowner and a member of Parliament, maintained that the Paris Declarations would be fatal to England because, in the event of a war, transports would all be monopolised by the neutral Powers, it being no longer possible to effect them in English vessels, on account of the rise in the rate of insurance. According to Mr. Lindsay the only means to avert this danger was entirely to suppress all right of capture. At Bremen, in anticipation of a Congress of the great Powers, which was expected, an assembly of merchants and shipowners, convoked the 2nd December, 1859, adopted the following resolution: 'That the principle of the inviolability of private property at sea in time of war, in so far as the necessities of war do not inevitably limit it, is an absolute essential to the period in which we live, and to existing sentiments of right and justice.' This resolution attracted general notice both in Europe and America. The *Economist* of the 19th December, 1859, congratulated Bremen on having taken the initiative. The colony of New Brunswick and the Boards of Trade of Liverpool, Manchester, Leeds, Belfast, Hull, Gloucester, Marseilles, Bordeaux, and Gothenburg, declared themselves in favour of the resolution; that of Liverpool drew up a

document setting forth the dangers which would result to English commerce from the incomplete resolutions adopted at Paris.

> In preceding French wars her commerce could be crushed, to-day it could be carried on in neutral vessels. England would, it is true, possess a similar advantage. But her merchant navy, being five times more considerable, she would be exposed to five times more risks. English steamers on distant seas would be open to the attacks of French cruisers; the naval fleet would be wholly powerless to protect them. Insurance premiums would rise enormously, and the portion of the English mercantile navy reduced to inactivity would be more considerable than the entire French shipping. If the war were prolonged all commerce would pass into the hands of neutral Powers. In the case of a war with America, the situation would be still more serious, as the latter Power would employ privateers.

In 1860, a deputation of merchants of Liverpool, Bristol, Manchester, Leeds, Hull, Belfast, and Gloucester, presented themselves before Lord Palmerston, and requested him to support the suppression of capture. Mr. Horsfall, supported by Cobden, having brought forward a motion in favour of the immunity of private property at sea, at the sitting of 17th of March, 1862, Lord Palmerston opposed it, stating that it would deal a terrible blow to the naval supremacy of England, and in fact be an act of political suicide. Nevertheless, in a speech at Liverpool (November 10th, 1856) he had given it as his opinion that the principle of the suppression of capture would prevail. Let us quote his words; they decide the question:

> I cannot help thinking that the softening of the principles agreed upon before the last war, practised during its continuance, and since rectified by formal promises, may be still further extended, and that, in course of time, the principles applied to land warfare may be enforced also at sea; that the property of private individuals shall be no longer subject to be attacked. If we cast a glance at examples in former times, we shall never find that any powerful country was conquered through private losses. The battles of army against army on land and at sea decide the quarrels of nations.

The principle defended by the United States so entirely conformed with the sentiments of humanity and justice of our times, that it was soon brought into application by different Governments. In 1859, at the treaty of Zürich, the French Government restored all captured Austrian vessels which had not been condemned by the prize court. By a decree issued March 26th, 1865, she restored also all captured Mexican vessels to their owners. In 1860, at the time of the war against China, both France and England accorded immunity to private property at sea. During the war between Austria, Prussia, and Italy, private property was respected by all three belligerent Powers. Already, Italy, opening the way for other nations, had inserted this clause in her maritime code.

In the month of February, 1866, a meeting of delegates of the different Boards of Trade was held in London. Those of Birmingham and Bradford proposed the following resolution:

> The assembly is of opinion that the declaration of principles of the Congress of Paris of 1856 is not in accordance with the actual requirements of trade, and

with the ever-growing desire to attenuate the calamities of war, this declaration not having extended to enemy's private property at sea the same immunity granted to that of neutral States.

On the 2nd of March in the same year, Mr. Gregory brought a motion before the House of Commons, proposing to establish immunity for private property at sea as a principle of international law. The motion did not pass, but was supported by men of all shades of opinion. At the sitting of the 15th of April, 1866, of the French Chamber, M. Garnier-Pagès brought forward a similar motion, and spoke with great eloquence in favour of it, but without result.

The Diet of North Germany, on the 18th of April, 1868, adopted unanimously Dr. Aegidis' motion, couched in the following terms: 'The Federal Chancellor is invited to take advantage of the friendly relations now existing with foreign Powers, to enter into negotiations for the purpose of rendering the respect of private property at sea a principle of international law, by a convention of all the great Powers.' The ancient system of capture and prize did not find a single supporter in the Diet.

In the French Legislative Assembly, on the eve of the German war, July 17, 1870, urgency was asked by M. Garnier-Pagès for the project of a law the preambles of which sum up perfectly the question.

Considering that peoples' rights should modify as civilisation progresses;

That the evils of war should be attenuated as much as possible;

That the freedom of the seas is, at all times, a supreme right, inherent to humanity, a right which no nation may attack;

Considering that the great European Powers, at the Congress held in April, 1856, declared in a treaty, almost unanimously accepted, that privateering was definitely and decidedly abolished;

Considering that the States have not been able to reserve to themselves the privilege of armed theft, which they forbid their subjects to practise;

That private property, the basis of all society, ought to be respected in time of war as in time of peace, on land and on sea, by Governments as by individuals;

That the exchange of the produce of industry and agriculture is a source of riches *to* all nations, and the most powerful and the most productive has the greater *interest* in this exchange being never impeded or interrupted;

Considering that, in reality, solidarity exists between nations for the moral and material amelioration of humanity, and that it is impossible to impoverish one nation without entailing injury and suffering on others;

France declares to be inserted in her maritime code the following article:

Art. 1. Capture and prize of enemy's trading vessels by the State vessels of war are abolished in the case of all nations, who, before the declaration of war, accepted, or were willing to accept reciprocity.

On the proposal of the President, M. Schneider, urgency was demanded for M. Garnier-Pagès' motion, but in the midst of the disturbance and excitement produced by the declaration of war, it was lost sight of. The Emperor Napoleon, contrary to the feeling of his country, would not abandon the right of capture, in spite of the example set him by Germany. We know how France afterwards had

reason to repent of this. Finally, from a doctrinal point of view, *L'Institut de droit international*,[5] whose competence Mr. Hall will not question, as he is himself a member, voted, almost unanimously, in the session of 1876, at the Hague, for the immunity of private property at sea as on land.

From the facts just briefly resumed, we may, I think, conclude, not that the principle is so universally applied and accepted that it may be regarded as actually international law, but that nearly all States and lawyers desire it to be recognised as such. I think we may safely affirm that, had it not been for the opposition of the English Government and authors, this principle would have been accepted and proclaimed, in 1874, at the Brussels Conference, assembled in order to prescribe the usages of war, and to specify the rights and duties of belligerents.

I will now try to show that maritime capture is contrary to the rights of war as now regarded by civilised nations; and in the second place, that it has become wholly inefficacious and could but be detrimental to any one State attempting to maintain it in defiance of the wishes of the other Powers.

War may be considered in two lights. It may be regarded as a struggle between two nations, population against population, man against man; or as a combat between two States, to be solely decided by the armies or navies of the belligerent countries.

The first notion was that accepted by all antiquity, by the middle ages, and, in certain circumstances, it has been applied in modern times. In this case, every practicable means may be employed to get rid of the enemy. His territory may be invaded, his property ravaged, his towns burnt, and the inhabitants put to death, the riches of the country destroyed: in fact, according to the acknowledged expression, 'on met tout à feu et à sang.' It is the same horrible spectacle we have before us in ancient warfare in the midst of the same race and people. Alexander takes Thebes, strangles the inhabitants, and so utterly destroys the city that it ceases to exist. In ancient Greece, Tarenta takes possession of Sybaris, and, in order to annihilate it eternally, turns the course of the river over its ruins. Under Louis the Fourteenth, Louvois ordered his army to ravage the Palatinate as in ancient times, but already this step was no more accepted by the juridical conscience of Europe: it has been repro-

[5] *L'Institut de droit international*, founded in 1873 by Messrs. Rolin-Jaequemyns, Bluntschli, and Lorimer, counts amongst its members, the number of whom is limited to fifty, the principal jurists on international law in Europe and America. The several presidents of its annual sessions have been Mancini, now Minister for Foreign Affairs in Italy, M. Rolin-Jaequemyns, Minister of the Interior in Belgium, M. Bluntschli, Sir Montague Bernard, and de Parieu. These names indicate sufficiently that the opinions adopted by this *Institut* are by no means devoid of authority. The other English and American members, besides Sir Montague Bernard, are Sir Travers Twiss, Lorimer, W. B. Lawrence, Dudley Field, Westlake, Wharton, Woolsey, Hall, Sir Sherston Baker, Erskine Holland, Mackenzie Wallace.

bated ever since, and the most bitter memories still rankle in the heart of the German people.

