

THE HAGUE CONFERENCES ¹

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Three propositions of the peace movement that stand out clearly in the middle of the nineteenth century were in part realized in practical form at its close. These were a Congress and Court of Nations and a Code of International Law. They came with the First Peace Conference at The Hague.²

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² The standard work on the First Conference is Frederick W. Holls', "The Peace Conference at The Hague, 1899." New York, 1900. See also, "Autobiography of Andrew D. White," New York, 1907, Vol. II, pp. 250-354, for a picturesque and impressive account of the First Conference. A condensed account of the work of this Conference is given by Mr. Holls in Mohonk Arbitration Report, 1900. A review of the first and a forecast of the Second Conference, by Dr. White, will be found in the same for 1907. Both are important contributions. See also Prof. J. B. Moore's "Digest of International Law," Vol. VII.

The different topics taken up by the Conferences may be found in well classified order in Dr. William I. Hull's, "The Two Hague Conferences." Professor James Brown Scott has treated the work of the Conferences briefly, but for many people sufficiently, in International Conciliation Document, No. 5. His two volume work on "The Hague Peace Conferences of 1899 and 1907" deals with the subject exhaustively. The introduction to his "Texts of the Peace Conferences at The Hague, 1899 and 1907," also goes over the same ground. A. Pearce Higgins, a British authority, has written a highly commended commentary, "The Hague Peace Conferences." Document No. 4, International Conciliation, contains valuable articles by Dr. David Jayne Hill and Baron d'Estournelles de Constant. *The American Journal of International Law* has published a number of articles of a high order on both Conferences. See Dr. Hill's article, Vol. I, p. 671. The supplement to the *Journal*, Vol. I, p. 103, contains the documents of the First Hague Conference and that to Vol. II, p. 1, the documents of the Second Conference. See also Hayne Davis', "The Second Peace Conference at The Hague," a small but inspiring book written in a popular style. The *New York Independent*, the *Outlook*, the great *British Reviews*, and the *London Times* should be consulted for articles. Editorials in the *Advocate of Peace* frequently relate to the subject. See Dr. B. F. Trueblood's, "The Two Hague Conferences and Their Results," pamph., 1910. Dr. Trueblood's, "Federation of the World" contains a helpful interpretation of the Conferences. Thomas J. Lawrence's, "International Problems and Hague Conferences," Sir Thomas Barclay's "Problems of International Practice and Diplomacy," Alfred H. Fried's "*Die zweite Haager Konferenz*" are all

The immediate occasion for calling the Conference is variously explained. "The Future of War," by Jean de Bloch,³ a Russian Financial Councillor, is said to have impressed profoundly Czar Nicholas II, its initiator, by bringing to his attention the enormous cost of "armed peace" and with the use of modern weapons, the terrible destructiveness of war, should it again occur. The Czar likewise is said to have been prompted to call the Conference by reading the report of Privy Councillor Basily, a special commissioner, whom he had sent to the meeting of the Interparliamentary Union at Budapest in 1896. We must remember also the Holy Alliance, organized by Alexander I, whose traditions of peace had been handed down, and consider the influence of the Czar's own father, who, upon his deathbed, laid upon his son the duty of promoting the peace of the world. But the agitation of peace societies and the work of associations for the improvement of International Law had produced an effect upon the international consciousness and therefore may have reacted upon the mind of the Czar.

Whatever influenced the Czar, the Ambassadors and Ministers at his Court were presented, August 28, 1898, while at his weekly

helpful. W. T. Stead's, "*Le Parlement de l'Humanite*," 1907, is good for biographical sketches of the leaders. His "*Courier de la Conference*," a daily paper published during the Conference and a medium of communication between its members, is full of information. The official account of the proceedings published at The Hague in French, but not usually found even in large American libraries, is, of course, the documentary source to which an advanced student of the subject should go. "*Conference Internationale de la Paix*," La Haye, 1899; and "*Deuxieme Conference Internationale de la Paix*," La Haye, 1907. Almost all standard works on International Law, published since 1907, like those of Westlake, Lawrence, Davis, Wilson and Tucker, and George G. Wilson in the Hornbook series, contain the results of the Conferences and some of them have in their appendixes the principal conventions. A convenient documentary handbook is Scott's "Texts of the Peace Conferences at The Hague, 1899 and 1907." This, for convenience, may be cited here as "Scott's Texts," while his work entitled, "The Hague Peace Conferences of 1899 and 1907," may be referred to as "Scott's Conferences." In referring to Hull's, "The Two Hague Conferences," and Holls', "The Peace Conference at The Hague, 1899," the last names of the authors will be given.

