

Peace conferences and the century of total war: the 1899 Hague Conference and what came after

GEOFFREY BEST*

The point of this lecture being to show how this famous Hague Conference set in train certain great changes in our world's handling of war and peace, I begin with a glance at how the world was politically organized one hundred years ago. In some respects it is rather like the world we now know, in others it is quite different.

It was a world of empires, gained and maintained by military power. The three oldest, China's and Spain's and the Ottoman, were crumbling. Three of the older ones controlled most of Europe itself: the German, Russian and the Habsburg. France controlled much of Africa and South-East Asia. The British had bits and pieces, some of them enormous, everywhere. Then there were newcomers, the Japanese and the United States. Americans didn't like to be told they had an empire, but empire is what it was practically becoming, with the Monroe doctrine as its warrant, and the US Navy and Marines as its enforcers.

It was a world managed by the powerful. The states in which economic and military power were most effectively concentrated were frankly called, as they had been since the early nineteenth century, the Great Powers. To each of them the discourse of international relations and diplomacy had learned to attribute a sphere of influence; which lesser 'powers' within it would neglect at their peril. At The Hague in 1899, all the states present were referred to, and referred to one another, as 'powers', Great or otherwise. International law and organization being under discussion, there was no point in any state's participation if it wasn't some sort of a 'power', with the proper attributes of such: sovereignty within its own territory, armed force to defend its borders and its national interests, respect for what was known as the 'standard of civilization', and ability to shoulder the responsibilities resting on members of the society of states.

It was a world with an Arms Race going on, and with military-industrial complexes to feed it. The costs were enormous, and came not just from the numbers of men involved. These were years when—I quote from the British delegation's instructions—there was much 'application of scientific invention to

* This is the text of the 39th Cyril Foster Lecture delivered on 29 April at the University of Oxford.

military purposes'.¹ New weapons and new means of delivering them were being developed every year. As soon as one military establishment had acquired a new military marvel, every state with which it might come into conflict felt the lack of an equivalent. It was repeatedly claimed, and not by socialists and liberals alone, that the costs were becoming too heavy to bear.

It was an internationalizing world; a world yearly more conscious of its one-ness. The word 'globalization' was unknown and the expression 'human rights' was not yet in use, but both concepts were (so to speak) in the air, seeking institutional embodiment. This movement of opinion was most evident in the mass of organizations and associations whose regular assemblies brought delegates and devotees together from all over the almost passport-free world and whose publications and star speakers had transnational followings.

Several of these networks were intensely interested in our Conference. Most obviously so, the peace societies and the Inter-Parliamentary Union, which had been coming together in international peace congresses almost annually since the 1880s. Prominent in the peace movement and in proto-human-rights movements generally were many eloquent and indomitable women; the number of their associations being legion, I simply sum them up as forerunners of the Women's International League for Peace and Freedom, to flower in 1915. Then there were all the professional people (including since the 1870s, international lawyers)—all of them by the end of the century well accustomed to get together across frontiers. And, to complete my sketch of this humming transnational civil society, every few years there were great international exhibitions—really big events in those days; though whether the causes of war or peace were better served by them would be matter for research. I suspect they served to some extent as arms fairs. The two big ones between which our Conference was sandwiched were Chicago's Columbian Exposition of 1893 and the Exposition Universelle in Paris in 1900.

And finally, the press. Newspapers and periodicals flourished in every land, and the same question was being put as we may still be putting: whether they made the relations of states better or worse. The word 'tabloid' was not yet in use but the essence of tabloid was already familiar and so were the cartoonist and the paparazzo. But tabloids were not the only mischief-makers; so-called 'broadsheets' could be just as vicious and mendacious. They were less vulgar than today's, but a lot more xenophobic. The year 1899 was a vintage one for press nastiness. The Fashoda incident was hardly past when the scandalous second trial of Captain Dreyfus, the Rennes trial, provoked the British press to make proposals 'for the stoppage of commercial intercourse with the French, for the boycotting of the Paris Exhibition ... and for the desertion of the French Riviera by British invalids'.² Then the French and indeed everyone else got

¹ From the draft instructions prepared for General Sir John Ardagh, in his papers in the Public Record Office, Kew. PRO 30/40 15.

² *Annual Register*, 1899, p. 173.

their own back. Every continental editor and cartoonist made Britain his butt when, the Peace Conference having just finished, the Boer War began.

And yet there is the other, the peace-supporting side, of the press, and its very strange representative is the arch-sensationalist of the British press, W. T. Stead. He took up the Conference with habitual vim and vigour, gave the approach to it huge coverage in his monthly *Review of Reviews*, started a penny weekly titled *War against War*, stayed in The Hague while it happened, and displayed an amazing capacity for getting to interview celebrities. His was a unique contribution to public awareness of the Conference. But indeed it attracted publicity all over. For the internationally minded, it was the event not just of the year but of the decade. And to the story of its calling, its proceedings, and its achievements, it is time to turn.

