International Law Studies—Volume 21

International Law Documents

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.
sides of this proposal with the attention which the subject required, and only because the Italian delegation had the keen desires that the new regulations of international law which would come forth from this conference should be fully satisfactory to all those who believed that the world could and must make further progress on the path of civilization.

The chairman remarked that it being now 1.20 p.m. he would suggest that the committee adjourn for luncheon and reconvene at 3 p.m. In saying this, however, he did not wish to foreclose the opportunity for further debate now if anyone desired to say anything further.

Mr. Sarraut called attention to the fact that the personnel both of the French delegation and of the staff of experts accompanying it had been greatly reduced and that with such a short time between meetings little opportunity was afforded for sending and receiving cables and attending to other such matters. He therefore requested that the afternoon session should begin at 3.30 instead of 3 o’clock.

The chairman announced that the meeting would adjourn until 3.30 o’clock.

TWELFTH MEETING—THURSDAY, DECEMBER 29, 1921, 3.30 P. M.

PRESENT.

United States.—Mr. Hughes, Mr. Root, Senator Underwood, Col. Roosevelt, Admiral Coontz. Accompanied by Mr. Wright, Mr. Clark.

British Empire.—Mr. Balfour, Lord Lee, Sir Auckland Geddes, Rear Admiral Sir E. Chatfield, Sir Robert Borden (for Canada), Senator Pearce (for Australia), Sir John Salmond (for New Zealand), Mr. Sastri (for India). Accompanied by Sir Maurice Hankey, Capt. Domville, Mr. Knowles, Mr. Flint, Mr. Malkin.

France.—Mr. Sarraut, Vice Admiral de Bon. Accompanied by Mr. Kammerer, Mr. Denaint, Capt. Odend’hal, Mr. Pensot.

Italy.—Senator Schanzer, Senator Rolandi-Ricci, Senator Albertini, Vice Admiral Baron Acton. Accompanied by Marquis Visconti-Venosta, Count Pagliano, Commander Prince Ruspoli, Mr. Celestino di Vegliasco.

Japan.—Admiral Baron Kato, Prince Tokugawa, Vice Admiral Kato, Capt. Uyeda. Accompanied by Mr. Ichihashi.

The secretary general, assisted by Mr. Cresson and Mr. Osborne.

Interpreter, Mr. Camerlynck.

1. The twelfth meeting of the Committee on the Limitation of Armament was held in the Columbus Room of the Pan American Union Building, at 3.30 p.m., December 29, 1921.
2. There were present: For the United States, Mr. Hughes, Mr. Root, Senator Underwood, Col. Roosevelt, Admiral Coontz; for the British Empire, Mr. Balfour, Lord Lee, Sir Auckland Geddes, Rear Admiral Sir E. Chatfield, Sir Robert Borden (for Canada), Senator Pearce (for Australia), Sir John Salmond (for New Zealand), Mr. Sastri (for India); for France, Mr. Sarraut, Vice Admiral de Bon; for Italy, Senator Schanzer, Senator Rolandi-Ricci, Senator Albertini, Vice Admiral Baron ’Acton; for Japan, Admiral Baron Kato, Prince Tokugawa, Mr. Hanihara, Vice Admiral Kato, Capt. Uyeda.

3. Secretaries and advisers present included: For the United States, Mr. Wright, Mr. Clark; for the British Empire, Sir Maurice Hankey, Capt. Domville, Mr. Knowles, Mr. Flint, Mr. Malkin; for France, Mr. Kammerer, Mr. Denaint, Capt. Odend’hal, Mr. Ponsot; for Italy, Marquis Visconti-Venosta, Count Pagliano, Commander Prince Ruspoli, Mr. Celesia di Vegliasco; for Japan, Mr. Ichihashi.

The secretary general, assisted by Mr. Cresson and Mr. Osborne, and Mr. Camerlynck, interpreter, were also present.

The Chairman, Mr. Hughes, said that the committee had before it the first resolution in regard to submarines.