At the present day, the second system alone is admissible. All authors regard it as forming a part of the *jus gentium*, generally accepted and recognised. 'Exemption from capture or confiscation in land warfare,' says an author frequently quoted, M. Charles Calvo,[6] 'which modern codes have stipulated for in favour of private property, is already a very important progress.'

War allows the belligerent to employ his forces against the enemy's country, not against inoffensive individuals, because war is a relation of State to State, not of person to person, or of State to person. If the commander of an invading army, occupying enemy's provinces, allowed his soldiers to shoot inhabitants who had been guilty of no hostile acts, public opinion in Europe would indignantly protest and pronounce him guilty of assassination.

The project submitted to the Brussels Conference in 1874 by the Emperor of Russia stated very clearly the true principles on this subject. Articles 1 and 2 of this project were as follows:—

> International war is an open struggle between two independent States and their armed and organised forces.
>
> The operations of war should be directed solely against the forces and means of warfare of the enemy's State, and not against the subjects, so long as the latter take no active part in the war.

Here we see it enjoined as a bounden duty to respect inoffensive persons and their property.

This latter point is still more firmly established by Article 40 of the project admitted by t e Brussels Conference (1874), where we read: 'Private property being exempted,' &c.

This principle then appears henceforth incontestably as a part of international law. On the 8th of August, 1870, in an order issued by the King of Prussia to his troops, he says: 'We do not make war on the peaceful inhabitants; on the contrary, it is the duty of every soldier to honour and respect private property.' On the 12th of August of the same year, King William, in his famous proclamation to the French people, so often misquoted and misinterpreted, says again: 'I make war against the soldiers; not against French citizens. The latter may therefore continue to live in perfect security as regards their persons and their possessions, so long as they do not deprive me of my right of protecting them by some act of hostility against the German troops.'

When we hear sovereigns pronounce words such as these, what must be our surprise when eminent lawyers, like Mr. Hall, maintain, 'that all kinds of property, land as well as goods, is subject to the conqueror; that it may be seized upon and confiscated.' According to these principles, if the Prussians had carried off pianos and clocks

[6] *Le Droit international*, ii. 81.

belonging to the French, as they were reproached for doing in caricatures, they did but make use of their right, and this indeed with great moderation, as they could legitimately take all. But if the voices of modern legal consciences speak against such theories, by what subtlety shall we succeed in making a distinction between private property at sea and private property on land? Why is the one to be respected and not the other? How can the same sovereign say, on the one hand, to his soldiers, 'Touch nothing, honour forbids it;' and, on the other, to his sailors, 'Run down the enemy's trading vessels, seize upon them, confiscate the goods of peaceful merchants, and, if you cannot make a profit on their sale, burn them or sink them to the bottom of the ocean'? It is quite impossible to discover the shadow of a legal reason which legitimises at sea an act prohibited on land.

Land and water are, it is objected, two different elements. Different means must therefore be employed in warfare suited to the element on which the combat is waged. Doubtless, on land belligerents move cavalry and infantry, while at sea they make use of vessels; but does it therefore follow that what would be pillage on land becomes a legitimate action at sea? Certainly not. That war does not create hostilities between a State and the peaceful inhabitants of the enemy's country, is a principle now generally accepted. A State, therefore, cannot seize on the property of individuals against whom she is not at war. If she does so, she is guilty of theft; it is an act of brigandage.—But, says Mr. Hall, on land armies live at the expense of the occupied territory, and capture at sea replaces requisitions on land. The right of levying requisitions is much less distressing than maritime capture.—This argument is inexact in all respects. Firstly, in modern wars the invading army either pays or gives receipt. The English armies have almost invariably conformed to this principle. Article 42 of the project of the Brussels Conference expressly enforces it as an obligation. There is then no confiscation. Requisitions are made to supply the requirements of the troops, whereas capture at sea has but one object, to ruin commerce and do the enemy as much harm as possible. It is the same thing as if on land all factories, farms, and railways were systematically set fire to, because, being sources of wealth, their destruction impoverishes an enemy. It is indeed thus that war was waged in ancient times, in the middle ages, and amongst savages. Glorious examples for the advocates of capture to cite!

To do the enemy as much harm as possible is so truly the end of capture, that this is even brought forward as a reason for its non-abolition. The reasoning is as follows: If merchant vessels are no longer seized upon and maritime commerce destroyed, one of the most serious obstacles to war will disappear, and conflicts will be more frequent and of longer duration.—But is it not monstrous to make the destruction of commerce, the basis of human solidarity, and the

bond binding nations together, the end in view, when the most important inventions and reforms of which our century boasts are those favouring international commerce? If the principal object of maritime warfare be to destroy the commerce of the enemy, then why were privateers abolished, which were certainly the surest means to attain this end? There is no middle course open; we must either recall the privateers or do away with capture.

Maritime capture allows the captor to set fire to the vessels seized upon if he cannot take them into a port of his own country. This custom was indeed universal. At the present day it excites general indignation. We may recollect the cry of reprobation that was raised, not only in Germany, but all over Europe, when the French cruiser the 'Desaix' burnt, on the Scottish coast, the German trading vessels the 'Vorwärts' and the 'Ludwig.' This fact alone is a proof that such a mode of warfare is repugnant to the modern sense of justice. The generation which glories in having abolished servitude and slavery and established free trade, cannot look on coolly when a captain burns a vessel with its freight.

If it be lawful to seize on private property at sea, and even to deliver it to the flames in order to force the enemy to sue for peace, and thus avoid the evils in store for him, why not act in the same way on land? The same motives are applicable to both cases. The means would, in fact, be far more efficacious, for the harm done by a regularly organised pillage and confiscation would be far more considerable, especially at the present time, when the wealth accumulated in the great cities of civilised countries is so considerable. The invading army would find the means of maintaining war by war itself, as in the Thirty Years' War.

If the public were to reflect but a moment as to what really is this pretended right of capture, they would find it quite impossible to support so abominable a custom even in theory.

What is still more odious than even this organised and legalised theft, is that the prize captured is divided between those who have seized on the private property of the enemy, exactly in the same way as in the sort of industry practised on the highways of Sicily and Spain. Formerly a few hours' pillage was accorded to troops as a reward for bravery. Even Napoleon frequently granted this indulgence to his soldiers in his early Italian wars. But such favours are no more possible now.

It is true that in the last Franco-German war certain facts were brought to light in opposition to a proper sense of respect for private property; but in the communications exchanged between the Cabinets of the belligerent Powers with reference to these unfortunate circumstances, this principle was invariably admitted as the basis of the discussion. The enemy never maintains that he may have recourse to confiscation. He pleads the requirements of the army, the necessities of war, and other totally different motives, all of which

leave this great principle intact. But, says Mr. Hall, these requisitions, justified as they are said to be by necessity, are far harder to bear than the seizing of a vessel which has been exposed to be thus seized upon, which is generally insured and which does not constitute the means of subsistence of the owner, as is frequently the case when the provisions, the stores, or the horses of country populations are carried off by an invading army.

As a matter of fact, Mr. Hall's remark is not without certain foundation, but it does not touch upon the question of law, which may be resumed as follows. Does war admit of all possible harm being done to the peaceful inhabitants of the enemy's country without any provocation whatever, solely to induce them to acknowledge themselves vanquished? To justify capture war must be thus regarded, and then all the horrors committed in ancient times, at the devastation of the Palatinate for example, may be also justified. If private property at sea may be needlessly seized upon and even burnt, to induce the enemy to sue for peace, may not the same course be resorted to on land for the same motive? Capture is a means of war in barbarous times. Requisitions limited to necessaries are a means of war in modern times. These requisitions are frequently very hard to bear, and perhaps more so now than formerly, on account of the immense armies brought into action; but they are nevertheless subjected to certain rules limiting excesses of all kinds.

It is again objected: On land the invading army may take possession of the enemy's territory; at sea, this mode of warfare being impracticable, the only step open is to seize on the enemy's ships, as this is the only means of preventing their trafficking on the seas. —We must always place law and what is right and justice above everything else, and to seize on the property of a peaceful citizen who is taking no part in the war is decidedly contrary to what is right, as we have tried to show. Besides, why prevent commerce from using the maritime ways? Free commerce is of utility to all. It daily tightens the bonds which unite civilised nations. To impede it or shackle it in any way is to attack the interest of the world in general, and this quite uselessly, as we will now show.

The only serious argument which the partisans of capture bring forward is this. The merchant navy is an auxiliary of the military navy. A merchant vessel is easily transformed into a man-of-war, and the sailors, sufficiently trained, are able to complete the manning of a fleet. The whole mercantile marine should be looked upon as an army corps taking part in hostilities. Therefore in seizing a merchant vessel there is no real violation of the principle of respecting private property.

