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On the Approval of International Commissions of Inquiry according to Results of the Conventions of 1899 and 1907 for the Pacific Settlement of International Disputes

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Abstract

Introduction: the article considers norms of the conventions for the pacific settlement of international disputes adopted on May 6 (18), 1899 and October 5 (18), 1907 in The Hague on the initiative of the Russian Emperor Nicholas II. Attention is drawn to the proposal to establish procedures for the work of international commissions of inquiry in relation to various situations of an interstate nature. It was assumed that they would resolve disputes between states that did not concern honor or essential interests, but only related to differences in the assessment of factual circumstances. The initiators of the proposals, members of the Russian delegation, believed that raising the issue was timely, relevant and would be significant in resolving individual interstate conflicts. *Purpose:* by studying archival documents, conventions of 1899 and 1907 for the pacific settlement of international disputes, works of researchers of that period, to bring to the legal community the information about origins of the issues of disarmament, rules of warfare, and peaceful settlement of international disputes with a view to their possible use in making individual decisions in the modern period. *Methods:* content analysis, analysis, comparison, comparative historical, formalization, comparative legal, structural and functional, with a focus on a systematic approach. The *results* of the study of historical documents, the analysis of individual facts related to the work of international commissions of inquiry for the pacific settlement of international disputes, and the application of the analogy method to modern conditions are also of applied importance. The article reveals legal grounds for concluding agreements between the disputing parties, the timing of the creation of commissions, procedures for their activities – place of residence, conditions of relocation, language of communication, powers of the chairman, members, commissioners, the specifics of preparing final documents, and their role.

Keywords: conventions for the pacific settlement of international disputes; international commissions of inquiry; international law.

5.1.1. Theoretical and historical legal sciences.

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Peoples, stay united in all great things;
preserve freedom in your own small affairs;
be imbued with humanity, mercy in all human and international affairs
F.F. Martens

Introduction

On May 18, 1899, one of the first conferences on general disarmament in world history opened in The Hague [1, pp. 481–483; 2, pp. 97–102; 3, pp. 85–91]. It was initiated by the Russian Emperor Nicholas II, who sincerely, like his predecessors, believed in peaceful coexistence of states. The young ruler wanted to continue the peace-loving ideas of his father, who had not waged any wars.

The policy of the commonwealth and good neighborliness was very timely and relevant. About 16 years remained before the First World War, the largest and bloodiest for its time. But the smell of gunpowder was already in the air. The powers that be were able to disperse it on condition of conscientious, honest unification in order to preserve peace, the lives of their subjects, and create better conditions for them.

It should be emphasized that the idea of suspending the arms race, spending public funds on the creation of weapons factories, and the development of non-traditional types of human destruction appeared even before Nicholas II. Thus, the Brussels Conference of July–August 1874 on the codification of laws and customs of land warfare was convened on the initiative of the Russian Emperor Alexander II, grandfather of Nicholas II.

Researchers believe that, despite his age, Nikolai was suspicious of the 25-year-old world in Europe, to which senior officials were accustomed and relaxed their vigilance [4; 5, pp. 236–237]. During the lull, many leading states accumulated military forces and developed a system of weapons. The greatest fear was caused by Germany eager to advance colonial conquests. Other countries found reasons for mutual conflicts as well. Contemporaries of that period believed that the most insignificant problem could be enough to get the whole world involved in relentless bloody battles. The Russian tsar did not want to be involved in a new war and tried, if not to prevent it forever, then at least to increase peacetime and reduce future losses.

On behalf of the sovereign, the Minister of Foreign Affairs M.N. Muravyov [6, pp. 289–316] drew up a draft, approved and published in August 1898 in the Government Bulletin. Through diplomatic channels, the document (researchers call it a note) was transferred to foreign countries. With a positive perception of the idea by foreign states, Nicholas II intended to create a stable international environment for Russia and Europe. He had a desire to form an image of Russia as a peacemaker empire in the eyes of the world community.

Freezing of military budgets, at least a temporary halt to the build-up of military potential, were extremely important for Russia, which was experiencing economic difficulties. This approach was not superfluous for Europe, which was in the state of “long depression”. Despite this, the arms race forced huge budgets to be spent on equipping armies. Russia allocated about 25% of the total annual expenses to this.

The reaction of European countries to this document was generally negative. Nicholas II sent M.N. Muravyov and the Minister of War A.N. Kuropatkin to Europe in order to explain that Russia was not talking about complete disarmament, but only wanted to suspend the arms race.

