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The evolution of global politics and the pacific settlement of international disputes, 1794–1907

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Abstract

The nineteenth century witnessed a major effort amongst key historical actors at applying international arbitration to settle a range of questions between states. An increasingly globalized public sphere took great interest in arbitration and how it might be used to supplant war in what they called the ‘civilized’ world. At the fin de siècle, these two elements came together at the peace conferences at The Hague in 1899 and 1907 when diplomats institutionalized arbitration through the creation of the Permanent Court of Arbitration. This thesis examines the various contexts in which the great powers employed arbitral mechanisms in order to highlight the pivotal role arbitration played as a tool of diplomacy in this globalizing age. Moreover, it investigates the political motivations behind the eventual systematization and institutionalization of arbitration.

Chapter 1 explores both the pre–nineteenth–century history of pacific settlement as well as the early development of arbitration in the opening stages of the nineteenth century. Chapter 2 analyses the ways that arbitration played a confidence–building role in the increased complexities of nineteenth–century great power politics. Chapter 3 explains how imperial powers employed arbitration to regulate their relations with non–Western governments, particularly in terms of demarcating and delimiting the boundaries of their colonies in Africa and Asia. Following on, chapter 4 examines private claims arbitration, particularly in the developing capital markets of Latin America. Chapter 5 considers how internationalist and peace movements in the west co–opted the idea of arbitration in the latter half of the nineteenth century, providing an impetus to institutionalize and systematize pacific settlement. Finally, chapter 6 considers the motivating factors as well as the impediments behind the negotiations at the two Hague conferences for the advancement of pacific settlement.

The following six chapters demonstrate how the enhanced use of legal mechanisms in the nineteenth century were part of the changing vision of modern diplomatic and legal practice. At the same time, the expansion of pacific settlement represented the primary vehicle for states to implement greater structural changes in the international system for the sake of peace and progress.
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Introduction: Nineteenth-century pacific settlement reconsidered

Animated by a strong desire to concert for the maintenance of the general peace;
Resolved to second by their best efforts the friendly settlement of international disputes;
Recognizing the solidarity which unites the members of the society of civilized nations;
Desirous of extending the empire of law, and of strengthening the appreciation of international justice;
Convinced that the permanent institution of a Court of Arbitration, accessible to all, in the midst of the independent Powers, will contribute effectively to this result;
Having regard to the advantages attending the general and regular organization of arbitral procedure...

The foregoing sentiments expressed in the preamble of the Convention for the Pacific Settlement of International Disputes of 1899 at one end represent the pomposity typically associated with diplomatic treaties and conventions.\(^1\) At another end, they are a telling collection of choice phrases. From the supposed 'solidarity' of the 'society of civilized nations' to the desire to extend the so-called 'empire of law', these words represented the stuff of contemporary international politics. Signed by twenty-six states at the Hague peace conference in 1899, this convention represented the high point of the entire conference. Called at the behest of Tsar Nicholas II of Russia, the conference invited nations to gather at The Hague to discuss disarmament and other initiatives in support of peace. The idea of disarmament became a nonstarter at the conference, owing to the general reluctance of practically all great powers to contain their arms race.

In lieu of this dead end, the idea of expanding and improving the means of pacific settlement became the most practical and realizable measure in support of peace. To use the words of historian Sandi E. Cooper, it represented the 'highest common denominator' amongst the delegates assembled.\(^2\) The favourable disposition of the great powers towards pacific settlement was by no means a coincidence. By the fin de siècle, the use of pacific settlement had well and truly entered a golden age, enjoying a greater degree of regularity and permanency in diplomatic practice than it had in the past. At The Hague, many of the delegates set upon developing a convention that provided for a more systematic and institutionalized framework for peacefully settling international disputes.

The pacific settlement convention gave greater clarity to the use of good offices, mediation, and conciliation with articles devoted towards defining the role of third parties, the obligations of all parties as well as procedural elements for these

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\(^1\) The full text of both the 1899 and 1907 conventions for the pacific settlement of international disputes are available at http://avalon.law.yale.edu/ (last accessed 10 August 2016).

mechanisms. It also designed new mechanisms such as the International Commission of Inquiry. Russian jurist and delegate at the conference Fyodor Martens, who is credited with the inception of this idea, suggested that such a commission would provide a ‘safety valve’, acting in concert with other forms of pacific settlement. Undoubtedly, the greatest contribution at the conference came from the convention’s articles relating to international arbitration. These articles refined the procedural aspects of arbitration. It contained a variety of undertakings on the part of signatories to use arbitration as a tool of best practice and to honour arbitral awards. Moreover, it established the Permanent Court of Arbitration, which remains today the oldest and longest running international court.

The convention was ground-breaking. It served to create a more coherent system of pacific settlement involving permanent institutions and streamlined protocols. From what was an ad hoc and largely abstract system of international law for much of the nineteenth century to a systematic and institutional framework, this convention moved global society by leaps and bounds. Historian Geoffrey Best sums up the profound impact of the convention, observing that ‘what was new and striking about it was not the idea of arbitration as such but its institutionalization, its installation in the foundations of an improved world order.’ The foundations laid at the peace conference in 1899 were further expanded at the second peace conference in 1907. This conference was initially called by United States President Theodore Roosevelt in response to a popular petition to capitalize on the remarkable success achieved in 1899. In keeping with the spirit of the first conference, delegates gathered in 1907 to develop further initiatives aimed at maintaining peace.

