THE DECLARATION OF LONDON.

BY PAUL S. REINSCH.

DURING the last winter a work was accomplished which will stand as one of the great landmarks in international progress. Quietly, without any appeal to public attention, the London Naval Conference held its meetings and elaborated its convention. Not heralded with popular acclaim, nor surrounded with brilliant festivities, the council of expert representatives of the great powers accomplished results which constitute indeed a new departure in international life. A code of international law relating to the rights and duties of belligerents with respect to neutral commerce was accepted—a body of world law to be interpreted and applied by a standing international tribunal. Thus a true international judicature is at last to come into being.

The most important achievement of the Second Hague Conference (1907) was the adoption of a plan for an international court of appeals in prize cases. Hitherto all such cases have been tried by the courts of the state whose forces had made the respective capture. As these courts were bound by the instructions of their government great differences in principles and interpretation of the prize law arose and were perpetuated. National traditions had grown up based upon considerations of policy and of national necessity. But these divergent interpretations as to what objects could be captured as contraband, how a blockade was to be rendered effective, and similar questions, have caused great difficulties during every war of modern history. Never have the neutrals agreed that the law as enforced by the belligerents was in all its parts truly recognized and accepted as international law. During and after a war there have been recriminations and claims for indemnification which have sometimes overclouded the friendly relations between different

Powers for decades before they could be satisfactorily settled. The institution of a court of appeals composed of judges representing all the Powers, a body of juristic experts in whose character and knowledge the world has confidence, would therefore remove one of the chief causes by which war is complicated and encumbered with incidental conflicts. The convention adopted by the Second Hague Conference provided for a standing court of fifteen judges. Certain contracting powers—Germany, the United States, Austria-Hungary, Great Britain, Italy, Japan and Russia—are always to have a representative. The other states are to participate in rotation. It is provided that in the decision of a judicial question "the court is to be guided by the treaties existing between the two parties involved. In the absence of treaty provisions the court shall apply the principles of international law, and if no generally recognized rule exists the court is to give judgment in accordance with the general principles of justice and equity." As the interpretation of the principles of international law by the different nations has been notoriously divergent and conflicting, it was thought advisable that a conference of the leading naval Powers should be summoned for the purpose of arriving at a harmonious and consistent formulation of the principles involved.

The Naval Conference was called by the British Government in 1908. Besides the inviting Government, there were represented the five great Continental powers of Europe—Germany, Austria-Hungary, France, Italy and Russia, as well as the United States and Japan. Spain was invited on account of her historic importance in the family of nations and her interest in maritime questions, and the Netherlands because the International Prize Court is to have its seat in that country. The composition of the London Conference, therefore, differed from that of the Hague Conference in that the nations there represented were those which actually have the determining power in the creation of international maritime law on account of their present naval strength. Among the personnel of the conference there were many noted authorities on maritime law. The principal delegate of Germany, M. Kriege, a member of the Hague Court, had taken a notable part in the Second Hague Conference. France was ably represented by M. Louis Renault, one of the leading spirits in both the Hague Conferences, a man whose learning

and personality have been of the greatest influence in the present international movement. The British delegates were Lord Desart and Admiral Ottley. The principal delegate of Russia was Baron Taube of the University of St. Petersburg. The other Powers were similarly well represented. The delegates of the United States were Rear-Admiral Charles H. Stockton and Professor George G. Wilson, who had both taken part in the excellent work in the codification of international law undertaken of late by the Naval War College of Newport. The conference was in session from December 2nd, 1908, to February 26th, 1909. During this period it elaborated a convention of seventy-one articles.

The programme submitted by the British Government included the following matters:

"A. Contraband;
"B. Blockade;
"C. The doctrine of continuous voyages;
"D. The destruction of neutral prizes before condemnation by a court;
"E. Rules concerning unneutral services or hostile assistance;
"F. The transformation of merchantmen into war-vessels on the high seas;
"G. The transfer of a vessel from the flag of one nation to that of another during war;
"H. The question whether nationality or domicile is to determine the character of enemy property."

This comprehensive programme, including the entire field of belligerent rights as far as the law of prize is concerned, was carefully worked over by the conference; and, although they did not succeed in arriving at an agreement upon all the points suggested in the programme, nevertheless upon the far larger part they determined generally acceptable principles. It was, indeed, not to be expected that every point could be settled at this time. On the contrary, the achievement of the conference has transcended all expectations.