On the morning of 24 August 1898, the ambassadors and ministers in St Petersburg went to the Foreign Ministry for their regular weekly meeting with Count Muraviev. They were in for a mighty surprise. He told them that 'his August Master' had it in mind to convene a Conference 'with the object of seeking the most efficacious means for assuring to all peoples the blessing of real and lasting peace, and, above all, in order to put a stop to the progressive development of the present armaments'.³ Their astonishment was not so much that the Tsar was proposing an international conference to make war in some degree less awful, for his grandfather Alexander II had already twice done so, but that he was apparently proposing something so huge and unprecedented: a conference to call a halt to the arms race by some measure of general disarmament. They faithfully transmitted the Tsar's project to their governments, and waited for the heavens to open.

I do not know how soon the news leaked out, but when it did, the project was greeted, just as all such grand projects of disarmament ever since have been greeted, in two very different ways. On the one side, there were the welcoming enthusiasts, to whom the issue seemed simple: the fewer the chances of war the lesser the wars when and if they came. For peace people of every kind, from religious pacifists through the broad band of peace-seeking internationalists to the sturdy patriots whom Martin Ceadel has accustomed us to call 'defencists', news of the Tsar's project brought excitement and hope.⁴ Europe was beginning to look like the armed camp to which it was credibly likened by the time it imploded in 1914. Armies and navies seemed to be in symbiotic relationship with the nationalists, militarists and imperialists who fed on fears and resentments. Such an opportunity, it was felt, might not occur again. Peace-loving people must organize to press their governments to take the Tsar at his word.

Taking the Tsar at his word, was, however, the last thing that came to the minds of the senior ministers and heads of state when his project came before them. What is he up to? What lies behind this? These were the questions they

³ *British Parliamentary Papers*, 1899, vol. CX. Command Paper 9090. Enclosed with Ambassador Sir C. Scott's letter from St Petersburg, 29 August 1898.

⁴ See his valuable book, *Thinking about peace and war* (Oxford: Oxford University Press, 1987).

immediately asked themselves and each other. To put it bluntly: what was in it for Russia? There was the general explanation and there was the particular one. The general was that Russia, at that time striving to modernize its industries and communications, was feeling the costs of armaments more painfully than Germany and Austria-Hungary, its principal enemies. The particular explanation was that Austria was in process of fitting its army out with new artillery, which Russia would like to avoid having to match. W. T. Stead was of course among the hopefuls. He produced an explanation that was quite simple and wholly altruistic; the Tsar, he said and wrote, had told him that he had been reading or talking to Ivan Bloch, the Russian railway magnate and student of military affairs, whose notable book on *War in the future* came out that very year, purporting to show that the new technologies were making war pointless, awful and unthinkable. Bloch may well have made part of the Tsar's motivation but nobody in the diplomatic and military worlds believed he was the only part.⁵ Where the trail of evidence runs cold, the historian is driven back to reasonable conjecture. I surmise that Tsar Nicholas's motives were mixed; as are the motives, I believe, of most of us.

The invitation of such a potentate was not lightly to be dismissed. Ponderously turned the wheels of diplomacy. We are so accustomed to international conferences, we take them as a fact of life and perhaps a commonplace one. It was not like that one hundred years ago. The chancelleries of Europe handled it like a parcel that might contain a bomb. Their correspondence was rather like that between friends which sometimes follows invitations to a peculiar and ambiguous party—Are you going? Who else will be there? Do you think the Potsdams will go? Will the Pretorias be invited? And so on. Whether anything would come of it or not depended mainly on the Kaiser. No state was less likely than Germany to reduce its armaments programme. The Kaiser moreover was touchy about seeming to do anything important at the suggestion of anyone else, least of all his great imperial rival. On the other hand Germany did not wish to be isolated, nor was it desirable that the foreign press should be given a handle for holding up the All-Highest to popular execration. Germany agreed to attend—though with a show of hesitancy and distaste unmatched elsewhere.

Where Berlin went, Vienna and Rome would follow. The other Great Powers politely showed willing from the start, and all accepted Russia's suggestion that they should accept Queen Wilhelmina's invitation to convene in her capital. Thus began The Hague's remarkable history in parallel with Geneva as a city specially famous in the records of international law and order.

The Great Powers being agreeable and the place of meeting settled, it remained to complete the invitation list. This had ticklish aspects. Russia thought of inviting simply states with diplomatic representation in St Petersburg. But that did not cover all the states in the world claiming to be sovereign.

⁵ Dr Eyffinger, Librarian of the International Court at the Hague, tells me that his contacts with Russian historians and archivists enable him to say with assurance that the Tsar had seen a copy of Bloch's book, put before him probably by Count Witte.

The Russian rule was not exactly followed, and in a few cases one can see why. The UK, for example, was not about to let Transvaal and the Orange Free State cut figures as sovereign states. Italy (perhaps France too) objected to the Vatican. Why the Americas were represented only by the United States and Brazil is not known. To sum up a partly mysterious business: twenty-six states took part, all European save for the two American ones already mentioned and four from Asia: China, Japan, Persia and Siam.