Mr. Root said that he wished to say a few words following Sir John Salmond’s remarks of that morning. He was in full agreement with Sir John Salmond’s suggestion, and he had no idea of asking the adoption of the resolution without the critical examination which carried with it the result of such examination. Mr. Root believed that the resolutions should go through the process sometimes described by parliamentarians as “perfection by amendment.” Sir John Salmond had made a valuable suggestion which, embodied in a few words, could but result in the improvement and clarification of the resolution. This ought to be done and he hoped it would be done; whether it was done here by the members of the committee, speaking upon the advice and experience of their experts, or by a drafting committee of experts was of little consequence. The great question was whether the committee would agree to make such a declaration as this. In any case the process of destructive and constructive criticism should be gone through.

Mr. Balfour said that, as he understood Mr. Root’s proposal, it was, in British Parliamentary language, to proceed to the second reading of the resolutions and then to send them to committee. This phraseology he understood was not used in this country and he did not know how far it was employed in the Parliaments of the other States represented on this committee. Nevertheless, it clearly expressed what Mr. Root proposed, i. e., to put on record the agreement to the principle of the resolutions and then to pro-
ceed to discuss them in detail. It was an admirable method and was, he believed, the only way to escape from mixing up principles with details. So far as the second reading aspect was concerned, he believed that the underlying principle had already been informally approved. Only the formal vote remained to be registered. His own view, after listening to the powerful, persuasive, and impassioned speech of Mr. Root, was that the important words of the resolutions were the following, at the bottom of the first page:

"To the end that there may be a clear public understanding throughout the world of the standards of conduct by which the public opinion of the world is to pass judgment upon future belligerents."

That was the central core of the doctrine which Mr. Root had formulated. He valued these words partly because they removed a misconception and partly because they included a positive constructive proposal. The misconception was that the committee was occupied in an attempt to formulate the full code of maritime law. If this were the case, not only would it be necessary to weigh and scrutinize every word and every clause, but also to insure that nothing was omitted which ought to be included. That, no doubt, would be a very useful task, but was not what the committee had been invited by Mr. Root to do. The positive and constructive side of Mr. Root's proposal was to secure a clear understanding of the standards of conduct which the public opinion of the world would apply to future belligerents. That was the object of the document; that was what it set out to accomplish. He thought that this end could best be achieved by transferring the words he had quoted from paragraph two of section one to the preamble, which would then read as follows:

"The signatory powers desiring to make more effective the rules adopted by civilized nations for the protection of the lives of neutrals and noncombatants at sea in time of war invite the adherence of all other civilized powers to the following statement of established law to the end that there may be a clear public understanding throughout the world of the standards of conduct by which the public opinion of the world is to pass judgment upon future belligerents."

This was a mere matter of arrangement, but he thought it would help the world to see the great object which Mr. Root's draft was intended to accomplish. He therefore welcomed the procedure now proposed. The principles underlying this document had the warm approval of the British Empire delegation. The members of that delegation would have preferred that the document itself should have been rendered unnecessary by the abolition of submarines. Since they had not been able to carry
out this policy, however, Mr. Root's resolution provided them with an alternative. If they could not hold their first line of defense, they had at least a second line to fall back on, for in Mr. Root's document the abuse of submarines had been unsparingly dealt with. Everyone must recognize that when a weapon had been misused in the past, could be misused in the future and would be much more effective if so misused, no professions of morality or declarations of law could be relied upon to supply a sure protection against this abuse. While all must regretfully admit this, he would like to associate himself with what Mr. Root had said yesterday about the immense advantage of embodying the plain dictates of humanity in explicit terms. It was not sufficient for them to be buried in works on international law or lost in departmental correspondence, they must be proclaimed in the most public manner. He agreed with Mr. Root that, if so stated, they could not and would not be without effect on the conduct of mankind. To suppose that submarines would never again be abused, in spite of all the professions of the committee, would no doubt be sanguine. But he believed that the adoption of these resolutions would be a great step toward the education of the world, and might do much to mitigate the horrors of war and its needless cruelties. Holding these views, he could only congratulate Mr. Root and promise his best support in the objects which he sought to attain.

