INTERNATIONAL LAW AND THE NEUTRALITY OF BELGIUM AT THE OUTBREAK OF WORLD WAR I:

An Evaluation of the Legal Support for the British Case against Germany

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A Thesis

Submitted to
Michigan State University
in partial fulfillment of the requirements
for the degree of

MASTER OF ARTS

Department of History

1988

ABSTRACT

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American historians have long accepted the British argument made in 1914 that the German invasion of Belgium was a clear violation of Belgian neutrality and international law. This thesis examines how closely the British case was supported by the established opinion of the international legal community.

This examination is primarily based on the legal texts published throughout the nineteenth and early twentieth centuries. Both Anglo-American and Continental works provided a broad foundation for an analysis of select diplomatic documents.

The sources revealed that a wide gap separated the interpretations of Great Britain and most jurists on the issue of the international law relevant to the neutrality of Belgium. The British government used a narrow, and largely national, definition of this issue, one that ignored deep divisions and ambiguities within the legal community.

ACKNOWLEDGMENTS

I would like to extend a special thanks to Dr. John W. Coogan, who closely supervised this study. He helped me to learn how to maximize my skills, minimize my mistakes, and begin to think like a historian. I would also like to thank Dr. Donald Lammers, whose constructive suggestions contributed to the completion of this work. A final note of appreciation goes to Christine M. Farrell for her unlimited support and patience.

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INTRODUCTION

The image of Belgium as the victim of Germany's violation of international law at the outbreak of World War I is a persistent one. American historians have been willing to accept the British argument of 1914 that the invasion of Belgium was contrary to the stipulations of universally recognized laws of neutrality and to explicit treaty obligations.[1] One modern scholar goes so far as to assert that Germany had "no serious belief in international law" and was ultimately defeated by "the forces behind international morality."[2] Such interpretations of Germany's position are at best oversimplified and distorted and at worst are incorrect. A careful examination of the opinions of international lawyers on all of the specific points raised by the treaties establishing Belgium's neutrality and the German ultimatum to Belgium in August 1914 reveals ambiguity and contradiction.[3] Vagueness and disagreement not only marked this specific level of law, but also reached down into the definitions of basic terms and the most fundamental concepts. The British based their case against Germany on a very narrow, and largely national, interpretation of international law that overlooked deep splits within the international legal community. When the questions of law are separated from the emotional, strategic, and political issues of 1914, the British legal

argument is difficult to defend.

An examination of the British case against Germany begins with the issues relevant to the neutrality of Belgium in August 1914. One set of issues can be found in the treaties which made Belgium a permanently neutral state in the 1830's. The German ultimatum to Belgium raised a second set of legal questions, most of which can be traced throughout the nineteenth and early twentieth centuries. Both of these sets in turn raised other broader and more fundamental points. The debate over the precise meaning of all of these issues can be divided into three general periods or chapters. The first focuses on this debate as it was developed by jurists from the signing of the first Belgian treaty in 1831 to the Second Hague Peace Conference of 1907. The second concerns the Hague Conference itself, when jurists and national representatives met in an attempt to resolve this legal debate. The conference failed in this attempt and disputes among international lawyers over Belgian neutrality continued until the outbreak of war in August 1914. The third begins and ends when this debate concerning the neutrality of Belgium was elevated from theory to an actual legal conflict. In this last period, a wide gap formed between pre-war jurists and the government of Great Britain over the definition of the status of Belgium in international law.

In this examination of these three periods, a

distinction exists between legal authorities and national governments. Jurists and scholars generally interpreted international law in historical and theoretical terms. Governments, on the other hand, interpreted the law as each individual case arose using the works of legal authorities as a guide. Governments, not jurists, were responsible for developing and carrying out policy decisions when international legal conflicts occurred. How closely any government used established legal opinion to buttress its decisions depended entirely on the political leadership of the day. The first two chapters of this examination trace the development of the interpretation of issues concerning the neutrality of Belgium before 1914 within only the legal community. The final chapter contains an evaluation of how closely the British government followed the long history of legal opinion in formulating its case against Germany at the outbreak of World War I.

The Belgian treaties contained several specific points that would have a direct bearing on the British case. The treaties were signed in 1831 and again in 1839 by Austria, France, Great Britain, Prussia, and Russia. The signatories agreed to "guarantee" the "execution" of these conventions which recognized Belgium as a permanently neutral state. Confusion over the agreements began almost immediately. The treaties did not specify if the "guarantee" was collective or individual. They also were not clear on what precisely

was being "guaranteed" or what was the nature of the obligation of each guarantor. This ambiguity made it impossible to develop any clear interpretation of the treaties' meaning.

The German ultimatum raised other specific issues concerning the neutrality of Belgium. These included the necessity of declarations of war, the meaning of "benevolent neutrality," the legality of the passage of belligerent troops across neutral territory and pre-emptive military strikes in self-defense through a neutral country. Most of these issues had long histories of dispute in the legal literature and, along with the Belgian treaties, establish the legal positions of Belgium and Germany, as well as Great Britain, in August 1914.

These specific points were part of broader issues that were also relevant to the British case and to the pervasive ambiguity of Belgian neutrality before World War I. Not only was the neutrality of Belgium unclear within the legal literature from 1831 to 1914, but no universally accepted definition of "neutrality" existed. There was not even a generally acknowledged definition of the term "guarantee." Few jurists could agree on many broad issues concerning the nature or interpretation of treaties in general. Finally, international lawyers were uncertain if permanent neutrality was actually a violation of the sovereignty of an independent state. For example, some scholars maintained

that forcing states like Belgium to remain perpetually neutral kept the state from being completely sovereign and national sovereignty was a right protected by international law. The uncertainty over this broad issue created a credible argument for asserting that the Belgian treaties were contrary to international law as soon as they were signed.

Just as these broader issues were meant to support the more specific points, fundamental concepts of international law were the foundation for the entire structure. Yet, this foundation was no less problematic than the rest. Far-reaching disagreements existed between Anglo-American and Continental scholars, as well as within each group, as to what international law was and how it was created.

Modern jurists contend that the term "international law" generally refers to the rules which govern the relations between states. This type of law differs substantially from domestic or municipal law because there is no ultimate authority higher than an individual state. Under international law, each sovereign nation stands on an equal legal footing with all others. A fundamental consequence of this legal equality is that all or most states must recognize international laws before they are binding. This fact makes the process of "recognition" vital for establishing what constitutes international law.[4]

In general, modern scholars also assert that

international law is created through treaties and international custom.[5] An international custom is a rule nations derive from the habitual practice of states and accept as obligatory. Nations can accept or "recognize" a custom either formally or informally. Formal recognition refers to international conventions or treaties that stipulate that a certain custom has become legally binding. States can recognize a custom informally by following one as a national policy or by using a custom as a precedent in resolving current international legal conflicts.

Between 1831 and 1914, legal authorities were divided over several of these fundamental concepts of international law. Some scholars still maintained the "Divine Law," Roman Law, natural law or other sources were more important than treaties and custom. In addition, during this period there was ambiguity surrounding the definition of the term "custom" within the legal community. Jurists were vague on how a custom was established, as well as how it became a law.

One of the most important divisions between international lawyers before World War I concerned the idea of "recognition" of customs. The disagreement over this issue separated the Anglo-American jurists from their Continental counterparts. Anglo-Americans tended to maintain a loose interpretation of recognition while Continental jurists insisted on a strict interpretation

demanding formal procedures. This disagreement meant that some international lawyers defined some customs as obligatory while others did not. This split between these two groups reflected a difference in approach to law in general. Anglo-Americans placed a high value on common law, or the unwritten laws established by tradition and previous court decisions, while Continental jurists accepted only those rules formally sanctioned by a sovereign government.[6]

This degree of confusion and contradiction at such a fundamental level of law was significant at the outbreak of the First World War. These fundamental concepts were the basis for the legal positions of Great Britain and Germany. Both nations, because of intrinsic differences concerning the nature and sources of international law, were bound to have disputes over such already unclear issues as neutrality. Not only did these fundamental concepts separate Anglo-American and Continental jurists in general in 1914, but they separated Great Britain and Germany in particular.