One curious incident invites mention. It became clear, even on this occasion, that the transaction of international business could be warped by the domestic problems of governments. We all know how American presidential elections have an impact on the safety and welfare of our world. In 1899, Queen Wilhelmina was embarrassed by the absence of anyone from the Vatican. Her government at that moment was anxious to propitiate the Roman Catholic party. Thus, not too surprising, her ingratiating letter to the Pope before the Conference, and at its close, the much more surprising reading-out of an exchange of letters between herself and His Holiness. To all the diplomats present, this was unaccountable, and to some of them, improper.⁶ But diplomats were going to have to get used to that sort of thing.

The Conference was due to begin on 18 May. The official delegates formed only a small group beside the host of well-wishers and enthusiasts who gathered there also. This was the first ever occasion on which an intergovernmental, in technical terms a 'diplomatic' conference was accompanied by a great show of organized public opinion in its support, not to mention what we now call 'media interest'. The phenomenon is by now very familiar to us. NGOs expect to have their ideas taken seriously, and if frustrated, they may form an alternative conference outside the official one. 'NGOs' were not yet in the political glossary, and nothing of that formidable sort happened at The Hague, but there were what we would call 'fringe meetings' and much lobbying of such delegations as were prepared to receive them. I put it like that because I find in the British delegation's reports no mention at all of such 'outsiders', and I do not believe the German or Russian delegations would have seen any, but the United States' delegation was obliged to see citizens of their great democracy, and a sore trial it found them. I quote the American Ambassador again: 'The queer letters and crankish proposals which come in every day are amazing ... It goes without saying that the Quakers are out in full force... The number of people with plans, schemes, notions, nostrums, whimsies of all sorts, who press upon us and try to take our time, is enormous.' The poor man had more than enough to do as it was. He records with regret that for the first time in his life, he had to work on a Sunday.⁷

⁶ The texts are in *British Parliamentary Papers*, 1899, vol. CX, Command Paper 9534, pp. 273–4. I see no reason to disbelieve the explanation of the episode given in Andrew D. White, *Autobiography* (New York: Century, 1922, two vols), vol. 2, pp. 349–50.

⁷ *Ibid.*, pp. 260–2, 271, 272–3 and 347. He had gone to head the delegation at The Hague from Berlin where he was US Ambassador.

Besides being the first such international jamboree, it was surely also a landmark along the road to women's equal participation in such occasions. Very many women were in The Hague, and one of them was the celebrated peace-worker and writer, the Austrian noblewoman Bertha von Suttner. 'Her salon', says her latest biographer, 'became a meeting point for diplomats and leading members of the peace movement.'⁸ I have so far found no evidence that her presence had any effect on the Conference's outcome, but there is no doubt that she had a lot to do with the development of the peace movement. She had some responsibility for persuading Alfred Nobel to found the famous Peace Prize, and although disappointed not to be its first recipient—that was the aged Henri Dunant, founder of the Red Cross—she did get it in 1905.

Amid so great a cloud of witnesses, who were the delegates upon whom all depended? Diplomats and army and navy officers, mostly, plus a sprinkling of international law experts—still rare birds at that time. To Russian and Dutch dignitaries were politely given the principal offices. The Americans and most of the Europeans were initially put out by the Russians' unfamiliarity with parliamentary procedure; this, plus a general inclination to embarrass the British, led to a decision (the one about soft-nosed bullets) which the British and Americans thought unfair.⁹ The Great Powers' delegates—among whom now were counted, I believe for the first time, those of the United States—naturally did most of the talking but several of the lesser powers made important contributions; the Belgians, the Dutch, the Swiss and once or twice Baron de Bildt, whose representation of both 'Sweden and Norway' made him a very model of how to approach the non-violent settlement of international disputes. The most singular delegate from among the Great Powers was the British Vice-Admiral Sir John Fisher, who behaved impeccably in meetings but was conspicuous in the open by sporting a white top hat; remarkable also on social occasions for tireless dancing and for making known his opinion, especially when Germans were present, that to talk of humanizing war was great nonsense.

He was not the only naval tough present. The United States' delegation included Alfred Thayer Mahan. He did not call attention to himself like Fisher, but his thinking was similar. Ambassador White wistfully reflected, as he drew up the official report, that Mahan's presence had certainly prevented any of them from being 'sentimental'.¹⁰ The German Colonel Gross von Schwarzhoff was the chief anti-sentimentalist in respect of war on land, no doubt with the concurrence of the delegate with the longest name, Vienna's Colonel Victor von Khuepach zu Ried, Zimmerlehen und Haslburg.

Outside the biggest public occasions, when young Queen Wilhelmina and the Queen Mother were present, the atmosphere was found to be agreeably

⁸ Beatrix Kempf, 'Bertha von Suttner: biographical notes', in *Die Waffen Nieder! Bertha von Suttner and other women in pursuit of peace* (Geneva: UN Library, 1993), p. 5.

⁹ Unfair, because their amendment had been put to the vote *after* the main proposition; i.e. the other way round from what it would have been under British or American parliamentary procedures.

¹⁰ White, *Autobiography*, vol. 2, p. 347.

informal. The place where most of the meetings were held, the so-called House in the Woods, was picturesque and comfortable. Moreover, there was a free lunch—courtesy of the Dutch government. Delegates came away convinced that business went more smoothly, and dangerous corners were more easily avoided, by their having been able to meet one another over meals in an unthreatening atmosphere.