In December 1898, the Russian government drafted another document, this time taking into account the opinions of European representatives. It was proposed to hold a conference and discuss:

1) an agreement on freezing the existing composition of land and naval armed forces, as well as budgets for military needs;

2) prohibition to introduce new firearms and explosives;

3) restriction on the use of destructive explosive compounds, prohibition of the use of projectiles from balloons;

4) exclusion of the use of submarines in military clashes;

5) extension of the provisions of the 1864 Geneva Convention and the 1868 Supplementary Regulations to naval operations;

6) recognition of the neutrality of ships and boats rescuing drowning people during or after naval battles;

7) correction of the1874 International Declaration concerning the Laws and Customs of War, drawn up at a conference in Brussels;

8) application of provisions on mediation and arbitration in order to prevent armed clashes between states [1, pp. 481–483].

The invitation to participate in the conference was accepted by 26 states: all European and six non-European states: USA, Mexico, China, Japan, Persia, and Siam. The conference opened on May 18, the 30th birthday of Nicholas II. The Russian emperor was one of the few who sincerely believed in resolving all possible conflicts.

Taking into account the stance of the conference participants, its results were minimal. The main goal to reduce the pace of armament was not achieved. However, there were adopted three conventions, such as Convention for the Pacific Settlement of International Disputes, Convention with respect to the Laws and Customs of War on Land, Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 22 August 1864, and three declarations, such as Declaration concerning the Prohibition of the Discharge of Projectiles and Explosives from Balloons or by Other New Analogous Methods, Declaration concerning the Prohibition of the Use of Projectiles with the Sole Object to Spread Asphyxiating Poisonous Gases, and Declaration concerning the Prohibition of the Use of Bullets which can Easily Expand or Change their Form inside the Human Body such as Bullets with a Hard Covering which does not Completely Cover the Core, or containing Indentations.

Representatives of the states had the right to sign or ignore the prepared documents. England refused to join the Declaration concerning the Prohibition of the Discharge of Projectiles and Explosives from Balloons or by Other New Analogous Methods. China, Turkey and Switzerland did not support the Convention with respect to the Laws and Customs of War on Land. The United States and Britain refused to sign the Declaration concerning the Prohibition of the Use of Projectiles with the Sole Object to Spread Asphyxiating Poisonous Gases. The unanimity of all countries was achieved only on the points of peaceful settlement of disputes and naval warfare, although only history could judge their sincerity and desire to comply with the regulations. In 1907, The Hague again hosted a conference, which was attended by 44 States.

Research

Let us turn to the 1899 Convention for the Pacific Settlement of International Disputes and conventions, decrees and the Final Act signed at the Peace Conference in The Hague on October 5 (18), 1907. We are talking about international commissionsof inquiry. In the 1899 Convention, the section “On international commissions of inquiry” consisted of six articles, in which this international legal institution was described in general terms, but very briefly. The document of 1907 included 28 articles, was revised and amended [8, pp. 23–36; 9].

The content of legal norms indicates that the subject of international commissions of inquiry is disputes between states that do not affect honor, essential interests, but are a disagreement in the assessment of some factual circumstances of the case. Being goodneighbors, states agree to consider it useful and desirable that the parties that have not reached an agreement through diplomatic means establish, as far as circumstances permit, an international commission of inquiry in order to bear the burden on it to facilitate the resolution of a mutual dispute by clarifying issues through an impartial and conscientious investigation.

These commissions were established by a special agreement of the disputing parties, which fixed the facts to be investigated. At the same time, it contained a procedure, place of stay (if the place of stay of the commission was not determined, then it was located in The Hague), conditions of movement, language of communication, timing, powers of the commissioners, as well as the period in which each of the parties must submit its statement of facts. If the parties recognized the need to appoint assessors (persons with judicial authority), then this was stipulated in the agreement and the scope of their powers was determined.

The parties were entitled to appoint special agents, intended to act as intermediaries between them and the commission of inquiry. A similar mission was to be carried out by their appointed advisers and lawyers who supported their interests before the commission. If the Commission did not meet in The Hague, it appoints a Secretary General, whose bureau served as its office. The office was charged with organizing the meetings of the commission, drawing up protocols during the investigation, and preserving the archive, which was to be transferred to the International Bureau in The Hague.