From the establishment of Belgium as a permanently neutral state in 1831, the legal status of this small nation remained unclear. Despite over eighty years of legal debate, several international treaties and conventions, and at least one conference on international law which most of the countries of the world attended, little was accomplished to improve this situation. In 1914, Great Britain claimed it

went to war because it was obligated by treaty to defend Belgian neutrality against a German violation of international law. During the war, Great Britain would make much of the reported comment by the German Chancellor that the Belgian treaty of 1839 was nothing more than a "scrap of paper."[7] Yet, in a strictly legal sense, the British case against Germany was little more than a "scrap" itself. Every legal point Britain raised against Germany was either in general dispute within the body of international law or was a uniquely British interpretation not advanced before 1914. Not only was the British legal position weak and largely insupportable by pre-war international law, but the same body of law could establish a far stronger defense for Germany than Anglo-American historians have traditionally admitted. If international law is to be a part of any future discussion of Belgium and World War I, the ambiguity and contradictions that existed at all levels of the field, the feebleness of the British legal position, and the insupportable assertions of successive generations of Anglo-American historians must be taken into account. Only then can historians make a more accurate explanation of the position of the European states of 1914 in international law.

I. International Law from 1839 to 1907

The key issues that display the ambiguity and contradictions of pre-war international law concerning the neutrality of Belgium were established or significantly developed between 1831 and 1907. These issues can be found in the Belgian treaties of 1831 and 1839 and in the opinions of international lawyers throughout the nineteenth century. A close examination of this period and of the three levels of issues from the specific to the fundamental provides an understanding of how the unclear status of Belgian neutrality originated within the legal community.

The most important sources contributing to Belgium's vague position in international law were the two treaties of 1831 and 1839. Austria, France, Great Britain, Prussia, and Russia signed these conventions in recognition of Belgium's separation from the Netherlands. Article VII of the 1831 treaty stipulated that Belgium would form "an independent and perpetually Neutral State."[1] Article XXV of the same agreement stated that the courts of the five great powers "guarantee to His Majesty the King of the Belgians the execution of all the preceding articles."[2] Other articles established boundaries and provided for the destruction of Belgian forts. The same nations and the Netherlands signed a second, virtually identical treaty in 1839.

Few international lawyers agreed what type of

"guarantee" the agreements contained, what was guaranteed, or what was the exact obligation of the guarantors. The type of "guarantee" was at the heart of the treaties of 1831 and 1839. Was it a collective guarantee that required all the great powers to act jointly to protect Belgian neutrality? Or was it a guarantee that would provide for individual nations to act alone or in concert with other signatories? The treaties did not provide a clear answer. Successive generations of international lawyers continued to reflect this ambiguity.

That the original framers created a vague term in the word "guarantee" was evident almost immediately. A convention between Britain and France in 1832 referred to the Belgian treaty as "jointly guaranteed."[3] Several legal authorities, perhaps because of this 1832 convention, later agreed with this interpretation. One scholar argued that such guarantees were "in general, given collectively and individually, under a common responsibility," but was unsure about the Belgian treaties specifically. At least one American writer did not specify either joint or individual responsibility.[4] Without a clear definition in the treaty or any agreement among its creators, conformity among scholars on the type of guarantee that the Belgian treaties was impossible. A German jurist implied that the Belgian treaty was virtually worthless and quoted Frederick the Great: "All guarantees are like ornamental works, better

suited for satisfying the eyes than for being very useful."[5] Many international lawyers avoided the problem completely.[6]

What the treaties guaranteed was even more confused than the nature of the guarantee. At least one authority argued that only Belgium's neutrality was guaranteed. Many others, primarily Anglo-American writers, asserted that both neutrality and independence were guaranteed. One prominent British lawyer argued that independence was not "expressly guaranteed," but that it might be implied.[7] Other writers claimed that not only did the treaties guarantee neutrality and independence, but also integrity and sovereignty.[8] Ernest Nys, a Belgian international lawyer, asserted that "In reality, Belgium obtained a guarantee of neutrality, but the five powers did not give Belgium a guarantee of the integrity and inviolability of territory...."[9]

These contradictions were compounded further by questions concerning the precise obligations of the signatory powers. In 1914, Great Britain would claim that each signatory was bound to protect Belgian neutrality even if one guarantor had to act alone. No example of this opinion existed from 1831 to 1907. Some writers suggested that if no collective decision could be made after a violation, each guarantor might act alone, but only as "his judgement may dictate" or "according to his view of the requirements of the case."[10] Others claimed that none of the guarantors should be expected to act alone.[11] A few

scholars preferred to remain vague by maintaining that a signatory was obligated to "respect" the treaties or offer "assistance" upon a violation. Others admitted that they could not define these obligations.[12] All in all, Belgium had an ambiguous guarantee to protect undefined interests that might or might not be obligatory for the guarantors, jointly of individually.

The German ultimatum delivered to Belgium before the outbreak of World War I raised several other issues that legal authorities had addressed during the nineteenth and early twentieth centuries. Questions concerning declarations of war, "benevolent neutrality," the passage of troops through neutral territory, and self-defense were not German creations in 1914. All had been a part of the ambiguity of international law during the previous eighty years.

Most international lawyers did agree before 1907 that a formal notification prior to commencing hostilities was unnecessary and only a polite gesture. An ultimatum could be viewed as a declaration of eventual hostilities, but also was not required under international law. What is significant about this issue is that Germany would acknowledge this particular procedure and use it in 1914 as a way to point out other relevant, longstanding legal issues.

In its ultimatum to Belgium, Germany raised the concept

of "benevolent neutrality." Even though the British government and many Anglo-American jurists would claim that "benevolent neutrality" was a German invention of 1914, this particular form of neutrality had a long history. Throughout this period, there were scholars who argued that neutrality did not exist as an absolute. They maintained that other forms of neutrality, sometimes called "benevolent," "imperfect," or "limited," allowed a state to show neutrality toward one or most nations, but not toward all. The United States used the term "benevolent neutrality" specifically during the American Civil War to distinguish degrees of neutral behavior.[13] Other legal authorities of this period implied that a belligerent could make use of neutral territory if it could first receive the consent of the neutral government. A few writers, both Anglo-American and Continental, stipulated that this type of neutrality was legal only if it was agreed to by the neutral and belligerent in a previous pre-war convention or treaty. Some international lawyers used these same definitions, but changed the term to "qualified" or "incomplete" neutrality.[14] Thus, the possibility of "benevolent neutrality" was at least a legal option open to states between 1831 and 1907.

Still, it must be noted that most legal authorities writing by the turn of the century had concluded that it was impossible for a neutral to claim any form of imperfect or

limited neutrality. For several scholars, neutrality was an absolute.[15] However, at least one prominent British jurist, John Westlake, wrote in 1904 that the question of a benevolent neutrality could not be "dismissed without further mention."[16]

Another issue closely related to benevolent neutrality was the legality of the passage of troops through neutral territory. This question was central to the German ultimatum in 1914. Authorities from the decades immediately before 1907 argued that a neutral could not allow passage of a belligerent force because it would violate the duties of neutrality. Earlier writers had maintained, however, that a neutral, as a sovereign state, had the "right" to "grant or refuse" the passage of another country's troops without "deviating from the sentiments of impartiality."[17] One eighteenth century authority, Emer De Vattel, whose work was still being published as a textbook on international law in 1861, argued that a nation could march troops through a neutral country only after having gained the neutral government's permission. Some later writers, including one twentieth century scholar, agreed.[18] Other authorities contended that a neutral could grant such passage, but only to both belligerents.[19] Again, the possibility of a neutral permitting the passage of belligerent armies, like benevolent neutrality, had a long historical basis.

