A common law of nations. International legal codification within the first peace congress movement (1843-1851)

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Abstract :

This article deals with debates on the codification of international law in the international peace conferences of the mid-nineteenth century. Between 1843 and 1851, the adherents of the peace movement organized a series of five international conferences on the problem of war and peace in Europe and the wider world. Scholars have thus far focussed on either organizational aspects or the predominance of religious or economic argument. Less attention has been devoted to the legal instruments discussed at each event. While arbitration was adopted as the most achievable course of action, a significant minority desired that any recourse to law should be reinforced by a new international code. In their advocacy for a code, peace friends revealed their sympathies to various political ideologies, as well as their prior legal educations. When the peace movement turned to law more explicitly from the 1870s onwards, many fundamental questions about the role of law in the peace question had already been first touched upon decades earlier.

Keywords : Peace conferences, pacifism, nineteenth century, codification, international law.

1. Introduction

Few events are cataclysmic enough to interrupt the usual cycle of life and death within vast segments of any given society as profoundly and abruptly as the outbreak of war. Political contexts vary through time, but the suffering at its heart never fundamentally changes. As widely understood, one of the key objectives of international law is the suppression and the regulation of war. Today's dominion of what has been labelled *ius contra bellum* is often credited to the accomplishments of, among other things, academic law societies, The Hague Peace conferences, the League of Nations, and the United Nations.1 Yet this perennially fragile shift in the international legal paradigm was not without a deep prehistory.

Historical studies of international law increasingly emphasize the relevance of pacifist internationalism to the development over the past century of international legal institutions attempting to curtail what many historians and international lawyers long believed to be the excesses of the positivist nineteenth century's *liberum ius ad bellum*.2 Most legal scholarship has concentrated on the influential activities of the overtly legalistic French and Anglo-American arbitration societies of the latter decades of the century.3 Far less attention has been devoted to their antecedent, the first generation of institutional activism by the 'friends of peace', which

culminated in a series of five large-scale peace conferences in major European cities between 1843 and 1851.

Not to be confused with official diplomacy and politics, this series of transnational meetings between clergymen, journalists, parliamentarians, political economists, and lawyers entailed the first bottom-up initiative to unite transatlantic civil society in a peace cause with universalist aspirations.[4] Breaking new ground, the self-styled *amis de la paix* were subject to ridicule and disbelief, alternately accused of cowardice and utopianism, and left behind a conflicted legacy.[5] A surge in British popular militarism caused by Louis-Napoléon's coup d'état, as well as the outbreak of the Crimean War, led to the end of the first cycle. The organizational and programmatic thread was picked up again, more ambitiously, by successor societies, ultimately inspiring more than thirty 'Universal Peace Congresses' from 1889 until 1939.[6]

Comprehensive legal studies of the early peace movement have thus far been lacking. Most historians on the early generations of nineteenth century peace activism have almost overwhelmingly dealt with Anglo-American activism.[7] The rather distinct Anglo-American bias in the most widely known literature is not without reason, given that institutional peace activism originated in, and remained predominant, in Britain and the United States until the late 1860s.[8] Notwithstanding this, a relatively small number of histories do pay attention to Europe as well, even if still composed in English.[9] Those who wrote in other languages – principally French and German – typically focus on a restricted subset of actors, who did not, as a rule, belong to any dedicated peace societies.[10] In all three languages, few scholars have paid any significant attention to the 'legal politics' of early peace activism, limiting themselves to either descriptive overviews, to the observation that the movement favoured mandatory arbitration, or to a political-theoretical analysis of federative schemes.[11] Hardly any studies exist that specifically seek to tackle the precise dynamics of legal argumentation within the early peace movement, both in debates internal to the peace movement – across the whole movement, not just the Anglo-American societies – as well as its larger relation to contemporary politics and mainstream legal doctrines.[12]

Two legal instruments loomed particularly large in the imagination of most international peace friends, above most others. One enshrined mandatory arbitration as the most 'realistic' and optimal means for states to settle disputes. Eventually, this solution would prove most persuasive, as plainly evident from the numerous arbitration societies at the century's end. Yet from the beginning, arbitration had been opposed by the idea of a permanent congress of nations, which in most of its numerous variations was to develop a codification of international law. Overshadowed by the eventual victory of arbitration, as well as the early Anglo-American adoption of this solution, the ideal of a congress of nations to codify international law has thus far been underestimated in legal historiography. Essentially continuing the Enlightenment criticism of the law of nations, a fair few peace friends embraced the notion that the domestic rule of law could be transposed to international relations.[13] Government ought to be held to the same restrictions internationally, as ordinary citizens were held to domestically.[14] The ambition to restate the system of international law would continue to crop up as the century progressed, both in individual efforts, such as the draft codifications by Bluntschli and Fiore, as well as in cooperative efforts, such as the International Law Institute and the larger 'peace through law' movement.[15] The absence of a code was felt even in international political practice, becoming more and more pressing as states increasingly turned to arbitration mechanisms to settle minor disputes.[16]

This article will proceed to highlight the recurrent debates surrounding the possibilities of a

reformed international legal code waged during the five peace congresses held in the 1840s and the early 1850s, largely through the official proceedings published by their main organizer and financier: the London Peace Society.17 These reports will be complemented with journals and periodicals, such as the Belgian liberal newspaper *L'Indépendance belge*, and proceedings in French and German.18 Additional mention will be made of other texts when referenced by delegates. Manuscript sources do not form the major focus of the present study, interested primarily in how international codification was discussed in the official propaganda, through which the movement liked to present itself to the public. That being said, an abundance of secondary literature has already dealt with these sources – some of which have since become difficult to access – and is duly consulted when needed.19 Combining the above materials, a picture emerges of a movement that wished to present a unified front to the world, but was behind its external façade a tentative alliance of disparate voices. Though friends of peace seemingly agreed on a common programme of legal instruments, individual priorities or specific conceptions could differ significantly. Numerous political and ideological biases influenced the early peace friends' vernacular legal discourses arguing for a less bellicose world order. 20

2. The London Conference of 1843

In themselves the peace conferences constituted only a single facet of a broader contemporary reform movement, consisting of intermingled liberal-bourgeois networks which aimed to further civilizational progress, also pursuing free trade, penal reform, public hygiene, working-class temperance, social science, and various other welfarist policy objectives.21 Described as an 'epistemic community', these transnational conferences gradually evolved between the 1820s and 1860s from accessible open-ended philanthropic 'debating societies' into increasingly streamlined and institutionalized bodies of expert knowledge, featuring a core of well-travelled 'specialists' who exchanged books and letters, and joined various professional associations.22

One such travelling philanthropist in the early era was the British Quaker and abolitionist Joseph Sturge (1793-1848), a leading member of the London Peace Society, who attended a meeting of the American Peace Society in Boston in 1841, during which the established Anglo-American peace societies agreed to hold a joint international convention sometime in the near future.23 Appropriate measures were taken, and by June 1843, after much transatlantic correspondence and a smaller preliminary meeting in 1842, the London Peace Society had made the conference a reality, purposely set two days after the Anti-Slavery Convention.24 Over three hundred delegates attended, the vast majority of which were British, complemented by thirty-five Americans sufficiently committed for an Atlantic crossing, in stark contrast to the mere seven from continental Europe. Inherently middle-class, many delegates and visitors shared a background in the clergy and the legal professions.25 Convention rules dictated that participants had to accept as a given that war was inconsistent with the spirit of Christianity, limiting themselves to debates on the best practical means of working towards its abolishment.26

Though a numerical minority, the ideas of the Americans took centre stage in the two most important resolutions of the conference, which pertained to the juridical means of introducing pacific principles into government policies. These would constitute the broad programme of the peace movement and determine its future direction. The basic point of contention could be represented schematically as an opposition between two American schemes: William Jay (1789-1858), a local judge in New York state, had published a book in the spring of 1842 in favour of arbitration, whilst

William Ladd (1778-1841) was best known for his influential works on a congress of nations in the 1830s.27

In London, both resolutions were introduced to the general assembly by means of a paper written and read by Henry MacNamara (1820-1873), a twenty-three-year-old English lawyer who a few years earlier had won the London Peace Society's essay competition.28 The young man explicitly referred to both of the above-mentioned peace plans, arguing that both arbitration and a congress relied on public opinion for its success. However, action should be chiefly directed to the proposal of Judge Jay, because of its simplicity and proven effectiveness. He strengthened this argument with reference to precedents and the opinions of Vattel and Martens, who were read as supporting arbitration – rather misleadingly in the case of Martens.29 The congress idea was at the same time not fully discarded, as the spread of the principle of arbitration would inevitably lead to the attainment of Ladd's 'excellent scheme'. It should merely be suspended for a time until Jay's plan had come to fruition.30 In the interim, efforts could be made to amend the code of international law, though only as a subordinate and auxiliary objective, on the same level as the moral education of the people and the abolition of compulsory military service laws.31 His speech only broadly outlined both schemes, thus assuming some prior familiarity with these respective works on the part of the audience member and the reader.