This argument may have possessed certain weight formerly, but it has none whatever at the present time. Men-of-war are now all iron-clad and carry immense guns. It is therefore quite impossible to transform an ordinary merchantman into a man-of-war. Light wooden vessels can, it is true, render certain services in pursuing

trading vessels. But if capture is interdicted this will be at an end, and it is quite certain mercantile ships will never more take any part in a naval engagement. If ordinary sailors must be taken prisoners, because they might enter on board a man-of-war, it would be as well to capture the whole adult male population of an enemy's country because they might all become soldiers. In his despatch to the French Government, dated October 4, 1870, after the fall of the Empire, M. de Bismarck warmly protests against a mode of warfare so completely opposed to a people's rights. In his reply, M. de Chaudordy, after having cited established customs, adds, 'that France would be among the first to join any convention whose object is to temper the evils of war.' The two countries agreed therefore in condemning ancient practices. The capture of sailors is not of nearly the same importance as it was formerly. Now both vessels and cannons are enormous, but men-of-war are few; so it is not seamen who are lacking, but the means for constructing vessels which cost about a million sterling each. We see then that neither merchant vessels nor sailors can be considered as auxiliaries of the military navy, and thus the last pretext brought forward in justification of capture falls to the ground.

I have tried to prove that capture is contrary to the present sense of right and justice. It remains for me to show that it has become also inefficacious as a means of warfare, save against England, which remains its last partisan.

The English believe that the seizing of merchant vessels is indispensable to their security as a nation, and to the preservation of their maritime supremacy. This opinion may have been tenable formerly, when privateers could seize on an enemy's possessions in any waters. But since the Declarations of Paris in 1856, and more especially since fresh means of transport have been introduced both on land and sea, everything is changed, and we may safely say that at the present time capture might do England grievous harm, but that, employed against any other State, it would be completely unavailing.

In former days, certainly, the English navy ruled the seas, blocked the enemy's ports, and, making custom an excuse, seized on all goods even under a neutral flag. She thus succeeded in entirely suppressing the maritime commerce of any State she was at war with. Now no sooner is war declared than all the merchant vessels return to port and cease to navigate until peace is restored. The prizes taken are very insignificant. Commerce is no longer suspended. Goods are transported by rail to neutral ports, where they are embarked on neutral vessels, and thus safely reach their destination. During the war of 1854, France and England blocked the Russian ports and practised the right of capture. The result was *nil*. Russian trade was carried on through the Prussian ports of Memel and Königsberg.[7] In 1870

[7] This fact is admitted by one of the most decided partisans of the right of capture—Mr. Butler-Johnstone (*Handbook of Maritime Rights*, pp. 87 and 89):

the French navy drove the German flag from the seas and strictly guarded all their ports. The total number of prizes captured by France amounted to seventy vessels, valuing 240,000*l.*; it is true that when peace was made, France was compelled to pay 800,000*l.* The commerce of Germany with other countries was carried on by Antwerp, Rotterdam, or Trieste.

France therefore gained nothing from capture. On the contrary, she had to pay very dear for it, besides having the mortification of being forestalled by Germany in the proclamation of the humanitarian principles which her writers had defended for upwards of a century. I look vainly for any country to which English men-of-war might do serious injury. Even formerly, when the right of seizing an enemy's property was strictly enforced, no war was ever prevented or even abridged in consequence. Lord Palmerston, one of the staunchest partisans of the right of capture, confessed in 1856 that 'no great country had ever been vanquished through private losses.' How much truer this is at the present time!

England would suffer considerably, not only from the employment by herself, but even from the very existence, of the right of capture. She has a larger merchant navy than all other European countries combined, and her trading vessels, dispersed as they are over all waters, could not be protected everywhere. With the present activity of transport there can be no question of uniting merchant vessels under a convoy guarded by men-of-war, and it is quite impossible to insure security on all seas. Let us recollect the terrible and odious achievements of the 'Alabama;' and yet that vessel was but an ordinary privateer, hastily constructed by private enterprise. The suppression of privateers would not at all shelter England from danger. If she were at war with any great Power, the latter would send out rapid vessels, and the English merchant ships would be soon chased from the seas, in spite of the immense superiority of the British fleet.

Indeed the harm effected by captors consists less in the prizes taken than in the rising of the rate of insurance and freight which results. During the American War of Secession the Southern privateers did not capture more than one-fiftieth of the total tonnage of the United States merchant navy, about 101,163 tons in 5,000,000. (See the report made at the Congress of 1866 by Mr. MacCulloch,

[1] The experience of the Crimean War was not favourable to the maritime policy which had thus been adopted. It was found that in spite of a pretty strict blockade of the Russian ports in the Baltic, the Russians found little difficulty in bringing their produce—tallow, hemp, and flax—to Memel and Königsberg, Prussian ports near the Russian frontier, by means of the rivers Vistula and Niemen, and there embarking it on board Swedish and Prussian vessels, where, under the Orders in Council, it was perfectly safe from capture. In this way the Russian producer was scarcely inconvenienced at all: he sold 10,000,000*l.* a year to England instead of 11,000,000*l.*, and he was recouped by the additional price which the English consumer paid him for his slightly enhanced cost of transport; and the Russian rouble, the index of the rate of exchange between the two countries, remained during the whole period of the war at par.'

Secretary to the Treasury). But the Union's vessels lost five-twelfths of their transports, which were effected in neutral vessels, and about one-sixth of the total number of American ships were sold abroad. The American mercantile marine has not yet recovered from this heavy blow. In 1876 the fear of England being drawn into the Eastern war, and her vessels thus exposed to capture, sufficed to raise the freight of English ships at Antwerp three francs a ton. If war were declared the insurance and freight would rise considerably higher still, and trade then would find it more advantageous to have recourse to neutral vessels for the effecting its transports. The English mercantile navy, which transports not only English produce, but, to a great extent, that of other countries, would suffer as much as the United States did at the time of the Secession War, and if the conflict were prolonged, she would probably lose half her ships. The geographical and economical position of England exposes her to greater dangers than other countries. She lives by international commerce. She imports from abroad a very large portion of her provisions and raw materials, and, being an island, all transports are of course effected by sea. Imagine these transports intercepted or even impeded, England would be exposed to an industrial and alimentary crisis the sufferings of which can be hardly conceived.

Steam, which prevents the absolute shutting in of any continental country, as the railway keeps outside communications always open, is capable of supplying cruisers with means of locomotion and destruction so rapid and so terrible, that an island could be easily cut off from all profitable connection with the outside world. It is true that the English fleet is at present superior to those of three or four other countries united, but it is impossible to guarantee that some new invention may not completely change this. Already every European State is furnished with Whitehead's torpedoes, made at Fiume, which, put into motion by compressed air, sink in the space of a second the most powerful ironclad. We see facts constantly mentioned in the English papers which show the dangers to which the recent changes in maritime warfare expose this country. The following is an extract from a daily paper:—

> The Ericsson torpedo-boat, with which experiments were made in America *last Monday*, does not burst upon this country without warning. A drawing and description of her was published in *Engineering*, and again by the *United Service Gazette* last Saturday. The correspondent of the *Standard* calls the apparatus for discharging it a 'gun,' but it must not be confounded with a gun properly so called. As yet, nothing more is known of its capabilities than that it has done what the Whitehead torpedo can also do; but it certainly seems to open up a vista of possibilities which may have a great influence on marine warfare. It is important to lay hold of the idea that modern science is causing ships to become less and less defensible, so that it may be doubted whether the old power of England, that of blockading the ports of an enemy, can be exerted in these days as easily and safely as it used to be.

People are beginning to perceive the danger to which the right

of capture exposes England. Quite recently a very capable officer, late of the Marine Artillery, Captain J. Colomb, delivered a lecture on this subject at the Royal United Service Institution. He brought forward an array of figures to show what the real meaning of the oceanic interest of England is, and how difficult it would be to protect her maritime trade and her food supplies. The maritime commerce of the British Empire, he said, is worth about eight hundred millions annually, and our prosperity, our very existence, depend on it. How could this immense interest be regarded in case of war with a great Power? Captain Colomb concluded that no general and adequate plans are prepared for such an emergency. I dare not say that this is quite true, but who can guarantee that the means of effectually protecting the sea trade of England really exist and are ready to hand? The constant, but agitated and uncertain, activity of the English Admiralty proves that we are passing through a period of transition; for the time being we can be sure of nothing. The apparition of the 'Merrimac' and the 'Monitor' reduced all vessels then afloat to absolute powerlessness. A similar event may again occur!