The final issue that would be raised in 1914 was the

notion of a pre-emptive strike in self-defense. Just before the invasion of Belgium, Germany claimed it had "reliable information" that France intended to attack Germany through Belgian territory. Germany requested to pass across Belgium in order to strike at France first in self-defense. The legality of such a pre-emptive attack in self-defense through neutral territory was never addressed before 1907. At best, authorities agreed that self-defense was a "legitimate" cause for war. If a nation's sovereignty and "political life" were threatened, that country could take military action if necessary to end the threat.[20] Still, these writers did not specifically mention pre-emptive strikes in self-defense or the legality of passing through a neutral state while conducting such an attack.

The ambiguity and disagreement among international lawyers did not involve only a few specific issues. Some of the terms and principles on which these issues rested were just as confused. The meaning of broad terms such as "guarantee" and "neutrality" was often unclear and disputed in the legal literature. The interpretation of treaties and the legal status of permanently neutral states were vague. Each of these broader issues contributed to the ambiguity concerning the neutrality of Belgium.

The Belgian treaties were vague in part because they rested on unclear basic definitions. No agreement existed to define the term "guarantee." At least one international

lawyer argued that any "guarantee" in a legal sense was the same as a "surety," so a signatory to a guarantee was "bound" to make good his promise.[21] Another scholar claimed that a guarantee in a treaty was never a surety as the term was used in business law.[22] Other authorities drifted between these two extremes, generally arguing that the interpretation of the term in a particular situation should be left to the guarantors of the particular agreement involved.[23]

More important even than the term "guarantee" was the term "neutrality." The most that the majority of scholars could agree on was that "neutralized" nations, meaning permanently neutral states like Belgium, perpetually followed the same rule of neutrality as those nations who chose to be neutral only during wartime. Jurists also generally agreed that another nation could not violate neutral territory. The divisions began when these same scholars tried to define what the term "neutrality" actually meant. For some it meant "strict impartiality." Others made the subtle, yet significant, distinction that a neutral state was not impartial and aloof, but rather "active, but passive" and that "passively he sympathizes with both" belligerents.[24] This definition gives the neutral a much different role to play than the former definition. A third, though smaller, group of scholars simply confessed that neutrality was a "controversial" and "obscure" term, though

they did not stop using it throughout their works.[25] One scholar even asserted that the term "neutrality" was "quite misleading in modern practice" and that "pure neutrality is impossible now-a-days."[26]

This widespread confusion over the meaning of "neutrality" made the position of neutrals unclear in international law between 1831 and 1907 and provided for a multitude of varying definitions and forms of neutrality. The definition governments such as that of Great Britain used toward Belgium was unlikely to have been the same one others, including Germany, followed. Without a standard definition, no state could rightly claim that it employed the only "correct" use of the term.

One general principle that had a direct bearing on the interpretation of the Belgian treaties was the nature of the treaties. Most scholars of this period wrote as if treaties had sacred qualities. Yet, despite the common high regard for the sanctity of treaties, few writers gave common answers to questions concerning the limits, interpretation, and durability of international agreements. Once again, the field was filled with obscurity and variety. One particularly vague observation on the limits of treaties asserted that they cease to be obligatory when "they come into contradiction with the development of the general rights of humanity...."[27] Several writers argued that treaties become void when their execution had "become

impossible."[28] Others argued that the original intent of the treaty framers must be the guide. One scholar maintained that the construction most favorable to the treaty's execution should be the rule.[29] A number of scholars asserted that treaties of a permanent nature could be broken or disregarded during times of war, but some maintained that treaties could be suspended and then re-established when peace was concluded.[30]

This great degree of confusion and contradiction over treaty interpretation had important implications for the Belgian treaties of 1831 and 1839. First, it was unclear if the Belgian treaties would remain obligatory on others if one signatory claimed that the urgencies of self-defense made the treaties "impossible" to uphold. This is precisely the claim German jurists would make after 1914. Second, it was impossible to say with certainty that the treaties could not legally be suspended under any circumstances. Germany would ask for just such a suspension at the outbreak of World War I. Finally, it is difficult to determine the original intent of the treaties, given the fact that they had been surrounded by ambiguity from the start. All these problems remained unsolved between 1831 and 1907.

A final general principle was the status of every permanently neutral state within the context of international law. Not all international lawyers were sure that the neutralization of states was legal. One scholar,

having the examples of such neutralized states as Switzerland, Belgium, and Luxemburg in mind, viewed permanent neutrality as "illegitimate" and incompatible with the basic rights of independent states because it limited a nation's freedom of action. Permanent neutrality was nothing more than a way for strong nations to exploit weaker ones.[31] Other scholars agreed that Belgium was not a completely sovereign state.[32] Belgium's status conflicted with what jurists argued was a fundamental principle of nations: that international law should protect the sovereignty of states and not limit it.[33]

This issue over the legality of neutralized states directly concerned Belgium. Some authorities categorized the treaties as a violation of Belgium's sovereignty and of international law, making them null and void from the beginning. Even if every signatory state, including Belgium, had agreed to the condition of permanent neutrality, the treaties still could have been contrary to international law. This problem of Belgium's legality is significant because it made who decided Belgium's options unclear if the state was not completely independent.

This widespread ambiguity and disagreement on both the specific and general levels of international law also reached down to some of the most basic concepts of the field. Fundamental issues, such as the meaning and sources of international law, were the basis for the whole structure

of the system. Deep splits between Anglo-American lawyers and their Continental counterparts, as well as between many individuals in each group, at this basic level of international law cast serious doubts on the legal support of the British case against Germany in 1914. Not only did specific interpretation of the Belgian treaties and general disagreement over vital legal definitions separate British and German positions on Belgium in August 1914, the nations also had fundamentally different concepts of the very nature of international law.

The first example of how certain concepts divided the legal community concerned the basic definition of international law itself. Few nineteenth or early twentieth century lawyers gave a clear definition of their particular branch of study. Those who did try to define the term tended to be Anglo-American publicists who relied on vague phrases such as "relative rights" or "conduct which reason deduces...from the nature of society" or "appropriate means" for a definition.[34] Other Anglo-American lawyers compounded the problem by offering two or three separate definitions for various forms of international law.[35]

Continental writers did not escape the use of vague definitions either. The majority, however, did admit the imprecision of their field. One authority in particular noted that there was "no generally accepted and exact definition" of international law.[36] Other writers agreed.[37]

This unwillingness to proclaim a specific definition suggests a more cautious approach to the study of international than that of most of their Anglo-American counterparts.

Another fundamental concept, one of the most divisive questions in the field, concerned the nature of the sources of international law. Opinions varied, with little agreement. A large number of writers, both Anglo-American and Continental, wrote that the primary sources of international law were God, "Divine Law," or "Moral Law."[38] Others suggested Roman Law, public opinion, natural law, or even something called "the interest of the state" as primary sources.[39] One scholar seemed to have answered these authorities, as well as many others, by asserting that "neither the law of God, not positive rules of morality, not the law of nature (whatever that may be) can be considered as the source or fountain of international law." He then proceeded to give his own version of an entirely different set of sources.[40]

This split in approach and interpretation went unnoticed by most writers in this period. At best the discrepancy was only pointed out in footnotes or explained as merely a difference of words, not of substance.[41] None seemed to realize that true substance was buried under conflicting and often confusing words.