Other features of the Conference which everyone agreed had been helpful were the exclusion of the public and, once they were past a sticky beginning, good management of the press. Admission of the public had never been on the cards anyway, but the press had not, and probably should have been thought about beforehand. A Conference might have got away with its decision to exclude the press in 1888 but by 1899 it simply could not be done. The decision caused unpleasantness and proved to be counter-productive. Inaccurate guesses and extrapolations from leaks appeared instead of well-informed reports. In the end, the Conference stumbled on something like our familiar practice of press releases, issued by the chairmen of committees. Impressions of the Conference given to newspaper readers around the world inevitably varied, but within the Conference it was universally felt that it had in some ways been more successful than the Great Powers' delegates had initially expected, and that it could not have done so well had the eyes and ears of the world been sharp upon it, partial impressions hastily formed, and delegates tempted or pressured to posture before their publics back home, in the way soon to become all too familiar.



I turn now to the three fields of law and organization to which the Conference devoted its energies. With regard to Disarmament in its literal and simpler sense, nothing was achieved, and I will conclude by considering why; but as for the other two, Arbitration and the Laws of War, we have to acknowledge that the Hague Conference gave our century a running start.

First, then, the Laws of War. Naive optimists who had an idea that the Conference was going to inaugurate a golden age of peace were disappointed when what it did was to update the Laws of War. This was, however, only to pick up and run with a long-established endeavour of the society of states: given that its anarchical tendencies sometimes produced armed conflict, at least the conduct of that conflict could be regulated so as to make it less rather than more unpleasant. In the history of this endeavour, no name was more famous than the Dutch scholar and diplomat Hugo de Groot; it was wonderfully fitting that the Conference could adjourn one day to nearby Delft, where Andrew White laid a wreath, paid for by America, on Grotius's tomb, and made the longest of a series of long orations in his praise.

Revision of the customary Laws of War, not in the Tsar's first thoughts, came into view as part of Russia's further thoughts about an agenda. There was already in existence, and very well known to all military men, a draft code

prepared at an experts' conference in Brussels in 1874 which had never got to the diplomatic stage.¹¹ Now it was proposed to look at it again; also at the emotive questions of weapons causing unnecessary suffering, and newly invented weapons which might make war worse.

There was indeed at that time a wealth of inventions to excite the military world, and there was—as there has been ever since—a tangle of arguments about them. Which can be stigmatized as peculiarly horrible?—horrible injuries in war after all were nothing new. How can we legislate about weapons still on the drawing-board, whose effects cannot be calculated? In any case, what is really new and what is just an improvement on the existing? From the military point of view, there were—as there always are—shrewd questions concerning likely military advantage and economies of force. And throughout the whole debate ran the idea that new inventions might—some believed, *would*—make wars shorter or even unthinkable; this was one of the ideas in Nobel's complicated, unhappy mind.

The short-list of weapons for consideration was—as it often is—partly a matter of preference and prejudice. No one mentioned machine guns or shrapnel. What they did talk about was gas, balloons, bombardment and soft-nosed bullets. On 'asphyxiating or deleterious gases' which at that date were relatively innocuous compared with what would soon be discovered, they passed a Declaration by which 'contracting powers' agreed to abstain from the use of projectiles which would diffuse the same. Thus began the string of attempts to control and prevent chemical and (what was still in the realms of science fiction) biological warfare.

They banned the use of balloons as vehicles for projectiles and explosives because balloons were so far the only form of aircraft that was useable. But 'other new methods of a similar nature' were beginning to come into view, and the military experts insisted that this Declaration should run for only five years. By the time the second Hague Conference met in 1907, the scene had wholly changed, and the bomber was nearly on the runway. Thus, inauspiciously, began the string of attempts to apply to war in the air restraints of the kind applied on land and at sea; a string which would at last come to a promising conclusion in the Geneva Additional Protocols of 1977.

That string of attempts may also, with hindsight, be seen in the Conference's consideration of the ever controversial question of bombardment: bombardment not yet from the air, but by land (the delegates would all have had in mind the bombardments of Strasbourg and Paris in 1870) and from the sea, where it was a practice dear to the hearts of admirals. The Conference agreed on certain principles of restraint in the interests of civilian populations, which may be seen as contributing in due course to the belated achievement in 1977.

¹¹ Its authority was such that it is reproduced, along with the other Ur-text of the modern laws of war, the 1863 'Instructions for the Government of Armies of the United States in the Field', in Dietrich Schindler and Jiri Toman, *The laws of armed conflicts* (Alphen aan den Rijn and Geneva: Sijthoff-Noordhoff/Henry Dunant Institute, 2nd edn, 1981). How the 'Brussels Code' was drawn up has been investigated with unprecedented care by Dr Karma Nabulsi of Nuffield College, Oxford. This will appear in her book, *Traditions of war: occupations, resistance and the law* (Oxford: Oxford University Press, 1999).