Specific references will be given to discussions only in a few cases in this article, as it is intended to be merely an introduction to the conventions adopted at The Hague Conferences; but such references will be given in other articles which are themselves in the nature of discussions of special topics.

³ Published by the World Peace Foundation, Boston.

reception, with a lithographed invitation that was prepared at the Czar's dictation by Count Mouravieff, the Russian Foreign Ministers. This is known as the Czar's Rescript⁴ of August 24

The Rescript held up the maintenance of peace and the possibility of reducing the expense of armaments as supreme ideals to which the governments, in response to the longing of the popular conscience for twenty years past, ought to direct their energies. Armaments were recognized as primarily the cause of the diversion of much labor and capital from productive to unproductive uses and of the creation of a crushing and growing financial burden upon the people, seriously injuring the public prosperity and checking the development of culture, progress and wealth, besides subjecting the nations to the danger of war from the mere massing of war materials ready for use.

To meet this situation the Czar proposed a Conference at which the problem of peace and disarmament should be discussed by the governments. He believed that such a Conference would establish "the principles of justice and right, upon which repose the security of states and the welfare of peoples." The Rescript at once became a theme of discussion throughout the world. It was received with scepticism in some quarters and the Czar was accused of trying to induce the world to disarm that he might take advantage of its helplessness; but, on the whole, people thought him sincere. The fact that the document emanated from what was supposed to be the most military government in Europe made the document at once the more remarkable and persuasive.

The Rescript, however, had first to be explained and then modified to suit current opinion. As re-issued a little later⁵ (Jan. 11, 1899—Dec. 30, 1898, old style), after consultation with the powers, the invitation suggested a discussion of the subject of the limitation of armaments, the regulation of war, with restrictions upon certain kinds of explosives and engines of destruction, the application of the Geneva Convention of 1864 to naval war, and the employment of arbitration and mediation in the event of threatened war. The Conference opened on the Czar's birthday, May 18, 1899, in the "House in the Woods," the summer palace of the Dutch royal family. The Hague was chosen for its meeting place, as the Czar desired to avoid entangling

⁴ Holls, p. 8; Scott's Texts, p. 1; Scott's Conferences, Vol. II, p. 1. (August 12, old style), 1898.

⁵ Holls, p. 24; Scott's Conferences, Vol. II, p. 3; Scott's Texts, p. 3.

political questions that often press upon a great capital. Queen Wilhelmina and the Netherlands Government officials welcomed the Conference with cordial hospitality. The services of the young Queen and of the Czar were both appropriately recognized by the Conference in messages at its beginning and in formal documents drawn up by it at its end.

When the Conference assembled all of the hundred delegates who were appointed to it were in attendance. The delegates⁶ were diplomatists, professors of law, military and naval experts, men chosen for their fitness from the best equipped classes of the nations. Many of these, as Andrew D. White has told us in his *Autobiography*, approached their duty in a spirit of unbelief,⁷ but were destined to see their efforts attain surprising success. Russia naturally had a leading part in the Conference because her Emperor had summoned it. Baron de Staal, a veteran and tried diplomatist, then Russian Ambassador to Great Britain, was elected president. The Conference was called to order by Foreign Minister de Beaufort, of the Netherlands.

The work of the Conference was divided among committees upon which were experts in the subjects discussed. The question of armaments could not be made the subject of legislation for, though pressing the nations, it was hardly ripe, owing to lack of information and formulas, for an equitable reduction. After discussion, a resolution was passed urging upon the nations the study of the proposals made at the Conference and the examination of the possibility of an international agreement for the limitation of armaments.⁸

The regulation of war, however, was comparatively easy and a convention on this subject,⁹ based partly upon the work of the Brussels Conference of 1874, but primarily upon the code used by the federal armies of the American Civil War, was adopted. This was made to include the Geneva or Red Cross Convention of 1864 for the care of the wounded. It also made humane pro-

⁶ For the names of the delegates to the First Conference see Holls, p. 38; *Scott's Conferences*, Vol. II, p. 63; *Scott's Texts*, p. 6; for the delegates to the Second Conference, see *Scott's Texts*, p. 112; *Scott's Conferences*, Vol. II, p. 257; or any copy of the Final Act, with which they are connected.