The best example of this problem and how it deepened

the division between Anglo-American and Continental international lawyers can be found in the conceptions of custom in law. No clear universal definition of "custom" can be found in the literature. It was often interchanged with other terms such as "comity," "history," "usage," or "analogy," each of which meant different things to different authorities. Some scholars made clear distinctions, but others did not or used similar definitions for different terms.[42]

The most divisive question concerning custom, however, involved the interpretation of "recognition." Most Anglo-American writers agreed that custom, regardless of its definition, formed an obligatory rule if it received wide consent or had been employed generally over a long period of time.[43] Yet, it was unclear what "consent" meant and how long was a "long period of time." For others, a state's recognition of a custom was established automatically when that state joined "the family of nations" or was confirmed by a nation's "non-dissent" or by "continued habit." Most scholars had a broad interpretation of "recognition" and used such vague phrases as "test of time," "public opinion" or "mutual interest" to explain how a custom became an international law.[44]

Continental writers, on the other hand, had a much more narrow definition of "recognition" of custom as law. They insisted that the formal consent of the individual nation's

government had to occur. "Recognition" could be made expressly or tacitly through conventions, legislation, or official policy. As two German jurists made clear, the "recognition" of a custom carried far greater weight than simple "knowledge" of it. If a custom was not formally recognized, it was merely "simple usage" or "pure theory" which did not form any part of international law.[45] Most other Continental writers of this period agreed. They argued that unrecognized customs could not be obligatory because they could easily be changed, come into conflict with recognized customs, or quickly become obsolete. Due to these problems, at least one Continental scholar suggested that nations should mutually agree to the "extinction of customary law" altogether.[46]

This vast difference between Anglo-American and Continental writers over the recognition of custom accents a basic difference in approaches to international law. Nations such as Great Britain and Germany were separated by a wide disagreement over a fundamental concept of law. It made sharp conflict between the two nations a possibility and confusion a probability.

Vagueness and dispute marked nearly every level of international law involving the status of Belgium from 1831 to 1907, from specific issues, to more general definitions, to the fundamental concepts of the field. Several specific key issues, such as the Belgian treaties, declarations of

war, the passage of troops, and benevolent neutrality developed long histories of confusion among the legal authorities. The issue of pre-emptive attacks in self-defense while passing through neutral territory, however, was unknown in the legal literature. Broader issues in international law also made contributions to the overall ambiguity. In 1907, jurists and national representatives would meet in a shared effort to clarify some of these issues. This effort was an object of the Second Hague Peace Conference.

II. The Second Hague Peace Conference

International law received its most systematic attention before World War I during the Second Hague Peace Conference of 1907. The conference lasted over four months and nearly all of the nations of the world attended. International lawyers and national representatives met to find ways to make wars less likely and to humanize those that did occur. Tsar Nicholas II of Russia, who called the conference, made several suggestions for diminishing global conflict, including adding to the laws and customs of war on land.[1] There were those, however, who advocated a much more sweeping agenda. One jurist, chief American delegate Joseph H. Choate, wrote of building an international legal system that could eventually create everlasting peace.[2] In the end, the conference fell far short of this idealistic plan. It could not resolve all of the long-standing differences that already existed between nations. In particular, the issues legal authorities had debated between 1831 and 1907 regarding the neutrality of Belgium, and which would be central to the British case against Germany in 1914, remained unsettled. They would still be unsettled at the outbreak of the First World War. The Second Hague Peace Conference either ignored these issues or made them only slightly less ambiguous.

One of the first tasks for the delegates was to form

separate commissions on a wide variety of subjects. The Second Commission's charge was the law of war on land. Within this large commission, a smaller sub-commission addressed the legal status of the declarations of war and of the passage of belligerent troops through neutral territory.[3]

Russia was particularly interested in declarations of war when the Hague Conference convened. Its delegation maintained that the Russo-Japanese War began in 1904 when Japan had unfairly attacked the Russian navy without delivering a formal declaration of war beforehand. Thus in part to avoid confusion between future belligerents, and in part to vindicate Russia's loss to Japan in 1905, the delegation proposed that declarations of war become obligatory.[4] The sub-commission easily adopted this idea and the conference eventually formalized it as Article I of Convention III.[5]

This new rule, however, made declarations of war a mere formality. Since a time delay was not obligatory after delivering a declaration, a surprise invasion was still possible, which made the law ineffective for making wars less likely. As one British international lawyer wrote in late 1907, the Second Hague Peace Conference had "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."[6]

The second issue relevant to the situation of Belgium in 1914 discussed at the Hague Conference was the passage of belligerent troops through neutral territory. A number of delegates were interested in this issue because they hoped to prohibit belligerents from fighting in neutral territory as had recently occurred in China during the Russo-Japanese War.[7] The same sub-commission that addressed the issue of declarations of war produced three rules designed to limit troop passage that eventually became Articles I, II, and V of Convention V. The first article, based on similar ideas proposed by the British and Belgian delegations, proclaimed that "the territory of neutral powers is inviolable." The fact that Belgium and Great Britain viewed this issue in the same way denotes a common attitude toward neutrals as well as a shared effort to clarify the neutral's legal status. The second article stated that "Belligerents are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral power." The fifth article stipulated that a neutral state "must not allow" acts mentioned in Article II to occur.[8] The British interpretation of these articles in 1914 was that Germany had clearly violated Articles I and II by invading Belgium and that Belgium had no choice but to go to war to uphold Article V.

Even though the conference adopted Articles I, II, and V to clarify the rights and duties of neutrals and

belligerents, ambiguity continued to surround the underlying principles of law. The term "neutral" was just as vague and contradictory during the Hague Conference as it had been between 1831 and 1907. The delegates did not establish an internationally accepted definition of a "neutral" state. They also did not define all the ways in which a neutral state could lose its neutral status, particularly if one state did not recognize the neutrality of another. It was also unclear after 1907 whether a state which was unable to maintain its neutrality by force should be considered neutral by other nations.

Articles I, II, and V of Convention V had other flaws as well. The articles did not expressly prohibit neutral states from following other forms of neutrality, including "benevolent neutrality." The rules also did not confirm or deny that a belligerent could legally pass through a neutral state while conducting a pre-emptive attack in self-defense against another belligerent. Finally, the disputed status of neutralized states in international law remained unresolved, casting doubts on whether Belgium was even protected or obliged by the articles in the first place. Together, all of these flaws gave the neutral state ambiguous rights and duties that remained unsettled long after 1914.

The most critical problem was in the wording of Article V. The usual English translation of this article was that a

neutral state "must not" allow belligerent troops to pass through its territory. In the original French texts, the same phrase was "ne doit pas."[9] This phrase could have meant "must not," but it also could have meant "ought not" or even "should not," particularly since a duty was implied. This gap between the meaning of the terms "must" and "should" made the precise degree of obligation of the neutral unclear, and French, not English, was the conference's official language.

Declarations of war and passage of troops were the only questions that the Hague Conference officially addressed that would become relevant to the British case against Germany in 1914. All of the other key issues were far too divisive and the national representatives at the conference purposefully avoided controversial topics.[10] The ambiguous and conflicting issues that jurists debated between 1831 and 1907 concerning Belgian neutrality, including the more broad and fundamental questions, continued in dispute within the legal community up to the outbreak of World War I.

