International Law Studies – Volume 13

International Law Topics and Discussions

U.S. Naval War College (Editor)

The thoughts and opinions expressed are those of the authors and not necessarily of the U.S. government, the U.S. Department of the Navy or the Naval War College.
TOPIC II.

COMMENCEMENT OF HOSTILITIES.

What regulations should be made in regard to the commencement of hostilities?

REGULATIONS.

ARTICLE 1. Hostilities between the contracting powers must not commence without previous and explicit warning, in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war.

ART. 2. The state of war must be notified to the neutral powers without delay, and shall not take effect in regard to them until after the receipt of a notification, which may even be given by telegraph. Neutral powers, nevertheless, can not plead the absence of notification if it is established beyond doubt that they were in fact aware of the state of war.

ART. 3. Article 1 of the present convention shall take effect in case of war between two or more of the contracting powers. Article 2 is binding as between a belligerent power which is a party to the convention and neutral powers which are also parties to the convention.

NOTES.

Introduction.—Certain aspects of the subject of declaration of war were considered in the International Law Situations of this Naval War College in the conference of 1910, and appear in the publication of that year as Situation II, pages 45 to 65. It was then shown that no uniformity of practice had prevailed in regard to time, method, or form of declaration, that there were reasons why some regulation should prevail for the declaration, and that The Hague conference of 1907 had tried to meet this need in the convention relative to the opening of hostilities.
Hague convention 1907, opening of hostilities.—The Hague conference of 1907 considered the question of the opening of hostilities, both from the point of view of the belligerent and of the neutral. The result of the long and careful discussion was a convention, of which the following are the essential articles:

Article 1. The contracting powers recognize that hostilities between themselves must not commence without previous and explicit warning, in the form either of a declaration of war, giving reasons, or of an ultimatum, with a conditional declaration of war.

This convention has now been adopted by most of the larger states of the world.

The understanding of its significance as presented to the Secretary of State by the American delegates is shown in the following statement from their official report:

The convention is very short, and is based upon the principle that neither belligerent should be taken by surprise, and that the neutral shall not be bound to the performance of neutral duties until it has received notification, even if only by telegram, of the outbreak of war. The means of notification is considered unimportant, for if the neutral knows, through whatever means or whatever channels, of the existence of war, it can not claim a formal notification from the belligerents before being taxed with neutral obligations. While the importance of the convention to prospective belligerents may be open to doubt, it is clear that it does safeguard in a very high degree the rights of neutrals, and specifies authoritatively the exact moment when the duty of neutrality begins. It is for this reason that the American delegation supported the project and signed the convention. (60th Cong., 1st sess., S. Doc. 444, p. 34.)

It is to be observed that this convention establishes the principle that the declaration shall be previous to the opening of hostilities, but does not state how long before the opening of hostilities the declaration should be made. The propositions made for fixing a specified time between the declaration of war and the opening of hostilities did not receive sufficient support in the conference to secure adoption. The committee concerned particularly with the formulation of the rules for the opening of hostilities called attention to the fact that the Institute of International Law in 1906 had not been able to agree upon a
period for delay between declaration and opening of hostilities, even when sitting in an unofficial capacity. The essential point is that the declaration shall be previous to the opening of hostilities.

Recent declarations.—Recent declarations of war show the necessity for definite regulations. The date of the commencement of the Spanish-American War of 1898 gave rise to many questions, some of which were taken to the Supreme Court of the United States.

Spanish-American War declaration, April 25, 1898.—According to the Constitution of the United States (Art. I, sec. 8, n.) Congress has power "to declare war."

On April 19, 1898, Congress passed the following:

Joint resolution for the recognition of the independence of the people of Cuba, demanding that the Government of Spain relinquish its authority and government in the island of Cuba, and to withdraw its land and naval forces from Cuba and Cuban waters, and directing the President of the United States to use the land and naval forces of the United States to carry these resolutions into effect.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, First, That the people of the island of Cuba are, and of right ought to be, free and independent.

Second. That it is the duty of the United States to demand, and the Government of the United States does hereby demand, that the Government of Spain at once relinquish its authority and government in the island of Cuba and withdraw its land and naval forces from Cuba and Cuban waters.

Third. That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States, to such extent as may be necessary to carry these resolutions into effect.

Fourth. That the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction, or control over said island except for the pacification thereof, and asserts its determination, when that is accomplished, to leave the government and control of the island to its people.

Approved April 20, 1898. (Foreign Relations U. S., 1898, p. 765.)

This resolution was immediately dispatched to the American minister to Spain, with an ultimatum.
DEPARTMENT OF STATE,
Washington, April 20, 1898.

