and this even although it is notorious that the neutral port to which the shipments are being made is used as a base of naval operations by a belligerent. In such a case, the unneutral act is done within the jurisdiction of the other neutral state, which it and not the Government of the United States is bound to prevent. Furthermore, the circular states that a neutral government is not bound to limit shipments of supplies made directly to a naval base established in territory under the control of a belligerent or to detain vessels engaged in such trade.

The circular concludes that the foregoing propositions do not apply to the furnishing of munitions of war included in absolute contraband, which in no event may be supplied to belligerent warships, either directly in neutral waters or indirectly by means of tenders or merchant vessels.

SOME TECHNICAL POINTS REGARDING THE HAGUE CONVENTIONS

In more than one of the discussions which have recently appeared upon the obligations of the belligerent Powers under the Hague conventions some confusion seems to exist as to the *modus operandi* which the Conferences have prescribed in order to make the conventions adopted by them binding upon the governments. A reason for this confusion no doubt lies in the common unfamiliarity with matters relating to the Hague Conferences, due to a general lack of interest in them in ordinary times, and probably also to an insufficiency in dealing with this subject of the available treatises on the Hague Conferences. A less excusable reason, however, is obviously evident, namely, the failure carefully to read and note the final articles contained in all of the conventions, which set out in detail the steps necessary to be taken by the governments before the conventions become legally in effect.

The principal error arises from the failure to note the distinction between the signature of a treaty and its ratification. Such a misunderstanding on the part of Americans seems somewhat surprising, in view of the emphasis laid upon this distinction in the constitutional practice of the United States, which requires that treaties may not be ratified except by and with the advice and consent of the Senate. The requirement of the ratification of treaties is not peculiar to the practice of the United States, however, although the branch of the government which is vested with the ratifying power may be different according to the form of the government. "Ratification is now a universally recognized customary rule of international law," says Oppenheim, "even if it is

not expressly stipulated." The reasons for the custom are given by the same writer as follows:

> The reason is that states want to have an opportunity of re-examining not the single stipulations, but the whole effect of the treaty upon their interests. These interests may be of various kinds. They may undergo a change immediately after the signing of the treaty by the representatives. They may appear to public opinion in a different light from that in which they appear to the governments, so that the latter want to reconsider the matter. Another reason is that treaties on many important matters are, according to the constitutional law of most states, not valid without some kind of consent of parliaments. Governments must therefore have an opportunity of withdrawing from a treaty in case parliaments refuse their recognition. These two reasons have made, and still make, the institution of ratification a necessity for international law.[1]

In conformity with the regular practice in the negotiation of treaties, the Hague conventions are signed by the plenipotentiaries *ad referendum*, with an express stipulation that they shall be ratified and the ratifications deposited at The Hague. In the absence of ratification, a Hague convention is of no more effect than a treaty negotiated by an American diplomatic officer which has not been duly ratified by his government. While the signature of the plenipotentiary in both cases is appended under instructions of the foreign office, the approval of the ratifying branch of the government is necessary legally to obligate the government. To withhold ratification no doubt embarrasses the foreign office, but it nevertheless prevents the convention from taking effect, so far as the withholding government is concerned.

Furthermore, the time when the convention goes into force is commonly regulated by the date of ratification. As an example of this provision in the Hague conventions, Article 7 of the Convention of 1907 respecting the laws and customs of war on land, is quoted:

> The present convention shall come into force, in the case of the Powers which were a party to the first deposit of ratifications sixty days after the date of the procès-verbal of this deposit, and, in case of the Powers which ratify subsequently or which adhere, sixty days after the notification of their ratification or of their adhesion has been received by the Netherland Government.

Some explanation of the terms used in this article will be appreciated possibly by those who are not familiar with the procedure of the Hague Conferences. The French compound word "*procès-verbal*" is a technical

[1] Oppenheim, International Law, 2d ed., Vol. 1, Sec. 511.

term applied to a written minute, and in the above article means the written minute of the act of deposit. The "first deposit of ratifications" is also referred to in Article 5 as follows: "The first deposit of ratifications shall be recorded in a procès-verbal signed by the representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs." The term is applied to the collective deposit of ratifications made by the Powers which have signified their intention of ratifying the convention within what might be called a reasonable time after it has been signed. This information is obtained through the diplomatic channel by the Netherland Government. The procedure seems to be merely a device for ascertaining before any ratifications are deposited if a sufficient number of Powers will ratify to make it worth while to attempt to put the convention into effect.

The ratifications subsequent to the first deposit are also referred to in Article 5 as follows: "The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Netherland Government and accompanied by the instrument of ratification." This needs no extended explanation. It merely refers to individual deposits of ratifications made subsequent to the collective deposit.