International lawyers after 1907 remained divided over the meaning of the Belgian treaties of 1831 and 1839. They did not agree on whether the treaties contained a collective or an individual guarantee from the signatory powers. Of those authorities who addressed the issue, several maintained that the guarantee was indeed collective while at least one writer did not specify either way.[11] Second,

scholars continued to debate what the treaties guaranteed. One French jurist was unsure if the signatory powers had guaranteed Belgium's independence as well.[12] Third, the precise obligation of the guarantors remained vague. A British writer maintained that even "the right" of a signatory to act individually was at best only "probably true," while a German scholar argued it was "doubtful" that any obligations existed at all.[13] Others claimed that if and when the treaties were broken, their interpretation would be based on the political considerations of the governments concerned.[14]

Another issue, "benevolent neutrality," also remained unclear after 1907. Some lawyers held that modern international law no longer supported "benevolent neutrality," but one British scholar admitted that a precedent for imperfect neutrality had occurred as recently as 1900 during the Boer War.[15] A few other writers either maintained that "qualified neutrality" was possible if stipulated by a pre-war treaty or that a neutral could sometimes give "indirect assistance" to a belligerent.[16]

The meaning of self-defense was the third specific issue not resolved before 1914. No jurist discussed the possibility of a belligerent passing through neutral territory in order to conduct a pre-emptive attack in self-defense against an enemy. One writer asserted that "to anticipate a suspected act" by an enemy would "open the way

for a general and systematic disregard" of international law.[17] Yet, an American military publication declared that a "belligerent is justified in applying any amount and any kind of force which is necessary for the purpose of the war," but left the legality of a first strike in self-defense unclear.[18] An American scholar, in a work published in 1908, made the only direct statement on the meaning of self-defense that came close to sanctioning pre-emptive measures. He argued:

> It is not required of a State that it wait till an injury is actually received and then make war to obtain reparation; it is its duty to provide against the threatened danger by making war, if needs be, upon the threatening party, in order to deprive him of the means of inflicting the injury.[19]

Even this position, however, did not address the legality of passing through neutral territory while carrying out a pre-emptive attack against an enemy.

The definitions of broad terms such as "neutral" and "guarantee," as well as opinions concerning the nature of all treaties, also remained ambiguous and conflicting between 1907 and 1914. Some international lawyers asserted that neutrality meant strict impartiality while others did not.[20] A few maintained that a state had a right to demand neutrality for itself, while at least one writer declared that a state had no such right.[21] The definition of "guarantee" and the nature of treaties also were divisive. For example, it was still unclear in 1914 if a guarantee was

equal to a "surety" or even an alliance, or if treaties could be suspended during wartime.[22] A few authorities resigned themselves to the fact that any definitions of terms such as "neutrality" was "imperfect" and "insufficient."[23]

Finally, the vagueness surrounding the legal status of neutralized states and the definition and sources of international law went virtually unchanged from 1831 to 1914. A number or writers asserted that permanently neutral states were not fully sovereign despite the fact that international law was meant to protect, not limit, national sovereignty.[24] Ambiguity marked such fundamental concepts as the definitions of international law because the term was continuously intermixed with the older notions of "Divine law" and "natural law."[25] Also, scholars did not solve the divisiveness over the precise number and type of sources of international law. Some argued for only two sources while at least one writer maintained that no less than six existed.[26] Finally, the deep split between Anglo-American and Continental jurists over the role of custom in law did not change from 1907 to 1914. Anglo-Americans continued to assert that custom did not need the formal recognition of states while Continental authorities insisted that it did.[27]

International lawyers and national representatives attending the Second Hague Conference did little to resolve the neutral status of Belgium. Declarations of war remained

a mere formality after 1907. The legality of the passage of troops was still open to dispute and confusion. Despite the conference, the same vague and contradictory key issues that had existed since 1831 continued. In the end, the Second Hague Peace Conference accomplished virtually nothing to clarify any of the questions that would become the legal basis for Great Britain going to war against Germany in 1914.

III. Conclusion: The Outbreak of World War I

On August 2, 1914, Germany delivered an ultimatum to Belgium requesting "friendly neutrality" and free passage through its territory in order to attack France in self-defense. Twelve hours later, Belgium rejected this request, categorizing it as a "flagrant violation of international law."[1] When Germany invaded the small nation, Great Britain issued its own ultimatum stating that if this invasion did not stop, it would "feel bound to take all steps" in its power to "uphold the neutrality of Belgium" and the treaty of 1839.[2] The invasion continued and Britain carried out its threat and entered the war. The British government's interpretation in 1914 of the legal status of Belgium, however, does not conform to the general opinion of pre-war international lawyers. A wide gap developed between the British application of international law concerning Belgium and the theoretical explanation of that same issue within the legal community. This gap casts serious doubts on the legal support of the case Great Britain made against Germany at the outbreak of World War I.

The most direct support for the British ultimatum in 1914 was the charge that Germany had violated the treaty of 1839 by invading Belgian territory. Britain claimed that it was "bound to take all steps" to defend this neutrality even

if it meant doing so alone. A British international lawyer, writing after his country was at war, argued that each signatory to the treaty was "clearly bound, severally as well as jointly, to protect Belgium."[3] Two French scholars, publishing soon after the war, maintained a similar view. They noted that the interpretation of their nation's former ally was correct because the invasion was an obvious violation of law.[4] For Great Britain in 1914, the treaty of 1839 was binding on each signatory individually and required war if necessary to uphold Belgian neutrality.

This British argument cannot be substantiated by any pre-war international law. Before World War I, no legal authority held that the Belgian treaties bound a signatory to act separately to defend Belgium. The greatest agreement among authorities was that the treaties were "probably" collective. The guarantors had a right to act as each saw fit, but only if they could not reach a joint decision. Other scholars contested this view.

Also unclear was what the signatories had guaranteed. Authorities were divided over whether the treaty protected only Belgium's neutrality or its independence, integrity, or sovereignty as well. The British claimed in their ultimatum that Belgium's neutrality was guaranteed. Yet, a number of pre-war international lawyers had argued that the signatories had guaranteed the independence or sovereignty of Belgium.[5] This type of argument would imply that

Britain's ultimatum was a violation of law because it limited Belgian independence by threatening military action on Belgium's behalf whether it agreed or not. Great Britain was deciding the security interests of another supposedly sovereign state.

After 1914, British and French jurists, patriotically reflecting the mood of their respective allied nations, would maintain that Germany had not only violated the Belgian treaties, but that it had not obeyed any international laws.[6] One scholar went so far as to assert that "German imperialism" was the antithesis of international law.[7] Germany did follow one very explicit law of nations, however, by delivering its ultimatum to Belgium. Article I of Hague Convention III was legally binding even though it was not a limit on warfare. British international lawyers would dismiss the fact that Germany had respected this law,[8] and that by doing so Germany had also formed a basis for a defendable legal position.

Germany used its ultimatum as a vehicle to raise longstanding legal issues relevant to Belgian neutrality. The first of these issues was "benevolent neutrality." Some pre-war scholars maintained that neutrality was not always absolute and that certain forms of "impartial" or "limited" neutrality were possible.[9] Despite the British and Belgian positions in 1914, the idea of "benevolent neutrality" had not been universally condemned as what the Belgian reply to

the ultimatum described as a "flagrant violation" of law. By applying the arguments of some jurists, it may have been a legal possibility open to Belgium for avoiding hostilities.[10]

The German ultimatum raised a second issue concerning the legality of the passage of belligerent troops across neutral territory. By 1917, some experts in the United States had accepted the British contention that Germany had broken Articles I and II of Hague Convention V by invading and passing through neutral Belgium.[11] Yet, like the issue of "benevolent neutrality," ambiguity still surrounded this question in 1914. The passage of belligerent troops across a neutral state was illegal, but because no clear definition of "neutral" was available, the neutral status of Belgium within the legal literature was unclear. No legal definitions existed establishing when a state was neutral or how it could forfeit its neutrality. This problem was important in 1914. According to the German ultimatum, if Belgium chose not to allow the passage of German troops, Belgium would become a belligerent. Technically, after Belgium denied the request, Germany did not regard it as a neutral state even before the first German troops marched into Belgium. If Belgium was not a neutral state before the invasion, then the articles regulating troop passage could not have applied. The vagueness of these articles within the context of existing international law provided Germany

another defense against the British case.

