

THE REGULATION OF WAR<sup>1</sup>

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The regulation of war is for some peace workers practically a forbidden subject for discussion. Peace Congresses do not regard as within their province the making of war regulations. Frequently on the Continent of Europe, and sometimes in England and America also, the question is asked when a resolution is about to be put, "Why consider the regulation of war? If you consider it, you recognize it as a legitimate means of settling international differences. War is too wicked an institution to be tolerated even so far as to regulate its methods. Let it be just as brutal as it can be and it will go out of existence all the sooner. The thing to do is to prevent war, not to make rules for conducting it." And there is ethical consistency in this, the position of the uncompromising peace man. On the other hand, there is also an ethical difficulty about it. Humanity is always in place whether it is shown on the battlefield or among scenes of peace. If you cannot stop a man from fighting, why should you let him be pummeled to death when he is down, or thrown into a trench like a maimed dog while still alive, or, if he is lying in a hospital, why let more bullets be shot into him, when a law may be made to protect him from further harm?

The fact that Jean Henri Dunant, founder of the Red Cross, received the Nobel Prize is, in a way, a recognition of the ethical value of the regulation of war.

The regulation of war has a logical place in the program of the Hague Conferences because it represents the humanitarianism of the nineteenth century in its relation to war. The first systematic code for the regulation of war, the real basis of all recent attempts to regulate it, was drawn up by Dr. Francis Lieber and adopted for use by the United States army in a general order issued by President Lincoln, April 24, 1863.<sup>2</sup> An improvement

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<sup>1</sup> All rights reserved. This is the fourth of a series of seven articles by Dr. Tryon on subjects of present interest in International Law, which will appear in the JOURNAL during the present calendar year.

<sup>2</sup> *Dr. Francis Lieber's Instructions in the Government of Armies in the Field.* By George B. Davis. *Am. Journ. Int. Law*, Vol. I, 13. Scott's *Texts*, p. 350.

upon this was made at the Brussels Conference of August 27, 1874<sup>3</sup> and again at the meeting of the Institute of International Law at Oxford, Sept. 9, 1880,<sup>4</sup> the results of which may be found in the convention with respect to the Laws and Customs of War on Land<sup>5</sup> adopted by the Hague Conferences of 1899 and 1907. Alongside these should be placed the Declaration of St. Petersburg, Nov. 29 (Dec. 11, old style) 1868,<sup>6</sup> which, in explaining reasons for renouncing certain explosives with a view to lessening the horrors of war, gives the spirit of war regulations. It says:

That the only legitimate object which states should endeavor to accomplish during war is to weaken the military force of the enemy; that for this purpose, it is sufficient to disable the greatest possible number of men; that this object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable.

To put the matter in the language of Mr. Holls (Mohonk report for 1900, p. 11):

The idea which lies at the foundation is that in a war between civilized nations there should be not only no unnecessary cruelty, but no greater interruption of peaceful industry than is unavoidable.

All the topics relating to this subject have been discussed by some of the ablest writers on international law.<sup>7</sup>

<sup>3</sup> Scott's *Texts*, p. 382.

<sup>4</sup> Scott's *Texts*, p. 389.

<sup>5</sup> Scott's *Texts*, pp. 45, 209. Scott's *Conferences*, Vol. II, pp. 110, 368.

<sup>6</sup> Scott's *Texts*, p. 381.

<sup>7</sup> See especially the following writers: Holls, 93-117. J. B. Moore, *Int. Law Digest*, Vol. VII, pp. 152-341. Hull, *The Two Hague Conferences*, pp. 169-262. Scott's *Conferences*, Vol. I, pp. 512-540. Higgins, *The Hague Peace Conferences*, pp. 256-272. Westlake, *International Law*, Part II, War, pp. 52-108. Holland, *Laws of War on Land (Written and Unwritten)*. Bordwell, *The Law of War Between Belligerents*. The topic is treated in various chapters in Lawrence's *Principles of International Law*; Prof. G. G. Wilson's *Handbook of International Law*; Wilson & Tucker's *International Law*, and George B. Davis' *Elements of International Law*. Articles by George B. Davis should be seen in *Am. Journ. Int. Law*, Vol. I, p. 13, already referred to, and Vol. II, p. 63. For official reports of discussions of the regulation of war at the Hague Conferences, see *Conférence Internationale de la Paix*, La Haye, 1899; and *Deuxième Conférence Internationale de la Paix*, La Haye, 1907. These throw much light on the subject.