You have been furnished with the text of a joint resolution voted by the Congress of the United States on the 19th instant (approved to-day) in relation to the pacification of the island of Cuba. In obedience to that act, the President directs you to immediately communicate to the Government of Spain said resolution, with the formal demand of the Government of the United States that the Government of Spain at once relinquish its authority and government in the island of Cuba and Cuban waters. In taking this step the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction, or control over said island except for the pacification thereof, and asserts its determination when that is accomplished to leave the government and control of the island to its people under such free and independent government as they may establish.

If, by the hour of noon on Saturday next, the 23rd day of April, instant, there be not communicated to this Government by that of Spain a full and satisfactory response to this demand and resolution, whereby the ends of peace in Cuba shall be assured, the President will proceed without further notice to use the power and authority enjoined and conferred upon him by the said joint resolution to such extent as may be necessary to carry the same into effect.

SHERMAN.

Before Mr. Woodford had delivered the communication to the Spanish Government, the Spanish minister of state sent to Mr. Woodford the following note:

In compliance with a painful duty, I have the honor to inform your excellency that, the President having approved a resolution of both Chambers of the United States which, in denying the legitimate sovereignty of Spain and in threatening armed intervention in Cuba, is equivalent to an evident declaration of war, the Government of His Majesty has ordered its minister in Washington to withdraw without loss of time from the North American territory with all the personnel of the legation. By this act the diplomatic relations which previously existed between the two countries are broken off, all official communication between their respective representatives ceasing; and I hasten to communicate this to your excellency in order that on your part you may make such dispositions as seem suitable. (Ibid, p. 767.)
Mr. Woodford then (Apr. 21, 1898) requested his passports and withdrew from Spain.

Spain on April 21, 1898, at 7.30 a. m. had stated that the threat of intervention in Cuba "is equivalent to an evident declaration of war."

The Spanish minister at Washington had requested his passports on April 20 at about noon. Mr. Woodford had been instructed on April 20 to remain near the Spanish Court in his capacity of minister till noon of the 23d of April unless previously handed his passports; and he did remain, and diplomatic relations were continued till the morning of April 21.

A blockade of Cuban ports was proclaimed on April 22.

On April 23, 1898, the Queen Regent of Spain issued a decree announcing the existence of war and declaring the termination of the treaties "and all other agreements, compacts, and conventions that have been in force up to the present between the two countries."

On April 25, 1898, Congress, exercising its constitutional authority, passed the following act:

First. That war be, and the same is hereby, declared to exist, and that war has existed since the twenty-first day of April, anno Domini eighteen hundred and ninety-eight, including said day, between the United States of America and the Kingdom of Spain.

Second. That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States, to such extent as may be necessary to carry this act into effect. (30 Stat., 364.)

By this act of April 25 war existed during the day of April 21 and from that time. By the Spanish decree treaty relations were superseded by war on April 23; in fact, diplomatic exchanges had taken place on April 21.

The Supreme Court of the United States acknowledged that war had existed since and including April 21, and that captures subsequent to that day were valid. This was two days prior to the Spanish decree and four days prior to the American declaration.

On the 25th of April President McKinley, recognizing that the position of the United States was not well de-
fined, said in a communication to Congress, referring to the position of the Spanish Government as stated in the note to the American minister at Madrid:

It will be perceived therefrom that the Government of Spain, having cognizance of the joint resolution of the United States Congress, and in view of the things which the President is thereby required and authorized to do, responds by treating the reasonable demands of this Government as measures of hostility, following with that instant and complete severance of relations by its action which by the usage of nations accompanies an existent state of war between sovereign powers.

The position of Spain being thus made known and the demands of the United States being denied with a complete rupture of intercourse by the act of Spain, I have been constrained, in exercise of the power and authority conferred upon me by the joint resolution aforesaid, to proclaim under date of April 22, 1898, a blockade of certain ports of the north coast of Cuba, lying between Cardenas and Bahia Honda and of the port of Cienfuegos on the south coast of Cuba; and further, in exercise of my constitutional powers and using the authority conferred upon me by the act of Congress approved April 22, 1898, to issue my proclamation, dated April 23, 1898, calling forth volunteers in order to carry into effect the said resolution of April 20, 1898. Copies of these proclamations are hereto appended.

In view of the measures so taken, and with a view to the adoption of such other measures as may be necessary to enable me to carry out the expressed will of the Congress of the United States in the premises, I now recommend to your honorable body the adoption of a joint resolution declaring that a state of war exists between the United States of America and the Kingdom of Spain, and I urge speedy action thereon, to the end that the definition of the international status of the United States as a belligerent power may be made known, and the assertion of all its rights and the maintenance of all its duties in the conduct of a public war may be assured. (Foreign Relations U. S., 1898, p. 771.)