The issue of passage of troops was vague in much the same way as "benevolent neutrality" was. The unclear meaning of the wording of Article V of Hague Convention V made the exact duty of Belgium concerning troop passage open to doubt. If the article legally meant that neutrals "should not" allow the passage of belligerent troops, perhaps Belgium had more options in 1914 that it had claimed. Belgium might have legally sanctioned Germany's passage as "benevolent neutrality" if no absolute obligation to deny such as an act existed under Article V. Again, the ambiguity over this issue diminished the overall strength of the case against the German invasion of Belgium.

Another issue that the German ultimatum raised was the meaning of self-defense. Before 1914, legal authorities had not addressed the possibility of a belligerent passing through neutral territory while conducting a pre-emptive strike against an enemy in self-defense. Germany claimed on August 2 that it had "reliable information" that France was planning to attack Germany by crossing through Belgian territory. As a result, it claimed that for its own security, Germany had to strike France first in a similar manner. The legality of such an act was unclear in international law.

Belgium maintained that the German request was illegal. The Belgians claimed that "no strategic interest justifies

such a violation of law." Only after the outbreak of war did jurists address this issue. German scholars argued that "kriegsraison" or the "necessity of war" validated the invasion of Belgium because national security was threatened.[12] Again, this idea of the "necessity of war" was never directly addressed by pre-1914 international lawyers. A few authorities had advocated the use of pre-emptive attacks in self-defense, but none applied this theory to neutral territory.[13]

All of these specific issues raised by the Belgian treaties and the German ultimatum were also connected to broader issues that were relevant to Belgian neutrality in 1914. For example, the term "guarantee" had a direct bearing on the interpretation of the treaty of 1839. For Great Britain, the term was easily defined. In its ultimatum to Germany, Britain asserted that a "guarantee" was absolutely binding and obligated the guarantor to take any step necessary to carry out its promise. A few pre-war authorities supported this interpretation of "guarantee."[14] Other, far weaker, definitions were common. A few scholars even implied that guarantees, particularly the one within the Belgian treaties, were virtually worthless.[15] Only by using a narrow interpretation of this highly ambiguous term did Great Britain justify entering the war in 1914.

A more important term than "guarantee" was "neutrality." This term was the basis for the Belgian

treaties and for Belgium's position in international law. From 1831 to 1914, scholars did not construct a universally accepted definition of "neutrality." Some jurists argued that neutrals were strictly impartial, while others claimed neutrals were equally friendly toward all belligerents. Some scholars claimed that the term was "obscure" or just misleading.[16] The vagueness of this issue made the legal position of all neutrals rather weak in international law and made the precise rights and duties of states such as Belgium open to confusion. It also gave neutral states far more latitude in decision making than either Great Britain or Belgium would admit in 1914.

Another broad issue relevant to Belgian neutrality before World War I was the interpretation of treaties. In 1914, Great Britain viewed treaties as the most concrete basis for international agreements. Yet, the issue was obscure in many ways within pre-war international legal opinion. For example, it was unclear how treaties ceased being obligatory for their signers. Several writers of this period argued that treaties became void when their execution had become "impossible."[17] German jurists writing after the outbreak of the war maintained that the Belgian treaties had become "impossible" to uphold.[18] Germany had to attack France to defend itself because nothing was more vital to a state than its security. This ambiguous definition of certain aspects of treaties in international law, when

coupled with the less clear meaning of self-defense, gave added support to the German defense.

This vague interpretation of treaties also directly related to the German ultimatum. Germany proposed that if Belgium allowed free passage through its territory, Germany would "bind" itself to "guarantee" Belgium's possessions and independence at the conclusion of peace. In effect, this meant suspending Germany's treaty obligations for the duration of the war. Belgium viewed the proposal as a violation of international law and rejected it. Great Britain accepted this Belgian decision and defended it.

This argument that suspending the Belgian treaties was illegal cannot be supported by pre-1914 international law. Some authorities maintained that a mutual agreement for a temporary suspension of a treaty was legal.[19] This illustrates another example of how options open to Belgium before the war were more numerous than it allowed. The vagueness surrounding the interpretation of treaties also adds weight to a German legal defense.

The final relevant broad issue concerned the legal status of every permanently neutral state. Before 1914, not all legal scholars were convinced that the neutralization of states was legal. A few maintained that perpetually neutral states were a violation of international law because the state's independence and sovereignty was permanently limited. One of the fundamental principles of nations was

national sovereignty. A number of scholars maintained that any limits placed on an independent state were contrary to the basic purpose of international law.

The fact that the legality of neutralized states was in question before World War I had serious implications. First, it suggested that the treaties of 1831 and 1839 themselves were a violation of Belgium's sovereignty and of international law. Second, because Belgium was not completely independent, it was unclear who was responsible for deciding its options. If the signatories were responsible, it is difficult to see how any agreement concerning Belgium could have been reached in August 1914. Finally, if Belgium was not a sovereign state, it may not have had the authority to grant or deny anything to another nation. Germany could have been just as free as Great Britain in taking any step it thought necessary for protecting itself.

This vagueness and contradiction on both the specific and broader levels of international law also involved some of the most fundamental concepts of the field. These issues, such as the meaning and sources of international law, were the foundation for the entire field. For example, few pre-war international lawyers gave a clear definition of their field. Many scholars did not agree on what kind or on how many different sources of international law existed.[20] Finally, a deep split divided Anglo-American and Continental

jursts concerning how a custom was "recognized" and became binding for nations.[21] This split separated Anglo-American and Continental writers in general, but it divided Great Britain Germany specifically in 1914. Together, all of these disagreements on this fundamental level made many of the legal isues surrounding the neutrality of Belgium unclear at the outbreak of the First World War.

Conflict and ambiguity marked every level of international law involving the status of Belgium from specific issues, to more general definitions, to the fundamental concepts of the field. From 1831 to 1914, several specific key issues, such as the Belgian treaties, declarations of war, the passage of troops, "benevolent neutrality," and the meaning of self-defense developed long histories of dispute. Broader issues of international law also made contributions to the overall confusion.

The British case against Germany in 1914 rested on a particular interpretation of law that was different from much of the combined opinion of the pre-war legal community. Great Britain based its legal argument on a very narrow interpretation of "neutrality" that denied what some jurists had acknowledged as the legality of "benevolent neutrality" and the passage of belligerent troops through neutral territory. The British also adopted a limited view of law that overlooked or rejected the legal implications of declarations of war or the meaning of self-defense, both of

which were central to a German defense. Further, the British government dismissed any possibility that the legal status of Belgian neutrality was in doubt or that a generally accepted definition of international law did not exist.

The most crucial weakness of the case against Germany involved the Belgian treaty and some fundamental concepts of international law. First, by using some very narrow definitions of "guarantee" and treaty interpretation that few pre-war jurists had advocated, Great Britain could assert that a treaty guarantee was binding. Second, the British devised a unique interpretation of the Belgian treaties by claiming that signatories were individually obliged to the point of being bound to go to war if need be. Finally, the British government overlooked the split between Anglo-American and Continental approaches to international law in order to assert an irrefutable legal position that really did not exist.

This gap between the government and pre-war jurists over the legal status of Belgian neutrality is significant in several ways. Not only does it illustrate the rather weak and distorted British legal position in 1914, but it implies that Belgium had several different legal options open to it other than the one it took, including the option of "benevolent neutrality." This gap also displays how Germany could have used the pre-war legal literature as a

strong defense against all of the British charges. Perhaps most importantly, this evaluation of international law from 1831 to the outbreak of war accents a problem in the historiography of the First World War. For too long, Anglo-American historians have used the inaccurate and misleading British interpretation of Belgian neutrality in their explanations of World War I. This problem denotes not only a misunderstanding by many historians of the nature of international law before 1914, but also a general disregard for the importance of the role of law in international relations.