The rules relating to the status of the wounded soldier, for whose benefit much has been done, are embodied in the Geneva Convention. In the year 1859 when the war was in progress in which Italy, France, and Austria took part, the humane spirit of the times, which had developed since the Napoleonic campaigns, was touched by the stories of the neglect and suffering of wounded men, particularly after the battle of Solferino, where many were left in a cruel manner to die from neglect. Organized relief was proposed by Mr. Dunant, who persuaded the Swiss government to call a meeting of the representatives of the nations at Geneva in 1864, which made the Geneva, sometimes called the Red Cross, Convention. This guaranteed surgical care and nursing for foe and friend alike in time of war; made hospitals neutral ground; protected ambulances; and, as far as possible, spared physicians, nurses and chaplains while engaged in works of mercy. These rules, however, applied only to troops fighting on land. An attempt was made to adapt them to sea warfare at a second meeting in Geneva in 1868, but the convention then adopted was never ratified. It was, however, revised and adopted by the First Hague Conference, held thirty-one years later. Meantime conditions under which land warfare was conducted and ideas of sanitation had changed so much that it became necessary for a complete revision of the original convention of 1864.

In response to a recommendation made by the First Hague Conference a new convention was made in 1906.<sup>8</sup> This convention, however, did not apply to sea warfare, the completion of the rules in regard to which was left to the Second Hague Conference.<sup>9</sup> There is, therefore, a general understanding among the nations as to the treatment of the sick and wounded in time of war, whether it be on the sea or on land.

As the first Geneva Convention (1864) does not appear in the Conventions of the First Hague Conference, but is simply adopted by title, so the second Geneva Convention is only referred to by title in the regulations respecting the Laws and Customs of War on Land. The section relating to them reads:

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<sup>8</sup> For Red Cross Convention see Scott's *Texts*, p. 376. *Am. Journ. Int. Law*, Vol. I, p. 409, for article by Gen. George B. Davis, explaining this convention. Summarized briefly by Hull, pp. 193-199. See also Higgins, pp. 8-38, for texts and commentary.

<sup>9</sup> Scott's *Texts*, 267. Scott's *Conferences*, Vol. II, 446.

The obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention.<sup>10</sup>

The spirit of the new Geneva Convention, which is more technical in its wording than that of 1864, may be understood by the following extract from its first chapter :

Art. 1. Officers, soldiers, and other persons officially attached to armies who are sick or wounded shall be respected and cared for, without distinction of nationality, by the belligerent in whose power they are.

However, a belligerent, when compelled to leave his wounded in the hands of the enemy, shall leave with them, so far as military conditions permit, a portion of the personnel and matériel of his sanitary service to assist in caring for them.

Art. 2. Subject to the care that must be taken of them under the preceding article, the sick and wounded of an army who fall into the power of the other belligerent become prisoners of war, and the general rules of international law in respect to prisoners become applicable to them.

The belligerents remain free, however, to enter into such mutual stipulations in regard to sick and wounded prisoners as they may deem appropriate. They shall have, especially, authority to agree :

1. To mutually restore the sick and wounded left on the field of battle after an engagement.

2. To send back to their own country the sick and wounded who have recovered, or who are in a condition to be transported, and whom they do not desire to retain as prisoners.

3. To send the sick and wounded of the enemy to a neutral state, with its consent, and on condition that they shall be interned by the neutral state until the close of hostilities.

Art. 3. After every engagement the belligerent who remains in possession of the field of battle shall take measures to search for the wounded and to protect the wounded and dead from spoliation and ill treatment.

He will see that a careful examination is made of the bodies of the dead prior to their interment or incineration.<sup>11</sup>

Whether war be justified or not, whether rules of this kind give it moral recognition or not, the better nature of mankind is revealed in these provisions and the world would be the darker without them. There is also this to be said for the unfortunate soldier. In many countries, other than the United States and Great Britain, he is not a volunteer. He does not necessarily fight for his opinion, or for anything in which he has an interest.

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<sup>10</sup> Scott's *Texts*, p. 218. Scott's *Conferences*, Vol. II, 387.

<sup>11</sup> Scott's *Texts*, p. 403.