⁷ *Autobiography of Andrew D. White*, Vol. II, p. 256.

⁸ Holls, p. 66; *Scott's Texts*, p. 20; *Scott's Conferences*, Vol. II, p. 79. The question of the limitation of armaments will be dealt with in a separate article towards the end of this series.

⁹ *Scott's Texts*, p. 45; *Scott's Conferences*, Vol. II, p. 111.

visions for the care of prisoners of war. A special convention adapted the Red Cross rules to sea warfare.¹⁰

The Conference also passed a declaration prohibiting for five years the throwing of projectiles from balloons,¹¹ the use of projectiles having as their sole object the diffusion of asphyxiating or deleterious gases,¹² and the use of bullets that expand or flatten easily in the human body.¹³

The most important act of the Conference related to the prevention of war, the adoption in 61 articles of a convention for the Pacific Settlement of International Disputes.¹⁴

This is sometimes called the Magna Charta of the coming World State.¹⁵ It contains a declaratory preamble recognizing the "solidarity uniting the members of the society of civilized nations," and expressing the desire of the signatory powers to extend the "empire of law" and strengthen "the appreciation of international justice." The belief is expressed that "the permanent institution of a Tribunal of Arbitration accessible to all in the midst of independent powers, will contribute effectively to this result." By the first article of the convention, "the contracting powers agree to use their best efforts to insure the pacific settlement of international differences."

This convention falls into three divisions. The first of these enacts a system of friendly offices and mediation. Before using force, nations may turn to their friends to ask for help in coming to a possible settlement. If, however, the contending nations fail to ask for help, the other powers are expected to aid them in coming to an understanding. An offer of mediation—this is an original contribution made to International Law by the First Hague Conference—is not to be regarded as an unfriendly act; but the means of reconciliation proposed by a nation need not necessarily be accepted by the contestants, and when not accepted the mediator's functions come to an end. A system of seconding powers, elaborated by Mr. Holls from an old model, provides for the appointment of two friendly powers to have

¹⁰ Scott's Texts, p. 71; Scott's Conferences, Vol. II, p. 143.

¹¹ Scott's Texts, p. 79; Scott's Conferences, Vol. II, p. 153.

¹² Scott's Texts, p. 81; Scott's Conferences, Vol. II, p. 155.

¹³ Scott's Texts, p. 83; Scott's Conferences, Vol. II, p. 157.

¹⁴ Scott's Texts, p. 21; Scott's Conferences, Vol. II, p. 81.

¹⁵ For a discussion of this convention, with its three leading features—mediation, commissions of inquiry and court of arbitration, Holls, p. 173; Hull, p. 267; Scott's Conferences, Vol. I, p. 254.

charge of negotiations between two prospective belligerents for thirty days, during which time it may be possible to prevent war.¹⁶ Mediation also applies while war is in progress, as was to be illustrated a little later by President Roosevelt's tender of good offices in the Russo-Japanese War.

Another feature put into the convention was a provision for an international commission of inquiry to investigate facts in dispute between nations. This was not to act as an arbitral tribunal or fix responsibility in a question between nations, but simply to ascertain and report upon the truth of the facts presented.

The chief feature of the convention, however, was the establishment of a Permanent Court of Arbitration, the forerunner of the Court to which the dreamers of the early days had always looked forward. Three countries, the United States, Great Britain and Russia, presented plans for a Court, but that which formed the basis of the institution adopted was proposed by Lord Pauncefote, the first delegate from Great Britain.¹⁷ The substance of the plan as adopted is that each signatory power shall be entitled to an equal number of arbitrators, which at the suggestion of Germany was made four, the whole to be a panel from which litigating powers may choose a tribunal for each case as it comes up. The judges are not put on salary unless in actual service. An International Bureau at The Hague acts as a Chancellery of the Court. A council of administration and control, made up of Foreign Ministers, accredited to The Hague, is appointed with the Netherlands Minister of Foreign Affairs at its head. It was provided that the judges shall serve or hold themselves in readiness to serve for six years and that they may be reappointed. Considerable discussion arose later as to whether a case should have a second hearing by the same judges within a specified time, in event of errors or the discovery of new evidence; but, in deference to continental opinion as expressed by Dr. Frederic de Martens that an arbitral decision once pronounced should be final, else it would fail to command respect, an agreement was reached that revision would be permitted only if provided for in the *compromis*, that is, the preliminary agreement defining the terms of a proposed arbitration.