Capture is also perilous for England on account of the complications it may occasion with neutral Powers. If war were, for instance, to break out between England and Russia, the Russian fleet coasting the United States could thence sink English merchant vessels, and then seek shelter in American ports. In such a case would Russian men-of-war possess the right to supply themselves there with provisions and coal, as England allowed the 'Alabama' to do at the Cape and elsewhere? What numberless cases would occur for disputes and conflicts, especially with a State where the memory of the plunderings of the Southern privateers built in an English port is still rife, in spite of the Geneva indemnity! And if the United States were to take up arms, their privateers would in all probability sweep the English merchant navy from the seas, even making[8] all due allowance for the superiority of the latter's fleet, and this not so much on account of the prizes taken as from the great rising in the rate of insurance and freight which would ensue.

The situation created by the Declarations of Paris is therefore evidently but transitory. We must either come to absolute immunity

[8] 'Is England safe?' asks the *Morning Post* (March 29, 1882), and then proceeds to answer its question in the negative. 'The Minister for War has practically, if not in so many words, confessed that we could hardly help to defend those fortresses on the other side of the North Sea which have justly been called the outworks of London. With regard to the strength of our navy there is much more doubt. If we could prevent invasion, we could not, as at present armed and prepared, protect Belgium or Holland, whose independence is absolutely essential to our permanent safety; and it is more than doubtful whether we could hold our own in even three of the four seas where such dominion is little short of an imperative necessity. It seems almost certain that we could not hunt down the swarm of hostile cruisers which the tempting prize of our vast and invaluable merchant marine would at once call into existence. Is England prepared as she should be at such a time and for such prospects?'

for all private property, or return to the seizing upon enemy's goods on even neutral bottoms.

The young school of international law desires, with Cobden, the abolition of capture, while the partisans of ancient usages clamour that England should again exercise the right of seizing enemy's goods under a neutral flag. Four years ago Mr. Butler-Johnstone proposed to the English Parliament to release themselves from the Declarations of Paris. The motion was repulsed, and rightly; it would have exposed England to a league of neutral Powers more to be dreaded than that formed at the close of the last century, for the United States would have been at their head. The neutral flag which has covered all goods since 1856 is a privilege not lightly to be sacrificed, and forms now part of national law. Besides, as the Earl of Airlie justly remarked ('Neutral Rights,' April 1877), the seizing of enemy's goods entails retaliation, from which would result a rise in the prices of raw materials for English industry, and then she would be able no longer to hold her own against the Continent, at a moment when sale prices are very nearly at the same level everywhere, under the influence of free trade and universal competition. Let us now compare the harm which can be done by means of maritime capture to and by England, in the event of war with a great Power.

The conflict with the United States would certainly be the most dangerous for England. America possessing nearly no fleet, the English navy would, it is true, remain mistress of the seas; but the United States have reserved to themselves the right to arm privateers. They could set afloat a great many rapid vessels on the Atlantic and Pacific Oceans. The English ironclads, being unable to carry sufficient coal for a long cruise, would be of no use in defending the merchant marine. But a small portion of the English fleet, the light vessels, therefore, could be employed in protecting commerce. The mere interruption of communication with American ports would be a terrible blow to English trade and industry. A stoppage in the importation of cotton and corn, and the American ports simultaneously closed to our exports of iron and other manufactured goods, the crisis which would result would be indeed terrible. It would, however, affect America but slightly, for her own products could suffice to supply her actual necessities. Manufacturers would, even thus, insure very high prices, higher indeed than they obtain with the present system of protection. Let us suppose all the American ports to be completely blocked, the drawback for England would be incomparably greater than for America. It is easy to predict beforehand that the English would be the first to tire of such a situation and of its consequences. Maritime capture, and the suppression of commerce which it entails, would oblige England to seek for peace much sooner than America.

In a war with Russia, the harm that either Power might do the

other by the exercise of the right of capture would be far less than in the case just cited. This means of warfare in the hands of England would be powerless, as Russia possesses only a very small merchant navy. The English fleet could, it is true, close the outlets of the Baltic and of the Black Sea to Russian vessels, but in other parts of the globe English trading vessels would be in grave peril, as was shown in an article in the *Edinburgh Review* (July, 1880). English commercial interests in the Pacific are very considerable. The exchanges effected with Australia alone amount to about 40,000,000*l.* sterling, and with other countries washed by the Pacific Ocean to 60,000,000*l.*, together 100,000,000*l.*, which is equivalent to one-sixth of the total maritime commerce of England. Four-fifths of the transports to and from China are effected under the English flag. The English tonnage in Australian ports approaches seven million tons. Now this immense movement of riches is for the future more or less menaced by the possessions which Russia has acquired on the East Coast of Asia. The transfer of the region of the Amoor as far as Tuman, and the exchange of the Kurile Isles for Sakhalin, have rendered the offensive means of Russia far more serious. Vladivostock is one of the finest harbours in the world, and coal seams exist not far off. Russia maintains a small fleet of men-of-war in these seas, one or other of which occasionally are to be seen in Chinese or Japanese ports. It will be remembered that in 1854 the attack on Petropaulowsk was unsuccessful, and that a division of the Russian navy escaped from the Bay of Castries in spite of the supervision of the English fleet. The thick fogs which frequently envelope the sea on these coasts favour any vessel desirous of escaping from a blockade. But four days' navigation separates Petropaulowsk from Shanghai, while the nearest coaling point for England, in the Chinese seas, is Hong Kong. A rapid man-of-war starting from one of the ports of the Amoor could commit frightful havoc among the richly freighted English merchant vessels trafficking in the Atlantic. The above reasons induced the *Edinburgh Review* to predict that, in case of a war with Russia, unlooked-for dangers might surge from this quarter. At all events, it is a certain fact that by maritime capture Russia could inflict heavy losses on English trade, while England could cause Russia no inconvenience whatever.

In a war with France the situation would be more equal, as England could do greater harm to France than to Russia; but, on the other hand, the proximity of the French ports and of her naval resources makes her an enemy more to be dreaded than Russia. Exceptionally rapid vessels starting from Cherbourg or Brest would cast consternation among English trading ships, for in the space of a few hours, at night, a steamer, mounted with a few guns, could destroy a great many vessels, and spread terror among all the others. The disadvantages and sufferings resulting for the two adversaries could not bear comparison. France would continue her

imports and exports by the neighbouring ports, Genoa at the south, and Antwerp at the north; while the transports to and from England being effected almost wholly in English vessels, the latter would all be exposed to capture.

One shudders to reflect on the incalculable losses English commerce, and consequently English industry, might have to submit to. Mr. Hall, while maintaining the legitimacy of the right of capture in principle, is forced to admit that it would be more calamitous than useful to England.

> It is (says he) certainly a matter for grave consideration, whether it is not more in the interest of England to protect her own than to destroy her enemies' trade. Quite apart from dislike of England, and jealousy of her maritime and commercial position, there is undoubtedly a good deal of genuine feeling on the Continent of Europe against maritime capture. It is not clear how far the latter is strong and general, but it is not unlikely that there is enough of it to afford convenient material for less creditable motives to ferment; and contingencies are not inconceivable in which, if England were engaged in a maritime war, European or other States might take advantage of a set of opinion against her practice at sea to embarrass her seriously by an unfriendly neutrality. The evils of such embarrassment might perhaps be transient; but there are also conceivable contingencies in which the direct evils of maritime capture might be disastrous. English manufactures are dependent on the cheap importation of raw material, and English population is becoming yearly more and more dependent on foreign food. In the *Contemporary Review* for 1875 (vol. xxvi. pp. 737–51) I endeavoured to show that there are strong reasons for doubting whether England is prudent in adhering to the existing rule of law with respect to the capture of private property at sea. The reasons which were then urged have certainly not grown weaker with the progress of time. (*International Law*, p. 380.)

Upon the whole, before the time of railways, and with the right of seizing upon enemy's goods even under a neutral flag, maritime capture was certainly a formidable weapon for a strong naval power. Railways, and Art. 2 of the Paris Declarations prohibiting the capture of neutral vessels, have rendered this custom wholly inefficacious. Those who maintain that England cannot allow it to be abandoned without compromising her maritime supremacy, forget this. Besides, at the present day, it would be possible to intercept all outside communications of an island like England, while such a step with any continental country would be quite impossible. The merchant ships of the latter would remain safely in port, and the only evil effected would be a slight rise in transport charges for imports and exports which would travel by rail.

The economic situation of England is perilous from its very force. This wonderful country may be compared to a vast workshop where work is done for the entire universe. She draws subsistence for her workpeople, and raw materials from abroad, and returns them thither as manufactured goods. Russia and America supply her with corn and grain, Holland, Belgium, and Denmark with cattle, India and the United States with cotton, China and Japan with silk, Australia, the Cape of Good Hope, and the coasts of La Plata with wool, and so

on. In her turn, she sends her iron, calicoes, ironmongery, and materials of all kinds to every quarter of the globe. All these imports and exports are effected in ships. The following figures show the difference of this interest between 1840 and 1880.