The most distinctive achievement of the conference would seem to lie in the articles of the convention dealing with contraband. Not only has the vexed question of the classification of contraband found a satisfactory settlement, but many other incidental problems, such as the proper test in making conditional contraband subject to confiscation, and the application of the doctrine of continuous voyage to contraband, have been settled in a manner so simple, lucid and just that the acceptance of the prin-

ciples announced will certainly commend itself to the authoritative opinion of the world. Criticism of details will, indeed, be necessary as these conventions are applied in the course of time, but this cannot detract from the achievement of having laid down such clear and rational rules of adjudication. Material objects are divided into four classes in the Declaration of London—those which are absolutely contraband in time of war, those which are conditionally contraband, and those which shall under no circumstances become contraband. A fourth class—objects not embraced in any of the preceding—may be made contraband by special declaration of a belligerent Power. Articles absolutely contraband are those which are solely or principally utilizable in warfare, but to these there are added the following: draft animals, pack animals and saddle-horses, provided they are useful for military operations. Thus a matter about which there has been much controversy is settled by declaring for the absolute contraband quality of army horses and similar animals.

The principal objects contained in the list of conditional contraband are the following; provisions, articles of clothing proper for military use, gold and silver, vehicles and ships, materials for railways and telegraphs, flying-machines, fuel—in short, objects which are susceptible to military uses. Other objects that may be used for this purpose—*e. g.*, timber—may be added to the list of contraband by special declaration of the belligerent. Things which cannot be declared contraband comprise the raw materials of industry, such as cotton, wool, silk, minerals and crude drugs, as well as paper, soap, agricultural and industrial machinery, objects of furniture, etc.

Articles absolutely contraband may be seized if they are being transported to the territory of the enemy. They are not protected from seizure by the fact that before arrival at their final destination they are to be transshipped or carried overland. The principle of continuous voyage by which the entire traject of the contraband article is taken as one continuous route has thus been adopted with respect to articles absolutely contraband. Articles of conditional contraband may be seized if it is established that they are to be delivered to the armed forces or administration of the enemy state—*i. e.*, if they are being sent directly to the enemy authorities, or to a merchant who acts as furnishing agent, or to a place serving as a base of hostilities. Such articles, con-

ditionally contraband, can be seized only if on a ship which is at the time engaged in a voyage to enemy territory. The doctrine of continuous voyage does not apply in this case, with the exception, however, that if the enemy territory does not have a maritime frontier articles of conditional contraband may be seized on the sea, though they are to be transported over neutral territory to the enemy country. The vessel carrying contraband is confiscable if the forbidden articles transported amount to one-half of the cargo, either on account of their value, or their weight, or the volume, or the freight charge paid upon them. The system thus elaborated contains a number of original elements, such as the last provision cited and the distinction between conditional and absolute contraband with respect to the doctrine of continuous voyage. However, in the main the work of the conference has been rather to strike a just mean between conflicting national policies of prize law and to arrive at a simple and just basis upon which the intercourse of nations can be founded in time of war. Considered as a system, the arrangement provided by the conference is admirably lucid and logical, each part bearing a carefully considered relation to the whole.

With respect to the law of blockade, the principle of the Declaration of Paris (1856) is reiterated and emphasized—that a blockade must be maintained by a naval force sufficiently large to make it effective. It is further provided that a blockade will not be considered effective unless due notice is given of the exact date of its commencement and of the geographical limits of the blockaded area. The most far-reaching provision is that the seizure of neutral vessels for violation of a blockade can only be effected in the radius of action of the war-vessels charged with making the blockade effective, nor can a vessel be taken after its pursuit has been given up by the ships of the blockading squadron. This provision strictly identifies the area within which seizures may be made for blockade-running with the area within which an effective blockade is being maintained. In considering the validity of a seizure for blockade-running, the court will therefore determine in the first place whether the ship was seized by a vessel of the blockading squadron and, secondly, whether the vessels of this squadron were so stationed and were present in such strength as to make the blockade effective. It will be seen that should the declaration be adopted by the Powers, it will

henceforth not be possible to seize a vessel at a distance from the blockading squadron on account of its alleged purpose of breaking through a blockade. The seizure must, on the contrary, be a direct and integral part of the blockading operations. The question of notice of the blockade is so regulated that the neutrals will be assured of definite notification, so that hereafter no doubts may be entertained as to the validity of the seizure on account of a question of sufficient notice.