He is compelled to take part in war whether he wishes to or not. Whatever is done for the European soldier by the Red Cross is, therefore, often done for a man who is not responsible for being a soldier and who cannot help himself.<sup>12</sup>

The rules relating to sea warfare protect hospital ships during hostilities; they allow such ships, equipped either wholly or in part by private individuals, or by officially recognized relief societies, to be used by a belligerent when properly certified. These are exempt from capture if formally put under the control of a belligerent. They must assist the wounded, sick and shipwrecked men in the service of both the belligerents, without distinction of nationality. They must not, however, be used for a military purpose or allow their movements to hamper the operations of belligerents. They must be marked with distinctive signs so as to be easily distinguishable by day or night. If a battle takes place on a warship, its sick wards must be respected as much as possible. As it is permissible for an armed guard to be left in hospitals or with wounded men on the battlefield, so a guard may be placed over the sick wards of a hospital ship, and this circumstance will not deprive the ship of its immunity from capture. Neutral merchantships, yachts and boats may take on board sick or wounded, after a naval battle, and vessels responding to an appeal for relief must be protected. Religious, medical and hospital attendants cannot be made prisoners of war, whether on sea or land. After every engagement the same care must be taken to look for and inquire into the condition of the sick and the wounded, and in this case the shipwrecked also, if there are any, as is taken under the rules for the same class of persons in land warfare.<sup>13</sup>

Much progress has been made in regard to the treatment of prisoners of war. When an American hears the phrase, "prisoners of war," he is naturally reminded of Andersonville and Libby prison, names that are mentioned here not to recall old strife, but to help learn of the light that has broken forth on a new day. The horrors of even fifty years ago, to say nothing of a century ago, cannot be repeated. Attention is especially called

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<sup>12</sup> The work of the Red Cross has within recent years been thoroughly organized for relief in time of peace as well as war. See *Monthly Bulletin*, published by the Red Cross at Washington.

<sup>13</sup> For an examination of the Geneva Convention as applied to Naval warfare, see report by Prof. Renault, *Am. Journ. Int. Law*, Vol. II, p. 295. Higgins, pp. 382-391.

to the three following regulations, the significance of which might escape the notice of the average reader who, for the first time, examines this technical and complicated subject.

Article 4 reads:

Prisoners of war are in the power of the hostile government, but not of the individuals or corps who capture them.

They must be humanely treated.

All their personal belongings, except arms, horses and military papers, remain their property.<sup>14</sup>

Again, Article 7 reads:

The Government into whose hands prisoners of war have fallen is charged with their maintenance.

In the absence of a special agreement between the belligerents, prisoners of war shall be treated as regards board, lodging, and clothing on the same footing as the troops of the government who captured them.<sup>15</sup>

There is nothing suggestive of the horrors of the old military spirit,—of dead lines, starvation, and shelterless camps, in these passages, but rather of the spirit of humanity, although it is presumed that a nation having prisoners of war must be able to care for them according to these rules.

Referring to the application of these rules in the Russo-Japanese War, the first to which they were applicable, Professor Hershey says:

All the witnesses who have given evidence (and they are numerous) speak in the highest terms of the treatment of Russian prisoners, and especially of the sick and wounded, on the part of the Japanese. \* \* \* \* Within a few weeks after the outbreak of the war Japan made arrangements for putting into operation the provisions of the Hague Conference for the treatment of prisoners. Of the Russian treatment of Japanese prisoners, less is apparently known than of the Japanese treatment of Russian prisoners. From such evidence as we have, it appears, however, that those Japanese prisoners who fell into the hands of the Russians were, as a rule, well cared for, except at Port Arthur.<sup>16</sup>

The usage of prisoners has been humanized in other respects. As soon as hostilities are begun a bureau is organized by the captor government which supplies information to the friends of those in captivity as to their condition. This bureau receives articles for them from their homes or from relief societies. If a

<sup>14</sup> Scott's *Texts*, p. 211. Scott's *Conferences*, Vol. II, p. 379.

<sup>15</sup> Scott's *Texts*, p. 212. Scott's *Conferences*, Vol. II, p. 379.

<sup>16</sup> Hershey, *International Law and Diplomacy of the Russo-Japanese War*, pp. 319, 322. See generally, chapters X and XI.

prisoner is set to work by his captors he is paid for his labor, which must be appropriate to his station and must not be connected with military operations. Officers who are taken prisoners are paid the same wages as men of the same rank receive in the captor army, which must be refunded to the captor by the prisoner's own government after the war is over. A prisoner is supposed to suffer no more confinement than necessary to prevent his escape, but if he does escape, and is recaptured, he is not punished, except by closer confinement or surveillance.