From this it is plain that the status was not defined and assured until after the declaration, though the declaration issued on the 25th of April was held to define the status existing as regards the belligerent rights of the United States subsequent to the 20th of April. Under such conditions complications naturally arise not only as regards relations of belligerents but also as regards neutrals.

Under the provisions of The Hague convention there is required before commencement of hostilities a "pre-
vious and explicit warning, in the form either of a declaration of war giving reasons or of an ultimatum with a conditional declaration of war."

In 1898 Congress did not formally declare war until after the opening of hostilities, for a blockade was declared on April 22, 1898. This act of Congress was unquestionably legal under the Constitution of the United States, though it would not now be regarded as in accord with the convention relative to the opening of hostilities. Even if Congress had not declared war at all, it would certainly have existed after the Spanish decree of April 23. Whether without declaration war would have existed on April 21 is open to question. Whether the signing of the convention relative to the opening of hostilities has in any way limited the powers of Congress under the Constitution is a question that might be raised. However, as the United States has become a party to this convention, it is, as regards foreign states signatories to the convention, bound by its provisions. A failure to observe the provisions of the convention would render the United States liable.

Further, it is sufficient to say that in a change so far reaching in its effects as a change from state of peace to a state of war, it is only reasonable that the time of the change should be unequivocally known both to the opposing belligerent and to neutrals.

The ultimatum of the South African Republic, 1899.—At the time of the strained relations between the South African Republic and Great Britain, in 1899, the Republic issued an ultimatum showing that it regarded concentration of forces near its borders as an act of war. After relating many grounds for action, the ultimatum says:

Her Majesty's unlawful intervention in the internal affairs of this Republic in conflict with the convention of London, 1884, caused by the extraordinary strengthening of troops in the neighborhood of the borders of this Republic, has thus caused an intolerable condition of things to arise whereto this Government feels itself obliged, in the interest not only of this Republic, but also of all South Africa, to make an end as soon as possible, and feels itself called upon and obliged to press earnestly and with
emphasis for an immediate termination of this state of things
and to request Her Majesty's Government to give it the assurance—

(a) That all points of mutual difference shall be regulated by
the friendly course of arbitration or by whatever amicable way
may be agreed upon by this Government with Her Majesty's
Government.

(b) That the troops on the borders of this Republic shall be
instantly withdrawn.

(c) That all reinforcements of troops which have arrived in
South Africa since the 1st June, 1899, shall be removed from
South Africa within a reasonable time, to be agreed upon with
this Government, and with a mutual assurance and guarantee
on the part of this Government that no attack upon or hostilities
against any portion of the possessions of the British Government
shall be made by the Republic during further negotiations within
a period of time to be subsequently agreed upon between the
Governments, and this Government will, on compliance there­
with, be prepared to withdraw the armed burghers of this Re-
public from the borders.

(d) That Her Majesty's troops which are now on the high seas
shall not be landed in any port of South Africa.

This Government must press for an immediate and affirmative
answer to these four questions, and earnestly requests Her Maj­
esty's Government to return such an answer before or upon Wed­
nesday, the 11th October, 1899, not later than 5 o'clock p. m., and
it desires further to add that in the event of unexpectedly no
satisfactory answer being received by it within that interval It
will with great regret be compelled to regard the action of Her
Majesty's Government as a formal declaration of war, and will
not hold itself responsible for the consequences thereof, and that
in the event of any further movements of troops taking place
within the above-mentioned time in the nearer directions of our
borders this Government will be compelled to regard that also as
a formal declaration of war.

The reply of Great Britain was short and war was held
to exist at once:

Her Majesty's Government have received with great regret the
peremptory demands of the Government of the South African
Republic conveyed in your telegram of 9th October, No. 3. You
will inform the Government of the South African Republic, in re­
ply, that the conditions demanded by the Government of the South
African Republic are such as Her Majesty's Government deem it
impossible to discuss.

Russo-Japanese War, 1904.—The Japanese declaration
of war against Russia was published on February 10,
1904. The Russian reply was published on the same date. The Ekaterinoslav and Mukden, Russian steamships, were captured with their cargoes on February 6. Other steamships were captured on February 7. On February 8 the Japanese torpedo boats attacked the Russian fleet at Port Arthur. On the 9th other engagements took place and captures were made. Therefore the war was in full progress before any declaration was issued by either Japan or Russia. A decision of the Japanese court in the case of the Ekaterinoslav was to the effect that war existed from the time of the sailing of the Japanese fleet from Sasebo at 7 a.m. on February 6. Thus the Russo-Japanese war began about four days before the declaration was made, and it was legal war from that time. "The war commenced when the Japanese fleet left Sasebo with an intention of attacking the Russian fleet."