Many other matters of importance were settled by the conference. It was determined that a neutral ship carrying troops or despatches for the enemy may be confiscated. While the right of destroying prizes on account of military necessity was admitted, the exercise of the right was guarded in such a manner as to protect neutrals against losses due to arbitrary action. The captor in such cases must prove the presence of an exceptional necessity for the destruction of the prize, otherwise he will be liable for damages; if merchandise not subject to confiscation has been destroyed with the ship, or if the ship itself is not liable to seizure, the proprietors are to be indemnified. When neutral merchantmen are convoyed by a neutral war-vessel the word of the commandant of the latter as to the character of the merchantmen and their cargoes is to be accepted, and the vessels convoyed are to be exempt from visit and search. Should it be believed that the commander of the convoying vessel has been mistaken or deceived, his attention may be called to the suspicious facts. He is then himself to make an examination of the suspected vessel. His finding in this matter is, however, to be accepted by the belligerent, who is thus restrained from direct interference with convoyed merchantmen.

Upon two points of the programme no agreement was arrived at. The important question as to whether the nationality or the actual domicile of the proprietor of merchandise is to be the determining factor with respect to the enemy character of the latter could not be brought to a satisfactory conclusion, as none of the solutions suggested commended itself to the delegates of all the Powers. The attempt to determine such questions primarily on the basis of the nationality of the proprietor, and only in cases where that test should fail by his domicile, did also not receive unanimous support. Similarly the question of the legality of the transformation upon the high seas of a merchantman into

a war-vessel could not be settled. The same views which had already been expressed at the Hague Conference of 1907 were again propounded and a union of opinion was not feasible.

With the results of the conference before us, it is possible to appreciate the great advance in international relations which their full acceptance will assure. Through making the rights of neutrals definite, the cause of many conflicts disappears. The belligerent still retains the power to protect himself fully against efforts to supply his opponent with war materials, but he can no longer proceed in an arbitrary manner. His action must be taken in accordance with certain definite rules and he must give due notice of his intentions. He is no longer permitted to give his rights an arbitrary and irrational extension. The science of international law is thus provided with a definite basis upon which there may be constructed a system of rules and precedents which will normalize commercial intercourse in times of war, which will make neutral merchants aware of their risks and duties, and will present the restrictions upon their trade not in the light of the national policy of a powerful belligerent, but, as a rule, supported by the public opinion of the world. The spirit of compromise shown at the conference was most commendable. Fortunately, the traditional policy of the United States is so much in accord with the principles laid down by the conference that it was not necessary for our Government to make many concessions. It enjoys the satisfaction of seeing its strong backing of these well-considered principles of its international jurisprudence crowned with the success which their inherent reasonableness entitles them to. The attitude of the British Government in this matter has been highly interesting. It was to be feared that the conflict between the interests of British maritime power and of Continental European militarism would stand in the way of fruitful results in the deliberations of the conference. But the British Government had realized that the time has passed when the policy of Great Britain is to be determined entirely from the point of view of belligerency. During the Russo-Japanese war the British Government learned by experience as a neutral the value of a more definite understanding concerning the principles of prize law. In his instructions to the British delegates, Sir Edward Grey therefore goes so far as to say that "His Majesty's Government are now desirous of limiting as far as pos-

sible the right to seize for contraband, if not eliminating it altogether," and he pledges the support of his Government "to any proposal tending in the direction of freeing neutral Powers from undue interference by belligerents." He states, "The maintenance of these belligerent rights in their integrity, and the widest possible freedom for neutrals in the unhindered navigation of the seas, are the principles which should remain before your eyes as the double object to be pursued." The two principles here laid down by him are, indeed, apparently contradictory in their nature. Yet the conference solved this contradiction by making definite the rights of belligerents and thereby protecting neutrals against arbitrary interference and unreasonable regulation.