	Sailing vessels	Steamers	Total
Tonnage of British shipping, 1880	3,740,442	2,594,135	6,344,597

Value of merchandise, exported and imported, 1880	£697,644,031
" " " " 1840	133,312,740
Increase since 1840	£564,331,291

No other country depends to so great a degree on the freedom of the seas. If this liberty cease to exist, be restricted, or even menaced, the whole economic edifice trembles. Factories close, provisions rise in price, workmen lose their wages, the social body is attacked in its entirety, and the labouring classes are exposed to terrible sufferings. We may recollect how hardly the workmen in the cotton trade were tried when the blockade closed the ports of the Southern States during the War of Secession,[9] and then but one single industry was affected.

What would it be, if all were simultaneously attacked by the stoppage of imports and exports? And it is to a danger such as this that the English, imagining themselves patriotic, are willing to expose their country for the sake of preserving a right of capture perfectly powerless directed against other States.

I am fully persuaded that the first great war will prove the necessity of proclaiming complete immunity for private property at sea as on land. It is the only system in accordance with the natural rights of man and with the sentiments of justice and humanity of our century; the only system in conformity with the means of warfare, of production and locomotion, which we owe to modern science.

If reasoning alone sufficed to induce progress, and if it need not be corroborated by the hard and often bloody lessons of experience, it might be hoped that, even before another war, civilised States will adopt this principle, which French and Italian lawyers advocated even in the eighteenth century, and which has already been applied in recent wars. Such a step was ardently desired by both the Paris Congress of 1866 and the Brussels Conference of 1874, and general opinion on the Continent insists strongly in its favour.

EMILE DE LAVELEYE.

[9] For instance, at this time, in the Manchester district, out of 842 spinning factories, only 295 continued uninterruptedly working. Out of 172,257 workmen, one-third only continued earning. The sum total of wages paid, which was estimated in 1860 at 11,000,000*l.* sterling, fell to half that amount, and it was necessary to open a national subscription for the relief of so much misery. What would be the situation now, in the event of a maritime war with one of the great Powers?

THE LAWS OF WAR.

(*Concluded.*)

II. Warfare on Land.

When the eminent German lawyer, recently dead, Herr Bluntschli, presented General von Moltke with the little work [1] which I propose to analyse here, the Marshal sent a letter in reply which made a great sensation in Europe (December 11, 1880). He said this:—

> I fully appreciate the philanthropic efforts which are being made to soften the evils entailed by war. But perpetual peace is a dream, and not even a good dream. War is a God-established element of order. It is a means for the development of man's noblest virtues—courage, renunciation, faithfulness to duty and the spirit of sacrifice. The soldier gives his life. Without war the world would stagnate, and lose itself in materialism.

Is it not strange that so great a mind, so humane and Christian a nature as the Count von Moltke's, can yet entertain such delusive ideas as to war? Is not war in itself, in its end and its means, the unloosing of the materialism, or rather of the animal which still lives in us? Certainly all carnivorous animals make war, but why? To devour their victim and procure for themselves nourishment. When men make war it is also to live at the cost of the vanquished. In the beginning they were devoured, later reduced to slavery, and, later still, despoiled of the fruits of their labour. The employment of force in the hands of him who defends his life or his country is legitimate; but this would be useless if there were not in the first instance an aggressor. The latter therefore violates law and commits a crime against humanity. War, then, is abominable in its very origin, and should be execrated, not glorified.

It is true, it is a means of developing certain virtues, exactly as the construction of ironclads and torpedoes is a most ingenious application of scientific discoveries; but are these virtues, is this knowledge well employed in destroying men? In every war where the aggressor takes unjustly the initiative, he breaks the law of nations and is guilty of crime and barbarity. How, then, shall we not detest war? But so long as this horror of war be not general, so

[1] A Manual published by the Institut de Droit International.

long as people consider it in the same light as General von Moltke—*i.e.* as a proper manifestation of the power of a country—armed conflicts will be a permanent menace, a scourge which may fall on us at any moment.

If this be the case, let us at least do what we can to diminish the atrocities of strife between nations. Certain principles of justice are forced upon armies by public opinion. Less barbarous habits and more humane customs, but recently disputed, are now generally accepted. It would be well to define and establish these habits and customs in such manner that campaigning generals should consider themselves compelled to make their soldiers obey them. Several attempts have been made to effect this. During the Civil War in the United States, President Lincoln published instructions for armies in campaign—the work of a great thinker, Francis Lieber. The *Projet de Déclarations*, which sprang from the Brussels Conference of 1874, was an attempt to establish by an international treaty the ideas accepted by civilised nations. Several Governments—France, Russia, and the Netherlands—have published manuals for their troops when campaigning.

But twenty years have elapsed since Lieber's work appeared, petty political considerations have prevented the ratification of the project of 1874, and the regulations in the Government manuals we have just mentioned are not all worthy of acceptance. A fresh attempt to draw up a Code may therefore be fully justified. *L'Institut de Droit International*, numbering in its ranks the most eminent jurists in international law of Europe and America, has just made this attempt.

The task was not unaccompanied with serious difficulties. Where Russia, supported by many other States, had partially failed, was it likely an academy who had but the scientific value of its members to rely upon, would succeed? It was hardly to be hoped for. The Institute, therefore, does not propose the conclusion of an international treaty; it merely submits to the different Governments a *Manual of Laws for Land Warfare*, designed to serve as a basis for national legislation which would be in conformity with the progress of legal science, making at the same time due allowance for military necessities.

The *Manual* was discussed in the first place by a committee, among whom were several renowned lawyers—Messrs. Bluntschli, Rivier, Martens, a well-known military doctor M. de Landa, a Dutch Colonel den Beer Poortugael, formerly War Minister in Holland. The draft of the *Manual* has been drawn up by M. Gustave Moynier, of Geneva, the President of the International Committee of the Red Cross. The Institute approved unanimously of the work of the committee in a session held at Oxford in September 1880, where nearly all the English members were present.

The *Manual* comprises three parts. The first states general principles on the laws of war; the second treats of the application of these principles, of hostilities, and of the conduct to be pursued with regard to persons and property, estates, occupied territory, prisoners of war, and residents in neutral countries; the third examines punishments for the violation of established maxims. In eighty-six articles regulations for the guidance of campaigning armies are summed up: few—none even—are rash or quite new. The Institute does not pretend to innovate; it endeavours more especially to define and determine accepted ideas.

At the beginning of the year 1874, the society founded in Paris for the amelioration of the lot of prisoners of war, the chairman being the General Count d'Houdelot, submitted to the different sovereigns a project of international regulations which were destined to realise the end pursued by this philanthropic association. A letter of Prince Gortschakoff to Prince Orlof, dated April 6, 1874, shows us that the project met with the Russian Emperor's approval. He, in fact, had been long pre-occupied by this humanitarian idea. Some time previously, by order of the Emperor Alexander, the Cabinet of St. Petersburg had considered a project for an international convention destined to regulate the conditions and establish the customs of war, so as to diminish as much as possible the horrors of combats between one country and another, by determining the rights and the duties of campaigning armies. The project of the Russian Cabinet was submitted to the majority of the civilised States, and all the countries of the European Continent agreed to examine its stipulations in a Conference which met in Brussels, July 27, 1874.

The States represented at this Conference were Russia (who had taken the initiative), Germany, Austro-Hungary, Belgium, Denmark, Spain, France, Great Britain, Greece, Italy, the Netherlands, Sweden, Norway, and Turkey. The United States, also invited to send delegates to Brussels, thought well to abstain, in order to remain faithful to Monroe's doctrine, and to the political isolation of America. As Mr. Lucas remarks, this withholding on the part of the American Government was much regretted by even its warmest partisans, who reproached the Americans with having on this occasion deserted the cause of progress in international law. Monroe's doctrine would not, however, prevent America from adhering to a convention suppressing maritime capture. But as England had insisted that the question of maritime warfare should not be touched upon, America could not hope to obtain the object she has in view—that is to say, the definite establishment of the just principle of immunity for private property at sea as on land. It was for this motive that she withheld.

The majority of States were represented at Brussels by a military

and a diplomatic authority; some sent also a representative of the science of international law. In spite of the bitter memories of the then recent war of 1871, the intercourse between the delegates of Germany and France was most courteous, and on the majority of questions they were of the same opinion. After many serious debates the Conference adopted a project of a convention destined to be submitted to the examination of the different Governments.