MacNamara's position was interesting because it represented a departure from the book-length essay by which he had first ingratiated himself in pacifist circles. Published in 1841, the second part of his work opened with an endorsement of the system of a congress and court of nations, as envisioned by Ladd.32 In fact, he had copied nearly verbatim significant parts of Ladd's 1840 essay to the extent that crucial passages of these two texts became effectively interchangeable.33 Ladd's – and consequently MacNamara's – congress proposed a congress of ambassadors of Christian and civilized nations with the purpose of fixating the principles of international law through multilateral treaties, in turn allowing the establishment of a court of nations. The executive branch was left in the hands of public opinion.34 The strong division was clearly derived from the American constitutional model. These international institutions were needed, because, argued MacNamara slightly more explicitly than Ladd, doctrine as sanctioned by customary law had proven unable to develop a moral or even a coherent international legal system; even the most common of cases were subject to contradictory opinions, and the world's governments, either too incompetent or too disinterested to 'untie the Gordian knot', disregarded the law altogether all too frequently.35

This was followed in MacNamara's work by a list of points of international law that needed settling, taken almost entirely from a larger list by Ladd.36 The latter equated the law of nations mostly with the laws of war, citing numerous examples from the treatment of prisoners of war, over assassination, to the confiscation of private debts once a state of war had been declared.37 Other areas included the rights of neutrality and diplomatic privileges.38 The list was framed as a series of questions, often citing contrasting scholarly opinions to emphasize the need for centralized international legislation, although it was stressed that in no case should the congress interfere in the internal affairs of the state.39 Ladd referred nearly exclusively to Vattel, Burlamaqui and Grotius, whilst MacNamara used a slightly more sophisticated array of sources.40

Opposed to Ladd's plan was the aforementioned scheme devised by Jay, which caused somewhat of a sensation even before its official publication. Earlier on his American itinerary, Sturge had visited Jay in person in his Connecticut home.41 He was much swayed by the plan to insert arbitration clauses in all future international treaties, and subsequently attached the relevant passages of

Jay's unpublished manuscript to his American travelogue, introducing the idea to the British peace friends. Not without effect, as by June 1842 Macnamara distanced himself from his prize essay in a public letter to the journal of the London Peace Society, voicing his support for Jay's plan as he read it in the appendix to Sturge's book published earlier that year.42

It appeared to persuade many Americans as well. The journal of the American Peace Society published a number of articles in the fall of 1842 indicating a turn to arbitration as the principal mode of action. The first one detailed that Sturge had explicitly lobbied for Jay's arbitration scheme at the Boston peace meeting, because unlike legislative action within an international congress, arbitration treaties could be realized immediately.43 This was followed by the same excerpt of Jay's plan which Sturge had taken with him to England. Jay supported the feasibility of his plan through a number of arguments derived from diplomatic history, religion and even blatant power politics.44 Doctrinal legitimation was found in Vattel, whose treatise on international law was considered a standard in the United States far into the nineteenth century.45 According to this well-read Swiss author, arbitration was fully accepted in natural law, and victory in war did not necessarily go to the party which had the strongest legal case.46 A follow-up piece by Thomas Upham (1799-1872) argued along similar lines, also citing passages from Vattel to stress arbitration's conformability to the law of nations, natural law, and legal precedent.47 However, an article in the next issue explicitly emphasized that Jay had not dismissed the congress idea as impracticable or utopian, but had only posited arbitration as a preparatory substitute, thus hinting at some internal dissent within the ranks.48

Awareness of these events in the lead-up to the London Conference allows for a much better grasp of the significance of the consensus eventually reached. The first explicitly legal resolution recommended arbitration to all governments, and, more specifically, endorsed the insertion of arbitration clauses into all future international treaties.49 This was immediately followed by a second resolution, which affirmed 'that while recommending the plan of Judge Jay […], we still regard, as Peace Societies have from their origin regarded, and as especially set forth by the late W. Ladd, Esq. a Congress of Nations, to settle and perfect the code of international law, and a High Court of Nations, to interpret and apply that law […]'.50 The awkward phrasing undoubtedly reflected a compromise, even if only in rhetoric, aimed at calming partisans of the congress idea and downplaying internal divisions to the general public. Discussion of MacNamara's paper was relegated to a committee, which discussed it in private and only delivered a report summarily listing the conference resolutions distilled from its discussions.51 A terse public reply before the committee convened, by the American George Gibbes (?-1844), a member of said committee, echoed one of the chief arguments that could be raised against arbitration: he could not see how the United States could submit itself to an arbitral tribunal without knowing the laws by which she would be judged.52

This sentiment was shared by Constantin Pecqueur (1801-1887), himself absent, but whose lengthy letter was read aloud to the conference.53 Pecqueur did not address the topic of arbitration, instead enumerating a number of draft resolutions the conference ideally adopted. Not quite a modest man, these substitute resolutions largely reiterated points made previously in his two prize-winning essays at the Parisian *Société de la morale chrétienne*, to which he helpfully referred.54 According to this French socialist journalist, petitions needed to be directed to the legislative chambers on a wide range of subjects, ranging from the inclusion of Asian states into the concert of Europe to the assimilation of military penal codes to civilian criminal law. Governments should equally abrogate the sovereign right of discretionary war and any purported right of conquest.55

Whilst Pecqueur advocated a congress of nations, promulgation of a reformed international legal code did not necessarily rely on this congress; agreement between the great powers could already be sufficient.56 The court of nations tasked with enforcing this code was to gradually become more coercive until a cosmopolitan police force was established.57 The proceedings did not indicate whether these suggestions were debated.

A number of letters touched upon related subjects. Another letter read aloud was by Thomas Upham, largely repeating his earlier promotion of arbitration.58 Dissidence was found in one of the last letters, sent but not read, by an American pastor, who voiced traditional support for a congress, yet whose decisions would be merely advisory, rather than binding.59

3. The Brussels Conference of 1848

Five years passed until the American expatriate Elihu Burritt (1810-1879), the ‘learned blacksmith’, began warming British collaborators within his League of Universal Brotherhood and a few European sympathizers to the prospect of holding a conference in Paris in the summer of 1848.60 However, the June insurrection prevented a meeting in France and everything was moved to Brussels in September, under the auspices of the London Peace Society and with the helpful logistical support of cabinet leader Charles Rogier. The event was attended by about a hundred and fifty British and Americans, and only a slightly higher number of Belgians. There was just one French delegate, as well as a Dutchman, but not a single German.61 An important addition to the conference rules was the prohibition on allusions to political events.62

Codification was a topic broadly touched upon in two of the conference’s proposed resolutions, out of a substantial total of four.63 Whilst only the third resolution specifically dealt with a congress of nations, the proposed arbitration resolution immediately preceding it still framed the measure as a transitory one, facilitating a congress of nations which should frame a code of international law.64 This continued the accommodating spirit of the last conference, though it was clear arbitration was heavily preferred by the organizers, as the arbitration resolution actually adopted the next day, having passed through a private committee in the evening, had dropped any mention of temporality.65 The surreptitious move was congruent with observations Burritt had made a few weeks earlier into his diary on the demands of the much larger London Peace Society, whose aid he had enlisted.66 Following Sturge, the British peace society had adopted Jay’s plan, whilst Burritt increasingly grew into the intellectual successor of Ladd, who had died a few years before the London Conference, leaving the idea of a congress of nations without its chief supporter in the American Peace Society.

The switch was not immediately apparent on the conference floor, even among some of the British. In the introductory essay prepared by William Stokes (1802-1882), who still described a congress as ‘this great change’ that would secure an ‘appeal to peaceful law and recognized justice’.67 He stressed quite strongly that one of the benefits of an increased resort to arbitration would be a greater willingness by both governments and public opinion to accept the ‘greater and more complete work’ that was a congress of nations.68 Whereas the ‘embryo […] of arbitration’ relied on an appeal to ‘simple justice’, which entailed a considerable degree of subjectivity, a congress would reduce principles introduced in arbitration cases to a systematic code of laws. This would allow the formation of a court of nations, an ‘authorized centre of appeal’, capable of introducing objectivity and predictability into international relation, rendering armies gradually obsolete.69 Earlier, in the resolution on war, James Buckingham (1786-1855) had equally strayed from the

desired line, by emphasizing that a code of international law would have to be set up – based on an 'improved' version of the existing works of Vattel and other authors – before treaties on arbitration, as well as an adjudicating congress of nations, could be viable. These comments were left out of the British proceedings – as well as the French-language, which were based on the British – indicating that they conflicted with the London Peace Society's official line to promote immediate arbitration, above other instruments.70

