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978-1-107-41887-5 - The Hague Peace Conferences: And Other International Conferences
Concerning the Laws and Usages of War: Texts of Conventions with Commentaries

A. Pearce Higgins

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TEXTS OF CONVENTIONS WITH COMMENTARIES

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TEXTS OF CONVENTIONS WITH COMMENTARIES

by

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PREFACE

IN 1904 I published translations of the Declarations of Paris and St Petersburg, the Convention of Geneva, 1864, the draft Brussels Declaration, 1874, and the Conventions signed at the First Peace Conference, together with a short introduction and a few notes. I did so chiefly for the sake of students attending my lectures in Cambridge, as, at that time, there was not to my knowledge any one book in which the English texts of these important international documents could be found. The present work contains in addition to the French texts of the foregoing (except the Brussels Declaration) the French and English versions of the Geneva Convention of 1906, the Final Act and Conventions of the Second Peace Conference, 1907, and the London Naval Conference of 1909. I have also included in my commentary on Convention No. 10 of the Hague Conference, 1907 (10 H. C. 1907), a translation of the Convention signed at the Hague on the 21st Dec. 1904, exempting hospital ships from state port dues and taxes in the ports of the signatory Powers. Great Britain is not a party to this Convention. The Conventions of the First Conference as amended by the Second are printed in parallel columns, the changes being shown in italics, and cross-references occur throughout. The French texts have been taken from the official sources, and in the case of the Hague Conventions of 1907 they have throughout been carefully compared with the texts contained in *La Deuxième Conférence Internationale de la Paix* published by the Dutch Government. As regards the translations, I have made the British official translations the basis of my work¹: I have however in nearly all cases compared them with those contained either in Mr E. A. Whittuck's *International Documents*, Professor James Brown Scott's *Texts of the Peace Conferences at the Hague, 1899 and 1907* (which contains the official United States translations), Professor T. E. Holland's *Laws of war on land*, Dr Westlake's *International Law, War*, or General G. B. Davis's *Elements of International Law*. In the case of the Declaration of London, I have adhered to the official translation with a few exceptions. To each of the Conventions I have appended a commentary

¹ In the case of the Conventions of 1899 which were revised in 1907 the translations of the portions common to both Conventions as given in *Parl. Papers*, Misc. No. 1 (1899), Misc. Nos. 1 and 6 (1908) show considerable variations; similarly the translations of all the Hague Conventions of 1907, contained in the last two Parliamentary Papers, differ considerably.

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in which I have given an account of its origin, and its relation to the general rules of law on the subject with which it deals. In the case of the Hague Conventions, which form the greater portion of this volume, I have endeavoured from the official records, and more particularly from the Reports presented to the Conferences by the various Committees, to ascertain the meaning which their framers intended them to have. In the case of the Conventions of 1899 I have generally limited myself to the changes made by the Conference of 1907, as those Conventions have already been fully dealt with by various writers. In the case of the Geneva Convention of 1906 I have confined myself to calling attention to the chief changes made in that of 1864, referring students for a fuller explanation of the Convention to the work of Professor Holland cited above. In the case of the Declaration of London the commentary is supplied by the official translation of the General Report presented to the Naval Conference prepared by M. Renault on behalf of the drafting Committee, to which I have added a few footnotes. I have in each case appended a list of books and articles dealing with the subject under discussion: the lists are in no case exhaustive, but are intended to assist students, for whom this work is primarily intended, in following up their examination of the questions dealt with.

The two final volumes of the official account of the Second Peace Conference, *La Deuxième Conférence Internationale de la Paix* (cited throughout this work as *La Deux. Confér.*), were not published until a large part of this book was in the press; I therefore relied chiefly in the early portions on the excellent Reports to the Conference contained in the first volume, and in *Parliamentary Papers*, Miscellaneous, No. 4 (1908) [Cd. 4081]. I also derived considerable assistance from the valuable work of M. Ernest Lémonon, *La seconde Conférence de la Paix*, and the reports of the proceedings of the Conference in *The Times*. Professor J. B. Scott's lectures on *The Hague Peace Conferences of 1899 and 1907* were published too late to be of any use to me except in regard to the last two Conventions. Sir Thomas Barclay's *Problems of International Practice and Diplomacy* (cited as *Problems, etc.*) has afforded me assistance on nearly all the subjects dealt with. I have endeavoured to acknowledge the sources of my information in all cases.