While the Declaration of London has generally commended itself to publicists and international-law experts, yet it has been bitterly attacked from the point of view of Great Britain. Thus a writer in the "Nineteenth Century" (Mr. Th. G. Bowles) is so carried away by indignation that he asserts that Great Britain has yielded upon all vital points. He looks back with regret to the British statesmen "who knew what war is." But the British Government is wiser than such criticism. Both the character of war and the relative position of the British Government have changed since the Napoleonic wars, and even since 1856. If we were to have an arbiter of the seas we should, indeed, just as gladly see Great Britain in that position as any other Power; but the times have passed when any one nation can exercise an absolutely controlling authority upon the sea. The arrogant policy of the British statesmen "who knew what war is" could not be continued to-day without arraying against Great Britain the public opinion of the world and eventually the public force of other great naval Powers that have grown up within the last two decades. The unreasonable character of such criticism is apparent when we remember that no real power of belligerency has been given up, but that the rules adopted are directed almost entirely against arbitrariness. It is, indeed, not a thing to be regretted that, under the present conditions of the world, no power will be permitted to pursue an utterly arbitrary policy in matters of international law. The recognition of this fact by the British Government is far more statesmanlike than would have been a policy of obstructing the growth of a definite law upon these important matters.

The reception of the declaration has, in general, been so favorable that its ratification and adoption by the great Powers may be looked forward to with confidence. Constitutional lawyers of the United States have been confronted with the problem as to whether the Constitution would permit the creation by treaty of a court to which appeals would lie from our Supreme Court. It was feared that such an arrangement might be declared unconstitutional by that tribunal. In order to obviate such doubts and difficulties, which might oppose themselves to the ratification of the London Convention, there was passed a special resolution setting forth that as certain states experience difficulties in harmonizing the acceptance of the London Declaration with their system of constitutional law, it is to be left open to such states to regard the right of invoking the International Prize Court as a direct action for indemnity, rather than an appeal from the national tribunals. In the experience of the past there have, indeed, frequently been negotiations for indemnity for seizures which had been pronounced legal by the prize court of the belligerent, as notably in the Civil War claims cases. The institution of the International Court of Prizes may be looked upon as making the procedure in such cases regular. The procedure in the International Prize Court may be regarded either as an appeal from the Prize Courts of the belligerent, or as a direct action for indemnity for losses inflicted with the sanction of the national Prize Courts. The latter interpretation would obviate all constitutional difficulties. Our Government may give its accord to a regular form of determining international indemnities without thereby infringing the constitutional rights of the Supreme Court. As this difficulty in the way of the acceptance of the Declaration by our Government has thus disappeared, it is to be hoped that the Declaration of London may receive the ratification of the American Executive and Senate. In it are embodied many of the results of American diplomatic experience and of the best reasoning in our State Papers. The part which our State Department has taken in bringing about the creation of an International Prize Court and the formation of this admirable code of prize law should be crowned by a speedy adoption of both conventions by the American Government.

PAUL S. REINSCH.

THE SOCIAL HEGEMONY OF ENGLAND.

BY SIDNEY WHITMAN.

I.

THE story of the influence which the social customs of dominant nationalities have exercised, from time to time, over the imagination of their contemporaries forms an interesting chapter in the history of civilization, and is indeed a valuable contribution to the study of the evolution of national character. This is certainly so in the most pregnant instances of fashion dominance in ancient and modern times—those of Greece and Rome, Italy, Spain and France. For, strange to say, the political systems which loom largest beside our own on the map of the world—Germany, Russia and the United States—have never exercised this peculiar fascination over other nations.

The political preponderance of France, and with it the exuberance of French national conceit, were so marked under Louis XIV that the Major-Domo of a distinguished German soldier of fortune serving in France, Marshal Duke von Schomberg, having committed some act of folly, could venture to address his master to his face: "*Parbleu! on me prendra pour un Allemand,*" implying thereby something coarse and stupid. "*On a tort,*" dryly replied the Marshal. "*On devrait vous prendre pour un sot.*"

The French nation enjoyed a good long innings in the European playground of human Vanity; for French fashions and fancies—taking the terms in their widest application—ruled more or less on the Continent of Europe down to within the memory of men now scarcely past middle age, who remember in their youth how the shape of our nether garments still came to us from Paris in the well-known "peg-top" trouser. But within the present generation England may be said to have usurped and finally taken over the part of Mentor of Fashion,