Stokes's line of argument was not picked up by subsequent speakers. A short letter by Richard Cobden (1804-1865), hero of the free-trade movement and increasingly bringing his considerable influence to bear within the peace movement, expressed his support for a general arbitration treaty, whilst openly doubting the opportunity of the congress idea.71 In subsequent years, he would go so far as to publicly denunciate the proposal before parliament and to undertake multiple attempts to scrap the 'utopian' resolution in Paris and Frankfurt.72 Adolphe Roussel (1809-1875), law professor at the Université libre de Bruxelles (ULB) disregarded the need for codified law entirely in his speech, mostly arguing in favour of arbitration by equating state morality to individual morality, a common trope in intellectual debates on international law.73 Édouard Panchaud (1802-1889), an evangelical pastor in Brussels, speaking of arbitration as a natural law of God, similarly ignored the second part of the resolution.74 The Belgian historian Adolphe-Simon Rastoul de Mongeot (1800-1873) only obliquely respected the congress part of the resolution through reference to the Greek Amphyctyonic Council to legitimize modern arbitration.75 The remainder of the day's discussions were derailed by the contrarian views of the Spanish Proudhonist Ramon de la Sagra (1798-1871), who shocked delegates by declaring their ideas anarchical, as armies were the ultimate supporters of the law.76 At this point the debate degenerated into a series of animated refutations of de la Sagra's accusations, with the brief exception of Sturge, who endorsed Cobden's views.77

Elihu Burritt introduced the conference and codification resolution the next day through a paper which largely corresponded to an article he had published earlier that month in the London Peace Society's journal.78 It left no question as to the objective of a congress of nations, harshly condemning as it did the present state of international law. To Burritt, this branch of the law did not really exist, and that which passed under its name possessed little authority.79 Grotius may have been the first to develop a system which had exerted some minor positive influence over the years, but overall the discipline remained a disparate compilation of precedents, opinions, and arguments.80 No authoritative code of international law had ever been adopted. Yet Burritt also cautioned against too drastic an overhaul of existing precedent; the principal innovation of a congress would be the establishment of a 'universal common law' that derived its legitimation from an international legislature. A legal committee therein would review doctrine and draft statutory clauses to be discussed, amended and adopted by the general assembly, to be in turn ratified by the various national legislatures.81 Legislation thus enacted would form the supreme constitution of humanity, enforced by a permanent High Court of Nations.82

Responses by delegates to Burritt's proposal were mixed. Giuseppe Bertinatti (1808-1881), a professor in law from Turin, added that this code should not merely codify existing customs of European public law, but should ideally attempt to draw up a veritable cosmopolitan law that could also admit future independent states into its legal system.83 Bertinatti casted doubt on some fundamental principles of the contemporary law of nations. The Italian delegate thus echoed Tacitus's criticism of Roman politics when he deplored that 'we wished to civilize the world, and we began by laying it waste'.84 In reference to Kant, he argued that the world may have been *civilized*,

but not *moralized* and that the latter should be the foundation of cosmopolitan law.85 Bertinatti proposed specific normative desires. The first was the abolition of the Vienna system of hierarchical diplomatic precedence and its concomitant principle that the ambassador represented the person of the sovereign, which meant that diplomats were often military men whose nature led them all too often to regard war as the *ultima ratio regum*.*86* The second was the promotion of commercial liberty which would naturally lead to the political confederation of states.87 A third one rejected the current system of 'dominance and conquest', endorsing Bentham's proposal to emancipate all colonies.88

Other speakers showed less interest in international law as such, or ignored the topic at hand entirely; a bad habit of more than one delegate each year. The English Chartist Henry Vincent (1813-1878), for instance, spoke only on public opinion, arbitration and religion.89 Ramon de la Sagra again did not help matters, this time elaborately dissecting the reasons why a congress of nations was 'impossible, absurd and anarchical'. The prospect of a humanitarian legal code was unrealistic, since a complete congress of nations would inevitably incorporate ambassadors from despotic states. A congress thus composed would either be unable to overcome its differences or devolve into yet another congress of Vienna.90

These charges again turned every subsequent speech into a rebuttal of de la Sagra.91 Interestingly, two attackers asserted that the law of which they spoke was not man-made, but derived from heavenly principles, thus echoing an interpretation of religious natural law – one even went as far as disparaging the positivist conception of law itself.92 Perhaps surprisingly, 'our Spanish friend' – as he was referred to – was not without sympathizers. Pierre-Philippe Bourson (1801-1888), head of the *Moniteur belge* and one of the secretaries of the conference, agreed with the assessment that they were dealing with symptoms rather than causes, though he did not further detail his scepticism.93 Francisque Bouvet (1791-1871), a leftist French parliamentarian, opined that de la Sagra simply delighted in stirring up the hornet's nest, as he had himself in previous work underlined the need for arbitration or a universal congress.94

Once the conference phenomenon had crossed the Channel, a pattern thus began to emerge that was to reinforce itself over the editions that followed. The London Peace Society's leadership, especially as it fell more and more under the influence of Cobden, who identified himself with political pragmatism, pressured Burritt, as well other members who may have sympathized with Burritt, to accept the more restrained campaign objective of supporting bilateral treaty-making enshrining mandatory arbitration. Numerous factors can explain arbitration's appeal to the British, as well as many Americans, no longer led by Ladd. Arbitration procedures potentially based on equity corresponded well to the common law legal systems the Anglo-Americans were familiar with, and was compatible with the religious moralism that characterized domestic activism. Most of these peace friends preferred straightforward means of dispute resolution, inspired by a few anti-war axioms from scripture.95

Burritt's support for a codifying congress of nations represented an increasing minority opinion among the Anglo-Americans, but found numerous echoes among European collaborators. Even then, many of the continental collaborators could not fully identify with Anglo-American solutions. The charges made by a contrarian like de la Sagra cannot as easily be dismissed by the modern observer, as they were by the Anglo-Americans, for European public opinion stood indeed very sceptical towards peace activism. Probably not emphasized enough by some authors, Anglo-American solutions hardly made any inroads into European politics, because they did

not adequately correspond to European political sensibilities. To the average European, thorny questions of insecurity, armaments, or legal interventionism had very different implications than they had to Anglo-American peace activists. Most cared little, for instance, about the heated Anglo-American debate on the legitimacy of defensive war, dismissing as a side result the entire peace movement as 'utopian' – evident from the great many conference speeches refuting this accusation. The Americans in particular were barely taken seriously by the press, especially during the next conference, which was held in the capital of France.96

4. The Paris Conference of 1849

The following year in Paris, arbitration had risen to the top of the list, whilst the congress of nations had dropped to the penultimate fourth of the substantial resolutions, which, furthermore, only advised to 'prepare public opinion' for the formation of an eventual congress, whose sole object would be to frame a code of international law and constitute a supreme court.97 It had been superseded by both disarmament and a cluster of smaller resolutions on education and the press, proposed on the floor.98 Unquestionably the most famous one of the conferences, it was attended by over two thousand people each day, though the British delegation again decisively surpassed everyone else, exceeding those of the French, the Americans, and the rest of Europe.99 Presiding over the event was Victor Hugo, whose inaugural speech on the United States of Europe became iconic.100

The consolidation of arbitration as the movement's top priority was evident in the opening paper to the resolution by the British pastor Godwin, who admitted that, although law was the optimal power in civilized communities, the international community as of yet rejected the authority of international legal tribunals.101 The next best thing was arbitration based on 'reason', which could be understood to mean equity.102 Godwin then detailed arguments in favour, without mentioning the need for either a code or qualified jurists, even if he preferred arbiters that were neither monarchs nor statesmen, but men 'of all stations' with 'acknowledged competency' and a 'sense of justice'.103 None of the speakers following him spoke of the need for codified law or the transitory character of arbitration. However, the next day, during the disarmament resolution's debate, the Dutch delegate Willem Hendrik Suringar (1790-1872) – who had the year before been the only delegate to join de la Sagra in his 'nay' against the arbitration resolution – surprised by declaring that a code was needed before arbitration could be successful. Though Suringar did not detail how this legal code would be established, its connection to the 'utopian' schemes of Ladd or Burritt likely caused the British peace friends to shorten Suringar's speech, to misleadingly suggest Suringar agreed fully with the straightforward pro-arbitration line the London Peace Society wished to project.104 In an independently released version of Suringar's speech, just like Buckingham's the year before, his support proved far more conditioned on a code.105

The subject was only broached again on the last day. Burritt had again written the paper, subsequently translated into French, mostly repeating points made in Brussels. This time he acknowledged that the debate was mostly alive in the United States, modifying his argument slightly to accommodate the hypothesis of de la Sagra that a congress would be unable to function due to the presence of despotic states; to Burritt these would inevitably be a minority unable to overturn the congress's conclusions.106 In comparison to last year, he also laid more emphasis on the gradual nature of the intended reforms effecting to install a 'common law of nations', which in no way desired to establish a political union or impose on a single prerogative of the 'legitimate

sovereignty' of member states.107

Burritt's legalistic lead was picked up only half-heartedly by delegates. Jean-Gaspard Deguerry (1796-1871), a Catholic preacher, supported an international legislative congress through the analogy with national assemblies and the historical continuity with William Penn's scheme.108 Deguerry's arguments were rooted in economy and religion, but not in law, only comparing the parliamentary arbitration resolutions in Britain and the U.S. favourably to 'timid' attempts in France.109 Interventions by various other interlocutors likewise only agreed in broad terms, or spoke on wholly unrelated subjects. Charles Hindley (1896-1857), a British member of parliament and the president of the London Peace Society, for instance, pleaded for an Anglo-French rapprochement. The former African-American slave William Wells Brown (1814-1884) connected peace with abolitionism.110