It must be confessed that the Brussels Conference at its opening did not awaken the sympathies of the great European public. It was thought that there was an undercurrent of ideas of conquest in the project presented by Russia and supported by Germany. People imagined that these two military States desired to give a sort of international legality to the use of the strongest means of warfare, and thus to facilitate the work of invading armies. Others said that war is a thing so monstrous, so atrocious, that it should be cursed and condemned, and there should be no thought even of regulating customs which are in themselves but violations of law. Does any one think of legislating for assassination? And war is but wholesale assassination. If regulations be adopted for war as has been done for duelling, the former will become a regular institution, an integral part of our social system. On the other hand, the more atrocious war is allowed to remain, the more it assumes the character of a pitiless butchery, the more the human conscience will rise against it, and the greater chance there will be to see it wholly disappear. So spoke the lovers of peace.

Neither of the motives which raised distrust with regard to the Brussels Conference appears to me to possess any solid foundation. If the great military powers agree to establish certain limits, certain rules for the employment of force, it is assuredly a subject of congratulation for humanity. To-day there is no agreement, no established rule. The conquered are delivered over to the mercy of the conqueror, who can use his own discretion as to the means he will employ the better to attain his end. If some of these means be condemned, if it be decided they are to be no longer employed, is it not a cause for congratulations and applause?

As to the other argument, that war must not be civilised, that it is better to leave it to all its natural ferocity, I cannot admit it. Progress has always been effected slowly, by a series of reforms and successive improvements. The savage struggle, man against man, of barbarous times, became transformed into the official duel in feudal ages; later again this duel, the supposed judgment of God, gave place to a court of law. Marriage, which commenced with rape, has ended in free consent, after a series of modifications dictated by the progress of morals. It will be the same with war. Though, unfortunately, it is not likely shortly to be done away with,

at all events it is not by retaining all its ferocity that men's morals will become sufficiently softened to render it impossible, for violence produces violence, and blood begets blood.

After the Thirty Years' War, the horrors committed revived all the cruelty of barbarous ages. When prisoners were made to suffer the very refinement of torture, no one thought of abolishing capital punishment. On the contrary, it is since executions have been rendered as humane as possible that the desire entirely to suppress them has become manifest. The more the feelings are softened, the more men in general will be disposed to agree, and the greater will be their horror of the use of arms. If war be waged with cruelty, a barrier is at once placed to the softening of morals.

The Geneva and St. Petersburg Conventions opened the road to the Brussels Conference, which was itself but a prelude to the progress to follow.

It is easy to see, in examining the text of the Conference, that the Russian Emperor, in taking the initiative, was actuated by no ideas of conquest. The greater number of articles forbid acts of violence, which hitherto had been committed by belligerents in all wars. True, the sentiments of international confraternity and the pacific instincts, now dominant in the human breast, render it repugnant to have to lay down laws for the means of coercion called the necessities of war, and one is tempted to condemn them all absolutely; but we are unfortunately far from this ideal. For the future, if violence be not restricted by proper rules and regulations, it will know no other bounds than the arbitrary will of the commanders of armies, certain very confused precedents, and customs still vaguer, more undefined, and always disputed. The desire for vengeance and retaliation which certain events in the late Franco-German war have left rankling in the hearts of Frenchmen may lead us to look for acts of violence when the moment for revenge arrives, which, in their turn, will provoke others, and thus we shall return to the barbarity of former ages. If, on the contrary, the European States adopt, either each independently, or by general consent, certain rules, we shall be sure of very considerable progress. 'War,' says the final protocol of the Brussels Conference, 1874, 'being thus regulated, would entail fewer calamities, and would be less subject to the aggravations induced by uncertainty, by the unexpected, and by the passions which the struggle excites; it would lead far more surely to the object which should ever be the great aim and end in view—that is to say, the re-establishing of friendly relations, and of a firmer and more lasting peace between the belligerents.'

It is undeniable that, in spite of the rivalries which exist between States, and of the senseless calling to arms which these rivalries occasion, a current of pacific ideas has recently been productive of

facts of which humanity may justly boast. For instance, recourse to arbitration is becoming more and more frequent, and a motion has been already voted in several Parliaments in favour of this pacific means of settling international differences; the Convention of Geneva and that of St. Petersburg, the adoption of the famous Rules of Washington with respect to the Alabama claims; the 23rd protocol of the Paris Conference, which advises the intervention of a friendly Power before calling to arms; and the desire expressed at the Brussels Conference, on the proposal of the French delegate, General Arnaudan, that uniform regulations should be adopted by the different armies.

Philanthropists and advocates of peace are of opinion that an international code should be drawn up defining the relationship of one nation to another, as a *Code Civil* does for citizens of the same country. Several important societies have already been formed with this object, though it is impossible not to admit that such an ideal state of things is still very far distant. It would, however, be a great step in the direction of the realisation of this humanitarian project if a sort of code for belligerents were to be generally adopted, for it is far more difficult to determine rules for war than for peace. The concord which reigned at the Brussels Conference on most delicate points, and even between the representatives of France and Germany, prove beyond a doubt that it would be quite possible to arrive at an understanding with regard to many disputed points of international law proposed by the little code to which I have called attention.

The terms of Art. 1 give a very just notion of modern warfare, and indicate very clearly the bounds imposed by this conception on the employment of force; it says, 'Warfare does not admit of acts of violence, save between the armed forces of belligerent States. This article is inspired by the text of the Russian project, submitted to the Brussels Conference, and which is still more explicit. There the expressions used are as follows:—

1. An international war is a condition of open combat between two independent States (acting singly or with allies), and between their armed and organised forces.

2. War operations must be directed exclusively against the armed forces of the enemy's State, and not against the subjects, so long as the latter abstain from taking active part in the war.

The first article of our Code is also in conformity with the famous proclamation of the 12th of August, addressed by the King of Prussia to the French people at the commencement of the war of 1870,[2] proclamation so strangely twisted by the majority of French

[2] The proclamation was as follows:—'I make war against soldiers, not against French citizens. These, therefore, will continue to enjoy perfect security for their persons and property, so long as they themselves do not deprive me of the right to protect them by committing acts of hostility against the German troops.' In an

newspapers; for, according to them, the King said that he made war against the Emperor, not against France; and the conclusion they drew was that, the Emperor dethroned, the Germans ought at once to retire beyond the Rhine.

The point in this Art. 1 which stands out the most clearly is absolute respect for the life and property of non-combatants. Formerly a war rendered all the inhabitants of the two belligerent States liable to be taken prisoners; and on one side as on the other the greatest possible harm and injury was inflicted. The country was devastated, the towns burnt and sacked, and the vanquished reduced to slavery. To-day only organised forces may fight, and peaceful citizens ought to have nothing to fear from the passage of an army. Art. 54 stipulates that private property, either individual or collective, must be respected, always save in the exceptional cases mentioned in the following articles. The respect of private property at sea would certainly have resulted from the acceptance of this article; but the Institute of International Law, desirous of obtaining the approbation of its English members, would not inscribe a principle not yet wholly accepted by them.

Art. 55 allows an army occupying enemy's territory to take momentary possession of railways, boats, arms and war munitions belonging to individuals, but they must return them all and pay just indemnities. There are here war necessities which must be allowed for, but the following articles evince very evident progress. An occupying army may levy only existing taxes in the established form, and these must be employed for the administration of the country as was done by the local Government. (Art. 57.)—Another excellent provision is, the enemy's army may only seize on what belongs to the State; and further, the occupying State shall consider itself as only trustee of the public edifices, buildings, estates, workings and forests; the funds must be scrupulously guarded, and due attention paid to regulations as to usufruct. (Art. 50, 51, and 52.)—For the future all communal possessions, places of worship, or establishments devoted to instruction in science, even those belonging to the State, will be respected as private property. In addition to this, all seizure or intentional degradation of such establishments, of historical monuments, or of works of science or art, is strictly prohibited. Are not these most excellent provisions which have long been needed, and which can but call forth approbation?

The Code does not allow belligerents an unlimited choice of means for the destruction of an enemy. By a further extension of the St. Petersburg declaration of 1868 with regard to explosive bullets, it condemns the use of all arms and projectiles calculated to inflict

'ordre du jour' of the 8th of August, the King said, 'We do not make war against peaceful subjects. It is, on the contrary, the duty of every soldier who understands honour to protect private property, etc.'

superfluous harm. It forbids the use of poison or of poisoned weapons, the murder by treachery of persons belonging even to the enemy's army, the execution of an enemy who has laid down arms, and the declaration of no quarter. (Arts. 8 and 9.) All this is assuredly most decided progress. In many French accounts of the Franco-German war of 1871, boast is made of soldiers or irregular troops who succeeded in killing as many Prussians as possible by the use of stratagems which amounted absolutely to treachery. For instance, the *Journal de France* of November 21, 1871, extols the exploits of twenty-five of the irregular troops, who, having donned the Prussian uniform, succeeded in killing several Germans in the village of Sannegy. To read even of such acts is sickening, and yet one cannot affirm that they are contrary to the laws of warfare. Now they would be condemned. More than once, in earlier wars, it was threatened not to give quarter. This atrocity is forbidden by our Code.

