



FOREWORD

CRIMINAL JURISDICTION

100 YEARS AFTER THE 1907 HAGUE PEACE CONFERENCE

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One hundred years ago, a paradigm-shifting event took place in The Hague, which would eventually transform that city into the 'Legal Capital of the World.'¹ As a follow up to the 1899 Hague Conference (whose chief accomplishment was the creation of the Permanent Court of Arbitration), US President Theodore Roosevelt proposed the convening of a Second Hague Conference in the hope that 'the undying memories which cling around the Hague as the cradle of the beneficent work which had its beginning in 1899 may be strengthened by the holding of the Second Peace Conference in that historic city.'²

Like the 1899 Conference, the 1907 Hague Conference was officially convened by Russia's Tzar Nicholas II and hosted by Queen Wilhelmina of the Netherlands. From 15 June-18 October, 1907, representatives of forty-six of the world's leading nations assembled at The Hague to adopt a dozen seminal conventions, declarations and regulations defining the rules of conduct in modern warfare.³ The provisions adopted included the requirement of humane treatment of prisoners of war, the prohibition of pillage and of bombing undefended places or dwellings, the banning of arms which could cause superfluous injuries, and the outlawing of the use of poisons as weapons of war.

The 1907 Hague Conference launched the modern era of international humanitarian law. The provisions adopted at the Conference formed the basis for the later promulgation of the 1949 Geneva Conventions and 1977 Additional Protocols, as well as the Biological Weapons and Chemical Weapons Conventions. Moreover, the so-called 'Martens Clause' in the 1907 Hague Convention IV served as a foundation for the concept of crimes against humanity, recognized in the Nuremberg and Tokyo judgments, the Genocide Convention, and the Statutes of the contemporary international criminal tribunals.

The 1907 Hague Conference and its forerunner, the 1899 Hague Conference, join the list of history's most influential international congresses, from the peace of Westphalia in 1648 to the Rome Conference for an International Criminal Court in 1998. The participants of the 1907 Hague Conference recognized that world courts would facilitate world-peace, and for the first time they considered a proposal to establish a world court with binding jurisdiction, leading ultimately to the creation of the International Court of Justice with its optional compulsory jurisdiction forty years later. With each successive step, from the Hague Conference to the League of Nations to the United Nations, the means for the peaceful settlement of international disputes have grown increasingly robust.



The Hague Conference of 1907 was history's first truly global diplomatic conference. Participants included representatives from around the world. Each state's delegation was permitted a single vote on both procedural and substantive questions, thereby establishing the principle of diplomatic equality of small states with large ones. At the end of the Conference, the delegates agreed to meet again in eight years to build upon the work of 1907, thus establishing the concept that the best way to handle international problems was through a series of successive conferences. The former head Librarian of the International Court of Justice has said that it was at the 1907 Hague Conference that 'the legal and intellectual blueprint of a new world society was first advanced.'⁴ Though a third Hague Conference scheduled for 1915 had to be canceled because of the outbreak of the First World War, the conference idea strongly influenced the creation of the more highly organized League of Nations after WWI and the United Nations in 1945.

The delegates to the 1907 Conference 'strove mightily to substitute the courtroom and its law for the battlefield and its dead.'⁵ It is noteworthy that the recipient of the Nobel Peace Prize in December 1907 was Professor of International Law, Luis Renault, the head of the French delegation to the 1907 Hague Conference, who had served as the Conference's Rapporteur and was recognized as having been the most influential figure during the proceedings.

Held on 28-30 June 2007 at the historic Steigenberger Kurhaus, the 8th Hague Joint Conference honored the centennial anniversary of The Hague Conference of 1907 with two keynote addresses and a line up of twelve panels focusing on salient issues in international humanitarian law and criminal jurisdiction. The Conference began with a keynote address by Luis Moreno-Ocampo, Chief Prosecutor of the International Criminal Court. It also featured a dinner speech by Dr. Ernst Hirsch Ballin, Minister of Justice of the Netherlands. There were twelve panels featuring over sixty leading experts: (1) Effective Remedies for All? Universalizing the Battle Against Impunity; (2) Need for a Comprehensive Anti-Terrorism Convention? (3) Defining, Suppressing and Trying Genocide; (4) Head of State Immunity for Former Leaders; (5) Truth Commissions, Accountability and the International Criminal Court; (6) Corporate Liability for Human Rights Crimes; (7) Judicial Review of Internationally-enacted Anti-terror Measures: Problems and Prospects; (8) Cross-Fire Discussion of Lessons Learned from the Trials of Slobodan Milošević, Charles Taylor, and Saddam Hussein; (9) International Humanitarian Intervention in the Post-September 11 Era; (10) The Future of the International Criminal Court; (11) The Plundering of Natural Resources and Destruction of the Environment in Times of Armed Conflict; and (12) Dealing with Present-Day Conduct of Hostilities.

This book contains the articles, essays, and text of remarks generated from the 8th Hague Joint Conference. In light of the nature of this publication, we permitted the panel chairs a great deal of flexibility in presenting their findings and panel discussion reports.

We believe these scholarly writings make a significant contribution to the literature on international humanitarian law and criminal jurisdiction. As Co-Chairs of the 8th Hague Joint Conference and general editors of this volume, who were greatly assisted by Sasha Radin, researcher and outreach coordinator, at the T.M.C. Asser Institute, we are extremely grateful to our distinguished panelists and speakers for their contributions to the Conference and the resulting book. We also thank the organizations which sponsored the Hague Joint Conference: The American Society of International Law, the Nederlandse Vereniging voor Internationaal Recht, the Foundation 'The Hague Joint





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NOTES

¹ P. van Krieken & D. McKay, eds. *The Hague, Legal Capital of the World* (The Hague, T.M.C. Asser Press 2005).

² A. Pearce Higgins, *The Hague Peace Conferences and Other International Conferences Concerning the Laws and Usages of War, Texts of Conventions with Commentaries* (Cambridge, Cambridge University Press 1909) Chapter: 'The Second Peace Conference of 1907', note 1.

³ See generally, James Brown Scott, *The Hague Peace Conferences of 1899 and 1907* (Baltimore: John Hopkins' Press); William I. Hull, *The Two Hague Conferences* (New York, Ginn and Company, 1908); A. Pearce Higgins, *The Hague Peace Conferences and Other International Conferences Concerning the Laws and Usages of War, Texts of Conventions with Commentaries* (Cambridge, Cambridge University Press 1909).

⁴ Arthur Eyffinger, 'A Highly Critical Moment: Role and Record of the 1907 Hague Peace Conference', *Netherlands International Law Review* (2007).

⁵ S. Rosenne, ed., *The Hague Peace Conferences of 1899 and 1907 and International Arbitration: Reports and Documents* (The Hague, T.M.C. Asser Press 2001).