The procedure adopted for the Court makes it permissible for a sovereign or chief of state to act as an arbitrator. It is also pro

¹⁶ Holls, p. 188, for the origin of this plan.

¹⁷ For the speech on the subject by Lord Pauncefote, see Holls, p. 234.

vided that a tribunal may be selected outside the panel. A ruler, if chosen, is permitted to settle his own procedure. The place of session, unless otherwise fixed by the *compromis*, shall be The Hague, but the Court may, in case of necessity or with the consent of the parties, sit elsewhere. If trouble between two nations is threatened, the other nations may call the attention of the contending parties to the Court at The Hague, and the Bureau will act as an agent of communication.

In the choice of an umpire the nations are allowed considerable latitude. In a normal case each power chooses two arbitrators, only one of whom (by the amendment of Second Hague Conference, in Art. 45)¹⁸ is its national or appointee on the panel of the Court. These try to choose an umpire. If they fail to choose him, his appointment is left to a third power chosen by the two litigating nations. If this power fails, the umpire is appointed by two other powers, which are to agree upon him. As a last resort, these powers may choose him by lot. The umpire acts as president of the tribunal. The tribunal decides upon the languages to be used before it and has the right to compel the production of evidence or to refuse to receive new evidence offered by one party to which the other party objects. A refusal to comply with a request for evidence is noted by the Court. Documents offered by one party must be communicated to the other party. Provision is made for agents and counsel to appear before the tribunal and to argue questions orally. These in turn may be questioned by members of the tribunal. The decision of the case is made by a majority vote of the tribunal after discussion in secret, but must be accompanied by a signed statement of reasons upon which it is based. The award is made in open court, but is binding only upon the parties in litigation. Each party pays its own expenses and an equal share of the expenses of the tribunal.

The greatest crisis that arose during the Conference was in connection with arbitration. Germany, taking a conservative attitude, at first regarded the proposition for a permanent tribunal as a radical innovation. She believed that occasional arbitration should be given further trial for the sake of the light that experience with occasional tribunals might throw upon the practicability of the proposition.¹⁹ She also preferred a scheme

¹⁸ Scott's Conferences, Vol. II, p. 331. This book gives the amendments of the Second Hague Conference in italics. The story is anticipated a little here for the sake of clearness.

¹⁹ See Holls, pp. 246-248.

of voluntary rather than obligatory resort to arbitration. Although a permanent court was established, the nations, instead of binding themselves as a body to use it for the arbitration of specified cases, as proposed by Russia, reserved to themselves, in Article 19, "the right of concluding, either before the ratification of the present Act or later, new Agreements, general or private, with a view to extending obligatory arbitration to all cases which they may consider it possible to submit to it." Since the First Hague Conference about one hundred and forty treaties of obligatory arbitration, most of them limited, but some of them unlimited in scope, have been made by nations in pairs.²⁰

Before an understanding was reached as to the nature of the court adopted in 1899, it was necessary to send to Berlin a delegation consisting of Dr. Zorn and Mr. Holls to consult with the high officials there.²¹ It is an interesting fact that the delegates at the First Hague Conference felt obliged to create the Court from a sense of fear that if they did not do so, they would disappoint the expectations of public opinion. Mr. Holls in his speech at the Mohonk Conference of 1900 speaks of the salutary effect upon the endangered program made by an eloquent speech of Dr. White on occasion of the observance of the Fourth of July, when the Conference, at his suggestion, visited the tomb of Grotius at Delft to lay upon it with fitting ceremony a silver wreath of oak and olive leaves prepared in Berlin at the expense of the United States government.²²

While the Conference was in session a commission was appointed to receive communications addressed to it from the outside world. These came in the form of letters, resolutions, cablegrams, petitions and books. Delegations of oppressed peoples, Poles, Finns, Armenians, Macedonians, and others, as well as of

²⁰ See writer's article on a World Treaty of Arbitration in 20 *YALE LAW JOURNAL*, 163, and Dr. B. F. Trueblood's "International Arbitration at the Opening of the 20th Century," pamphlet, Boston, American Peace Society, 1909.