By the phrase "Powers which adhere to the convention" is meant those Powers which, not having signed the convention originally, later express the desire to become parties to it. Their intention to take this action is probably not communicated until after the approval of the ratifying branch of their governments has been obtained, so that adhesion has the effect of both signature and ratification.

Another point which is deserving of more consideration than has sometimes been given to it is the interpretation of the clause found in some of the conventions, that their provisions shall not apply except between contracting Powers, and then only if all the belligerents are parties. The provision on its face seems simple enough, but it should be borne in mind that the conventions of 1907 respecting the laws and customs of war on land and for the adaptation to naval war of the principles of the Geneva Convention, Articles 2 and 18 of which respectively contain this provision, are revisions of similar conventions adopted in 1899. Both conventions contain additional articles stating that the 1907 conventions, when duly ratified, shall replace, as between the contracting Powers, the conventions of 1899, but that the latter conventions remain in force as between the Powers which ratify them but which do not ratify the former. It seems to have been the intention of the Conference

of 1907 to limit the substitution of its conventions for the 1899 conventions to those Powers which accept the 1907 conventions, and to leave the 1899 conventions in force for those Powers which do not feel justified in ratifying the revision of 1907. There would therefore seem to be no doubt as to the applicability of the conventions in a war in which all the belligerents are parties to the 1907 conventions, or in which none are parties to the 1907 conventions but all are parties to the 1899 conventions; but, query, which, if either, of the conventions apply in a war where some of the belligerents are parties to the 1907 conventions and some to the 1899 conventions? An international court to which this question may be referred does not exist, and it will be necessary to await the practical construction put upon the above provisions before it is decided. The reporter of the convention of 1907 for the adaptation to naval war of the principles of the Geneva Convention, Mr. Louis Renault, the eminent and authoritative jurisconsult of the French Ministry for Foreign Affairs, seems to entertain no doubt on this point, in case the parties to the conventions of 1907 were originally parties to the conventions of 1899, for, in commenting in his report to the Conference upon these provisions in that convention, he says: "Where two Powers are parties to the convention of 1899 and only one of them a party to the new convention, the convention of 1899 will necessarily continue to govern their relations." [1]

A number of tables, for use in considering the applicability of these conventions, have been issued from time to time from different sources, giving information as to signatures, ratifications and adhesions. The use of these tables appears to have given rise to another source of confusion. While they were no doubt correct at the time of their publication, attention is called to the fact that no time limit is set in the conventions for their ratification, it being stipulated merely that they shall be ratified "as soon as possible." It is possible, and no doubt probable, that subsequent to the appearance of these tables additional ratifications or adhesions have taken place. For example, a table giving ratifications up to the year 1912 could not include ratifications deposited in the years 1913 and 1914. The Netherland Government is made the official depository of the instruments of ratification and adhesion and certified copies of them are sent through diplomatic channels to the governments which took part in the Conferences. For complete and exact information at any given date concerning all of the conventions, absolute reliance

[1] Deuxième conférence internationale de la paix, Actes et documents, Vol. I, p. 77.

may not be placed upon any printed table issued prior to that date, but the Department of State should be consulted.

A word should also be said as to the reservations to the conventions. A Power may make a reservation either when signing a convention or at the time of ratifying it. A reservation may be made to an article or to several articles, in which case the nation making the reservation gives notice that it does not accept these articles and they are thereupon not binding upon it. A reservation may also be made not to the article itself, but to the meaning to be placed upon the article. If such a reservation is made at the time of ratification, its text is usually embodied in the instrument of ratification. If, however, the reservation is made only at the time of signature the meaning which the reserving nation accepts is stated in the Conference and may be obtained only by reading the minutes of the session in which the reservation was made. These minutes have never been printed in English and, so far as known, have appeared only in the official report in French published by the Dutch Government. It is understood that the Division of International Law of the Carnegie Endowment for International Peace has had the portions of these minutes containing the reservations translated and will issue them in English in pamphlet form within a short time.

THE TRANSFER OF WAR VESSELS FROM BELLIGERENTS TO NEUTRALS

At the outbreak of the present war the warships *Goeben* and *Breslau* formed an integral part of the German navy. As such they engaged in battle and to avoid capture they appear to have taken refuge in Turkish waters, where early in August, they were reported to have been sold to the Turkish Government. Their officers and crews appear to have been retained, although the names of the vessels were changed to *Sultan Yawuz Selim* and *Midellu*, and they are reported to have taken part in an attack on Odessa, a Russian port, although Russia and Turkey were at the time at peace. In view of the sale of these vessels to a neutral, it seems advisable briefly to consider the validity of the transfer from the standpoint of law.

On August 1st war was declared between Germany and Russia. On the 3rd of August Germany and France were officially at war, as were Great Britain and Germany on the 4th. At the date of the transfer of the *Goeben* and the *Breslau* to a neutral Power—for Turkey was then neutral in law if not in fact—the vessels were exposed to capture by