Mr. Sarraut said that on two occasions already the French delegation had joined with all its heart in the high spirit of humanity which had inspired Mr. Root's resolution. It congratulated itself also on having heard the discussion which had taken place that morning and which had permitted everyone to grasp his (Mr. Root's) thought more fully, especially after the admirable comments which he had been good enough to make in his splendid speech. If there were still people who doubted the necessity to condemn the unmentionable abuses committed against humanity during the last war (and no one there present doubted it) their uncertainty would have been eliminated by the convincing eloquence of their eminent colleague.

Once more, Mr. Sarraut continued, he brought the full and complete adherence of the French delegation to the sentiment expressed in the first motion of Mr. Root, the principles of which the French delegation accepted formally.

The French delegation did not want to stop with this adherence to principle, but wanted to see the resolution go into force by virtue of a definite text which would combine all the assents of the Powers represented in the committee. Certain modifications had been proposed. He was perfectly convinced that Mr. Root, whose modesty equaled his great ability, would make no objection to the suggested amendments to his text. As a matter of
procedure and in order to reach prompt results, it would be wise if each of those who had made observations regarding the text of Mr. Root’s resolution, or had suggested modifications of details, would take the trouble to prepare and communicate the drafts which they proposed. These drafts could just as well be discussed and the committee would arrive in the end at a general text which would combine, he hoped, the unanimity of their acceptances, and would then be clothed with an authority such that, if ever—and all his hope repelled this idea—war should again occur, the peoples would be bound by an agreement the moral force of which would be borne in upon their consciences.

Mr. Balfour appeared to apprehend that certain countries might, in spite of everything, yield to the temptation to misuse the weapons remaining in their hands. For his part he believed that these peoples would reflect deeply before violating such obligations. If the committee had any doubt of this, if it could suppose that decisions such as those which were to be taken there would not be carried out, debate would not be worth while, and the only thing left for the committee would be to leave the table. But Mr. Balfour himself had not entertained this pessimistic conclusion, since he had stated that a resolution invested with the moral force of this decision would impress itself on the attention of the world. One must not deduce from the abuses committed by Germany the idea that inevitably others would commit the same abuses.

It was just because the consciences of all present had revolted against these abuses; it was because their consciences refused to accept the idea; it was because they were incapable of acting likewise that their alliance became spontaneously so strong against all those who had committed them.

He firmly believed in the influence that these joint decisions might exercise over the world. The time must come, as he had already stated, when they must call upon the other nations to ratify their conclusions by approbation, thus giving them a universal and definite value. But it was precisely for that reason and with that object that the text which would be the outcome of their deliberations, strengthened by their unanimous approval, should after mature consideration take on an emphatic and authoritative form which would impose itself upon the consent of the whole civilized world.

The chairman then asked whether it was desired to continue the discussion of the first resolution. The suggestion had been made that this resolution be adopted in principle, with reference to a subcommittee for the purpose of considering verbal suggestions which should be in conformity with its obvious purpose.
Before that was done, however, there should be an opportunity for any destructive or constructive comments in the committee that might be of use to the subcommittee.

Mr. Sarraut said that if he understood the proceedings suggested it had now come to what in French parliamentary language was called "taking the matter under advisement"; that is to say, keeping the resolution before the committee but referring it for further consideration to a subcommittee.

The chairman said that that was his understanding of the proposal.

Senator Schanzer, on behalf of the Italian delegation, said that he could only reemphasize the most sincere and most cordial sympathy with the idea and spirit of the resolution. The authority of Mr. Root was so great that the Italian delegation could adhere to the first point to which Mr. Balfour had referred, namely, the statement of the existing international law. The second point put the Italian delegation in a somewhat embarrassing position, as it had not received any instructions from its Government. He, therefore, could not give unreserved adherence to this part of the resolutions. They did not wish to delay the work of the committee, but felt they must make this reservation.

The chairman then said that the question before the committee was confined to the first resolution, declaratory of the principles of international law as it now exists. He asked to be permitted to add a single word. Upon the adoption of this resolution in principle, it would be subject to such verbal changes as might be thought best by the drafting committee. This resolution represented, the chairman thought, a most emphatic condemnation of the abhorrent practices which had been indulged in during the late war. It would seem, indeed, extraordinary if this conference, unmindful of these abhorrent practices which shocked the world and contributed more than anything else to the defeat of the Imperial German Government, should pass them unnoticed, and should deal only in a technical spirit with the matters connected with submarines.