In the Chapter on the Hague Conferences of 1899 and 1907 (pp. 39–59) I have traced the working of the Conventions of 1899 and given an account of the cases which have come before the Permanent Arbitration

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Court; in the commentary on the Final Acts of the Conferences I have discussed the *Vœux* adopted and in the Chapter on the Results of the Second Peace Conference (pp. 518–526) I have summarised the work of the Second Peace Conference.

I have appended a list of the signatory States at the conclusion of the commentary on each Convention as well as Tables of signatory States of the Conventions of both Conferences. It is important to remember that none of the Conventions of the Second Peace Conference have up to the present been ratified, the United States of America and San Salvador being the only Powers which have notified the Netherland Government that they are ready to ratify the Conventions: the Declaration of London also has not at present been ratified by any of the signatory Powers.

The delay in publication has been due largely to personal causes, but also to the desire to include the results of the London Naval Conference, which complete in many important points work which the Hague Conference of 1907 found itself unable to bring to a conclusion.

I have to thank His Majesty's Controller of the Stationery Department and the British Foreign Office for allowing me to make use of their translations, and to make quotations from the various Government publications referred to in the notes, particularly for permission to reproduce the Instructions to the British Delegates at the Second Peace Conference and the translations of the Declaration of London and M. Renault's Report, and for affording me other assistance. I have also to thank the Foreign Offices of the Netherlands and Switzerland, and the Secretary-General of the Permanent Court of Arbitration at the Hague for courteously furnishing me with information and official lists of signatory Powers, and in the case of the last-named for copies of the Minutes of the cases heard before the Permanent Court. To my friend Mr A. H. Charteris, M.A., LL.B., Lecturer in International Law in the University of Glasgow, I am under special obligation, as not only has he kindly read the whole of the proof sheets, but he has also made many valuable suggestions both as regards the translations and commentary. I have to thank the staff, readers and printers of the University Press for their careful and courteous co-operation.

A. PEARCE HIGGINS.

CAMBRIDGE,

September, 1909.

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INTRODUCTION

DURING the past fifty years attempts have been made by means of international Conferences to arrive at a definite understanding with reference to various rules of international law, and more particularly those relating to war, for notwithstanding nearly twenty centuries of Christian teaching, war still remains the final arbiter of nations. Arbitration treaties have, however, been increasing rapidly, and the peoples of the world are looking with growing favour on a pacific settlement of international disputes. The various Peace Societies, the Federations of Parliamentary Delegates, the Unions of workers of all classes and the great International Bureaux for posts, telegraphs, money, etc. are all assisting to bring about a greater freedom of inter-communication of ideas, and a larger conception of the oneness of humanity. Such organisations may, in the course of time, succeed in breaking down rooted national prejudices, and removing ambitious aspirations; meantime, however, these two forces are potent, and the era of perpetual peace is still far distant. The development of international law has been in the past and is still following in a striking manner the order of evolution of national laws, and progress is undoubtedly marked by the endeavours, increasingly successful, to regularise the methods to be adopted when peaceful methods of solving international disputes have failed, and the lists are set and “princes and states that acknowledge no superior on earth put themselves on the justice of God for the deciding of their controversies by such success as it shall please Him to give to either side.” Bacon’s idea of war bears a strong resemblance to that which underlay the judicial combat in England: “it was no appeal to brute force; it was an appeal to the God of battles¹.” Litigants in civil cases have, however, moved a long way from the position in which states still find themselves; self-help, even regulated self-help, has nearly, if not quite, ceased to exist in civilised communities

¹ F. W. Maitland, *Social England*, Vol. I. p. 414.

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which live under the rule of law; but in the domain of international differences, forcible self-redress and the peaceful settlement of disputed questions still exist side by side. The attempt at the Second Peace Conference to formulate a Convention for the compulsory submission to arbitration of even the simplest questions failed of achievement. The Society of Nations, as such, was not yet ready for the interposition of the International Praetor with his “*Mittite ambo hominem*,” though it readily acknowledged the value of the principle.

The results of the various Conferences which are set forth in the following pages all tend in one direction. They are attempts, for the most part only partially successful and characterised by all the defects inherent to compromises wherein the political aspirations of the various states of the world have been sought to be adjusted, to bring into existence a code of rules which shall be universally recognised as binding on belligerents and neutrals, failing a peaceful settlement of their quarrels. Self-help is recognised, but it is gradually being regulated, and alongside this regulated self-help there has been provided a method for peaceful settlement by the creation of the Hague Tribunal. These international Acts also register the desire that should war break out, peaceful intercourse between belligerents and neutrals shall be disturbed as little as possible, and the sufferings of those involved minimised.