Burritt's strongest ally in Paris was the American political economy professor and Massachusetts state congress member Amasa Walker (1799-1875), who had been a partisan for a congress of nations for years.111 In a long speech, Walker duly referred to the essay volume Ladd compiled on the subject, and never strayed far from Ladd's and Burritt's views. The congress of nations would have as its principal object the reform of the law of nations into a 'well digested and systematic code of international law'.112 This would be the collective work of statesmen and jurists, rather than the isolated academics of the past. The lack of such a code was the main preliminary obstacle to peace, without which a High Court of Arbitration could not function.113 A practical man, he followed this up with a draft constitution for the proposed congress, which largely overlapped with Burritt's suggestions; one delegate for every million inhabitants, and the congress's first session should last until a 'full and complete code' had been completed, after which it would periodically meet to amend as circumstances required.114 From Ladd he borrowed the comparison to Henri IV and Sully's scheme, which Americans following Ladd frequently invoked as a complicated scheme, that relied on the centralization of military power; their congress by contrast was friendlier to smaller states and derived its strength from that of public opinion.115

Other than continuously pushing back the congress resolution within the broader programme, there were other indications that the proceedings, as published by the London Peace Society, did not fully reflect the dynamics of the continental European peace movement. The Brussels Conference of 1848 concluded with the installation of an essay contest on the optimal means of putting the agreed-upon resolutions into practice. During the opening session, the Belgian secretary Auguste Visschers (1804-1876) presented the winners of the competition. He recapitulated the main activities of the peace movements, emphasizing the need for the progressive development of international and commercial law.116 Announcing the results, however, Visschers merely noted that the winner had made ample use of the licence afforded to him by the general phrasing of the essay question. He did not wish to further detail the winner's ideas, nor did he wish to imply these were shared by the conference committees.117 This was because its winner, the young Belgian lawyer Louis Bara (1821-1857), had in his lengthy prize essay explicitly contradicted nearly all current tactics of the *amis de la paix,* and had substituted them for a plea in favour of the autonomous development of international law along the lines of Western European liberalism.118 Despite having sponsored the competition, the London Peace Society never published the work, clearly not wanting to provide it with much publicity. Bara's intriguing 'science of peace' – along with dissenters like de la Sagra or Suringar – perfectly encapsulated the myriad political reasons why the Anglo-American Conference programme failed to convert European public opinion to the peace crusade in the mid-century.119

5. The Frankfurt Conference of 1850

A few months after the success of Paris, it was resolved to hold the next meeting in Frankfurt. The third and, for the time being, last continental peace conference came to pass in late August 1850 inside St. Paul's Church, erstwhile seat of the Frankfurt Parliament in the March revolution of 1848.120 The British delegation again outnumbered all others, most notably the Germans, who were comparatively few in number.121 More than one German delegate also contravened conference rules by arguing in favour of defensive war, and drawing attention to the conflict being fought in Schleswig-Holstein.122 As to the programme, arbitration continued to occupy first rank, whilst the resolution on a congress remained second to last, this time having also dropped the addendum on an international court.123 Interestingly, the German phrasing of the resolution concerning the general condemnation of war made explicit mention of 'questions of international law', whereas the British version did not.124

Accordingly, a few delegates touched upon the nature of a congress or international law outside of the congress resolution. All were European. The first was the renowned French journalist Émile de Girardin (1802-1881), a dissenter who preferred a universal assembly of nations over arbitration.125 According to Girardin, it was both easier, simpler and grander; an international legislative assembly would decide by majority on social questions, similar to national parliaments in constitutional states.126 The purpose of Girardin's assembly was thus distinct from the codification of international law as envisioned by Ladd and Burritt.

Conversely, Auguste Visschers, again Belgian secretary, believed in his opening remarks on arbitration that a congress was superfluous for the development of international law. In spite of current events and the positivist turn doctrine was moving toward, this civil servant claimed that the congress system established in Vienna had reversed the basis of 'existing public law', rendering war rather than peace the exception.127 Though the current peace rested on a fragile balance between great powers and their standing armies, international law was naturally developing and extending itself concomitant with the intensification of international relations.128 Analogous to unification domestically, numerous federal institutions would emerge, guaranteeing rights within the larger limits of international law. Rather than a single code or high court, several would co-exist in harmony like the various national constitutional systems.129 To Visschers, this was no conjecture, but a science rooted in natural law; had von Humboldt not already demonstrated the same for the physical world?130 The unstoppable moral progress of humanity was manifesting itself in the progressive development of international law; once the domain of a chosen few, its doctrines had entered the legislative halls.131

In doing so, Visschers echoed the sentiments of a compatriot, the Ghent law professor François Laurent (1810-1887), who had just published the first three volumes of his history of the law of nations, which would soon morph into a 'history of humanity', concepts that were interchangeable to Laurent.132 The professor sent a letter apologizing for his absence, and Visschers had dutifully brought copies of the first three books to present to the conference.133

In contrast to Visschers and Girardin, a certain Beck from Darmstadt detailed the composition of an arbitration tribunal, and concluded his speech with a few comments on the formation of a universal code of laws. Unfortunately, neither the British nor the German proceedings provided the full text, the latter only remarking that it aroused the interest of the assembly.134

On the last day of the conference, it was once more Burritt's turn to introduce the congress

resolution. His speech recycled much of the content of the previous ones, though it is difficult not to read some frustrations into it. He deplored that he was once again tasked with presenting the resolution, which had been labelled *American*.*135* He denied that there was anything distinctly American about the idea, which was to Burritt as old as international law, reinforcing his claim through reference to the medieval diets, councils and confederacies, and pointing out the schemes of Crucé, Saint-Pierre and Kant.136 While still mentioning the existence of a high court in resolutions adopted by state legislatures in the United States, he no longer argued that this congress would necessarily install an international court.137 Disappointed, Burritt called the resolution too timid in light of the heightened popularity of the peace cause.138

Its phrasing may have still been too ambitious, as no subsequent speaker even remotely touched upon either a congress or on codification, indicating that the concerns of the other delegates lay elsewhere. Arguments instead focussed on religion or on free trade. The reasons for the dismissal of codification, or its accompanying congress of nations, were manifold. To many of the religious pacifists, namely the Anglo-American Protestants, the reign of peace was foremost a consequence of personal holiness and individual perfection.139 Meanwhile, French liberal economists sympathetic to the movement believed a peaceful international legal order would establish itself ‘naturally’ out of the economic bonds forged between states through free trade.140 Consequently, some very important strands of contemporary peace philosophy were grounded in natural law, which did not require a political institution to institute norms. This can explain why so many speakers discussed, from the modern legal perspective, subjects seemingly unrelated to the topic at hand.141

5. The London Conference of 1851

The final gathering of the international conference cycle returned to where it all began: London. It was specifically intended to coincide with the Great Exhibition in Hyde Park, which many within the peace movement viewed as a peace conference in itself. Not including several thousand visitors each day, more than a thousand delegates participated, of which the majority was, as per tradition, British.142 Arbitration remained on the forefront, with the stripped-down congress resolution to have finally lost the congress aspect as well, now merely calling for public opinion to be prepared for the codification of international law.143

No speaker before the last day of the conference explicitly dealt with the restatement of international law. Even Visschers, who had become a faithful adherent of the British line, limited himself this time around to the simple wish that the principle of arbitration would find its way into the public law of Europe and the world.144 Burritt meanwhile complained that it was the third consecutive time it had fallen upon him to introduce the resolution.145 The only deviation from his previous speeches regarded the perceived convergence of interests between the Great Exhibition and the peace conference.146 The small number of speakers following him ignored the topic for which they had been called to the stage, which had become somewhat of a tradition at this point.