There was much discussion of these acts, and Russia entered a strong protest, and the Japanese Government replied. It is certain that it was not generally known that war had commenced when the fleet sailed on February 6, and it was not even known that the fleet had sailed. An element of uncertainty therefore existed.

Turco-Italian War, 1911.—It was announced in Rome late in September, 1911, that the Italian chargé d'affaires at Constantinople had been authorized to present an ultimatum to the Turkish Government, stating the grievances and demands of Italy. This communication was of the nature of an ultimatum with a conditional declaration of war. As both Italy and Turkey had participated in the conference at The Hague in 1907, these States were naturally familiar with the convention relative to the opening of hostilities. There was, therefore, an attempt on the part of Italy to conform to the provisions of the convention. This is shown in the ultimatum:

During a long series of years the Government of Italy never ceased to make representations to the Porte upon the absolute necessity of correcting the state of disorder to which the Government of Turkey had abandoned Tripoli and Cyrene. These regions should be admitted to the benefits of the progress realized by other parts of the Mediterranean and Africa.
This transformation which is imposed by the general exigencies of civilization constitutes for Italy a vital interest of the first order by reason of the slight distance separating these countries from the coasts of Italy. Notwithstanding the attitude taken by the Government of Italy, which has always accorded its loyal support to the Imperial Government in the different political questions of recent times; notwithstanding the moderation and patience shown by the Government of Italy; its views concerning Tripoli have been badly received by the Imperial Government, but more than that, all enterprises on the part of Italians in the regions mentioned have been systematically opposed and unjustifiably crushed.

The Imperial Government, which to the present time has shown constant hostility toward all legitimate Italian activity in Tripoli and Cyrene, quite recently, at the eleventh hour, proposes to the Royal Government to come to an understanding, declaring itself disposed to grant any economic concession compatible with treaties in force and with the higher dignity and interests of Turks; but the Royal Government does not now feel itself in a position to enter such negotiations, the uselessness of which has been demonstrated by past experience and which far from constituting a guarantee for the future, would be themselves permanent causes of disagreement and conflict.

The Royal Government has received from its consular agents in Tripoli and Cyrene information that the situation is extremely grave because of the agitation prevailing against Italian subjects, and which is evidently incited by officers and other functionaries of authority.

This agitation constitutes an imminent danger, not only to Italian subjects, but to foreigners of all nationalities, which requires them, for their own security, to embark and leave Tripoli without delay.

The arrival at Tripoli of Ottoman military transports, which the Royal Government has not failed to observe, appears preliminary to serious events, aggravates the situation, and imposes on the Royal Government the obligation absolutely to prepare for the dangers which will result.

The Italian Government, having the intention henceforth to protect its interests and its dignity, has decided to proceed to the military occupation of Tripoli and Cyrene.

This solution is the only one that will give Italy power to itself decide and itself attend to that which the Imperial Government does not do.

The Royal Government demands that the Imperial Government shall give order that the actual Ottoman representative shall not oppose the measure which will, in consequence, be necessary to effect this solution without difficulty. An ultimate agreement will
be requested between the two Governments to regulate the definite situation which will arise.

The royal embassy at Constantinople is ordered to demand a decisive response on this subject from the Ottoman Government within 24 hours of the presentation to the Porte of the present document, in default of which the Italian Government will consider itself as being obliged to proceed immediately with measures destined to assure the occupation. Ask, in addition, that the response of the Porte within the period of 24 hours shall be communicated also through Turkish embassy at Rome.

The reply of Turkey to the Italian ultimatum, though conciliatory, was not regarded by Italy as satisfactory.

The following is the text of the declaration handed to the Porte by the Italian embassy:

Carrying out the orders of the King, the chargé d'affaires of Italy has the honor to notify that the period accorded by the Royal Government to the Porte with a view to the realization of certain necessary measures has expired without a satisfactory reply reaching the Italian Government.

The lack of this reply only confirms the bad will or want of power of which the Turkish Government and authorities have given such frequent proof, especially with regard to the rights and interests of Italians in Tripoli and Cyrenaica.

The Royal Government is consequently obliged to attend itself to the safeguarding of its rights and interests as well as its honor and dignity by all means at its disposal.

The events which will follow can only be regarded as the necessary consequences of the conduct followed for so long by the Turkish authorities.

The relations of friendship and peace being therefore interrupted between the two countries, Italy considers herself from this moment in a state of war with Turkey.

The undersigned consequently has the honor to make known to your highness that passports will be placed at the disposal of the chargé d'affaires in Rome, and to beg your highness to hand him his own passports.

The Royal Government has likewise commissioned the undersigned to declare that Ottoman subjects may continue to reside in Italy without fear of an attack on their persons, property, or affairs.

September 29, 1911.

As Italy considered a state of war as existing, a definite hour from which this should date was announced, viz, 2.30 p. m., September 29, 1911.
Rome, September 29, 1911.