The faithfulness with which these rules of war were observed in the Russo-Japanese War leads to belief in the practicability of still more reforms and is prophetic of a time when, from the point of view of the regulative and ameliorative measures, the war system, from its sheer inconsistency with the newer standards of humane conduct, will tend to go out of existence altogether.

Other regulations relate to the treatment of spies, bearers of flags of truce, restrictions as to means of injuring an enemy, and methods of conducting sieges or bombardments. Article 22, taken from the Convention on the regulation of war, illustrates in a laconic, negative sentence the animating principle of the rules: "The right of belligerents to adopt means of injuring the enemy is not unlimited."<sup>17</sup> This phraseology is suggestive. We may well use the term "*limitation*" instead of regulation of war in order to indicate what its regulation means. Poison, treachery, killing men after they have surrendered, or have been disarmed and declaring that no quarter shall be given, are all forbidden.<sup>18</sup>

One of the most beneficial regulations applies to the treatment of the civilian inhabitants of a country suddenly invaded by an enemy's army. It is Article 2 of the annex to the Convention respecting the Laws and Customs of War on Land. It reads:

The inhabitants of a territory which has not been occupied, who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article 1, shall be regarded as belligerents if they carry arms openly and if they respect the laws and customs of war.<sup>19</sup>

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<sup>17</sup> Scott's *Texts*, p. 218. Scott's *Conferences*, Vol. II, p. 387.

<sup>18</sup> For a short sketch of conditions under which war was conducted in former ages with references, see Bordwell, pp. 7-25. See also references in Davis' *Elements of International Law*, pp. 286, 326.

<sup>19</sup> Scott's *Texts*, p. 210. Scott's *Conferences*, Vol. II, p. 377.

This is a protection to countries having practically no standing army, but relying upon the patriotism of the masses of the people to respond to a call to arms to resist an invader, but it applies also to countries having a standing army which may be elsewhere occupied than in the territory invaded. The provision originated in the experiences incident to the levies *en masse* in France in 1870. It is an advance from the past as it tends to protect from ruthless slaughter or treatment as outlaws a military force not in uniform, provided it complies with the legal requirements specified.

It is an interesting fact that an attempt has been made by advocates of peace to have "inferior populations" who rise in rebellion against stronger powers, or against invaders, given belligerent rights, that is, to have these peoples recognized as coming under the rules and customs of war, and not be treated as outlaws. A resolution to this effect was passed at the International Peace Congress at Munich in 1907. It reads:

The Congress, while fully confirming its former resolutions as to the regulation of war being outside its province, invites, in a spirit of justice and humanity, and in the interests of the peace of the world, the governments of civilized countries to apply to so-called inferior populations, whether subject or independent, the provisions relating to the laws and customs of war contained in the Convention of the 29th of July, 1899, which afford protection both to persons and property.<sup>20</sup>

It is one of the sins of powerful and aggressive governments that when they are oppressing weaker peoples and states they do not deal with them according to the rules of war which apply between nations equally matched, but use a more brutal code of ethics altogether. As the benefits of the international movement for world peace are extended, it is reasonable to suppose that they will apply to inferior populations as well as to recognized governments and that the time will come when the least of the world's inhabitants will be treated in a civilized manner, provided that he himself does not resort to forbidden measures.

The law relating to private property on land should be considered, by comparison, in connection with the question of the treatment of private property on the sea, which, however, is not covered by this article. There is one important matter in relation to it that is often overlooked. There is a well recognized prin-

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<sup>20</sup> *Bulletin Officiel du XVI le Congrès Universel de la Paix*, Munich, 1907; Berne, 1908, p. 130.

ciple that except for "military necessity" private property on land must not be taken or destroyed, and, if appropriated for military purposes, on formal requisition, must be paid or receipted for. The term "military necessity," however, is a loophole for great wrongs. On the plea of "military necessity" terrible destruction to property has been wrought within the past half century. It excused the destruction of Atlanta by General Sherman's forces in our Civil War. On this ground the homes of many of the Boers and of the Filipinos were destroyed in the course of their subjugation. There are times when the supplies of an enemy may be as important to an invader as soldier's lives, but their appropriation often means starvation to women and children.

