

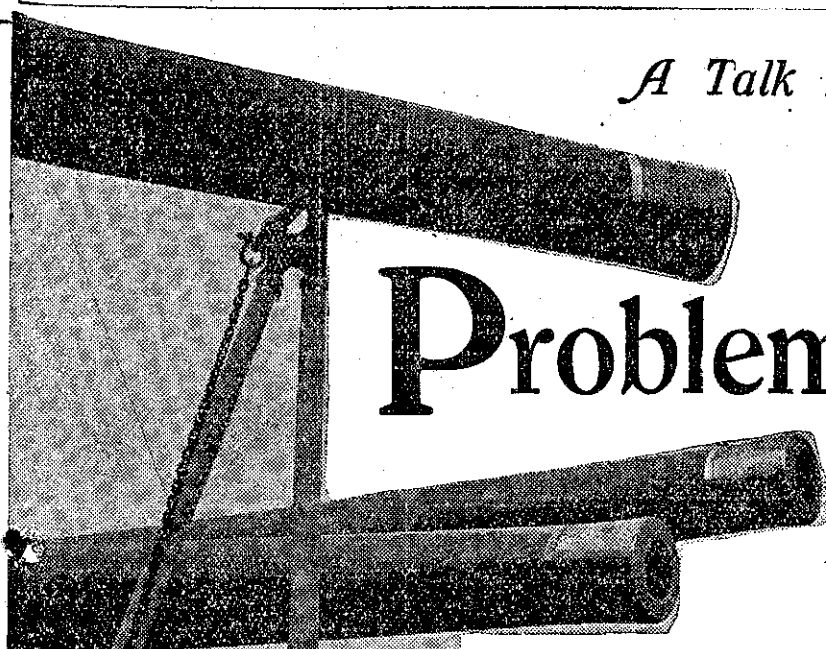
*A Talk by . . . .*

A. C. Brassington, LL.B.

on

# Problems of Law and War

broadcast recently from 3YA



**W**E mean by law, not the law with which we are all familiar through the law courts, but the law of nations, or international law, that is to say the rules acknowledged by the general body of civilised independent states to be binding upon them in their mutual relations. Although the subject of law in any shape or form is repellant to most people, the questions of international law are of paramount importance. In order to make myself clear upon these problems, it is necessary to outline the nature of warfare prior to the Great War of 1914-18, and then to deal with the present day.

One of the worst wars that Europe has ever experienced was the Thirty Years War,

which occurred in the Middle Ages, and was characterised by barbarities and horrors that to us seem indescribable. This thirty years' war involved the wholesale slaughter of men, women and children, and practically no distinction was made between the armed forces and the peaceful citizens of the countries concerned.

During the course of many years, the countries of Europe became conscience stricken at the terrible excesses which had been committed, and definite attempts were made by the intellectual leaders of the time to improve the conduct of hostilities and to enforce the distinction between soldiers and the peaceful civilian population. Military organisation and discipline improved and military commanders gradually accepted the distinction between the armed forces of the enemy state and civilians. The early international lawyers played a great part in this improvement, and the doctrine gained currency that war is really a relation between rulers and governments, and not necessarily between their respective subjects in their private capacity. This humane doctrine was applied fairly extensively in the wars of last century. In particular, in the Franco-Prussian war of 1870, the Russo-Japanese war of 1904, and in the Boer War, the civil or non-combatant populations were promised security, provided they did not take part in the actual fighting.

The great peace conferences held at the Hague in 1899 and 1907, at which all the chief powers of the world were represented, formulated rules of international law, in an attempt to restrict hostilities as far as possible to the armed forces on either side. Among many matters dealt with, the rules forbade the following acts, the use of poison or poisoned weapons, the use of arms or explosives likely to cause unnecessary

suffering, and any destruction of enemy property not imperatively called for by military necessities.

The use of poison gas was discussed at length, and the conference of 1899 agreed to renounce the use of poison gas in warfare. Furthermore, it was agreed to prohibit the bombardment, by whatever means, of undefended towns. The effect of these two great peace conferences was to emphasise the distinction between combatants and non-combatants, and the endeavour was made to restrict the field of military operations in order to avoid the injury or destruction of peaceful civilians, women and children.

**I**N Germany, however, long before the Great War, the doctrine was fairly widely held among their military commanders that military necessity might justify the breach of these rules of war, and that all the resources of the enemy's government should be attacked, its finances, railways and stores. Though they admitted the binding force of the rules of international law, they maintained that no limits of violence need be observed in cases where the safety of the army was endangered, or when the observance of the rules might lead to defeat.

As we know the rules of warfare were brushed aside in 1914-18, and the distinction between armed forces and the civilian population began to disappear. By the end of the war, the civil populations were the subject of aerial attack and large numbers were dying of starvation. The distinction between combatant and non-combatant was being broken down.

After the war, and the creation of the League of Nations, it was popularly supposed that warfare would be at least controlled by rules of international law, even if it could not be prevented. The nature of the changes that had taken place in the methods of modern warfare were only dimly appreciated by the public, and it was no doubt believed that the old distinction between combatants and non-combatants would be revived (*Concluded on page 2.*)

*A stirring incident in the Great War. A "U" boat rammed by a destroyer.*