²¹ The story of this mission has been beautifully told by Dr. White in his *Autobiography*, Vol. II, p. 309-322; see also, however, another explanation by Dr. Zorn, a short statement of which is given in *Scott's Conferences*, Vol. I, p. 75.

²² See *Lake Mohonk Conference on International Arbitration, 1900*, p. 16.

For an account of the Grotius celebration, see Holls, p. 535. He gives a full report of Dr. White's speech. Dr. White mentions preparations for the event in his *Autobiography*.

progressive Young Turks, appeared. But these could not be officially recognized as the Conference confined itself to relations between nations, and did not undertake to pass upon their internal affairs.

The result, however, of a century of agitation had at last taken shape in international legislation. Charles Sumner, in 1849, had spoken eloquently in condemnation of "The War System of the Commonwealth of Nations,"²³ but men who were living in the autumn of 1899 realized that the nations at last had a system of peace. It remained only to perfect that system through the action of successive Hague Conferences and therefore the peace societies began to urge the calling of another Conference. This agitation was taken up by the Interparliamentary Union, which met in St. Louis, in 1904. The Union made a pilgrimage to Washington, where, with Mr. Bartholdt as its spokesman, it requested President Roosevelt to summon the nations together once more. President Roosevelt took steps to initiate the Second Conference, but, with chivalrous generosity, left to the Czar of Russia, as the initiator of the First Conference, the honor of issuing the formal call for the new one. It was intended that this Conference should meet in 1906, but as this was the year of the Pan-American Conference, it was decided not to invite the nations to meet at The Hague until 1907. The Second Conference, numbering 44 of the 47 states now commonly recognized as belonging to the family of civilized nations, numbering 256 delegates, met June 15, 1907 in the Knights Hall, a quaint looking building in the centre of The Hague. On motion of the United States the delegates of the Latin-American nations except Mexico, which was represented in 1899, were permitted to adhere for their countries to the proceedings of the First Conference before undertaking to participate in the Second. The Conference, as in 1899, brought together the best men that the nations could send to it. The presiding officer was Mr. Nelidow, Russian Ambassador at Paris, a diplomatist of rather conservative political temperament, who looked upon the ideal of world peace as something far off and whose influence tended to restrict the Conference to its original program, which was limited in scope. That program had been prearranged by the Russian government with the assistance of Dr. Frederic de Martens, who had consulted with the Foreign Offices of the leading powers and obtained from them an under-

²³ Sumner's *Addresses on War*, Boston, 1904, p. 139.

standing on the subjects for discussion. It contained considerable unfinished business left over from the Conference of 1899, among which was the question of the immunity from capture of private property at sea in time of war, which had been referred to a future meeting, and other matters pertaining to the regulation of war, such as the bombardment of unfortified seacoast towns and the rights and duties of neutrals.²⁴

The subjects considered by the Conference may be classified into three general divisions: measures for the prevention of war; measures for the regulation of war; and measures relating to neutrality. The question of the limitation of armaments was not acted upon by the Conference, except to be made the subject of a resolution referring it to the nations for further serious study.²⁵

The Second Hague Conference remained in session for four months, or about twice as long as the First Conference, and enacted ²⁶ more legislation than its predecessor. It passed two resolutions, gave expression to four *veux* or opinions, made one recommendation, adopted 13 conventions, and put forth one declaration. Changes were made in the three conventions of 1899 in the light of experience gained between the two Conferences.

The first convention, known as the convention for the Pacific Settlement of International Disputes,²⁷ was rewritten in 97 articles with a view to clearness of language and completeness, that of 1899 being no longer in use except as embodied in that of 1907.

The principal change occurs in the provisions for commissions of inquiry, which now include the substance of the procedure that was used by the North Sea Commission. The system of arbitral procedure was also developed, especially summary procedure. By Article 48,²⁸ a nation is permitted to offer through the Bureau at

²⁴ This question is a study by itself. See Holls, p. 306, and read especially the speech of Dr. White, p. 314. Scott's Conferences, Vol. I, pp. 699-704. Also, "The Freedom of Commerce in Time of War," J. L. Tryon, *Advocate of Peace*, October, 1908.