The only substantial response to Burritt came from Francisque Bouvet.147 This Frenchman shared with his American colleague a distinct interest in the pacific development of international law, on which he would publish a book four years later.148 Congruent with the structure he would give to this later work, Bouvet framed the development of peaceful institutions of international law into an evolutionary historical narrative, which mostly blamed papal Rome for obstructing progress over the centuries.149 A key concept to Bouvet was the existence of an international jurisdiction, able to be guaranteed only through a universal congress.150

This congress would codify the laws it administered, chief among which would be the legal prohibition of wars between peoples. Other aspects of universal jurisdiction related to the revision and enforcement of treaties, either through public opinion, official repudiation, or the collective use of force by way of armed contingents supplied by member states.151 Legal norms it would uphold included the neutrality and the security of the high seas, global commercial liberty, and the duty to contribute proportionally to international public works, such as a canal in Panama.152 Tinged with liberal-welfarist connotations, Bouvet similarly advocated the collective coordination of colonization efforts, statistical offices monitoring trade balances, the dissemination of technological innovations, as well as the standardization of all weights, measures, and currencies.153 In sum, it would be the 'Logos of the human mind' and inaugurate a new form of law. Public opinion would see to its realization.154

Bouvet's comments were complemented by correspondence to the conference. Like Laurent the year before, a letter was sent by a legal expert of growing renown, this time by the merchant, statistician, economist and lawyer Leone Levi (1821-1888). Originally an Italian Jew, he had moved to Britain in the 1840s, where he became a Protestant and developed an interest in international commercial law, including in his many activities both comparative legal research and law reform agitation.155 At the time of the London Conference, he was a member of the organizational peace congress committee.156 Unsurprisingly, his attention was drawn to the codification resolution in particular. He could not attend himself, but included a copy of his recent lecture on an international commercial code.157 However, Levi's curiosity was evidently piqued, as he published a treatise on the pacific reform of international law in general in 1855 and continued to be active in the peace movement for decades.158 His proposals drew heavily from natural law, and favoured both arbitration and a congress of nations, though Levi was more sceptical about both than the typical *ami de la paix*.159 At the end of his life, in 1887, he published another volume on the subject, this time adhering to a much more positivist methodology.160

6. Conclusion

Hardly sharing a distrust of governments 'incompatible with an attempt to conceptualize the post-Napoleonic system in terms of legal rules', the mid-century peace movement considered legal instruments as fundamental aspects of their general programme, both in terms of their practical value in pacifying international politics, as well as in the law's possibility to persuade the larger public.161 The inaugural London Conference proved decisive in setting the tone for subsequent conventions. It pitted two peace plans against each other, and judged them on the above-mentioned criteria. Arbitration held a decisive practical advantage in the eyes of most influential members of the Anglo-American societies, though the legislative restatement of public international law by a congress of nations enjoyed enough minority support to remain on the agenda for a few more years up until the Frankfurt meeting.

Once the conferences moved into continental Europe, codification continued to find some enthusiastic adherents. Legal reform through confederal arrangements had been adopted by an influential number of continental peace friends, including Bouvet, Pecqueur and the early ideas of Auguste Visschers. The first two had written, or would write, extensive treatises on the subject, although these did not fully correspond to the Anglo-American inception, as derived from Ladd. Any claims that the resolution on a congress of nations and a code 'could not overcome the opposition of the Europeans' misrepresent the diversity of pacifist thought, and want to force a geographical

divide onto a movement that was in reality more nuanced.162

Still, the relative position of codification did steadily weaken within the peace conference programme, caused by mounting pressure exerted on Burritt behind the scenes, as well the tight control kept over the programme by the pragmatic Anglo-American leadership. All this was further aggravated by the observation that a great many delegates indisputably relied much more on religion or economics than on immediate reform of positive law. To those many who drew primarily from faith or free trade ideology, international law depended on an increased respect for Christian tenets, or from expanding economic associations. Such activists did not need a centralized legislator to 'force' top-down on states that which had to establish itself bottom-up from the heart of man – or from his financial self-interest.

Those participants who did invoke explicit arguments in favour of direct codification did so in a variety of ways. Doctrine was treated ambivalently, both criticized for its indeterminacy, whilst simultaneously invoked whenever parts of it seemed to legitimize objectives of the peace movement. Ironically, peace friends were thus exploiting the same perceived 'weakness' of law that was eliciting their reproaches to diplomats and doctrine. A similar ambiguity manifested itself in their proposals *de lege ferenda*. Restatement of international law through explicit legislative action entailed a certain belief in positivism, or at least a lack of faith in the operability of natural law, but – considering positivism had not yet reached its future dominant status – draft norms were typically said to emerge from natural law, be it conceived as a law of God or a social law of harmony. Displaying a keen intuitive awareness on the functioning of international law, however, many proponents of codification realized that naturalist precepts still depended on the positive assent of states before they could be considered law, in the sense of having practical normative effect.

A key solution to bridge the gap between natural law and its positive affirmation in state practice was found in the domestic analogy. Consent was practically unanimous among peace friends that the same morality applied to states that did to individuals. This induced those in favour of codification to borrow elements from existing models of public law, and transpose these to the international sphere, creating an inextricable connection between legal codification and quasi-constitutional legislative and judiciary institutions. Very few peace friends could imagine a codification separate from an institution of public law hierarchically above the state, at least in the mid-century. However, as proved aggravating to the pragmatist leadership, a reformed international code was more often than not connected to politically far-reaching interpretations of 'justice', much of which would have been virtually impossible to realize in an official diplomatic assembly, representing widely diverging political regimes and interests.

Though the objectives of all peace friends in reality proved far more ambitious than what was politically viable – both for a congress of nations, as well as for mandatory arbitration – the resort to the domestic analogy did place them squarely in line with international lawyers, who had been doing essentially the same, yet more restricted, philosophical exercise since the Enlightenment. Embryotic interest from a number of legal specialists in the conference activities further indicates that a latent convergence of interests between peace activists and progressive jurists was ever present, only becoming more apparent as the movement matured and professionalized in the ensuing decades. Both arbitration as well as codification – even if increasingly disconnected from a permanent congress of nations – would return powerfully in the later peace through law movement. Burritt believed that humanity was moving to complete the 'universal chain of law and order'.163 Only time will tell whether such *ius contra bellum* constitutes a chain strong enough to withstand

the deathly forces of Leviathan.

Notes

1 R. Kolb, *Ius contra bellum. Le droit international relatif au maintien de la paix. Précis*, Bâle, Helbing Lichtenhahn, 2009, p. 6 ; R. Lesaffer, *Too Much History: From War as Sanction to the Sanctioning of War*, in *The Oxford Handbook of the Use of Force in International Law*, ed. M. Weller, Oxford, Oxford University Press, 2015, p. 35-36; O. Corten, *Le droit contre la guerre*, Paris, Pedone, 2014, p. 2, 875-879.

2 A. Verdebout, *The Contemporary Discourse on the Use of Force in the Nineteenth Century: a Diachronic and Critical Analysis*, in *Journal on the Use of Force and International Law,* vol. 1, 2014, p. 223-246; H. Simon, *The Myth of Liberum Ius ad Bellum: Justifying War in 19th-Century Legal Theory and Political Practice,* in *The European Journal of International Law*, vol. 29, 2018, n^{0} 1, p. 113-136; T. Ruys, *From passé simple to futur imparfait ? A response to Verdebout,* in *Journal on the Use of Force in International Law*, vol. 2, 2015, n° 1, p. 3-16.

3 Outside of what is briefly mentioned, rather superficially, in the *Oxford Handbook,* few modern legal-historical analyses of the early peace movement exist right now. See C. Lynch, *Peace Movements, Civil Society, and the Development of International Law*, in *The Oxford Handbook of the History of International Law*, eds. B. Fassbender and A. Peters, Oxford, Oxford University Press, 2012, p. 206-207; M. Janis, *North America: American Exceptionalism in International Law*, in *The Oxford Handbook, op. cit.*, p. 537-538.

4 T. Hippler, *From Nationalist Peace to Democratic War. The Peace Congresses in Paris (1849) and Geneva (1867)*, in *Paradoxes of Peace in Nineteenth Century Europe,* eds. T. Hippler and M. Vec, Oxford, Oxford University Press, 2015, p. 173, 175-176.

5 See for instance comments in the *Revue des deux mondes* cited *infra*.

6 Two more were organized in Manchester and Edinburgh in 1853, but these could no longer be considered international. D. Cortright, *Peace: a History of Movements and Ideas,* Cambridge, Cambridge University Press, 2012, p. 40-92.

7 Useful studies include: M. Curti, *Peace or War. The American Struggle, 1636-1936,* Boston, J. S. Canner & Company, 1959, 374 p; M. Ceadel, *The Origins of War Prevention: the British Peace Movement and International Relations, 1730-1854,* Oxford, Clarendon Press, 1996, 587 p.

8 According to analyses of Jacob ter Meulen's bibliography of peace literature, 'English reigns virtually supreme until about 1865' in the total output. The Luxemburg Crisis of 1867 triggered the birth of the first viable peace societies in continental Europe. See P. Van Den Dungen (ed.), *From Erasmus to Tolstoy. The Peace Literature of Four Centuries; Jacob ter Meulen's Bibliographies of the Peace Movement before 1899,* New York, Greenwood Press, 1990, p. 19-21.