APPENDIX

APPENDIX A

The text of the German ultimatum to Belgium:[1]

Brussels, August 2, 1914.

Very Confidential

Reliable information has been received by the German Government to the effect that French forces intend to march on the line of the Meuse by Givet and Namur. This information leaves no doubt as to the intention of France to march through Belgian territory against Germany.

The German Government cannot but fear that Belgium, in spite of the utmost goodwill, will be unable, without assistance, to repel so considerable a French invasion with sufficient prospect of success to afford an adequate guarantee against danger to Germany. It is essential for the self-defense of Germany that she should anticipate any such hostile attack. The German Government would, however, feel the deepest regret if Belgium regarded as an act of hostility against herself the fact that the measures of Germany's opponents force Germany, for her own protection, to enter Belgian territory.

In order to exclude any possibility of misunderstanding, the German Government make the following declaration:

1. Germany has in view no act of hostility against Belgium. In the event of Belgium being prepared in the coming war to maintain an attitude of friendly neutrality towards Germany, the German Government bind themselves, at the conclusion of peace, to guarantee the possessions and independence of the Belgium Kingdom in full.

2. Germany undertakes, under the above-mentioned condition, to evacuate Belgian territory on the conclusion of peace.

3. If Belgium adopts a friendly attitude, Germany is prepared, in co-operation with the Belgian authorities, to purchase all necessaries for her troops against a cash payment, and to pay an indemnity for any damage that may have been caused by German troops.

4. Should Belgium oppose the German troops, and in particular should she throw difficulties in the way of their march by a resistance of the fortresses on the Meuse, or by destroying railways, roads, tunnels or other similar works, Germany will, to her regret, be compelled to consider Belgium as an enemy.

In this event, Germany can undertake no obligations towards Belgium, but the eventual adjustment of the relations between the two States must be left to the decision of arms.

The German Government, however, entertain the distinct hope that this will not occur, and that the Belgian Government will know how to take the necessary measures to prevent the occurrence of the incidents such as those mentioned. In this case the friendly ties which bind the two neighbouring States will grow stronger and more enduring.

[1]Hugh Gibson, A Journal From Our Legation in Belgium (Garden City, New York: Doubleday, Page, and Co., 1917), pp. 16-17.

APPENDIX B

The following is the British ultimatum to Germany:[1]

Sir Edward Grey to Sir E, Goschen, British Ambassador at Berlin.

Foreign Office, August, 4, 1914.

We hear that Germany had addressed note to Belgian Minister for Foreign Affairs stating that German Government will be compelled to carry out, if necessary, by force of arms, the measure considered indispensable.

We are also informed that Belgian territory has been violated at Gemmenich.

In these circumstances, and in view of the fact that Germany declined to give the same assurance respecting Belgium as France gave last week in reply to our request made simultaneously at Berlin and Paris, we must repeat that request, and ask that a satisfactory reply to it and to my telegram of this morning be received here by 12 o'clock to-night. If not, you are instructed to ask for your passports,and to say that His Majesty's Government feel bound to take all steps in their power to uphold the neutrality of Belgium and the observance of a treaty to which Germany is as much a party as ourselves.

[1]Great Britain, Collected Diplomatic Documents Relating to the Outbreak of the European War (London, 1915), "British Diplomatic Correspondence," p. 109.

ENDNOTES

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[2]Patrick Devlin, Too Proud to Fight: Woodrow Wilson's Neutrality (London: Oxford University Press, 1975), p. 138.

[3]A full translation of the 1839 treaty can be found in, C.P. Sanger and H.T. Norton, England's Guarantee to Belgium and Luxemburg (New York: Charles Scribner's Sons, 1915), pp. 125-141. A complete translation of the German ultimatum can be found in the appendix.

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[6]John Westlake, International Law: Part I Peace (Cambridge: Cambridge University Press, 1904), p. 28.

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[2]Ibid., p. 213.

[3]Ibid., p. 222.

[4]For an example of each position, see Franz de Holtzendorff et Alphonse Rivier, Introduction au Droit des Gens (Hambourg: Verlagsanstalt und Druckerie, 1889), p. 12; Richard Kleen, Lois et Usages de la Neutralite (Paris: Libraire Maresq Aine, 1898), p. 85; John Bassett Moore, A Digest of International Law 8 vols. (Washington: U.S. Government Printing Office, 1906), I, p. 20.

[5]August G. Heffter, Le Droit International de L'Eurpoe (Berlin: H.W. Muller, 1883), p. 217.

[6]Louis le V^{te} de laGueronniere, Le Droit Public et L'Europe Moderne (Paris: Libraire Hachette et Co., 1876), I, pp. 272-279; Johan Ludwig Kluber, Droit des Gens Moderne de L'Europe (Paris: Libraire de Guillaumin et Co., 1874), pp. 400-401 footnote (c); Leone Levi, International Law (New York: D. Appleton and Co., 1888); James Lorimer, The Institutes of the Law of Nations (London: Willaim Blackwood and Sons, 1883), II, pp. 121-151; and Hannis Taylor, A Treatise on International Public Law (Chicago: Callaghan and Company, 1901), pp. 118-119.

[7]John Westlake, International Law, p. 28.

[8]For examples of this general disagreement on this issue, see L. Oppenheim, International Law: A Treatise (London: Longmans, Green and Co., 1905), p. 141; P. Pradier-Fodere, Traite de Droit International Public 8 vols. (Paris: 1885), VIII, p. 885; and Alexandre Merignhac, Traite de Droit Public International 2 vols. (Paris: Libraire Generale de Droit et de Jurisprudence, 1905), II, p. 50.

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[10]Jan Helenus Ferguson, Manual of International Law 2 vols. (The Hague: Matinus Nyhoff, 1884), II, p. 74.

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[12]Alphonse Rivier, Principes du Droit des Gens (Paris: Librairie Nouvelle de Droit et de Jurisprudence, 1896), p. 109 and Henry Wheaton, Elements of International Law (Boston: Little, Brown and Company, 1886), p. 335.

[13]See Levi, International Law, p. 290.

[14]For examples of all of these various opinions, see Digest of the Published Opinions of the Attorneys-General (Washington: U.S. Dept. of State, Government Printing Office, 1877), p. 166; Heffter, Le Droit International de L'Europe, pp. 335-336; Kluber, Droit des Gens Moderne de L'Europe, p. 402; G.F. de Martens, Precis du Droit des Gens Modern de L'Europe 2 vols. (Paris: Guillaumin et Co., 1864), II, p. 301.

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[45]Bluntschli, Le Droit International Codifie, p. 53 and G.F. de Martens, Precis du Droit des Gens Moderne de L'Europe, I, p. 46.

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ENDNOTES

Chapter Two

[1]For the correspondence leading to the Second Hague Peace Conference, see James Brown Scott, Texts of the Peace Conferences at the Hague, 1899 and 1907 (Boston: Ginn and Company, 1908), pp. 93-111.

[2]Joseph H. Choate, The Two Hague Conferences (Princeton: Princeton University Press, 1913), p. 44.

[3]Ernest Lemonon, La Seconde Conference de la Paix (Paris: Lbiraire Generale de Droit et de Jurisprudence, 1908), pp. 339-470.

[4]James Brown Scott, The Proceeding of the Hague Peace Conferences 3 vols. (New York: Oxford University Press, 1920), III, pp. 3-4.

[5]Scott, Texts of the Peace Conferences, p. 199.