²⁵ Scott's Texts, p. 138; Scott's Conferences, Vol. II, p. 289, for the resolution; but for discussion see Hull, p. 456; Scott's Conferences, Vol. I, pp. 654-672.

²⁶ Conventions are adopted by The Hague Conferences *ad referendum*. They must be ratified by the various governments before becoming effective.

²⁷ Scott's Texts, p. 155; Scott's Conferences, Vol. II, p. 308.

²⁸ Scott's Texts, p. 174; Scott's Conferences, Vol. II, p. 333.

The Hague to arbitrate a case with its opponent. It is no longer necessary, therefore, for one nation to approach directly another nation with which it is at odds and that may be reluctant to respond to overtures. This provision practically enables one nation to cite another to come before the bar of public opinion.

The Second Convention²⁹ applies arbitration to contractual debts. Although either by general or special treaties, questions relating to such debts had previously been referred to arbitrators usually to joint commissions of the two nations involved in a dispute, this convention is a new departure so far as the Hague Conferences are concerned. It is largely the outgrowth of experience of Latin-American countries with European, but to some extent also with American creditors and, although founded primarily on what is known as the Drago Doctrine,³⁰ was adapted to international opinion by General Horace Porter of the American delegation. General Porter not only drafted it, but made an able speech in its favor.³¹

The main provisions of the convention were contained in Article 1, which reads as follows:

"The contracting powers agree not to have recourse to armed force for the recovery of contract debts claimed from the government of one country by the government of another country, as being due to its nationals."

"This undertaking is, however, not applicable when the debtor state refuses or neglects to reply to an offer of arbitration, or after accepting the offer, prevents any *compromis* from being agreed on, or, after the arbitration fails to submit to the award."

Article 2, having referred to the procedure to be used, says:

"The award shall determine, except where otherwise agreed between the parties, the validity of the claim, the amount of the debt, and the time and mode of payment."³²

This convention is regarded as an important preventive of war. In effect it requires that arbitration must first be tried before there

²⁹ Scott's Texts, p. 193; Scott's Conferences, Vol. II, p. 356.

³⁰ See "Calvo and Drago Doctrine," by Amos S. Hershey. 1 *Am. Jour. Int. Law*, 26. See also the same p. 692 for an article on "State Loans in Their Relation to International Policy," by Luis M. Drago.

³¹ J. B. Scott's, "American Addresses at the Second Peace Conference," p. 25; Hull, p. 352. See Scott's Conferences, Vol. I, p. 386; *et seq.*, for a chapter on the history of this convention. Higgins, pp. 184-197, has a brief, but lucid article on it with full references.

³² Scott's Texts, p. 194; Scott's Conferences, Vol. II, p. 557.

can be war. On the one hand it protects Latin-Americans from European aggression and on the other it leaves to European nations the right to use force in case of obstinacy or irregularity. It also minimizes the resort by the United States to the Monroe Doctrine to prevent European occupation of Latin-American countries.

The third convention³³ marks a radical change in the historic practice of the nations. For about two hundred years, led with only a few exceptions, war has been begun without a formal declaration. The unexpected opening of hostilities between Russia and Japan was, to a large degree, responsible for the following rule which was adopted in the interest of fairness and out of regard for the spirit of loyalty which should prevail among the nations of today, bound together as they are by mutual ties and a sense of solidarity:

Art. I. The contracting powers recognize that hostilities between themselves must not commence without previous and explicit warning, in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war.

The rights and interests of neutrals were protected by the following rule:

Art. II. The existence of a state of war must be notified to the neutral powers without delay, and shall not take effect in regard to them until after the receipt of a notification, which may, however, be given by telegraph. Neutral powers, nevertheless, cannot rely on the absence of notification if it is clearly established that they were in fact aware of the existence of a state of war.

The fourth convention,³⁴ which relates to the laws and customs of war on land, is a slight revision of the convention made on this subject in 1899. The legislation adopted appears in the convention as an annex to it.

The fifth convention³⁵ regulates the rights and duties of neutral states and belligerents in land warfare. It lays upon

³³ Scott's Texts, p. 198; Scott's Conferences, Vol. II, p. 362.