If there is any one term the conception of which needs reformation it is this one. Whenever the matter comes up in courses in international law, in law schools and colleges, instructors should make it a point to explain the evils and inconsistencies which occur in the interpretation of the term "military necessity" and should encourage students to use their moral influence to have its scope restricted as much as possible in the future. International Law is in an ethical, constructive stage; the aim of a teacher should be not only to state what the law is, but to suggest what it should be. And the same duty devolves upon all writers and publicists who deal with the subject. "Military necessity" ought to be limited or defined by the Third Hague Conference, and meantime the barbarities committed in its name ought to be given full publicity.<sup>21</sup>

In land warfare undefended towns are protected (by Article 25) from bombardment by any means whatsoever. This provision prevents the use of airships in bombardments.

Bombardments of undefended towns and villages from the sea by naval vessels are no longer allowed. The Hague Convention<sup>22</sup> on this subject embodies the consensus of recent interna-

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<sup>21</sup> For a discussion of this subject, see Westlake *International Law*, Part II, p. 115. Holland, *The Laws of War on Land (Written and Unwritten)*, pp. 12, 13, 14, 33, 43. Bordwell, *The Law of War Between Belligerents*, p. 5. See also Chapter VII on Civil War of the United States, and Chapter XIII on War in South Africa for illustrations of the extent to which the plea of military necessity may be carried.

<sup>22</sup> Scott's *Texts*, p. 259. Scott's *Conferences*, Vol. II, p. 436. For a discussion, see Higgins, pp. 352-357. Scott's *Conferences*, Vol. I, pp. 587-598. See also Prof. Scott's article in *Am. Journ. Int. Law*, Vol. II, pp. 285-294.

tional opinion. The substance of it is given in its first article as follows :

The bombardment by naval forces of undefended ports, towns, villages, dwellings, or buildings, is forbidden.

A place cannot be bombarded solely because automatic submarine contact mines are anchored off the harbor.

Local authorities may be compelled, under penalty of bombardment, to supply provisions for the immediate use of a naval force before it, but the requisitions must be in proportion to the ability of the place. Bombardments are not allowed for money contributions. Naval bombardments, like those on land, must be preceded by a warning given by the naval commander, who must do his utmost to spare certain buildings which are exempt from destruction under international law, such as relate to art, science, and religion, or hospitals when not used for a military purpose. These must be indicated by large signs that can be easily distinguishable by the attacking forces.

The value of this Convention is variously estimated. On the one hand it is hailed by some advocates of peace as a definite step towards disarmament. They say if an unfortified city may not be bombarded, why spend any more money on fortifications? But it is answered by militarists that, although this law prevents the bombardment of an undefended city, it does not prevent the enemy from landing its army and making that city a base of military operations or from proceeding from thence to the interior, and as for mines they might be removed by ingenious modern appliances and approach to a city made possible.

An attempt was made by the Second Hague Conference to prevent the laying of mines in such a manner as to destroy neutral commerce, but with only partial success. It is possible for mines and torpedoes to be constructed so that if they are cast adrift, they become harmless within a specified time, as, for instance, an hour. But several of the nations are unable as yet to adopt the most modern system of mining and continue to use the old system by which torpedoes cast adrift may float in the sea until stopped by some approaching vessel, not necessarily an enemy's war-ship, but just as likely an ocean liner belonging to some other power, and having on board hundreds of innocent passengers, including women and children, with the result that the ship and passengers are destroyed. After the Russo-Japanese War the Chinese government was obliged to send vessels out to sea to pick up floating

mines of this destructive kind. The Chinese had lost several vessels and five or six hundred lives in consequence of criminal recklessness of one or both of the belligerents.

In spite of the progress made by the Conference in adopting a law for mines, a mistake was made by it in not restricting the laying of mines more carefully, and in allowing governments with old-fashioned methods too much time to adopt new ways. Dr. Thomas J. Lawrence, who is a great student of this subject, has already sounded a warning to the world in language that anybody can understand who reads his work, "International Problems and Hague Conferences." He says:

We should substitute for the vague Hague rule that unanchored contact mines should become harmless an hour after they cease to be controlled, the definite one that they must lose their explosive quality an hour, or any marked period that may be agreed upon, after they are dropped into the water. We should also provide that this rule come into operation immediately, and with it the corresponding rule that anchored mines should not be used unless they are so constituted as to become harmless the moment they break adrift. No days of grace should be allowed for other and more dangerous varieties.<sup>23</sup>

Dr. Lawrence then goes on to plead for the awakening of public opinion on this subject.