It is officially announced that, the Ottoman Government having failed to meet the demands contained in the Italian ultimatum, Italy and Turkey "are in a state of war from half-past two in the afternoon of to-day, September 29."

The Italian Government will provide for the safety alike of Italians and foreigners of all nationalities in Tripoli and Cyrenaica by all means at its disposal.

A blockade of the entire coast of Tripoli and Cyrenaica will be immediately notified to the neutral powers.

Limitation of rules.—While the rules of the convention of 1907 make the previous and explicit declaration of war obligatory upon the contracting states, there are circumstances under which war may arise without declaration. Under such circumstances the early principles will prevail, and a subsequent declaration may determine when war legally begins or the beginning may be inferred from the first act of hostilities. When one of the parties to the war is not a party to The Hague convention such a condition might arise. In case of civil war the ordinary conditions would be such as to render a declaration if not unnecessary at least unusual. The early rules will therefore still be applicable to certain cases, even if those of 1907 are generally adopted.

Form of declaration of war as regards belligerents.—That war should not commence without a formal declaration was recognized practice among the ancients. In the Middle Ages three days' notice was sometimes required. Heralds were sent in advance ever after the days of Grotius, during the early part of the seventeenth century. From the beginning of the eighteenth century the practice was varied, by far the larger number of wars having been begun without previous declaration.

The recall of diplomatic agents has been the usual preliminary act of the government, indicating that relations are strained to such an extent that war may soon follow, but war does not necessarily follow, as the difference between the states may be adjusted. The nature of the diplomatic negotiations or of discussions in the parliaments may indicate that war is threatening, but none of these evidences constitutes a declaration of war.
An ultimatum may be issued containing a demand for satisfaction. Such an ultimatum is usually formulated in diplomatic terms, which would not make it too difficult for the state to which it is dispatched to find a way to adjust the difficulties. The ultimatum usually fixes the time within which an answer must be made. The United States required that Spain reply to its demand for withdrawal of Spanish forces from Cuba within three days; i.e., by April 23. War was declared on April 25. An ultimatum in itself does not necessarily involve a declaration of war unless the failure to comply with the demands carries with it a conditional declaration of war.

The British demands upon Venezuela in 1902 required an immediate satisfaction of certain claims, and concluded: "This communication must be regarded in the light of ultimatum." The failure of Venezuela to satisfy these claims did not lead to an immediate war, but to an attempt to establish a pacific blockade which subsequently took the form of a true blockade.

Whatever the preliminary negotiations or evidences of strained relations which might have received consideration prior to 1907, among those states now parties to the convention relative to the opening of hostilities, it is now necessary that there be a previous and explicit warning. This previous and explicit warning may take the form of a reasoned declaration of war or of an ultimatum with a conditional declaration of war.

The reasoned declaration of war was regarded by many as necessary or at least very desirable because the opposing belligerent should be given a formal statement of the grounds of the war and the neutrals should not suffer such great changes in their ordinary rights and obligations without knowledge of the reasons.

If instead of the reasoned declaration of war, the ultimatum with conditional declaration was employed, the reasons for the breaking off of peaceful relations would be stated in the ultimatum.

The exact wording of the declaration or ultimatum would naturally vary according to circumstances, but
should be previous and explicit. That the beginning of a status which changes the legal and other relations of states and individuals and introduces risks and obligations where none had previously existed should be clearly defined scarcely needs argument. The possibility of injustice to innocent parties has been very great under the old system of uncertainty which prevailed under the doctrine that war commenced with the first act of hostility when there was no way of defining what constituted an act of hostility.

Col. Tinge, of the Chinese delegation at the Second Hague Conference, 1907, said that it would be serviceable to define the term war, for under the name of expeditions there had been numerous examples of invasions of his country.

Commencement of hostilities.—The Hague convention provides "the contracting powers recognize that hostilities between themselves must not commence without previous and explicit warning."

The discussions at The Hague in 1907 show that "previous" simply means before in time, but does not imply that any specified period of priority is involved.

There is in the convention no definition as to what constitutes the commencement of hostilities before which explicit warning must be given.

Dr. J. M. Spaight, writing in 1910, says:

It is, of course, the aggressor who is bound to make the formal declaration of war. Every nation has the right to defend itself from attack. Continental jurists, while requiring a declaration from the belligerent who takes offensive action, admit that it is not required from the party repelling a hostile enterprise. Bluntschli adds that a defensive war may necessarily have, for military reasons, to take the form of offense. "From the point of view of law the difference between the offensive and defensive war lies not in the fact of being the first to cross the frontiers or invade the hostile territory, but in the difference of the respective rights of the parties." Hence he would dispense with a declaration where the threatened belligerent forestalls his adversary in self-defense. The doctrine is a dangerous one; aggressors are usually able to satisfy themselves that they are acting on the defensive. Bluntschli's view has no warranty in the convention of 1907. The
belligerent who strikes first, whether he is really acting on the
defensive and his aggression is merely a tactical mode of self-pro-
tection or not, is bound to give notice, as laid down in the first
article. (War Rights on Land, p. 24.)