For a discussion of the probable value as a peace measure of the requirement of a declaration of war, see "The Limitation of War," in *YALE LAW JOURNAL* for May, 1911. See also Higgins, pp. 202-205; Westlake, "War," pp. 18-28.

³⁴ Scott's Texts, p. 203; Scott's Conferences, Vol. II, p. 368.

³⁵ Scott's Texts, p. 230; Scott's Conferences, Vol. II, p. 400.

belligerents obligations to respect the inviolability of neutral territory, and upon neutrals the duty of impartiality. It has special application to neutral property, but relates also to the internment and care of escaped prisoners of war and wounded men in neutral territory.

The sixth convention³⁶ relates to enemy's ships found at the outbreak of hostilities in an opposing enemy port, also to the ships on the high seas of an enemy when unaware that hostilities have broken out. According to growing, but as yet incompletely established custom, enemy vessels in an opponent's port should be allowed time to unload and discharge their cargoes and get away without molestation; but, by The Hague rules, neither custom nor privilege is declared to be in their favor. The statement is made that it is desirable that they should be allowed to leave port freely. It is to the credit of the Conference, however, that, though they may be detained, they may not be confiscated, and that notice must be given them to depart. This convention was considered reactionary by the United States, which did not sign it. There is satisfaction, however, in knowing that within a century embargo on enemy vessels has been practically given up.

The seventh convention³⁷ relates to the transformation of merchant-ships into warships in time of war. The vital question whether this transformation should be permitted on the high seas was left open, as it was impossible to reach an agreement, owing to radical differences of opinion among the nations. But rules were made that merchant-ships intended for war service should, when transformed, be placed under duly commissioned officers and bear the outward signs of warships, their crews be made subject to military discipline and their operations made to conform to the laws of war.

The eighth convention³⁸ relates to restrictions as to the laying of automatic contact submarine mines and is intended for the protection of commercial shipping. It is not permissible to lay mines with the single object of intercepting such shipping.

The ninth convention, which is declarative of existing practice, forbids the naval bombardment of undefended coast towns and regulates bombardments when they are allowable.³⁹

³⁶ Scott's Texts, p. 240; Scott's Conferences, Vol. II, p. 414.

³⁷ Scott's Texts, p. 246; Scott's Conferences, Vol. II, p. 422.

³⁸ Scott's Texts, p. 252; Scott's Conferences, Vol. II, p. 428.

³⁹ Scott's Texts, p. 259; Scott's Conferences, Vol. II, p. 436.

The tenth convention applies the principles of the new Geneva Convention or Red Cross rules of 1906 to sea warfare and marks a step forward in humane regulations.⁴⁰

The eleventh convention⁴¹ codified the more recently accepted rules as to the right of capture of private property at sea in time of war, exempting from capture postal correspondence of neutrals and belligerents, fishing vessels, small coasting vessels, and vessels employed in scientific or philanthropic missions. It also contains liberal provisions for the treatment of officers and crews of captured enemy merchant-ships.

A proposition of the American delegation for the immunity from capture of innocent private property at sea failed to carry. (See *ante*.)

The twelfth convention established an International Prize Court of Appeal to adjudicate cases of the capture of neutral merchant-ships and cargoes and to adjudicate cases of such belligerent ships and cargoes as may be captured in violation of treaties, national declarations or other rules of International Law.⁴²

It was impossible to agree upon rules for contraband of war. A Conference of the leading naval powers held at London in the winter of 1908-9 made a code for the International Prize Court, which included a definition of contraband of war.⁴³

The thirteenth convention regulates the rights and duties of neutrals in maritime war, safeguarding, however, the rights of belligerents as well as of neutrals, forbidding hostile acts in neutral waters and the use of neutral territory as a base of operations.⁴⁴ Enemy's ships are forbidden to remain more than a certain time in neutral harbors and have to leave in a certain order so that when ships of belligerents are in port a naval battle may not occur in or near the neutral's jurisdiction.

⁴⁰ Scott's Texts, p. 267; Scott's Conferences, Vol. II, p. 446.

⁴¹ Scott's Texts, p. 281; Scott's Conferences, Vol. II, p. 462.

⁴² Scott's Texts, p. 288; Scott's Conferences, Vol. II, p. 473.