9 By far the best descriptive history remains that of Wilhelmus Hubertus van der Linden: W. H. van der Linden, *The International Peace Movement, 1815-1875,* Amsterdam, Tilleul, 1987, 1237 p. Sandi Cooper's study of European peace activism is considered a standard in the field: S. Cooper, *Patriotic Pacifism: waging War on War in Europe, 1815-1914,* New York, Oxford University Press, 1991, 336 p.

10 Often forgotten in English-language scholarship, just because formal societies practically did not exist on the content, did not mean there was no peace activism. Furthermore, continental *amis de la paix* were frequently enmeshed in networks tied to Anglo-American activism, but describing these social links in any detail would far exceed the scope of the present article. Examples of non-English studies include those by Carol Bergami, as well as those by the already mentioned ter Meulen. J. TER MEULEN, *Der Gedanke der internationalen Organisation in seiner Entwicklung. Zweiter Band. Erstes Stück. 1789–1870,* The Hague, Martinus Nijhoff, 1929, 371 p.

11 Bergami's excellent work has not neglected legal argumentation: C. BERGAMI, *Quelle démocratie pour quelle organisation internationale ? Le pacifisme français et la naissance d'un constitutionnalisme républicain, 1840-1889,* in *Les cahiers Irice,* vol. 12, 2014, n° 2, p. 17-30. Christian Lange's study has become outdated, yet still of descriptive use: C. LANGE, *Histoire de la doctrine pacifique et de son influence sur le développement du droit international,* in *Collected Courses of the Hague Academy of International Law,* vol. 13, 1926, n° III, p. 171-426.

12 Much of this forms the subject of the present author's more comprehensive and detailed doctoral research.

13 M. BELISSA, *Fraternité universelle et intérêt national (1713-1795). Les cosmopolitiques du droit des gens,* Paris, Kimé, 1998, p. 7-14, 41-49.

14 See also W. DE RYCKE, *Legislating Utopia. Louis Bara (1821-1857) and the Liberal-Scientific Restatement of International Law in the Nineteenth Century Peace Movement,* in *Journal of the History of International Law,* advance online publication, 2020, DOI: 10.1163/15718050-12340146, p. 26, 33-35.

15 V. GENIN, *Le laboratoire belge du droit international: une communauté épistémique et internationale de juristes (1869-1914),* Brussels, Académie Royale de Belgique, 2018, p. 53-74 ; R. LESAFFER, *Peace through Law: the Hague Peace Conferences and the Rise of the Ius Contra Bellum,* in *War, Peace and International Order? The Legacies of the Hague Peace Conferences of 1899 and 1907*, eds. M. ABBENHUIS, C. E. BARBER and A. HIGGINS, London and New York, Routledge, 2017, p. 32.

16 The celebrated 1872 *Alabama claims* arbitration set an important precedent, but the most significant disputes, those concerning 'vital interests', were never submitted to arbitration. Statesmen like Elihu Root emphasized the importance of a code for the functioning of an international judicature. M. JANIS, *The American Tradition of International Law. Great Expectations, 1789-1914,* Oxford, Clarendon Press, 2004, p. 148-149; R. P. ALFORD, *The Nobel Effect: Nobel Peace Prize Laureates as International Norm Entrepreneurs,* in *Virginia Journal of International Law,* vol. 49, 2008, n° 1, p. 75-76.

17 These reports contain the most 'complete' account, though these propaganda texts must be handled with care. V. LINCOLN, *Organizing International Society: The French Peace Movement and the Origins of Reformist Internationalism, 1821-1853,* Berkeley, unpublished doctoral thesis, 2013, p. 139-142.

18 Non-pacifist press is mentioned only sporadically in the present article, concerned with debates internal to the peace movement. An internationally read newspaper like *L'Indépendance belge* is drawn upon for its strong coverage of the Brussels Conference of 1848. A French periodical like

the *Revue des deux mondes* is used for its unique position as an organ of elite French liberal public opinion. See P. Van Den Dungen, *Milieux de presse et journalistes en Belgique, 1828-1914,* Brussels, Académie royale de Belgique, 2005, p. 157 ; G. De Broglie, *Histoire politique de la Revue des deux mondes de 1829 à 1979,* Paris, Perrin, 1979, p. 77-78.

19 Martin Ceadel commented in 1996 that the London Peace Society's privately held records have long been extremely difficult to access. The by now old owner is again unresponsive to requests. M. Ceadel, *op. cit.,* p. 17.

20 L. Benton, *Beyond Anachronism: Histories of International Law and Global Legal Politics,* in *Journal of the History of International Law,* vol. 21, 2019, n° 1, p. 13-14. See also P. Bourdieu, *La force du droit,* in *Actes de la Recherche en Sciences Sociales,* vol. 64, 1968, p. 16.

21 C. Müller, *The Politics of Expertise: The Association Internationale pour le Progrès des Sciences Sociales, Democratic Peace Movements and International Law Networks in Europe, 1850-1875,* in *Shaping the Transnational Sphere. Experts, Networks and Issues from the 1840s to the 1930s*, eds. D. Rodogno, B. Struck and J. Vogel, New York, Berghahn Books, 2015, p. 134.

22 C. Leonards and N. Randeraad, *Building a Transnational Network of Social Reform in the Nineteenth Century,* in *Shaping the Transnational Sphere. Experts, Networks and Issues, op. cit.*, p. 116-119.

23 J. Sturge, *A Visit to the United States in 1841,* London, Hamilton, Adams and Co., 1842, p. 140.

24 *The Proceedings of the First General Peace Convention held in London, June 22, 1843, and the two following Days; with the Papers laid before the Convention, the Letters, read, &c. &c.* (hereinafter: *Proceedings London 1843*), London, Peace Society's Office, 1843, p. 4-7.

25 *Ibid*., p. 43-45.

26 *Ibid*., p. 6.

27 Both had served terms as president of the American Peace Society. Jay was a judge in Westchester County, not to be confused with his father, supreme court justice and Founding Father John Jay. The son was likely influenced, however, by the Jay treaty on arbitration concluded by his father in 1794. Ladd was a wealthy sea captain-turned-cotton grower. W. H. van der Linden, *op. cit.*, p. 145-150, 37-38.

28 He would later become a judge. M. Ceadel, *op. cit.,* p. 292.

29 *Proceedings London 1843, op. cit.,* p. 64-65. This passage corresponded strongly to the part of Jay's work on the benefits of arbitration, though the inclusion of Martens was novel. However, MacNamara only quoted passages from Martens on war as an ultima ratio, neglecting to add that on arbitration specifically, this scholar claimed that the method had 'become increasingly rare', since it was found to be 'generally inadequate'. This description did not change from the first French-language edition of 1788 up to the 1858 edition. G.F. von Martens, *Précis du droit des gens moderne de l'Europe,* new edition, Paris, Guillaumin, 1858, vol. 2, p. 20.

30 *Proceedings London 1843, op. cit.,* p. 65-66.

31 *Ibid*., p. 22, 68.

32 H. MacNamara, *Peace, permanent and universal. A Prize Essay,* London, Saunders and Otley, 1841, p. 224.

33 ter Meulen had already noticed this in 1929, though the resemblances are obvious. J. ter Meulen, *Der Gedanke, op. cit.*, p. 307.

34 W. Ladd, *An Essay on a Congress of Nations, for the Adjustment of International Disputes without Resort to Arms,* Boston, Whipple and Damrell, 1840, p. iv, 13-16; H. MacNamara, *op. cit.,* p. 223-225.

35 H. MacNamara, *op. cit.,* p. 229-230.

36 *Ibid*., p. 230-239.

37 W. Ladd, *op. cit.,* p. 17-20.

38 *Ibid*., p. 24-38.

39 This was consistently so in the classical Anglo-American inception of a world congress. H. MacNamara, *op. cit.*, p. 237; W. Ladd, *op. cit.,* p. 16.

40 MacNamara considered Joseph Story's *Conflict of laws* as 'forming a strong argument in favour of our plan'. He also used Pufendorf. *Ibid*., p. 237.

41 J. Sturge, *op. cit.,* p. 55.

42 *Herald of Peace*, July 1842, p. 156.

43 *Advocate of Peace,* October and November 1842, p. 241-243.

44 According to Jay, the War of 1812 with Britain might have been avoided had there existed a treaty obligation to consider arbitration first, referring to the success of the 1831 Dutch arbitration of an American-Canadian border dispute. He also argued, less Christian, that arbitration was in Britain's best interests as she would have a hard time defending Canada in the event of another war. W. Jay, *War and Peace: the Evils of the first and a Plan for preserving the last,* London, Thomas Ward, 1842, p. 41-44.

45 Vattel was ambiguous or even contradictory on many subjects. See also E. Jouannet, *Les dualismes du Droit des gens,* in *Vattel's International Law in a XXIst Century Perspective,* eds. V. Chetail and P. Haggenmacher, Leiden, Nijhoff, 2011, p. 133-145.