Most humane regulations are also proposed with regard to attacks on places, at the same time taking nothing from the efficiency of the means employed. For instance, an open town, unless serving as a basis of attack or defence, cannot be bombarded. (Art. 32.) Before commencing the bombardment of any stronghold, the authorities must be duly warned, and buildings devoted to public worship, to art, to beneficence, or serving as hospitals for the wounded, must be spared as much as possible. (Art. 33 and 34.)

Is not this a satisfaction given to the protests which were raised during the Franco-German war? During the Crimean War the English bombarded nearly every locality on the shores of the Baltic, and set fire to all the stores of wood they could lay hands on. I can still recollect the indignation that this conduct gave rise to in neutral countries. Henceforward it should be interdicted.

A town even taken by assault may not be delivered up to pillage. (Art. 32 a.) A further progress, for, during the Directory and the Napoleonic wars, on several occasions, the pillage of towns taken by assault was authorised, as M. Thiers informs us, without accompanying the information with a single word of blame. Public opinion, especially in countries that have suffered from invasion, has often asked that, when a town is bombarded, the fire of the artillery should be directed against the forts only, not against private dwelling-houses. Our Code could not formulate an article on this principle, it being too directly opposed to the generally received customs of war which are looked upon as necessities. Nevertheless a note annexed to the *Compte rendu* of the acts of the Brussels Conference is expressed as follows: 'The Committee is firmly convinced that all commanders of civilised armies, in deference to the principles which the Brussels Conference wishes to establish as international regu-

lations, will look upon it as their most sacred duty to use all means in their power, when attacking a fortified town, to spare private property belonging to inoffensive citizens in so far as local circumstances and the necessities of war leave them the power so to do.' This final restriction takes off a large portion of the practical value of the declaration, but it is a step in the direction of the suppression of the intentional bombardment of private dwellings.

If our Code, having a practical end in view, feared to raise the opposition of military authorities by protecting in too marked a manner private houses, it nevertheless claimed most important immunities. Art. 34 is as follows:—

> In the event of a bombardment, all necessary measures must be taken to spare as much as possible sacred edifices, buildings devoted to art, science, or charity, hospitals, or any asylum for the sick and wounded, on condition that they do not serve at the same time as a means of defence.

The measures with regard to prisoners of war are also most humane. All their belongings, arms alone excepted, remain their personal property; they may only be confined in cases of absolute necessity. As a general principle, prisoners are to be treated, as regards food and clothing, in the same way as the troops of the State who have captured them. A prisoner who has escaped and been retaken shall be subjected to no penalty.

It cannot be denied that, if all these measures were to be generally adopted, the evils of war would be greatly lessened. Certainly it would be better to go further still; but war is war, that is to say, the use of force; and if certain acts of coercion necessary to the march of strategic operations were interdicted, the prescription would be most assuredly violated, for necessity knows no law.

There remains a capital point to be examined. *Who ought to be regarded as belligerents—combatants and non-combatants?* This is a very delicate question, and one which raised the greatest number of difficulties at the Brussels Conference, and was the cause even of apprehension to the public and to certain governments. It was suggested that the regulations adopted with regard to the belligerents might enfeeble the means of defence of those countries who maintain but a small permanent army, and who in case of war have to call on the patriotism of their subjects. Let us first transcribe the articles of our Code which relate to the point in discussion:—

> 1. Persons not forming part of armed forces must abstain from acts of hostility.
>
> This regulation implies a distinction between those persons forming part of the armed force and those merely dependent on the State. A definition is therefore necessary to establish clearly what is meant by 'armed forces.'
>
> 2. The armed forces of a State comprise—
>
> (1) The army properly speaking, including the militia.

(2) National guards, landsturm, irregular troops, and all other corps, subject to the three following conditions—

(*a*) Possessing a responsible commander.

(*b*) Wearing a uniform or distinctive badge of some sort perfectly recognisable at a distance, and compulsory for all members of the corps.

(*c*) Openly carrying arms.

3. The crew of vessels of war.

The inhabitants of unoccupied territory who, on the approach of the enemy, spontaneously and openly take up arms to combat the invading troops, even though they have no time properly to organise themselves.

All belligerent armed forces are bound to conform to the rules of warfare.

There are two opposite opinions on this subject. Military authorities in general admit the right of attack only of an enemy's organised troops—the corps wearing a distinctive uniform; others, on the other hand, are of opinion that all means are legitimate employed against an invader. A very competent writer on this subject, M. Lucas, of the Institut de France, draws a distinction between the invader and the defender of his country. According to him, the first should be subjected to regulations not imposed on the second. He whose only object is to repel an invasion is in the right; it should therefore be permissible for him to employ all means.

M. Lucas's distinction does not appear to me well founded. I admit of greater latitude being accorded to the State unjustly attacked than to the assailant; but a State invading the territory of another State may be but legitimately defending itself. The invader is not invariably the first to assault. War is declared against me; I repulse the enemy; must I stop at the frontier? may I not follow up my successes and impose peace on him who has unjustly disturbed it? Evidently invasion in such a case is a necessity; it is perfectly legitimate; and if it be just in this instance to establish a legal difference, it would certainly be in favour of the invading army.

But I see no occasion for drawing these distinctions. If conditions be imposed with regard to means employed for attack and defence, it is in the interest of humanity generally and to prevent war from assuming a barbarous and ferocious character. General Jomini, the Russian delegate at the Brussels Conference, quoted a passage from a work of M. Rolin-Jacquemyns, the present Minister of the Interior in Belgium, which throws a very clear light on the question:—

What we must hope is that, in the future, free people will be possessed of sufficient constancy and foresight to organise themselves on a military footing based on the participation of *all* in the system of national defence. This would be not only a national, but a humane duty, for the more disciplined and regular the troops engaged in war the less humanity suffers. True, brave and noble sentiments and heroic conduct are not necessarily covered by a uniform, and we must

allow that among those peasants who have been shot in time of war, more than one was guilty only of having obeyed an instinctive impulse of patriotism. But we must allow also that the sort of inefficacious resistance that they offer an invading army must invariably lead on the one hand to 'banditisme,' and on the other to pitiless repression. We think with Dr. Arnold, that it is the bounden duty of every government, not merely not to encourage the population to engage in such irregular warfare, but carefully to repress it, and to oppose an enemy with only regular troops or men regularly organised, acting under officers who will observe the regulations prescribed by humanity for a regular war. What are called popular insurrections or irregular risings of an entire population to repulse an invading army should always be condemned—without distinction as to by, or against whom, these means are employed—as a resource the efficacy of which is limited and doubtful, but the atrocity certain, and as the most terrible possible aggravation to the evils of war.

The necessity to wear a uniform in order to enjoy the rights of a belligerent and not to be shot is generally recognised. A discussion arose during the Franco-German war between M. de Bismarck and the French Minister of War with respect to irregular troops. Each side admitted that every combatant should wear a recognisable badge. Only M. de Bismarck insisted that the little red ornaments the French wore on their blue 'blouse' could be so easily taken off and replaced, that it was impossible for the German soldiers to ascertain from whom to look for acts of hostility. At the Conference the German delegates were both in favour of the three conditions of Art. 3 which I mentioned above.

As we have shown, war is a state of open struggle between the regular and organised forces of two countries. Peaceful citizens taking no part in the combat should not be interfered with by invading troops. Their lives and property ought to be respected. But, on the other hand, non-combatants may not surprise and kill an enemy advancing in all confidence. If the latter be not thoroughly assured on this subject, he will be much less likely to spare any unarmed citizens he meets. A detachment of scouts advance and see some peasants working in a field: if they can suppose that they may be irregular troops in disguise, as a precautionary measure, being doubtful, they will fire on the peasants to avoid an attack from behind, when they themselves have advanced further. There would be no safety for any one. Each inhabitant would become a possible enemy, and, when occasion offered, would be treated as such. Combats would become imbued with an atrocity revolting to the conscience, and which would incalculably increase the evils of war. It would be a return to the barbarous ages. To avoid such extremes it has been wisely insisted that combatants shall wear a uniform, carry arms openly, and acknowledge a responsible commander.