And, finally, there was a Declaration by which signatory states 'agreed to abstain from the use of bullets which expand or flatten easily in the human body'. This became notorious as the row about dum-dum bullets, and was much enjoyed by the continental publics because it was a means of excoriating the British. Dum-Dum was the name of the arsenal at Calcutta which made bullets for the British army in India. The ordinary hard-cased small-bore bullets of the new Lee-Enfield rifle were found inadequate to stop the hardy and pain-accustomed tribesmen on the frontiers of empire, so something more damaging had been invented and used. The British delegates argued in vain that the wounds caused were no worse than had been caused (without attracting critical attention) by the broader-bore muskets which all European armies had been using not long ago or than were caused by shrapnel and high explosives. They argued also, that nobody wanted a weapon which simply did not work. It was to no avail. General Sir John Ardagh and his only ally, the American Captain William Crozier, were overwhelmed by a humanitarian uproar; perhaps the first, and certainly not the last, of its kind.

Now for the revision of the Brussels draft code which became the important document known as the Hague Regulations or Rules for the Conduct of War on Land. This was agreed fairly easily. All that was needed for raising it to international legal status was the reconciling of two opposite points of view: that of an army invading a foreign land and subjecting it to military occupation, and that of the people patriotically defending their land as best they could; which always led to that confusion between combatants and non-combatants which makes legal protection of non-combatants so difficult. The 'regulars' who looked forward to doing the occupations stigmatized popular resisters as 'irregular' and sought to make it nearly impossible for 'irregulars' to resist invaders and occupiers without becoming classified as unlawful combatants. The debate in 1899 was threatening to get bogged down in this difficulty as it had done in 1874, when a compromise or, some might say, fudge was proposed by the Russian legal adviser Martens, which placed all concerned 'under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience'.¹²

Named after him (though it was actually the bright idea of a Belgian), it has become famous and much admired, and called into service in many situations other than those particular ones for which it was originally intended. We may rejoice that 'the Martens clause' enabled the Hague Regulations to be launched into our century with some power to restrain the worst violences and inhumanities of war. But the Regulations were not to have a clear field in

¹² It appears not among the Regulations themselves but in the Preamble to the Convention to which the Regulations are annexed. Those Regulations, it may be helpful to recall, are reproduced without significant alteration in the 4th Hague Convention of 1907, in which form they remain the basis of contemporary law of war.

which to operate. New techniques and styles of war-making have cruelly exposed their shortcomings; to which I now turn.

The gist of the problem has been the increasing involvement of civilians in war, whether they seek it or not. Civilians suffering under artillery or aerial bombardment, or from the effects of blockade, may be reckoned not to have sought it; although it may be argued that populations of democracies at total war have brought it on themselves. Civilians in the midst of a revolutionary or civil war may genuinely sympathize with 'irregulars' claiming to be fighting on their behalf, or they may not; in either case their situation is dire. The men who made the Hague Regulations and attempted those other fringe softenings of the rigours of war could only most vaguely imagine what total war would be like. Revolutionary peoples' war was even further from their imaginations.

Their successors in our own time have attempted to bring the laws of war up to date. Men of the Hague tradition were joined with men of the Geneva tradition, the Red Cross tradition, at a mammoth Diplomatic Conference from 1974 to 1977 in Geneva to produce those Protocols Additional to the Geneva Conventions which I have already mentioned. The most important parts of them for my story are those dealing with bombardment and with insurgencies. Rules governing the former were at long last worked out which seemed viable to would-be bombarders and reasonable to those representing the civilian interest. Whether the Articles are workable which attempt to protect the civilian at the same time as allowing the lawful insurgent fighter reasonable opportunity to operate, is a vexed question, with a good deal—again!—of fudge in it.¹³ All I will say of it is that fudge combined with goodwill and good luck is well known sometimes to work; and that, like it or not, some problems in international relations, as in other aspects of life, are simply insoluble.

Now for what is generally reckoned to have been the Conference's greatest achievement: the Convention for the Pacific Settlement of International Disputes. In other and more common words, a multilateral treaty for arbitration between states. What was new and striking about it was not the idea of arbitration as such but its institutionalization, its installation in the foundations of an improved world order.

Arbitration is an ancient practice which lay dormant between the sixteenth and nineteenth centuries. It resurfaced as one of the best ideas of that Internationalism which (as I have already mentioned) was one of the last century's contradictory interests. And the idea found plenty of practical expression. Individual states often deemed it convenient to make arbitration arrangements with one another. Britain and the United States included provisions for such arrangements in the treaty, always known as Jay's Treaty after its American negotiator, which comprehensively sorted out and settled the raft of quarrels and claims which bedevilled relations between the two countries after the thirteen colonies became independent. The British international lawyer, Thomas

¹³ The making of these parts of the Additional Protocols is dealt with in my book, *War and law since 1945* (Oxford: Oxford University Press, 2nd edn, 1997).

Barclay, writing soon after the turn of the century, counted eight such treaties between 1820 and 1840; thirty between 1840 and 1860; forty-four between 1860 and 1880; and ninety between then and 1900.¹⁴ A considerable 'arbitration' literature developed, the acknowledged masterpiece of which, found very useful at The Hague, was the London Peace Society's regularly updated survey edited by Dr W. Evans Darby.