Many of these Conventions represent the first attempt at an international agreement on the subjects with which they deal, in other cases they are the results of more mature deliberation, and their practical value has been tested by time and the trying ordeal of war.

The question is often put as to the value of Conventions regulating the conduct of war—Will they stand the test of a life and death struggle of nations? Will not the written laws of war be set aside and the necessities of war excuse acts which the laws of war condemn? It is recognised in several of the following Conventions that the rules they enunciate are to be observed “so far as military necessities permit”; the rules themselves represent the standard of conduct at which commanders are to aim, but, as practical men, the delegates have recognised that there must be some cases when the observance in the strict letter of the provisions will be impossible¹. It is with the view of diminishing the evils of war “so far as military necessities permit” that the signatory Powers have adopted the Regulations on the laws and customs of war on land. No legislation can specify beforehand the precise circumstances which would justify a commander

¹ See G. C. 1906, Arts. 1, 15; 4 H. C. 1907, preamble, Art. 54; 9 H. C. 1907, Arts. 2, 6; Declaration of London, Art. 49.

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in failing to act on the rules laid down, but no circumstances can justify the violation of the fundamental principle of these rules, which prohibit the infliction of needless suffering to individuals and mere wanton destruction of property¹. The laws of war set forth in the following pages are binding on the parties to the Conventions; they were made to be observed and good faith is predicated of all international agreements. The practice of states in recent wars bears striking witness to the power of law under severe trial. There were some complaints of breaches of the laws of war, and in the Russo-Japanese war neutrals had occasion to enter strong protests against some of the Russian practices; but the latter had reference to the unwritten laws of naval warfare. The breaches of universally accepted rules of war which have been definitely and conclusively proved to have been committed during recent years have been few. International law works, notwithstanding the absence of the Austinian sanction. The rule of right operates apart from the terrors of punishment, and the more highly civilised states become, the more complete their acceptance of the "perfect law of liberty," the more will they act the law they live by without fear. The moral force of the solemn promise of a nation should be enough to secure the observance of its international obligations, but besides this, there is another factor no state can afford to neglect which has become of increasing importance during the past half century, namely the public opinion of the world. International law is based on the practice of civilised states in their dealings with each other, and such practice is the embodiment in action of the moral consciousness of communities. Public opinion is one of the great formative influences of the law of nations, and an educated public opinion in each state is at the same time one of the safeguards for the due observance of international law and the best guarantee for an equitable solution of the difficulties which international Conventions have failed to solve. International law-breakers are in the long run arraigned at the bar of humanity, and history records their sentences. It is said that when Germany was asked by Thiers after the fall of the Second Empire "A qui donc faites-vous la guerre?" von Ranke, calling to mind the horrors of the ravages of the Palatinate, replied "A Louis XIV!"² Might is not necessarily Right in international or national law; the generation that witnesses a gross violation of the law of nations will not often see the punishment which follows, "Raro antecedentem scelestum Deseruit pede Pœna claudo."

¹ See T. E. Holland, *The Laws of War on Land*, p. 13; L. Oppenheim, *International Law*, Vol. II. § 69; J. Westlake, *War*, p. 115.

² See F. Despagnet, *Droit international public* (5th ed.), § 39 (on the sanction of International Law).

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Law, be it national or international, must always wait on and fall short of the highest standards of morality current among those governed by it. The record of the growth of the conventional law of nations as evidenced by the international treaties contained in the following pages is far from satisfying the aspirations of the idealist, but it shows a steady, if slow progress towards a more clearly defined system of the rules regulating the intercourse of nations whether as belligerents or neutrals; it also shows the beginnings of an international judicature for the peaceful settlement of disputes, and affords reasonable ground for the hope that the Court established at the Hague in 1899 may ere long become permanent both in fact and in name. States have at last begun to take in hand the work of clearing up difficulties, settling disputed points and preparing the way for a systematic statement of the rules of international law.

The political antagonisms and unconcealed jealousies of states are factors of supreme importance in considering the future of international law, but the record of the past shows an increasing sense of the solidarity of the human race and the gradual elevation of the ideal of international justice. A study of what has been achieved may be of assistance in stimulating those moral aims which shall in the future make war increasingly difficult, and reduce to a minimum the sufferings of those involved.