[6]Westlake, International Law: War, II, p. 267.

[7]Oppenheim, International Law: A Treatise, II, p. 354. For a discussion of warfare in neutral territory during the Russo-Japanese War, see Nagao Ariga, La Guerre Russo-Japanese (Paris: Libraire de la Cour D'Appel et de L'Order des Advocats, 1908), pp. 505-530.

[8]For the three acts, see Lemonon, Le Seconde Conference de la Paix, pp. 410-413 and Scott, Texts of the Peace Conferences, pp. 231-232.

[9]For the French text of Article V, see Lemonon, Le Seconde Conference de la Paix, p. 43.

[10]For example, the president of the conference declared in this opening statement, "I shall endevor to keep peace among us by seeking points of contact and by avoiding everything that might bring out differences of opinion that are too violent." Scott, Proceedings, I, p. 47.

[11]For example, Franz Despagnet, Cours de Droit International Public (Paris: Libraire de la Societe du Recueil Sirey, 1910), p. 715; Pasquale Fiore, Le Droit International Codifie, (Paris: Libraire de la Cour D'Appel et de L'Order des Advocats, 1911), p. 772; Frederick E. Smith, International Law (Boston: Little Brown and Co., 1911), p. 100 and Cyrus French Wicker, Neutralization (London: Oxford

University Press, 1911), pp. 28-29 all argue that the guarantee was collective. For one vague explanation, see Franz von Liszt, Le Droit International (Paris: Donation Carnegie pour la Paix Internationale, 1927), p. 23. (This is a French translation of a German work origianlly published before World War I).

[12]Henry Bonfils, Manuel de Droit Internatioanl Public (Paris: Libraire Nouvelle de Droit et de Jurisprudence, 1908), pp. 200-201 and 520.

[13]Wicker, Neutralization, p. 9 and Liszt, Le Droit International, p. 189.

[14]Bonfils, Manuel de Droit International Public, p. 522; Henry W. Halleck and G. Sherston Baker, Halleck's International Law (London: Kegan Paul, Trench, Trubner and Co., Ltd., 1908), II, p. 10; Amos S. Hershey, The Essentials of International Law (New York: The Macmillan Co., 1912), p. 111 and 318; Liszt, Le Droit International, p. 191.

[15]Oppenheim, International Law: A Treatise, II, p. 372. Others who argued that "benevolent neutrality" was no longer legal included, Despagnet, Cours de Droit International, p. 1194 and J.M. Spaight, War Rights on Land (London: Macmillan and Co., 1911), p. 473.

[16]Halleck and Baker, Halleck's International Law, II, p. 162 and Hershey, The Essentials of International Law, p. 452.

[17]Spaight, War Rights on Land, p. 481.

[18]U.S. General Staff, Rules on Land Warefare (Washington: Government Printing Office, 1914), p. 13.

[19]Halleck and Baker, Halleck's International Law, I, pp. 541-542.

[20]Those who viewed neutrality as impartiality included, Charles G. Fenwick, The Neutrality Laws of the United States (Washington: Carnegie Endowment for international Peace, 1913), p. 2 and Oppenheim, International Law: A Treatise, II, p. 302. Those who held the opposite view included, Halleck and Baker, Halleck's International Law, II, p. 161 and Spaight, War Rights on Land, p. 473.

[21]Bonfils, Manuel de Droit International Public, p. 869 and Fiore, Le Droit International Codifie, pp. 774-775 argued in favor of the right, while Oppenheim, International Law: A Treatise, II, p. 267 argued against it.

[22]Halleck and Baker, Halleck's International Law, I, p. 304-305 maintained that a guarantee was equal to a surety, and at times, even an alliance, while Liszt, Le Droit International, p. 190 did not. Both Despagnet, Cours de Droit International, p. 707 and Hershey, The Essentials of International Law, p. 360 footnote 12 argued that treaties could be suspended during a war, while Oppenheim, International Law: A Treatise, II, p. 129 asserted that they could not.

[23]For example, Despagnet, Cours de Droit International Public, p. 1198; A. Pearce Higgins, The Binding Force of International Law (Cambridge: Cambridge University Press, 1910), p. 7 and J.H. Morgan, The German War Book (London: John Murray, 1915), pp. 143-144.

[24]Bonfils, Manuel de Droit International Public, p. 198; Despagnet, Cours de Droit International Public, p. 178; Fiore, Le Droit International Codifie, p. 182; Hershey, The Essentials of International Law, p. 112 and Wicker, Neutralization, p. 1.

[25]For example, Halleck and Baker, Halleck's International Law, I, p. 52.

[26]For example, Bonfils, Manuel de Droit International Public, p. 22; Despagnet, Cours de Droit International Public, p. 69; Hershey, The Essentials of International Law, pp. 19-20 and Liszt, Le Droit International, p. 13 all argued for only two sources, while Smith, International Law, p. 19 claimed six.

[27]For example, such Anglo-Americans as Halleck and Baker, Halleck's International Law, I, p. 55 and Hershey, The Essentials of International Law, p. 20 maintained a wide interpretation of the recognition of custom in law, while Bonfils, Manuel de Droit International Public, p. 22; Despagnet, Cours de Droit International Public, pp. 70-71 and Fiore, Le Droit International Codifie, p. 81, all Continental writers, argued for a narrow interpretation.

ENDNOTES

Chapter Three

[1]For a translation of the Belgian reply to the German ultimatum, see Hugh Gibson, A Journal From Our Legation in Belgium (Garden City, New York: Doubleday, Page, and Co., 1917), pp. 18-19.

[2]An example of the British ultimatum can be found in the appendix.

[3]Thomas Baty, War: Its Conduct and Legal Results (London: John Murray, 1915), p. 238.

[4]A. Merignhac and E. Lemonon, Le Droit des Gens et la Guerre de 1914-1918 2 vols. (Paris: Librairie de la Societe du Recueil Sirey, 1921).

[5]supra, Chap. 1, endnotes 7 and 8.

[6]For example, see Emile Waxweiler, Belgium Neutral and Loyal: The War of 1914 (New York: G.P. Putnam's Sons, 1915) and Andre Weiss, The Violation by Germany of the Neutrality of Belgium and Luxemburg (Paris: Librairie Armand Colin, 1915).

[7]Jacques Marquis de Dampierre, German Imperialism and International Law (London: Constable and Company, Ltd., 1917).

[8]Baty, War: Its Conduct and Legal Results and J.O.P. Bland, Germany's Violation of the Laws of War 1914-1915 (New York: J.P. Putnam's Sons, 1915).

[9]supra, Chap. 1, endnotes 12 and 13.

[10]supra, Chap. 2, endnote 16.

[11]The Inquiry Handbooks (Wilmington, Delaware: Scholarly Resources, Inc., 1974), "The Neutrlaity of Belgium," pp. 92-93.

[12]Ernst Muller, Who Are the Huns? (Berlin: Georg Reimer, Publisher, 1915) and T. Niemeyer, Michigan Law Review, vol. XIII, No. 3, Jan. 1915, "International Law in War."

[13]supra, Chap. 2, endnote 19.

[14]supra, Chap. 1, endnote 18 and Chap. 2, endote 22.

[15]supra, Chap. 1, endnote 5 and Chap. 2, endnote 13.

[16]supra, Chap. 1, endnotes 20, 21 and Chap. 2, endnote 20.

[17]supra, Chap. 1, endnote, 23.

[18]Muller, Who Are the Huns?, pp. 1-45 and Niemeyer, "International Law in War."

[19]supra, Chap. 1, endnote 25.

[20]supra, Chap. 1, endnotes 33, 35 and Chap. 2, endnote 25, 26.

[21]supra, Chap. 1, endnote 38, 39, 40 and Chap. 2, endnote 27.

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