A state whose frontier adjoined a state with which it
had had or might have difficulties might double the num-
ber of troops along this frontier. It might assemble all
its troops along this frontier. Would this be the com-
mencement of hostilities? Would the other state be jus-
tified in regarding this as an act of war? If both states
are parties to the convention and war follows, would
the state placed at a disadvantage by the assembling of
its opponent troops on the frontier have a right to main-
tain that the convention had been violated?

If the naval forces of a state had been similarly as-
sembled in an advantageous position, would this be the
commencement of hostilities? The assembling of the
vessels may be of vastly more weight than the firing of
guns in the determination of the issue if war arises.

Such being the case in regard to many acts on land
and sea which may be in the nature of veiled threats,
there always remains the right of the state against which
the threat is directed to demand in an ultimatum given
reasons, the withdrawal of the threatening force, or even
to demand that the forces be not assembled in such a
manner as to be a threat. Of such action each state
must be judge. There is nothing in the principles of
international law which would forbid the placing of its
troops in any part of its own territory or the movements
of fleets in any direction on the seas.

As was shown in the International Law Situations in
1910, pages 45 to 65, there may be conditions under which
the principles recognized previous to 1907 would pre-
vail as in civil war, when the first act involving the use
of military force may be regarded as the commence-
ment of hostilities and the opening of war. In case of
strained relations between states the performance or
failure to perform an act specified in an ultimatum or in
a conditional declaration of war may be regarded as the
beginning of a state of war.
Form of declaration as regards neutrals.—The rule of The Hague convention relative to the opening of hostilities provides:

The existence of a state of war must be notified to the neutral powers without delay.

That the belligerent may not be negligent in making this notification, it is further provided that the obligation of neutrality consequent upon the existence of a state of war "shall not take effect in regard to them until after the receipt of a notification, which may, however, be given by telegraph."

Certain possibilities of complications are introduced by the added clause:

Neutral powers, nevertheless, can not rely on the absence of notification if it is clearly established that they were in fact aware of the existence of a state of war.

It is presumed that the burden of proof of the notification of the existence of a state of war would be upon the belligerent, and such proof might be difficult to establish.

There were at The Hague conference in 1907 several propositions looking to the establishing of a period of time after notification to the neutral during which period the obligations of neutrality should not be operative. The Belgian delegate suggested that the obligations of neutrality should become operative 48 hours after the receipt of the notification of the existence of war. It was pointed out that this might give occasion to the idea that neutrals might during this period act with impunity in a manner contrary to the obligations of neutrality. It might further be said that if the neutral is to be allowed a period after the notification in which neutral obligations shall not be binding, the aim of the belligerent on the offensive would be to have this period at such a time as would be of least advantage to his opponent. This question would, therefore, become one entering into the belligerent's considerations in determining the time of the declaration of war. As the belligerent would ordinarily wish to engage his opponent before he
had had time to prepare, and as a period of free commerce with a neutral would add to the opportunity to prepare, the belligerent on the offensive would often be influenced to declare war suddenly or in advance of a period which might otherwise elapse.

Prof. Westlake's opinion.—Prof. J. Westlake said concerning the Second Hague Convention relative to the opening of hostilities:

This regulation coincides with the doctrine which we have laid down above. Only two remarks are needed in order to put the matter in a clear light. One is that the declaration of war is now expressly required to be motivée, which the declarants have always made it for their own justification. The other is that the commencement of hostilities without a preceding declaration, in such peculiar cases as are contemplated above, is left possible by the fact that the parties are not made to contract that they will not commence hostilities against one another otherwise than as described, but recognize that hostilities ought not (ne doivent pas) to be otherwise commenced.

Nothing can more clearly show the impossibility of insisting on an interval of notice between a declaration of war and a commencement of hostilities under it than the fact that the very moderate proposal of a 24 hours' interval, made by the delegation of the Netherlands, was not accepted. The conference has therefore rather confirmed than weakened the necessity that, in order not to be taken unprepared, every nation must rely on its own vigilance and on no formal rule. (Westlake's Int. Law, Part II, War, p. 267.)