46 W. Jay, *op. cit.,* p. 40-41; *Advocate of Peace,* October and November 1842, p. 244-245.

47 Upham, a philosophy professor in Bowdoin College, had published an essay in 1836. *Ibid*., p. 253-254; see also T. Upham, *The Manual of Peace,* New York, Leavitt, 1836, 408 p.

48 *Advocate of Peace,* December 1842, p. 276. Already pointed out by W. H. van der Linden, *op. cit.,* p. 148.

49 *Proceedings London 1843, op. cit.,* p. 45.

50 *Ibid*.

51 *Ibid*., p. 22, 33-34.

52 *Ibid*., p. 22. George Gibbes served as a delegate from the peace committee of the Parisian Société de la morale chrétienne. *Ibid*., p. 31; see also W. H. VAN DER LINDEN, *op. cit.,* p. 150.

53 He had earlier flirted with both Saint-Simonianism and Fourierism. See also V. LINCOLN-LAMBERT, *Between Global Governance and European Union. The Writings of Constantin Pecqueur,* in *Europe de papier. Projets européens au XIX^{e} siècle*, eds. S. APRILE, C. CASSINA, P. DARRIULAT and R. LEBOUTTE, Villeneuve-d'Ascq, Septentrion, 2016, p. 113-124.

54 *Proceedings London 1843, op. cit.,* p. 93.

55 *Ibid*.

56 *Ibid*., p. 93. From his previous writings, we can deduce that he was effectively pleading for a unified European state; C. PECQUEUR, *Théorie nouvelle d'économie sociale et politique, ou études sur l'organisation des sociétés*, Paris, Capelle, 1842, p. 419-435 ; see also V. LINCOLN, *Organizing International Society…, op. cit.,* p. 79.

57 Pecqueur referred to projects proposed at the conference of Aix-la-Chapelle in 1818 to institute mixed naval squadrons and corresponding tribunals to combat the slave trade. *Proceedings London 1843, op. cit.,* p. 93.

58 *Ibid*., p. 102-104.

59 *Ibid*., p. 106-108

60 The L.U.B. was a minor rival of the London society, led by Burritt. W. H. VAN DER LINDEN, *op. cit.,* p. 322-325.

61 *Ibid*., p. 326. The Dutch delegate was asked to represent Germany as well, which he politely declined as Holland was a 'separate kingdom'. *Congrès des amis de la paix universelle, réuni à Bruxelles en 1848,* Brussels, Lesigne, 1849, p. 2.

62 Government permission on the continent depended on this prohibition, violated multiple times. *The Peace Congress at Brussels, on the 20th, 21st, and 22nd of September, 1848* (hereinafter: *Proceedings Brussels 1848*), London, Thomas Ward, 1849, p. 1.

63 The other two main resolutions entailed a general condemnation of war, first on the list, and an appeal for general and simultaneous disarmament, which came last. *Proceedings Brussels 1848, op. cit.,* p. 15, 43.

64 *Ibid*., p. 16.

65 *Ibid*., p. 24.

66 Burritt's journal quoted in W. H. VAN DER LINDEN, *op. cit.,* p. 368-369.

67 *Proceedings Brussels 1848, op. cit.,* p. 16. Stokes was a Baptist minister from Birmingham and one of the principal architects of the conference series. P. R. DEKAR, *Baptist Peacemakers in Nineteenth-Century Peace Societies,* in *Baptist Quarterly*, vol. 34, 1991, n° 1, p. 6.

68 *Proceedings Brussels 1848, op. cit.,* p. 17-19.

69 *Ibid*., p. 19.

70 A similar lot befell the Dutch delegate Suringar's similar objections to arbitration, cited *infra*. Buckingham was a former radical M.P., and allied to Burritt's *League of Universal Brotherhood.* See J. BUCKINGHAM, *An Earnest Plea for the Reign of Temperance and Peace, as Conducive to the Prosperity of Nations,* London, Peter Jackson, Late Fisher Son, 1851, p. 115-116; M. CEADEL, *op. cit.,* p. 408.

71 *Proceedings Brussels 1848, op. cit.,* p. 19.

72 W. H. VAN DER LINDEN, *op. cit.,* p. 371-372.

73 *Proceedings Brussels 1848, op. cit.,* p. 20-21. International lawyers had made prolific use of the domestic analogy since at least Vattel. M. KOSKENNIEMI, *From Apology to Utopia. The Structure of International Legal Argument. Reissue with a new Epilogue,* Cambridge, Cambridge University Press, 2005, p. 22.

74 Panchaud was a French exile. *Proceedings Brussels 1848, op. cit.,* p. 21-22; J. MEYHOFFER, *Panchaud (Édouard)*, in *Biographie nationale de Belgique*, vol. XXXII, Brussels, Bruylant, 1964, p. 559-560.

75 This was a classic among peace friends, even if not corresponding to historical realities. D. BEDERMAN, *International Law in Antiquity,* Cambridge, Cambridge University Press, 2001, p. 8, 60-61, 82-83; *Proceedings Brussels 1848, op. cit.,* p. 22; F. ALVIN, *Rastoul de Mongeot (Alphonse-Simon),* in *Biographie nationale de Belgique*, vol. XVIII, Brussels, Bruylant, 1905, p. 758-760.

76 *Proceedings Brussels 1848, op. cit.,* p. 22.

77 *Ibid*., p. 22-23. The event caused a minor polemic, as de la Sagra published his retorts in a separate booklet in 1849, receiving a reply in a brochure by a certain E. A. R. DE LA SAGRA, *Utopie de la paix,* Paris, Capelle, 1849, 77 p.; F. E. A. GASC, *Lettres à M. Ramon de la Sagra sur l'utopie de la paix,* Paris, Guiraudet et Jonaust, 1851, 55 p.

78 *Ibid*., p. 24-27 ; *Herald of Peace,* September 1848, p. 129-131.

79 *Proceedings Brussels 1848, op. cit.,* p. 24.

80 In the version published in the *Herald of Peace*, Burritt also did not appear to hold natural law in particularly high esteem. See *Ibid*; *Herald of Peace,* September 1848, p. 129.

81 *Proceedings Brussels 1848, op. cit.,* p. 25.

82 *Ibid*., p. 26.

83 *Ibid*. p. 27.

84 *Ibid*.

85 *Ibid*.

86 *Ibid*.

87 *Ibid*.

88 *Ibid*. p. 28-29.

89 *Ibid*., p. 29-30.

90 *Ibid*., p. 31.

91 His accusations of anarchism were met with outcries of denial from the assembly. *L'Indépendance belge,* 22 September 1848, p. 7.

92 A certain D'Arcy Irvine deplored 'the modern tendency to discuss treaties and laws as being the works of men, instead of accepting them as having emanated from God'. *Proceedings Brussels 1848, op. cit.,* p. 32-33.

93 *Ibid*., p. 32; see also E. Witte and S. Keuleers, *De Moniteur belge, de regering en het parlement tijdens het Unionisme (1831-1845),* Brussels, Belgisch Staatsblad, 1985, 143 p.

94 *L'Indépendance belge,* 22 September 1848, p. 7.

95 According to Burritt's diary, Bouvet spoke for thirty minutes on a congress of nations, which he would repeat in Paris and Frankfurt. W. De Rycke, *op. cit.,* p. 13; M. W. Janis, *America and the Law of Nations, 1776-1939,* Oxford, Oxford University Press, 2010, p. 86-87; C. Northend, *Elihu Burritt, a Memorial Volume containing a Sketch of his Life and Lobors, with Selections from his Writings and Lectures, and Extracts from his Private Journals in Europe and America,* New York, Appleton, 1879, p. 56.

96 M. W. Janis has framed peace activism as 'American exceptionalism', achieved by ignoring nearly everything outside of the United States, still a politically peripheral country in the mid-century. During Paris '49, the French press had a field day joking about the Quakers, seen as fringe religious fanatics. The *Revue des deux mondes* mentioned the conference passingly, and did not wish to criticize the American delegates, who had applauded *'des discours qu'ils ne comprenaient pas.'* See M.W. Janis, *American Exceptionalism, op. cit.,* p. 537-538; *Chronique de la Quinzaine,* in *Revue des deux mondes,* vol. 3, 1849, n° 5, 873-875.

97 *Report of the Proceedings of the second General Peace Congress, held in Paris, on the 22nd, 23rd and 24th of August, 1849. Compiled from Authentic Documents, under the Superintendence of the Peace Congress Committee* (hereinafter: *Proceedings Paris 1849*), London, Charles Gilpin, 1849, p. 19, 65; *Congrès des amis de la paix universelle réuni à Paris en 1849: Compte-rendu* (hereinafter: *French Proceedings Paris 1849*), Paris, Guillaumin, 1850, p. 9, 32. The French proceedings were derived from the British proceedings published a year earlier, which is why preference is given to the British text.

98 *Proceedings Paris 1849, op. cit.,* p. 55.

99 Over 350 British, compared to a hundred French and 23 American delegates. A membership list was provided in the appendix. *Ibid*., p. 99-106.