⁴³ This code is not yet ratified, and has lately been seriously criticised in Great Britain, which was instrumental in having it drawn up. "The International Prize Court and Its Code" will be the subject of a special article in this series. See "Declaration of London"—Wilson and Tucker, p. 450; 3 *American Journal International Law (Supplement)*, 179; Higgins, pp. 540 and 567 for the code and report on.

⁴⁴ Scott's Texts, p. 317; Scott's Conferences, Vol. II, p. 507.

The fourteenth convention or, as in this case, a declaration, re-enacts to the end of the Third Conference the declarations of 1899 with regard to launching projectiles and explosives from balloons and forbids until then warfare in the air.⁴⁵ Several important governments have failed to ratify this convention, and there is uncertainty as to what might happen should war break out.

The Conference failed to make a universal treaty of obligatory arbitration of limited scope and for specified cases, but it unanimously adopted the principle that disputes relating to the interpretation of treaties are susceptible of compulsory arbitration. The Second Conference, like the first, thus left the matter of the negotiation of arbitration treaties to the nations, acting in pairs. (See *ante.*)⁴⁶

The Permanent Court of Arbitration was regarded as an advance upon the system developed largely in the 19th century, but also continued in the 20th, of conducting arbitrations through the agency of mixed commissions or sovereigns; but during the period that elapsed between 1899 and 1907, the international court, although it commanded public confidence, was subjected to criticism. Recommendations were therefore made for the institution of a new court, called the Court of Arbitral Justice, with fifteen permanent judges, to serve as an alternative to that of 1899, and a draft for such court was agreed upon. In a word the new court is intended to be judicial rather than arbitral in its character, to adjudicate cases upon the record presented and to eliminate the possibility of compromise of the various interests concerned. Its members are to be especially qualified as judges.

It is proposed that the new court shall hold regular annual sessions and that its functions shall be exercised between sessions by a delegation of three of its judges. The Permanent Court of Arbitration, so-called, is one which is permanent in respect to its panel of judges, but a new tribunal must be constituted for each case as it comes up. The new court is to be adopted by the nations as soon as they can agree upon an equitable method of appointing its judges. Since the Conference of 1907, the United States Government has exerted its influence to get these judges appointed. A proposition of Secretary Knox that the functions

⁴⁵ Scott's Texts, p. 332; Scott's Conferences, Vol. II, p. 525.

⁴⁶ For a full discussion of the proposal of a universal treaty of arbitration see the writer's article on that subject in 20 YALE LAW JOURNAL, 163.

of the Court of Arbitral Justice be conferred upon the International Prize Court has already been accepted by some of the more important governments, and there is said to be a prospect of its general acceptance. By this means, it is expected that the problem of securing an agreement as to the choice of judges will be met.⁴⁷

The Conference expressed the opinion that the powers should regulate the charges devolving upon foreigners in belligerent territory in time of war and that they should "insure and safeguard the maintenance of pacific relations, more especially of the commercial and industrial relations between the inhabitants of the belligerent states and neutral countries."⁴⁸

It was advised that a Third Conference be held within a period similar to that which had elapsed between the First and Second Conferences and that questions relating to the laws and customs of naval warfare be put on its program, the program itself, together with an order of business procedure, to be arranged by a preparatory committee to meet two years before the assembling of the Conference. This has been commonly interpreted to mean that the Third Conference will meet in 1915. This recommendation in effect made the Hague Conferences periodic.

To sum up, The Hague peace system in a word is now important. The Hague conventions represent previously accepted or now generally agreed upon rules of International Law. The central feature of these conventions is that relating to the Pacific Settlement of International Disputes. By its terms, if war threatens, mediation, commissions of inquiry, or arbitration may be employed to prevent its occurrence. If war breaks out, mediation may stop it. But while it lasts its severities upon enemies and infringements upon neutrals are restricted. The fact that the Conferences have become periodic, that their program will be more carefully arranged in the future than in the past, and that their procedure will be elaborated indicates their probable development into a real Parliament of Nations.

A Congress of Nations, when it comes, should be competent to deal with the most serious questions that arise between states and with the International Court ought to be a strong safeguard of international peace.

James L. Tryon.

⁴⁷ For a comparison of the Court of Arbitral Justice with the Permanent Court of Arbitration (1899), see 19 YALE LAW JOURNAL, 145, where important references to other articles on this subject are given.

⁴⁸ Scott's Texts, p. 139; Scott's Conferences, p. 289.