

International Law Studies—Volume 9

International Law Topics

The Declaration of London

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INTERNATIONAL LAW TOPICS.

The Declaration of London, February 26, 1909.

INTRODUCTION.

At this time, June, 1909, the period for the ratification of the Declaration of London has not expired. It is also not certain that the Declaration will be ratified. It may be said, however, that even if the Declaration should not be ratified, that it will naturally have a great influence upon maritime international law, being an agreement reached after extended consideration by delegates appointed for the specific purpose by the leading naval powers. In cases which might come to the court at The Hague for decision great weight would be given to this Declaration because it indicates the basis of an agreement between representative powers having differing legal systems. In case of war a state might with propriety issue for the government of vessels of its naval forces regulations which should accord with the provisions of the Declaration of London. More than one-third of the delegates at the London Naval Conference which drew up the Declaration of London were naval officers of experience, one-half of these being of the grade of admiral. The military aspects of the subjects presented to the London Conference were given full consideration, as is shown in the proceedings of the Conference. (British Parliamentary Papers, Miscellaneous, No. 5 (1909) [Cd. 4555]).

It is considered that it will be most useful to the navy of the United States to furnish the general report of the Conference, the French text of which is the official inter-

pretation of the Declaration of London, together with the Declaration itself and certain documents relating to the Conference.

[NOTE.—The names of all delegates will be found on p. 162.]

THE CALL FOR THE CONFERENCE.

Sir Edward Grey to His Majesty's representatives at Berlin, Madrid, Paris, Rome, St. Petersburg, Tokio, Vienna, and Washington.^a

FOREIGN OFFICE, *February 27, 1908.*

SIR: The convention for the establishment of an international court of appeal in matters of prize which formed Annex 12 to the Final Act of the Second Peace Conference has been under the consideration of His Majesty's Government.

2. Article 7 of the convention provides that, in the absence of treaty stipulations applicable to the case, the court is to decide the appeals that come before it, in accordance with the rules of international law, or if no generally recognized rules exist, in accordance with the general principles of justice and equity.

3. The discussions which took place at The Hague during the recent conference showed that on various questions connected with maritime war divergent views and practices prevailed among the nations of the world. Upon some of these subjects an agreement was reached, but on others it was not found possible, within the period for which the conference assembled, to arrive at an understanding. The impression was gained that the establishment of the international prize court would not meet with general acceptance so long as vagueness and uncertainty exist as to the principles which the court, in dealing with appeals brought before it, would apply to questions of far-reaching importance affecting naval policy and practice.

^a With the concurrence of all the Powers invited to the conference, the invitation was subsequently extended to the Netherlands Government.

4. His Majesty's Government therefore propose that another conference should assemble during the autumn of the present year, with the object of arriving at an agreement as to what are the generally recognized principles of international law, within the meaning of paragraph 2 of article 7 of the convention, as to those matters wherein the practice of nations has varied, and of then formulating the rules which, in the absence of special treaty provisions applicable to a particular case, the court should observe in dealing with appeals brought before it for decision.

5. The rules by which appeals from national prize courts would be decided affect the rights of belligerents in a manner which is far more serious to the principal naval powers than to others, and His Majesty's Government are therefore communicating only with the Governments of Austria-Hungary, France, Germany, Italy, Japan, Russia, Spain, and the United States of America.^a They would propose that the conference should assemble in October and, if it is agreeable to the Governments of those countries, they would suggest that it should meet in London.

6. The questions upon which His Majesty's Government consider it to be of the greatest importance that an understanding should be reached are those as to which divergent rules and principles have been enforced in the prize courts of different nations. It is therefore suggested that the following questions should constitute the programme of the conference:—

(a) Contraband, including the circumstances under which particular articles can be considered as contraband; the penalties for their carriage; the immunity of a ship from search when under convoy; and the rules with regard to compensation where vessels have been seized but have been found in fact only to be carrying innocent cargo.

^a With the concurrence of all the powers invited to the conference, the invitation was subsequently extended to the Netherland Government.

(b) Blockade, including the questions as to the locality where seizure can be effected, and the notice that is necessary before a ship can be seized.

(c) The doctrine of continuous voyage in respect both of contraband and of blockade.

(d) The legality of the destruction of neutral vessels prior to their condemnation by a prize court.

(e) The rules as to neutral ships or persons rendering "unneutral service" ("*assistance hostile*").

(f) The legality of the conversion of a merchant vessel into a war ship on the high seas.

(g) The rules as to the transfer of merchant vessels from a belligerent to a neutral flag during or in contemplation of hostilities.

(h) The question whether the nationality or the domicile of the owner should be adopted as the dominant factor in deciding whether property is enemy property.

7. His Majesty's Government are deeply sensible of the great advantage which would arise from the establishment of an international prize court, but in view of the serious divergencies which the discussion at The Hague brought to light as to many of the above topics after an agreement had practically been reached on the proposals for the creation of such a court, it would be difficult, if not impossible, for His Majesty's Government to carry the legislation necessary to give effect to the convention unless they could assure both Houses of the British Parliament that some more definite understanding had been reached as to the rules by which the new tribunal should be governed.

8. If the programme outlined above is concurred in by the Government to which you are accredited, it would be convenient if, on some subsequent date, as for instance the 1st August, the Governments were to interchange memoranda setting out concisely what they regard as the correct rule of international law on each of the above points, together with the authorities on which that view is based. This course would greatly facilitate the work of the conference, and materially shorten its labors.

9. I have to request your excellency to address a communication in this sense to the minister for foreign affairs, expressing at the same time the hope that if his Government are favorable to the idea of the conference being held, they will send a delegate furnished with full powers to negotiate and conclude an agreement.

I am, &c.,

E. GREY.

Sir Edward Grey to Sir C. MacDonald.^a

FOREIGN OFFICE, *July 8, 1908.*

SIR: With reference to paragraph 8 of my dispatch of the 27th February last, I transmit to you herewith two copies of a memorandum ^b setting out the views of His Majesty's Government, founded upon the decisions in the British courts as to the rules of international law on the points enumerated in my above-mentioned dispatch proposed for discussion at the forthcoming naval conference at London. I have to instruct you to hand one copy of this memorandum to the Japanese Government, and to inform me by telegraph that you have done so.

In so doing, you should explain that it is merely a compilation of rules and dicta of British courts and British practice collected for convenience, but necessarily put compendiously, so that, if a question arose, it would have to be decided by reference to the full authorities, and that, therefore, it is not to be taken as an official code, since some of the rules and dicta are of ancient date, and their application may be difficult in view of modern conditions.

I am, &c.,

E. GREY.

^a A similar dispatch was addressed to His Majesty's representatives at Paris, Berlin, Madrid, Vienna, Rome, Washington, St. Petersburg, and The Hague.

^b This memorandum may be found in British Parliamentary Papers, Miscellaneous, No. 4 (1909), [Cd. 4554] p. 3.

The memoranda of each of the States may be found in British Parliamentary Papers, Miscellaneous, No. 5 (1909) [Cd. 4555] pp. 2-56. These pages are followed by an arrangement of the opinions of the different States upon each topic and by a tentative formulation of bases for discussion, pp. 57-122.