The Commission’s working procedures in-

volved establishment and recording of the circumstances of the dispute, presentation of details of the proceedings, and implementation of all formalities required by the receipt of evidence. Article XIX of the 1907 Convention pointed to the adversarial nature of the investigation process. Timing of the study of facts, acts, documents, information useful for establishing the truth, as well as a list of witnesses and experts who were supposed to be listened to, were mutually communicated by the parties and the commission.

With the consent of the party, the commission could move its meetings to the place where certain events took place directly, or send one or more members of the commission there. Such movements could only be carried out with the permission of the state in whose territory certain actions were supposed to take place. Inspections of the area and the study of actual circumstances of the dispute took place in the presence of agents and advisers of the parties. Each of the parties to the commission had the right to receive explanations, information, means, and methods if they were of interest to the investigation. The parties undertook, on the basis of their legislation, to ensure the appearance of witnesses and experts to the commission, if they were on the territory of the party. In situations where they could not appear, the parties were obliged to interrogate them in front of their authorities. When carrying out certain actions on the territory of a third contracting power, the commission appealed to the government of that state. Such appeals were executed by means of domestic legislation, provided that they did not violate the security of the state.

Article XXV of the 1907 Convention established the rule that "witnesses and experts were called either at the request of the parties, or by the commission itself, and in any case through the government of the power in whose territory they stayed. Witnesses were heard alternately and separately, in the presence of agents and advisers, in accordance with the procedure established by the commission".

The interrogation of witnesses was supervised by the chairman. Members of the commission were entitled to ask questions to each of the witnesses to clarify or supplement his/her testimony, or to inform about everything concerning the witness within the limits necessary to establish the truth. Agents and advisers of the parties could not interrupt the witness during his/her testimony and could not directly address him/her themselves, but had the right to ask the chairman to put additional questions to the witness that they considered useful.

It should be noted that the procedure of international commissions of inquiry prohibited witnesses from reading prepared drafts. However, the chairman could allow them to resort to the help of notes and documents if it was required to transmit facts. The minutes of the witness's testimony were drawn up at the same meeting and read to the witness. The witness could make any changes and additions to it, which were noted at the end of his/her testimony. After all his/her statements were read to the witness, he/she was asked to sign them.

Agents were entitled, during or at the end of the investigation, to transmit to the commission and the other party such statements, representations or summaries of facts that they considered useful for revealing the truth. Meetings of the commission took place in private and remained secret. Any decision was made by a majority vote of commission members. The refusal of any of the members to participate in the voting was fixed in the minutes.

Meetings of the commission could be open, while minutes and documents of the investigation could be made public only by a decision of the commission and agreed with the parties.

After the parties had provided all explanations and evidence, and all the details had been listened to, the chairman declared the investigation over and the commission suspended meetings in order to discuss and draft its report. It was signed by all members of the commission. If one of the members refused to sign, it was noted, but the report remained in force. The commission's report was read in an open meeting in the presence of agents and advisers. A copy of the report was handed to each party.

"The report of the commission, limited only to establishing the facts, does not have the character of an arbitral award. The parties retain full freedom to use these factual conclusions at their discretion" (Article XXXV of the 1907 Convention). Each party had to bear its own costs and share the commission's costs.

Conclusion

1. Practical effectiveness of the conferences of 1899 and 1907 was not as significant as the initia-

tors wanted. The experience of the Hague conferences served as the basis for a peaceful settlement after World War I. They helped lay foundations of international humanitarian law, and their basic provisions are used (at least mentioned) in individual decisions in the modern period.

2. The point of view of F.F. Martens, an international law specialist who made a great contribution to the holding of the two Hague Conferences, remains relevant today, "Until the time when it becomes possible to issue a more complete set of laws of war, the High Contracting Parties consider it appropriate to testify that in cases not provided for by the resolutions they adopted, the population and the belligerents remain under protection and action of the principles of international law, since they follow from the customs established between educated peoples, from the laws of humanity and the requirements of public consciousness" [9, p. 5]. We would like Ukrainian nationalists to know these provisions today. This is said specifically for them.

3. The provisions and procedures for the activities of international commissions of inquiry established by the Conventions of 1899 and 1909 have proved to be not in demand by states as a means of resolving international disputes. There are several reasons: first, the essence of the contract lies in the fact that its obligations arise from the moment both parties agree to its terms (consensual in nature); second, practical limitations of minor disputes; third, the greatest attractiveness of other international legal means for resolving such disputes.

4. Studying archival documents, works of contemporaries of that historical period, the author hopes that the information found will be useful not only for researchers, but also for practical international legal activities in the modern complex historical period.

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