There was another reason which made the declaration opportune and necessary. The committee had had a long discussion in regard to the question of submarines, particularly as to the advisability of their continued use, their numbers, and as to the practicability of their limitation. The committee had been unable to reach an agreement on this question. That was a fact confronting them. Such a declaration as the one proposed in the first resolution would go to the whole world as an indication that, while the committee could not agree on such limitation, there was no disagreement on the question that submarines should never be used contrary to the principles of law governing war. The
adoption of the resolution might, furthermore, avoid misunderstanding on the part of those who were looking to the conference with great hope. It certainly could not be considered as a vain declaration after the experiences with submarines which the powers there represented had had and the feelings engendered by those experiences, to declare in the most precise terms that the rules of international law should be observed. He believed that such a declaration would be of the greatest value.

He hoped that when the resolution was referred to the drafting committee, it would not be overlaid with lawyers' niceties. There was, he knew, nothing which anyone could write which could not be improved by lawyers, but when it came to the expression of vague fears, to which lawyers so like to give expression, he hoped that such verbal criticisms would receive scant attention. Anything genuine and direct which carried the real point, the world would understand—such as the resolution proposed by Mr. Root.

Another important point was that the powers, should a difference arise between them, would have to remember that the weapons which they possessed were not to be used as in the past without reference to the laws of God and man. This would greatly detract from the value of a submarine fleet, for when nations counted their weapons they counted not only their number but the manner in which they could be used. Such a declaration would help the universal endeavors of diplomatists, charged with the conduct of affairs to settle difficulties without strife, and he hoped that the resolution would be agreed to with the understanding that, if it could be improved, it should be, but that the principle was recognized and adopted as sound in substance.

Unless there was objection, therefore, he would put the first resolution in this form, i.e., that agreement was requested in substance, with reference to a drafting committee (to consist of a member designated by each delegation) to consider the form of expression and such verbal changes as might be deemed advisable.

The chairman, after announcing the assent of the American delegation to the first resolution, as amended by Mr. Balfour, put the question to the other delegations, to which each assented in turn.

The chairman therefore announced the unanimous adoption of the resolution and stated that he had asked Mr. Root to represent the American delegation on the proposed committee and requested that the other delegations should appoint their representatives so that the matter could be referred to that committee for consideration of forms of expression.

The chairman then said that the second resolution would be considered in the form presented as follows:

"The signatory powers recognize the practical impossibility of using submarines as commerce destroyers without violating the
requirements universally accepted by civilized nations for the protection of the lives of neutrals and noncombatants, and to the end that the prohibition of such use shall be universally accepted as a part of the law of nations they declare their assent to such prohibition and invite all other nations to adhere thereto."

As Mr. Root had explained, this was a proposition to change the law. The first resolution attempted to state the law, the law which had been ignored and which had been trampled under foot, but which nevertheless had been and still was regarded as international law. This resolution fundamentally recognized, however, the practical impossibility of using submarines as commerce destroyers without violating the requirements universally accepted by civilized nations for the protection of neutrals and noncombatants. He assumed the resolution to mean that, while the rules of war were as stated in the first resolution—at least in substance—and while it was the sense of the powers there represented that they should be adhered to and clearly understood, the civilized world should be asked to outlaw the submarine as a weapon against commerce.

The point had been made that morning that there might be a question in regard to the assent of the powers here represented to the prohibition, i. e., in relation to the last words of the resolution, which provided that the powers here represented were to invite all other nations to adhere. He supposed that this meant that, if the prohibition should receive the assent of the powers here represented, they adopted it in the hope that it would be made a part of international law upon the adherence of all the other powers—not that it would become binding upon the powers here represented, if it did not become a part of international law, and if others by their refusal to assent prevented it from becoming a general principle. He assumed that the intention of the resolution was not that these powers should try to make international law for themselves, which, of course, they could not do, but that they should use their influence to obtain the adherence of nations to a new rule of law outlawing the submarine as a destroyer of commerce.