Our Code has conceded all that is compatible with human requirements in according belligerent rights to the population of an unoccupied territory that rises in arms to repulse invading troops, even

without having the time regularly to organise themselves. The terms of the article very rightly exclude surprise attacks and the operations of detached corps with no distinctive badge. It must be clearly understood these prescriptions are imposed in the interest of mankind in general. It is the only means of instilling respect for the great principle which governs all such questions: *That the state of war may only exist between the armed forces of belligerent Powers.*

Let us now see whether, as has been feared, the adopting of the articles proposed in our Code would be likely to diminish the means of defence of small States.—We must not delude ourselves on this point. The rising and spontaneous resistance of populations are almost impossible in a civilised country densely peopled, rich, and covered with roads and railways. Such explosions of patriotic fury occur only with nations where the morals and customs of the Middle Ages have been kept up, and they can only be effectual in a wild and mountainous region favouring ambushes and bold strokes, and preventing at the same time an enemy's operating in masses. In the course of this and the last century I can only recall Spain where the heroic resistance of the inhabitants contributed towards vanquishing Napoleon's officers, and this in a great measure thanks to the victories of the English army under Wellington. We must add that the Spaniards drew back at nothing in their zeal for the destruction of the enemy: assassinations of soldiers alone or asleep, poisoning of water or wine, strangling the wounded and prisoners. At the present day such cruelty would not be tolerated, and I think we cannot regret this. We must recollect, moreover, that Spain is very thinly peopled, traversed by chains of mountains, and that in many parts roads and resources of all kinds were wholly lacking. It was therefore a most excellent stage for faction wars, as the length of time all civil strife has lasted there proves. Elsewhere than in Spain there have been no national insurrections, or unorganised resistance has been completely ineffectual and disastrous for both the country and its inhabitants. Under the First Empire Germany was completely trampled by the French troops, and none of the population took up arms to oppose them. In their turn, when the allies invaded France in 1814, they met with no local resistance save in passing the Vosges, and that did not even delay the march of the invading armies. In Belgium the peasants of Campine, and in Switzerland the mountaineers of the Oberland, rose in arms to repulse the troops of the French Republic. Their heroism only rendered the conquerors more pitiless. The unfortunate peasants were shot and the conquered cantons mercilessly ravaged, the villages burnt, the houses pillaged, and the country utterly ruined.

In the Franco-German war, where the patriotism of a bold and

warlike nation, proud of its military superiority, was likely to induce spontaneous risings or insurrections, nothing occurred to stop or even seriously to hinder the conqueror. The French themselves admit that their irregular troops did more harm to their own countrymen than to the Germans. During the siege of Paris the immense army assembled there was connected with Germany only by railway, and this communication was only once cut off, and for but a few days.

When an army consisted of some 20,000 or 30,000 men, detachments of which numbered some thousand soldiers, inhabitants banding themselves together and heroically resolved to die before the enemy, probably caused an invader some apprehension. But now, when half a million men are rapidly collected and advance by rail, local resistance has become wholly impracticable. A few batteries of artillery stationed at a distance would quickly crush it.

The general economic situation, the preponderating influence of material interests, the multiplicity of means of communication, the commercial relations of one country with another, rendering them jointly and severally answerable, and stifling or killing old hatreds of nation for nation—all these causes combine to prevent the explosion of those bursts of patriotism which induced the sacrifice of all—peace, possessions, and even of life itself—in the desire, at all costs, to expel the enemy. War to the knife is no longer more than a vain word. It is not compatible with present civilisation. Morals have become too softened, are too humane, for patriotism to inspire acts of a ferocity such that history admires them with horror. What magistrate, what general dare order the setting fire to London, Paris, or Berlin, in order to prevent the occupation of an enemy? The bitter hatred and pitiless fanaticism of a Spanish Carlist or a Parisian Communist could alone inspire such extreme measures. I doubt if, even in Russia, where patriotic feeling has been less softened than elsewhere by considerations of material interests, it would be possible to find a second Rostopchin to set fire to St. Petersburg.

Popular resistance in this respect may be likened to persecution. Pitiless persecution, which has recourse to the axe, and which is ready to exterminate thousands, if necessary, attains the result we see in the sixteenth century. It suppresses entirely dissent. Now that it is reduced to a fine or, at the most, to imprisonment, it does but excite the adversaries it professes to subdue. When, as formerly, men were ready to cut an enemy's throat, to assassinate him unawares at the risk of being hanged or shot, a desperate resistance might weaken or intimidate an invader. But now when humane feelings hold such sway that the enemy's wounded are as carefully tended as their own, as was seen in 1870, it is quite clear that the unorganised

resistance of populations must not be even looked for. It is not my place to discuss the details of a military reorganisation. I will only remark two points which appear to me essential: first, to organise seriously volunteer and militia corps; secondly, to abridge the term of service so that a greater number could enter, and thus to create an extensive militia reserve, accustomed to the use of arms.

It would be well to cultivate military aptitude among all classes, in the first place by introducing exercises and gymnastics in all schools, and secondly by engaging communal authorities to form societies for shooting in the place of archery and skittles. In certain cantons of Switzerland, every man of age to serve in the army is bound to belong to a society for rifle shooting, and a fixed number of shots during the period the society holds its meetings is obligatory for each member. Latterly, in the Bernese Oberland I constantly found placards to this effect reminding citizens of their duty in this particular.

I can understand that there should be a certain feeling of regret at all the inhabitants of a country being thus 'militarised.' But if independence and liberty are only to be obtained at this cost there is nothing to be done but to resign ourselves to it. The Swiss do not hesitate, and they are right. Besides, there are certain compensations to this sad necessity. The general population acquires habits of order and discipline, and at the same time the taste for gymnastic exercises, so excellent for the development of health and physical strength, is extended. It also does away with the iniquitous custom which allows those who have the means to pay the price of blood in money. When the ruling families of the land have their children in the army, they will be less willing to make war or allow it to be made. With an all-powerful Parliament, such as the representative principle exacts, and with deputies whose sons are in the army, war will not be so lightly declared as it has been hitherto.

There is a very important question that our Code has not taken into consideration, opinions being even now too much divided on this subject: it is touching the collective responsibility of localities where actions take place of which an enemy has occasion to complain. It will be recollected that in the Franco-German war the village of Fontenoy was set fire to because some irregular troops had destroyed a railway bridge situated on territory belonging to this commune. If a soldier be assassinated in a commune, is it right to seize on a certain number of the inhabitants and shoot them without having proved their guilt? The laws of France and Belgium recognise the collective responsibility of communes for actions that the police should have prevented; for instance, pillage. But for individual conduct, and in cases of overwhelming necessity, it is iniquitous that punishment should fall on innocent heads, more especially when that punishment is death.

Can hostages be taken as guarantees against an enemy's violence, or to oblige him to do something? The general opinion is that in certain proclamations and certain acts of repression the Germans in the war of 1870 passed the limits of what is equitable, even making all due allowance for the necessities of war. The matter is exceedingly delicate, and must appear the more so that it necessarily awakens very painful memories in both countries. However much rigour has been reproached to certain actions on the part of Germany, that country could justify them by examples of far greater severity practised in previous wars. It is useless to reproach past actions. Unfortunately, the annals even of recent wars would furnish far too many arms for such disputes. What we must search for, in order to avoid like cruelty in the future, is what equity combined with necessity can permit and authorise.

The question of reprisals was considered in the Russian project, observing as much as possible the dictates of humanity and also whether the laws of war had been violated by the enemy. The question as to hostages was also settled; but as it was desired to condemn absolutely reprisals, no decision was arrived at at the Brussels Conference, and the Institute of International Law judged it prudent also to abstain.

When it was suggested to open a fresh Conference at St. Petersburg to complete the work commenced at Brussels, England declared that she would not send a representative, and the newspapers applauded this resolution. The task of marking the limit of what is legitimate in warfare should be left to general opinion, they said; any too precise rules would have the effect of diminishing the means of defence of the weaker States. I think we have already shown that this opinion is without foundation. The opposition of the English press and public arose chiefly from the fact that the projects of reform in the usages of war had no publicity in England. Thus Mr. G. T. Bowles, in the *Herald of Peace*, February 1, 1875, p. 199, says: 'The members of the Conference have decided to keep their decisions secret. Why make mystery of a work of humanity? But for a conspiracy secrecy is indeed indispensable. It is on that account they shun publicity.' This was all untrue; there was no secrecy at all. The acts of the Conference were published.—Projects such as those contained in our Code meet in England with opposition from both parties. The partisans of ancient customs stand up for rigour as an absolute necessity, and men of peace dream only of the entire suppression of war, and do not attempt to render it less barbarous. This is to be regretted, because an important question of humanity is at stake. Statesmen, lawyers, and publishers who, by their resistance, contribute to the maintenance of the harsh and savage customs now practised during war, will bitterly regret their conduct when, in

future conflicts, they realise the terrible consequences of their narrow and short-sighted policy. The *Manual* of the Institute has been laid before the different Governments of Europe and America. It has been very favourably received, and will, we have no doubt, be looked into with all the attention it deserves. If, as is not at all impossible, the States, or the greater number of them, agree to accept it, we shall have witnessed a very remarkable event—the codification of an entire branch of International Law.

EMILE DE LAVELEYE.