100 The French text added descriptions of audience reactions. *French Proceedings Paris 1849, op.*

cit., p. 3-5.

101 *Ibid*., p. 9; *Proceedings Paris 1849, op. cit.,* p. 55.

102 *Ibid*., 20-21.

103 *Ibid*., p. 23.

104 *Ibid*., 36-37.

105 Suringar alluded to last year's resolution on a diplomatic congress. *Proceedings Paris 1849, op. cit.,* p. 20; W. H. SURINGAR, *Discours prononcé par M. Suringar, d'Amsterdam, Vice-Président au congrès de la paix, dans la deuxième séance, tenue à Paris le 23 août 1849, salle Sainte-Cécile, Rue de la Chausée-d'Antin,* Paris, Ducloux, 1849, p. 3-4, 7-8.

106 *Ibid*., p. 58-59.

107 *Ibid*., p. 59-62.

108 *Ibid*., p. 65-66.

109 This provoked objections by Francisque Bouvet, who had unsuccessfully tried to introduce an arbitration clause into the constitution of the French Second Republic. *Ibid*., p. 66-67.

110 *Ibid*., p. 77-78; M. CEADEL, *op. cit.,* p. 519.

111 See for instance *Advocate of Peace,* August 1841, p. 32-38.

112 *Proceedings Paris 1849, op. cit.,* p. 67-68.

113 *Ibid*., p. 69.

114 Ladd had proposed one vote per state, regardless of population. *Ibid*., p. 69-70; W. LADD, *op. cit.,* p. 14.

115 European peace friends invoked Henri IV's *grand dessein* more sympathetically, such as the Genevan count Jean-Jacques de Sellon (1782-1839), founder of the short-lived *Société de la paix de Genève.* See *Proceedings Paris 1849*, *op. cit.,* p. 71-72; W. LADD, *op. cit.,* p. 55-56.

116 *Proceedings Paris 1849*, *op. cit.,* p. 17.

117 *Ibid*., p. 18.

118 L. BARA, *La science de la paix. Programme. Mémoire couronné, à Paris, en 1849, par le congrès des sociétés anglo-américaines des amis de la paix*, ed. Charles Potvin, Brussels, Muquardt, 1872, 251 p.

119 A detailed analysis of the story of Louis Bara can be found in W. DE RYCKE, *op. cit.,* p. 1-41. If governmental responses to the Hague peace conferences are anything to go by, even 'conservative' peace friends likely did not fully grasp the depth of hostility towards arbitration. See V. GENIN, *op. cit.,* p. 159-161; S. COOPER, *op. cit.,* p. 208.

120 *Report of the Proceedings of the third General Peace Congress, held in Frankfort, on the 22nd, 23rd, and 24th August 1850. Compiled from Authentic Documents, under the Superintendence of the Peace Congress Committee* (hereinafter: *Proceedings Frankfurt 1850*), London, Charles Gilpin, 1851, p. ix.

121 Only fifty registered Germans, compared to 250 British participants. W. H. VAN DER LINDEN, *op. cit.,* p. 344-345.

122 The Berlin Dr. Bodenstedt, for instance, came to the conference with the specific intention to plead for the installation of a commission of enquiry by *amis de la paix.* See *Verhandlungen des dritten allgemeinen Friedenscongresses, gehalten in der Paulskirche zu Frankfurt am Main, am 22., 23. und 24. August 1850* (hereinafter: *German Proceedings Frankfurt 1850*), Frankfurt am Main, Sauerländers Verlag, 1851, p. 43-45; *Proceedings Frankfurt 1850, op. cit.,* p. 43.

123 Behind the scenes, Cobden was continuing to press for the dropping of this resolution, as he would next year as well. A compromise was reached on abandoning the idea of a court of nations. *German Proceedings Frankfurt 1850, op. cit.,* p. 53; *Proceedings Frankfurt 1850, op. cit.,* p. 51; M. CEADEL, *op. cit.,* p. 466.

124 *German Proceedings Frankfurt 1850, op. cit.,* p. 5; *Proceedings Frankfurt 1850, op. cit.,* p. 5.

125 A controversial figure, he played an important part in the history of the French newspaper press. See also L. O'BRIEN, *Monsieur Vipérin: Émile de Girardin and the republican satirical press in 1848,* in *French History,* vol. 30, 2016, n° 2, p. 197-217.

126 *Proceedings Frankfurt 1850, op. cit.,* p. 14-15.

127 *Ibid*., p. 12.

128 *Ibid*.

129 *Ibid*., p. 13.

130 *Ibid*.

131 *Ibid*.

132 *Ibid*., p. 75; M. KOSKENNIEMI, *Histories of International Law: Significance and Problems for a Critical View,* in *Temple Journal of International and Comparative Law*, vol. 27, 2013, n° 2, p. 220; F. DHONDT, *"L'histoire , parole vivante du droit ?" François Laurent en Ernest Nys als historiografen van het volkenrecht*, in *De Belle Époque van het Belgisch recht*, ed. Bruno DEBAENST, Brugge, Die Keure, 2016, p. 94.

133 *Proceedings Frankfurt 1850, op. cit.,* p. 24 ; *German Proceedings Frankfurt 1850, op. cit.,* p. 21. Visschers also brought copies of the work of Édouard Morhange, who won third prize in the Brussels essay contest.

134 *Proceedings Frankfurt 1850, op. cit.,* p. 14; *German Proceedings Frankfurt 1850, op. cit.,* p. 13.

135 *Proceedings Frankfurt 1850, op. cit.,* p. 51.

136 *Ibid*.

137 *Ibid*., p. 52.

138 *Ibid*., p. 54.

139 V. Ziegler, *The Advocates of Peace in Antebellum America,* Indianapolis, Indiana University Press, 1992, p. 12-13.

140 C. Bergami, *Européisme et cosmopolitisme. D'une spécificité européenne dans le pacifisme français des années 1840,* in *La contemporaine. "Matériaux pour l'histoire de notre temps",* vol. 108, 2012, n° 4, p. 11.

141 Apart from the fact that many also simply sought to profile themselves, not caring about specific subtopics.

142 Sixty Americans, and a handful of other nationalities. *Report of the Proceedings of the fourth General Peace Congress, held in Exeter Hall, London, on the 22nd, 23rd, and 24th July, 1851. Compiled from Authentic Documents, under the Superintendence of the Peace Congress Committee* (hereinafter: *Proceedings London 1851*), London, Charles Gilpin, 1851, p. 3-8.

143 *Ibid*., p. 29, 69.

144 *Ibid*., p. 29-30.

145 *Ibid*., p. 69-70.

146 *Ibid*., p. 70-72.

147 *Ibid*., p. 72. See also, for instance, C. Bergami, *Européisme... le pacifisme français, op. cit,* p. 19-20.

148 F. Bouvet, *La guerre et la civilisation*, Paris, Dentu, 1855, 276 p. ; republished under the more legalistic title *Introduction à l'établissement d'un droit public européen,* Paris, Dentu, 1856, 276 p.

149 *Proceedings London 1851, op. cit.,* p. 73-74. Earlier in Paris, Bouvet had already railed against papal authority, causing a great deal of tumult; *French Proceedings Paris 1849, op. cit.,* p. 20-21.

150 *Proceedings London 1851, op. cit.,* p. 73.

151 *Ibid*., p. 74.

152 *Ibid*.

153 *Ibid*., p. 75.

154 *Ibid*.

155 *Ibid*.; see also G. R. Rubin, *'Levi, Leone',* in *Oxford Dictionary of National Biography*, online, https://doi.org/10.1093/ref:odnb/16551, consulted on 30 January 2020.

156 *Ibid*.

157 The contents of this lecture were not printed. *Proceedings London 1851, op. cit.,* p. 81-82.

158 L. Levi, *The Law of Nature and Nations as Affected by Divine Law,* Edinburgh, John Menzies and T. & T. Clarck, 1855, 116 p.

159 According to Levi, private contracts still led to frequent lawsuits, and a congress would only be able to function in a time of complete peace, and would be hindered by the lack of an enforcing power. *Ibid*., p. viii, 105-107.

160 In this late work, he criticized Dudley Field and Bluntschli for ignoring the positivist portion of international law in their respective codifications. L. Levi, *International Law with Materials for a Code of International Law,* London, Kegan Paul, Trench & Co., 1887, p. vii-viii; see also M. Vec, *Sources of International Law in the Nineteenth-Century European Tradition. The Myth of Positivism,* in *The Oxford Handbook on the Sources of International Law*, eds. A. Orford and F. Hoffmann, Oxford, Oxford University Press, 2016, p. 121-145.

161 M. Koskenniemi, *The Gentle Civilizer of Nations,* Cambridge, Cambridge University Press, 2001, p. 41.

162 C. Lynch, *op. cit.,* p. 206.

163 *Proceedings Paris 1849, op. cit.,* p. 60.