The most celebrated of these nineteenth-century arbitrations was, of course, that over the damages done to Union merchant shipping by the Confederate cruiser *Alabama* during the American Civil War. Gladstone's decision to commit the case to a mixed commission for arbitration was seen by internationalists as a brave and virtuous step in the right direction; by his political opponents and by the sort of visceral patriot who is always with us as an abandonment of national pride and honour. The panel had five members: a judge each from Britain, the United States, Italy, Brazil, and Switzerland. The award, which went against Britain in the sum of fifteen-and-a-half million dollars, aroused much fury on this side of the Atlantic. It was the same story the other way round when Britain and the United States sensibly submitted to a pair of arbiters Britain's claims against the American navy in respect of its seizures during its blockade of Cuba in 1898. The American Secretary of State, John Hay—notwithstanding his public advocacy of arbitrations—was furious about the American judge's feebleness. 'But after all', he concluded irritably, 'we have nothing to do but pay and look pleasant.'¹⁵ So it always is with Arbitration. The party on the losing side is rarely convinced of its merits.

It was no surprise that this great matter should be high on our Conference's agenda. Nor was it surprising that it should be recognized as the most delicate of topics, requiring sensitive handling and a total removal from public observation. The committee entrusted with producing a draft Convention had some powerful figures on it. In the chair was the former foreign minister of France, Léon Bourgeois. Vice-chairmen were the Italian ambassador to Vienna, Count Nigra, and Sir Julian Pauncefote, Britain's ambassador to Washington since 1889. Pauncefote's arbitration skills had been kept in good shape by difficult negotiations of settlements of the rows about seal-killing rights in the Behring Sea and about the border between Venezuela and British Guiana (which Washington deemed a Monroe doctrine matter). It was he also who negotiated the General Arbitration Treaty between Britain and the United States which only failed to become law because it could not get a two-thirds majority in the Senate. I have been amused to read in a letter from Pauncefote to Lord Salisbury, 'the Senate [has] absolutely disregarded public opinion...'¹⁶ *Plus ça change...*

This excellent Convention of 1899 approached the goal of 'obviating, as far as possible, recourse to force in the relations between states' by four different

¹⁴ Article on 'Arbitration' in *Encyclopaedia Britannica*, 11th edn (Cambridge: Cambridge University Press, 1911), vol. 2, pp. 327–31 at p. 328. His article on 'Peace' in vol. 21 of the same gives a good picture of the 'peace movement' of his time.

¹⁵ R. B. Mowat, *Life of Lord Pauncefote* (London: Constable, 1929), p. 208.

¹⁶ *Ibid.*, p. 169.

routes. First, they were urged to seek and to accept the 'good offices' of friendly powers; so touchy did states tend to be about their sovereign status, it was stipulated that no offer of good offices etc. should be regarded as an 'unfriendly act'. Next, there was an ingenious suggestion that states in dispute should for a few weeks cease to deal directly with one another while they put their causes into the hands of trusted neighbours; just as prospective duellists used to communicate through 'seconds'. Third: 'in differences ... involving neither honour nor vital interests, and arising from a difference of opinion on points of fact', the difficulty could be settled by a Commission of Inquiry, a plain and simple fact-finding commission. And fourth, there was to be established at The Hague a Permanent Court of Arbitration, ready to handle all international business voluntarily entrusted to it.

How shall we evaluate this pioneer legislation? The first thing to note is that everything in it was optional. Arbitration enthusiasts had hoped that the use of it would be obligatory. The Great Powers were not having that! Nor, for that matter, were most lesser ones. (Those in the Balkans were particularly unhappy even about the Commission of Inquiry, I don't know why.) Germany, well to the fore in declamations about national honour etc., took the lead in objecting to the obligatory principle, and insisted on the removal of even a very small bit of it in relation to minor disputes about matters in which, really, points of honour or national interest could scarcely be imagined. But that was how things were. And that essentially is how things still are. What states agree shall be arbitrated about or adjudicated on, can so be dealt with. What they decline to submit to such genial processes, cannot.

States, however, in the early years of this century often did agree to settle disputes under the umbrella of this Convention. You will wish to be spared the details of the first four cases dealt with: the 'Pious Funds of California', the Venezuelan Claims, the Japanese Leases, and the Muscat Dhows. I will instance only the strange affair of the Dogger Bank. This was when the Russian Baltic fleet, traversing the North Sea on its way as inconspicuously as it could (not especially so) towards Japan, made out in the darkness a lot of small vessels and excitedly presumed them to be Japanese torpedo boats. A few were sunk before their true identity was revealed as fishing boats out from Lowestoft and Yarmouth. A first-rate international row was avoided by both parties' instant recourse to a Commission of Inquiry.

The great days of The Hague's Court of Arbitration were over by 1914. That is not to say that arbitration has ceased to figure in the affairs of states, only that it goes on in other forms; also that some of the causes that used to be thought appropriate for it were able to go, after 1919, to The Hague's other permanent court, the International Court of Justice (ICJ) established by the League of Nations in 1919, and re-established almost unchanged by the United Nations in 1945.