He says:

What is wanted at the present moment is a world-wide agitation. Trading interests and humanitarian organizations should speak with one voice. We are threatened with maritime warfare far more destructive of innocent human life, and far more dangerous to neutral property than anything of the kind since the Dark Ages. If Chambers of Commerce all over the world would combine to put pressure on their respective governments, and religious and progressive forces in every land should expose and denounce the impending evils, we should soon find that the resources of diplomacy were equal to the task of averting them.<sup>24</sup>

Warfare in the air was limited by the following rule in 1899:

The contracting powers agree to prohibit, for a term of five years, the launching of projectiles and explosives from balloons, or by other new methods of a similar nature.<sup>25</sup>

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<sup>23</sup> Lawrence, *International Problems and Hague Conferences*, p. 200. See also chapters VI, VIII and IX. Dr. Lawrence is an example of a writer who not only knows the laws of war, but wants them to be made more humane.

<sup>24</sup> The same, p. 201. See also for commentary, Higgins, pp. 328-345.

<sup>25</sup> Scott's *Texts*, p. 79. Scott's *Conferences*, Vol. II, p. 153.

The Conference of 1907 declared that:

The contracting powers agree to prohibit, for a period extending to the close of the Third Peace Conference, the discharge of projectiles and explosives from balloons or by other new methods of a similar nature.<sup>26</sup>

This Declaration, though it commits the nations against the use of airships in war, lacks the ratification of some of the chief European governments including Russia, Germany, France, and Italy. Some of the American nations, Mexico for example, and Japan have failed to ratify it. This fact makes the actual value of the regulation doubtful should it be put to the test; and meantime experiments with airships are being made in nearly all the military countries.

Declarations of war form a subject by themselves in the proceedings of the Second Hague Conference.<sup>27</sup> Legislation in regard to them marks a distinct change of view. In former times it was customary when war was intended for heralds ceremoniously to announce it to the enemy before taking action, but for the last 200 years, with some exceptions, one of which was the Franco-Prussian War, it has been customary to dispense with notice until the fighting has actually begun and then to give it, or in some way proclaim a state of war. This practice has a legal reason, as a country in order to claim the benefits of the laws of war, which permit doing exceptional acts, must inform other nations that it is engaged in war and not conducting its business under the ordinary laws of peace. Neutrals must also be duly notified. A country at war is concerned not only with its enemy, but with neutrals, whose lives and commerce have to be respected, though even neutrals are subjected to hardship. The nations learned a lesson when the Japanese fleet fired upon the Russian fleet at Port Arthur, taking it by surprise and destroying it without

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<sup>26</sup> Scott's *Texts*, p. 332. Scott's *Conferences*, Vol. II, p. 525. For a discussion see Higgins, pp. 488-491. The writer gives several valuable references. Compare also the prohibition with regard to the attack or bombardment of undefended towns "by any means whatsoever." (See *ante*.)

<sup>27</sup> Scott's *Texts*, p. 198. Scott's *Conferences*, Vol. II, p. 362. For discussion see Higgins, p. 202-205. Westlake, *International Law*, Part II, War, pp. 18-26. Scott's *Conferences*, Vol. I, pp. 516-522. Wilson, *Handbook of International Law*, pp. 246-249. Article by Ellery C. Stowell, *Am. Journ. Int. Law*, Vol. II, p. 50.

a previous declaration of war.<sup>28</sup> It was felt that a return to the custom of making a declaration would be in the interest of fair play and, therefore, the Conference required that hereafter there must be a declaration of war with reasons, or that a conditional ultimatum to be complied with on pain of war, be issued before hostilities are begun.

That the requirement for declarations of war is in part a peace measure is suggested by the thought that if a declaration be made in advance it may bring to his senses the belligerent that is notified of what may happen, and on the other hand, that it may give the notifying power a chance to cool off. Meantime, if the friends of peace become active in their cause, they may secure peace by mediation or by reference of the question at issue to a Commission of Inquiry and so prevent war altogether. The measure is, therefore, not only in the interests of fair play, but of peace, and the opportunity afforded for agitation in case of threatened war justifies in some degree the making of rules for a brutal system that it is hateful to recognize but which must be recognized if its regulation is attempted.

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<sup>28</sup> For a discussion of the opening of the Russo-Japanese War, see Lawrence, *War and Neutrality in the Far East*, p. 26. Hershey, *International Law and Diplomacy of the Russo-Japanese War*, p. 62. It appears that Russia should have expected and did expect resort to force by the Japanese, although surprised at the moment of the outbreak of war.