Mr. Root said the chairman had correctly stated the sense of the closing words of the resolution; it was to the end that the prohibition of the use of submarines should be universally accepted. Two things were done in the resolutions. First, a declaration was made, then an assertion. If a single nation were to lead with such a proposal, it might have no effect. It required universal assent to establish a law of nations. There was a difference between the second and the first resolutions. The first was a declaration of existing law and created nothing, merely certifying to what existed. The second resolution called
for an act which did not take effect until assent had been received.

Mr. Balfour said he would like to make a suggestion to Mr. Root. He understood Mr. Root's view to be that the powers represented on this committee were only endeavoring to initiate a great reform of international law, by declaring their own view and pledging themselves to induce other nations if possible to support it. He desired to ask whether he could not go a little further. Why should not the five nations represented here agree between themselves to act on the rule which Mr. Root proposed? This suggestion was not inconsistent with Mr. Root's plan. On the contrary it would greatly promote it. Nothing could be better as an example than that the five states, instead of merely adopting a resolution which would be inoperative till generally adopted, should adopt immediately the principles which they desired eventually to see embodied in international law. He did not wish to dogmatize on the subject, but he wished to put the proposal before Mr. Root for his consideration.

Mr. Root said that he would illustrate: The United States had the practice of amending the Constitution. The Constitution could be amended by a proposal of Congress and the assent of three-quarters of the States. One State voted, another, then another, then another—their votes were of no consequence whatever unless and until the necessary number had been recorded—and only when the assent of the necessary number had been recorded could they become effective. The committee could not make a rule of international law; all that they could do was to propose a law, and in proposing it they might add to it their assent, which did not become a law until the necessary number of assents had been received to make it a rule of law. He said that a great mass of nations agreeing might make international law, but the general rule was that international law requires universal acceptance.

He observed, speaking for himself and without opportunity to consult the other members of the American delegation, or without intending to speak for them, that it would be entirely satisfactory as far as he was concerned to have such an addition to this second prohibition as Mr. Balfour had suggested. It was an addition providing for the five powers who were here and who would be bound by such a prohibition as between each other, and he observed that he was quite sure that every power at the conference intended to shape its conduct in accordance with the rule proposed. Such an intention would make for security and good understanding.

Mr. Root said he did not suppose that such a course would in any degree change the conduct of any power here, but an assur-
ance of an intention respecting that conduct would be of great value in settling this disturbed and distracted world.

Mr. Balfour had asked a question as to policy. Mr. Root said he would give this point but passing notice. It was a very common thing in the legislation of all of their countries to deal with objectionable practices by broad prohibitions, because broad and simple prohibitions could be enforced, while complicated prohibitions filled with many items were exceedingly difficult to enforce. He supposed that a very broad prohibition like that we now live under here was necessary in order to make a simple rule which would prevent people from doing things in an objectionable way. In this case if they tried to make the prohibitions in detail, it would be impossible to enforce them, just as it was now impossible in the United States to have a glass of wine at dinner because it was necessary to have a broad prohibition to prevent a lot of poor fellows from getting drunk on bad whisky. This was a proposal of the same character as the proposal made by the British delegation, which had not been received with favor, i. e., the proposal to ban all submarines, with a broad prohibition based upon the fact that though submarines may have a useful purpose, nevertheless the painful purposes to which they might be put were so serious and so injurious that they justified the establishment of a broad and simple prohibition of all submarines. If you undertook to deal with submarines in detail you failed. You could not make a prohibition that could be enforced. Therefore the abuses were so great that the world would be wise to ban them altogether. Now this was a proposal the same in character, resting upon the same considerations; that is to say, it saved the submarine for legitimate purposes and banned only the injurious use of submarines. It substituted a general prohibition for a detailed prohibition—the rule which they had just recognized in their action upon the first resolution, and the wisdom of which did not rest upon theory. It rested in their memory of the most painful events of recent times.