With Disarmament still to talk about, I shall say very little more about these courts. They do not seem to me to have pushed the frontiers of justice much beyond where they were ninety years ago. What goes on in that amazing Peace

Palace at The Hague is of the greatest service to the international community, but only because the parties ask for it to be done and let it be done. Nowhere in the study of international affairs is 'the domestic analogy' more misleading. The very words 'Court' and 'Justice' are traps for the unwary. In a nation's domestic life, a court of justice is an organ of the state, of whose judgments serious notice has to be taken. In the society of states as at present constituted, the infrequent judgments and 'advisory opinions' of the ICJ need not be taken notice of by any party willing to face opprobrium and perhaps inconvenience; as was France in the 1970s, Iran through the 1980s, and the United States when it extracted itself from the Nicaragua case. Perceptions of national interest and honour are less frankly talked about than in 1899, but can still trump all other cards. Ultimate enforcement may constitutionally come from the Security Council ... but we all know what that means.

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And now disarmament. Disarmament and peace were twinned in the Tsar's first communication—'the maintenance of general peace and a possible reduction of the excessive armaments which weigh upon all nations'—and since this same linkage was the foundation of the 'peace movement', two curious phenomena are explained: the Russian autocrat's popularity among certain Western democrats and humanitarians, and the Conference becoming known even in official circles as the Hague Peace (or Peace and Disarmament) Conference. So far as disarmament went, that was a total misnomer. Nothing more was achieved in the disarmament line than the resolution 'that the restriction of military budgets, which are at present a heavy burden on the world, is extremely desirable for the increase of the material and moral welfare of mankind.' But the Russian suggestions about (what we would now call) arms control took up a lot of conference time and touched on some of the modes and problems familiar to us still. I will mention a few of the more interesting.

First, the multilateral abolition of particular weapons; not particular abolitions or reductions by bi- or tri-lateral treaties, as in the Washington naval treaties and the two SALTs, but multilateral, general. There have been a few successes. Biological and chemical weapons have been banned by UN treaties of 1972 and 1993 respectively. Certain unusual fragmentation weapons were banned by a UN treaty in 1981. Landmines have recently been banned by a Convention achieved outside the UN (outside, because it had little chance of being banned inside). But that's all. The common characteristic of these universally banned weapons is that major military powers could persuade themselves they could do without them. All the other weapons and systems which from time to time have been proposed for banning—submarines, bombers, nuclear weapons, napalm, to mention only the most obvious—are still with us, although it is a blessed effect of the 1899 tradition that all of them (except perhaps submarines) have been put under increasingly strict legal limitations as to their *use*.

Now for the associated matter of inspection and verification—crucial of course to the reliability of every measure of arms control, and as we all know so very difficult to implement. This matter had its first airing at The Hague, when a Dutch delegate put the Russian proposal to ban innovation in small arms. Referring to the question of inspection, he said ‘it would be an insult to the honour of States to presume them capable of breaking faith’. After General Ardagh had tactfully sounded a note of scepticism, the senior German reiterated that ‘there was no question of doubting the good faith of Governments’... and that was that!¹⁷ By now, we have become more sophisticated about this business and not only take Intelligence-gathering for granted but may note that from the 1960s the superpowers took for granted one semi-spying form of it, surveillance from space, as a wholesome part of their system of mutual deterrence. But inspection on the ground, and verification of the closest kind, remain the rocks on which arms control proposals repeatedly come to grief.

The feature which may bring us closest in spirit to the good folk of 1899 is the financial one. Not just the horror of war but the cost of preparedness for it was what made that conference so exciting to so many people: the cost, and the thought of what might otherwise be done with so much money. This argument did not get far at The Hague. To the insistence of the Russians and the smaller ‘powers’ that military budgets were burning money that could be better used on social welfare etc., the German delegates blandly replied that in their country, at any rate, there was wealth enough for guns and butter; and furthermore that the German people had no objection to footing the bill for both. This argument reappeared thirty years or so ago in a shape familiar to most of us here: that failure to curb military expenditures has crippled the development of the poorer countries of our world and kept the richer ones from fairer distribution of their wealth. It was this disarmament–development linkage that produced in 1978 the UN’s first Special Session on Disarmament (pleasantly known in the trade as UNSSOD One¹⁸) and two years later the famous Brandt Report which began the rotation of our mental axis from East–West to North–South.

The last recognizable feature of 1899 I will mention is that it brought into the open two truths that have been universally acknowledged ever since: first, that no state with a disagreeable neighbour or cause to believe it might acquire one will lightly take the risk of letting itself be put at a military disadvantage, and second, that schemes for all-round equal force reduction usually founder on the extreme difficulty of calculating force equivalences. (‘How many Serbian soldiers are equivalent to one Tomahawk missile?’) The men of 1899 very quickly gave up. Their close successors in 1907 thought it a waste of time to try. The Great War having powerfully suggested that it was desirable to try again, these aspects of the subject had a thorough airing in the League of Nations’ heroic pursuit of Disarmament, culminating in the great Geneva Conference at last begun in

¹⁷ As in note 6 above.

¹⁸ UNSSODs 1 and 2 are the subject of a useful Oxford M. Litt. thesis by Elizabeth Burch held in the Bodleian Library. Ms. M. Litt. C. 1001.