Reasons for Hague rules.—The discussion at The Hague in 1907 centered about the regulations in regard to the opening of hostilities which had been proposed and which followed closely those of the Institute of International Law at its season of 1906. As these were in their essential principles the same as those finally adopted, it is well to set forth the reasons for the French proposition. The reasons for their presentation were set forth by Gen. Amourel, one of the French delegates:

En commençant la discussion du Projet de Règlement sur l'ouverture des hostilités que la Délégation française a eu l'honneur de soumettre à vos délibérations, il n'est sans doute pas inutile qu'elle vous fournisse quelques explications de nature à justifier les termes de sa proposition.

Elle estime tout d'abord qu'il faut écarter la supposition d'une guerre faite sans raison sérieuse et apparente, ou sans qu'il se soit
produit au moins un incident susceptible, de donner lieu à une discussion. Une agression en pleine paix, sans motif plausible, n’est plus compatible avec le sentiment public des États du monde civilisé que nous représentons ici.

La guerre aura donc pour origine au moins un fait, ayant une certaine gravité, et pouvant motiver une échange d’explications. Alors commencera habituellement la période de négociations diplomatiques, au cours desquelles chaque Puissance cherchera à obtenir de l’autre des conditions propres à satisfaire ses intérêts. Si l’accord ne se réalise pas, l’une des Puissances peut avoir recours à la menace de guerre en fixant, par voie d’ultimatum, les concessions qu’elle exige. Elle fixe aussi, en général, un délai de réponse, après lequel elle se réserve de faire appel aux armes.

Quand les événements se produisent sous cette forme, au début d’un conflit entre deux nations, il est bien certain que l’état de guerre se trouve déclaré d’une façon suffisante : l’ultimatum porte en lui-même l’avertissement préalable et non équivoque ; il indique la concession exigée, et par conséquent la cause de la guerre en cas de refus ; enfin, il limite même la guerre dans le temps, selon l’heureuse expression de notre excellent collègue de la Délégation de Russie, puisque l’état de guerre commence à la limite du délai de réponse.

Mais il se peut que le fait, origine du conflit, ne soit pas toujours suivi d’une conversation diplomatique. Dans certains cas, le dommage matériel ou moral causé à un État lui paraîtra assez grave pour qu’il ne juge pas possible de n’en pas chercher réparation par les armes. Il en est ainsi parfois dans les conflits entre deux individus, lorsque les témoins de l’un reçoivent mission de réclamer uniquement une rencontre.

Il se peut aussi que, au cours des négociations diplomatiques, celles-ci prennent une tournure telle que le réclamant perde tout espoir d’obtenir par cette voie des conditions suffisantes. Il pourra fort bien alors rompre brusquement l’entretien, et avoir recours à la force pour s’assurer la satisfaction qu’il juge nécessaire.

Dans ces deux cas, que la guerre éclate immédiatement ou pendant les pourparlers, elle commencera par la manifestation inopinée de la volonté expresse de l’une des Parties en présence. Mais il semble que, même alors, l’ouverture des hostilités doit se faire avec les mêmes garanties que lorsque la guerre éclate à la suite d’un ultimatum.

L’avertissement préalable et non équivoque et les motifs de la guerre se trouvent donné dans l’ultimatum lorsqu’il en est fait usage ; nous demandons qu’ils soient compris dans une notification à l’adversaire, lorsque l’une des Parties prend la résolution de combattre sans avoir commencé, ou épuisé, la discussion diplomatique.

Il n’est pas nécessaire de justifier la condition que l’avertissement doit être non équivoque. Il devra aussi être préalable.
Nous entendons par là qu'il doit précéder les hostilités. Mais celles-ci peuvent commencer dès que l'avertissement sera parvenu à l'adversaire. La limitation de la guerre dans le temps sera ainsi moins nettement déterminée que dans le cas de l'ultimatum. Nous estimons, en effet, que les nécessités de la guerre moderne ne permettent pas de demander, à celui qui a la volonté d'attaquer, d'autres délais que ceux qui sont absolument indispensables pour que son adversaire sache que la force va être employée contre lui.

Nous pensons aussi que la déclaration de guerre doit être motivée; cette condition nous semble pouvoir être facilement acceptée, parce que les Puissances, ne se décidant à combattre que lorsqu'elles sont bien convaincues de leur droit, ne peuvent hésiter à le proclamer publiquement. En outre, il est particulièrement utile que les motifs de la guerre soient portés à la connaissance des États non mêlés au conflit mais qui vout en souffrir, et qui ont le droit de savoir pourquoi ils souffrent. Enfin, ces mêmes États, s'ils sont au courant des causes de la guerre, seront peut-être mieux disposés à offrir leurs bons offices, tout en respectant les intérêts en présence.

Ainsi se trouvent expliqués les termes de l'article 1er de notre Projet de Règlement. Quant à l'article 2, il vous paraîtra sans doute nécessaire que l'état de guerre, qui n'intéresse pas seulement les belligérants, mais qui apporte aussi un grand trouble dans les affaires des pays neutres, soit notifié le plus tôt possible à ceux-ci.