When the German submarines began torpedoing innocent merchant ships and when they had stopped them for the purpose of visit and search and had begun to place bombs in the hulls and blow up vessels, indignant protests were made. The German answer was that it was impossible to comply with the rules that had been made to govern the actions of surface ships. There was an agreement upon that. Germany declared it to be impossible, and it was impossible. The submarines could not successfully carry on warfare against merchant ships and summon them in the ordinary way to stop for visit and search. And when a vessel had been stopped for visit and search, the submarine could not put its crew and passengers in safety because the work was
done while the submarine itself was in a danger from which it could escape only by swift submersion. The submarine could not take a great boat load of passengers and crew into its interior, where air had to be furnished artificially. The distressing circumstances of the crew and passengers of merchant ships deemed the prey of submarines and left to die, were obvious. Germany's assertion that it was impossible for the submarine to war on merchant ships in accordance with these rules was well founded, and for one, the Government of the United States assented to it, agreed to it, admitted it. But they said the consequence was not that the rule failed, but that such warfare must end.

There was no fact more firmly established than that all the temptations that beset a belligerent to gain its point at whatever cost would stand between the submarines and conformity with civilized procedure. The only way to secure the safety of innocent passengers and crews, noncombatants, neutrals, women, children, etc.—the only way to secure their safety was to say—that no belligerent should attack a merchant ship through an instrumentality which can not achieve the attack without violating the rule. It created a simple and forcible rule in the place of the complicated and detailed rules which were required by the weakness of human nature. Mr. Root said a forcible rule, because a rule that could be understood by the people. He repeated again with regard to what he had said before regarding the first resolution, that he granted that contracts between nations would not enforce themselves. He granted that the rules made by diplomatists, conferences, and foreign offices, might not be enforced. But he also asserted that when a rule is based upon the principles of humanity and when the public of all free countries had got hold of it, understood it, and adopted it as a guide in its conduct of belligerent operations, the public opinion of all civilized countries would furnish sufficient support of the rule—because the condemnation of the public of the world brings with it a condign punishment for any Nation that offends, a punishment that no Nation dares to face.

The chairman said that there were two distinct propositions before the committee. The first, broadly stated, was an attempt to amend and improve existing international law in the sense that submarines should not be used at all as destroyers of commerce. There might be some difficulty in determining definitely when international law had actually been amended, but he believed that some means could probably be found of establishing a criterion, as for example, by stating that the agreement should be effective on the adherence of powers named.

The other proposal, which had been made by Mr. Balfour and accepted by Mr. Root, was that, regardless of the outcome of the first proposal, the five powers represented on the committee should
bind themselves, as among themselves, not to use the submarine for the destruction of commerce. Quite apart from any attempt the committee might desire to make to change international law, such a proposition was entirely within the competency of the powers here represented. So far as the American delegates were concerned, there was no doubt as to the approval of the policy. It was really a practical application of existing rules, as it was only in exceptional cases that submarines could operate successfully against commerce and the existence of the exceptional cases constituted an invitation and temptation to violation of the law. On this point it was hoped agreement could be reached. The two propositions, while distinct, could be set forth in one declaration or in separate declarations. The chairman desired to know whether such discussion should take place then or should be postponed until the following day.

Mr. Balfour said that the chairman had pointed out that the discussion had brought two propositions before us: First, the change in international law proposed in Article II of Mr. Root's resolutions, and second, the addition which he himself had suggested in that resolution whereby the powers represented on this committee would bind themselves immediately to accept and act upon the new policy as between themselves. He thought it would assist the consideration of this question if he were to give the exact words in which his own proposal should be formulated. He would amend the last part of Article II so as to read as follows:

"They declare their assent to such prohibition and they agree to be bound forthwith thereby as between themselves, and they invite all other nations to adhere to the present agreement."

The subcommittee for drafting a resolution regarding submarines was made up as follows: United States, Mr. Root; British Empire, Sir Auckland Geddes; France, Vice Admiral de Bon, Mr. Kammerer; Italy, Signor Ricci; Japan, Mr. Hanihara.

The meeting then adjourned until 11 o'clock a.m., December 30, 1921.

THIRTEENTH MEETING—FRIDAY, DECEMBER 30, 1921, 11 A.M.

PRESENT.

United States.—Mr. Hughes, Senator Lodge, Mr. Root, Senator Underwood, Col. Roosevelt, Admiral Coontz. Accompanied by Mr. Wright, Mr. Clark.

British Empire.—Mr. Balfour, Lord Lee, Sir Auckland Geddes, Rear Admiral Sir E. Chatfield, Senator Pearce (for Australia), Sir John Salmond (for New Zealand), Mr. Sastri (for India).