February 1932. It failed, as has every scheme for general disarmament ever since. I close with the aphorism attributed to the good Edouard Herriot, a leading French participant in the 1930s: “‘To disarm’ is an irregular verb with no first person singular and only a future tense.’”

What can be said in conclusion? I am not a sage, just a historian doing his professional best to turn the accomplishment of many years into an hour-glass, or somewhat less. I have sought to note some of the changes in the political organization of our world since that Conference of 1899 set them in train. It is obvious that, notwithstanding those changes, our world has not become a better place for many of us to live in or, for any of us, a safer one. But whether these mixed effects and dark developments are more to be attributed to failures of political organization or to the working of forces beyond political control, I find it impossible to judge.

I can, however, offer a modest contribution towards a conclusion. My suggestions are based on some scraps of evidence that have come before me as I studied what shrewd observers, especially the leading international lawyers of that age, have written about our Conference and its successors. The men at The Hague in 1899 did what they could—within the limits set by their states—without hurry and without overmuch regard for the tides of press and public attention which lapped around them. Not that public opinion did not matter to governments. It was something they were well aware of, either to respect or to exploit. But it was not quite yet forming the popular gallery to which diplomatic gatherings have had to play ever since. Shrewd observers noted the change already in 1907, when the second Hague Conference, a much bigger affair (no free lunches this time!) reaffirmed and sought to extend the work of the first. The press was admitted, the public was enthusiastic, W. T. Stead and Bertha von Suttner were there again. The pressure was on to show results. Delegates, even if they could achieve nothing at The Hague, had their eyes on the folk back home. And the results of *that* were, first, that some of the treaties made were unrealistic, and second, that states began a practice which has gone on and got worse ever since, of attaching ‘Reservations’ to their signatures of treaties which they felt obliged to sign but knew would be impossible or risky fully to observe. The only sort of reservation in 1899—the ‘R’ word was not actually used—had been the usual American reminder to everyone else about the Monroe doctrine; Ambassador White was embarrassed to have to make it, and was heard in stony silence!¹⁹ Reservations, at that date, seemed a bit dishonest. Since 1907, they have become commonplace. Another kind of dishonesty which began after our Conference and was to burgeon in the age of ‘open diplomacy’ was denounced thirty years later by Oxford’s admirable

¹⁹ White, *Autobiography*, vol. 2, pp. 340–2. The chairman’s inquiry whether there were any questions was met by a dead silence ‘for about a minute which seemed to me about an hour’. Pauncefoot told him he didn’t like it, saying, ‘It will be charged against you that you propose to evade your duties while using the treaty to promote your interests.’

Chichele Professor of International Law, James Brierly. Commenting on the 1928 General Act of Geneva, held up by League loyalists and superficial students to testify to the progress of peace, he wrote that it was (a) useless, (b) unnecessary, (c) pretentious, and (d) that the British government was dishonest in ratifying it with reservations; showing that it did not take it seriously.²⁰ I like to recall Brierly, partly because he was always pointing out the illusions in the concept of 'sovereignty'; partly because international law for him was, as for the publicists of the previous centuries, a limb of moral philosophy; and partly because his book *The law of nations: an introduction to the international law of peace*, has been for many years, equally with Hedley Bull's *Anarchical society*, a beacon guiding my thoughts about peace (and war) in our century.

James Brierly died in 1955, and it is clear that his obituarists, immensely as they respected his work, felt that he had become out of tune with the times. A younger generation of international law men was going to have to accept and make the best of the torrent of legislation and resolution-ing coming out of the UN whether they liked it or not. But things have fallen out just as Brierly feared they would. The second half of our century has not turned out more peaceful than the first, no matter how much more immense and portentous have become the institutions of international law and order. I don't think Brierly was so out of date, in sticking to this great truth: that whether we are talking about national or international society, the 'Law and Order' which we may desire for both puts the matter the wrong way round. Law is fine for helping consolidate a social and cultural Order for which the wish and will already exist, but it can hardly impose a self-sustaining Order on a society still characterized by clashes and conflicts.

I leave the last word with another of the fine international law men of those years, John Westlake, Whewell Professor at Cambridge. He was one of many celebrities to whom W. T. Stead addressed a circular letter early in 1899, asking them what they thought would come of the Conference. This is what he wrote:

Let every individual do his best to keep the claims of his own country within just limits, and to advocate on each occasion, even after that, a disposition not to insist on the last farthing, and arbitration where possible. Let every individual State do its best to prevent injustice between its neighbours, either in entering on a war or in the terms of peace by which a war may be concluded, by not shrinking from expressing an opinion or from supporting that opinion by the needful pressure.

If citizens have not the courage and States have not the unselfishness for this, no machinery will help the case. If they have, machinery will not be wanted or will be arranged easily so far as wanted.²¹

That was written before the Hague Conference of 1899. One hundred years later, the message might still be the same.

²⁰ 'The General Act of Geneva, 1928', in *British yearbook of international law* (1930), pp. 119–33. The full title of the thing he disliked so much was 'The General Act for the Pacific Settlement of International Disputes', product of the 9th Assembly of the League.

²¹ *War Against War* (W. T. Stead's short-lived periodical), no. 1, 13 January 1899, p. 2.