Cela n'est-il pas d'ailleurs nécessaire si l'on veut mettre les neutres en mesure de remplir le rôle que leur réservent les articles 6 et 27 de la Convention du 28 juillet 1899?

Tels sont, Messieurs, les motifs que la Délegation française avait à vous exposer à l'appui de sa proposition, et elle serait heureuse que celle-ci put recevoir votre assentiment. (Deuxième Conférence Internationale. Tome III. p. 168.)

The general report, presented after the committee had fully considered the question of commencement of hostilities and formulated the regulations, does not add much to the reasons stated by the representative of the French delegation. (Deuxième Conférence Internationale, Tome I, pp. 131-136.)

Form of declaration of war.—A review of the forms of statement of declarations of war shows that no one form has been followed. Certain requisites are evident. The declaration having the effect of changing the relations of the states in such a far-reaching manner must be made by a competent authority and to a competent authority. The competent authority may be determined.
by the domestic law of a state as in the United States "Congress has power to declare war."

The declaration should be unequivocal. The change of relations from peace to war should not be a matter of uncertainty. All parties who may be affected by the existence of war have a right to know the fact.

A notice prior to the commencement of hostilities should be given as the date at which acts of hostility become valid should be established before rather than after the act or by the act.

As war is in itself so serious it is generally held that there should be a reason for war and that the state entering upon hostilities should announce the reason. Of course, it is well understood that the apparent may not always be the real reason, and sometimes it might be best for all parties that the reason be not too fully stated lest it make return to peace more difficult.

The declaration should of course be public and formal, as the conduct of foreign states is also influenced by the state of war. These essentials of the form of a declaration of war are simple and necessary in order that it may be valid and fully operative, viz, the declaration of war should be from the competent authority, in an unequivocal form, and published prior to the commencement of hostilities, and should give a reason for the war. Suggestions as to other requirements for a valid declaration have been made, such as that the causes should be stated in full, 24 hours or some minimum of time should elapse between the publication of the declaration and its operation, etc. These have not yet received sufficient support to be regarded as essential.

The declaration should therefore be:

1. From the competent authority.
2. To the competent authority.
3. Previous to the opening of hostilities.
4. Explicit and unequivocal.
5. Reasoned.

The method of notifying a neutral in order that there may be as little difference in interpretation as possible
should be a simple transmission to the proper neutral authority of a copy of the declaration made to the enemy.

Résumé.—The survey of practice and opinion indicates that the rules proposed in 1907 at the conference at The Hague reflected general opinion. Any wide departure from these rules would not at present receive much sanction. Most authorities contend that the main aim is to know definitely when war begins, if war is to be undertaken, and to know something of the reason for the war. Considering this condition of affairs the following Hague rules are thought sufficient:

REGULATIONS.

ARTICLE 1. Hostilities between the contracting powers must not commence without previous and explicit warning, in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war.

ART. 2. The state of war must be notified to the neutral powers without delay, and shall not take effect in regard to them until after the receipt of a notification, which may even be given by telegraph. Neutral powers, nevertheless, can not plead the absence of notification if it is established beyond doubt that they were in fact aware of the state of war.

ART. 3. Article 1 of the present convention shall take effect in case of war between two or more of the contracting powers. Article 2 is binding as between a belligerent power, which is a party to the convention, and neutral powers, which are also parties to the convention.
Topic III.

Limitation of Armaments.

What attitude should be assumed in regard to the limitation of armaments?

Conclusion.

In view of the evident differences of opinion and difficulties the wish expressed at The Hague in 1907 may be reaffirmed, viz, that the Governments "examine the possibility of an agreement as to the limitation of armed forces by land and sea and of war budgets."

Notes.

General.—From the days of the saying that "all things are fair in war" there has developed in modern times a very decided opinion to the contrary. Restrictions upon the means and methods of injuring the enemy have been imposed. Many plans for doing away with the evils of war have been proposed.

On August 24, 1898, the Russian Czar caused his minister to hand to the diplomatic representatives at St. Petersburg a rescript which set forth the dangers of increasing armaments, and stated that—

To put an end to these incessant armaments and to seek the means of warding off the calamities which are threatening the whole world—such is the supreme duty which is to-day imposed on all states.

Filled with this idea, His Majesty has been pleased to order me to propose to all the Governments, whose representatives are accredited to the Imperial Court, the meeting of a conference which would have to occupy itself with this grave problem.

This conference should be, by the help of God, a happy presage for the century which is about to open. It would converge in one powerful focus the efforts of all states which are sincerely seeking to make the great idea of universal peace triumph over the elements of trouble and discord.