While the second conference was not as spectacular as its predecessor in terms of accomplishments, it built upon the substantive progress made in the first. With eighteen additional signatories and an extra thirty–six articles, the Convention for the Pacific Settlement of International Disputes of 1907 greatly expanded, refined, and revised elements of the original convention. In particular, the processes of international arbitration were significantly streamlined to improve its efficiency and usability in times of dispute. It introduced a summary procedure for the speedy settlement of small claims through third–party settlement as well as providing a more comprehensive procedural template that could be adopted, rather than having to devise a new set of rules in each case. Discussions at the conference also set in motion new adjudicatory measures such as the London Naval Conference in 1909, which attempted to establish the International Prize Court.


4 Only Romania, Serbia, and the Ottoman Empire entered reservations regarding certain articles that could be assumed as giving arbitration or mediation an obligatory character. The United States entered reservations to emphasize that the convention would not affect its policy non–intervention and its special interests in Latin America.


6 Despite all of the delegations signing the declaration, none ratified it. In 1910, nations gathered again in The Hague to rework the regulations of the prize court. Unfortunately, only Nicaragua ratified the
Despite the historical significance of these conventions and the pioneering nature of the Permanent Court of Arbitration, there is very little modern historiography that provides an account of what drove politicians to create these conventions. This failure is striking given that these conventions stood at the intersection of a long history of episodic use of arbitral and adjudicatory mechanisms by states, buttressed by a burgeoning public peace and internationalist movement and legitimated by a generally supportive political elite.

The fact that the First World War broke out not long after these conventions in 1914 serves to question the true impact of the conventions. Yet, as devastating and pivotal as this war was, the legacies of the pacific settlement conventions are deeply rooted in our modern international system. Standing at the fin de siècle and the opening decade of the twentieth century both conventions helped create the hatchings of a global rules based system. The legacy of these conventions would see expression not only in the founding of the Permanent Court of International Justice in 1922, but equally in the creation of the League of Nations in 1919 and, by implication, the United Nations System in 1945. Ideas advanced in support of the creation of the Permanent Court of Arbitration were the same sort that informed the ‘new diplomacy’ of President Woodrow Wilson in the post–First World War era. Moreover, the conventions introduced a new vocabulary of international law and institutions. Cuban jurist Antonio Sánchez de Bustamante looking back in 1925, argued that despite the limited nature of the Permanent Court of Arbitration, at the very least, it had made the world ‘familiar with the name—if not with the reality—of a permanent court’. The desire to develop ways and means of better regulating the international system was a persistent long-term trend developed in the nineteenth century and carried over into the twentieth century.

This thesis investigates the pre–history of international arbitration prior to its full institutionalization and systematization in 1899 and 1907. The following chapters present a long–term view of the pacific settlement conventions, interlinking their creation with the development of the nineteenth–century international system and how it set in motion the beginnings of a global rules based system. This thesis makes an original contribution by offering a unique perspective of global history and agreement with the idea of international interference in the execution of prize law being too much of an encroachment on national interests for many political leaders.


international law in the nineteenth century, while presenting a much-needed prehistory of the pacific settlement conventions of 1899 and 1907 and the Permanent Court of Arbitration. Specifically, it demonstrates how arbitration functioned in the international system to both manage the complex interactions between states stemming from globalisation and, at the same time, civilise the international system by resolving these issues through a legal interface.

In our modern times, the global rules based system, which includes the United Nations System and the World Trade Organization, has created an interlocking set of legal norms for efficiently resolving trade and boundary disputes and a myriad of other issues. While not always successful and often subject to rightful criticism, the presence of such a system does help to keep the international system stable and functioning. The primary contention of this thesis is that in order to understand the evolution of international law and how our modern-day international system got to this global rules based system, it is necessary to look back at the use of arbitration in the nineteenth century and the pacific settlement conventions. In the nineteenth century, there was no global rules based system. Instead, the nineteenth century functioned under a pentarchy of great powers that used congress diplomacy and restraint to regulate the international system. Arbitration represented both an outcrop of this congress diplomacy and restraint yet at the same time evolved into a unique system for regulating globalization. Arbitration was important because in the absence of pre-established ways of resolving issues that arose from globalisation, and in the absence of a fully-fleshed out legal system, it was often the most logical (and in some cases only way) to resolve issues. Through its episodic usage over the nineteenth century, arbitration paved the way for the pacific settlement conventions, representing the first foray into the development of a global rules based system.

The nineteenth century was a transformative period in global history. If the century was to have a ‘direction’, distinguished jurist David Kennedy hypothesizes, it would be ‘simultaneously from Europe outwards and from politics to commerce’.10 In other words, this was an age of globalization.11 Increased opportunities for overseas emigration, trade, and investment for Western nations gradually entangled the rest of the world into the economic and political hegemony of the maritime powers of Great Britain, France, Germany, and the United States. Alongside the ancients régimes of Austria–Hungary and Russia, these countries collectively constituted the powerbase of the Western international system. Much of these one-sided relations came down to the twin drivers of industrialization and capitalism, delivering those maritime powers a vast material and technological advantage and an impetus to build formal (i.e. colonial) and informal (i.e. commercial) empires.

Law became a vital component in programming Western ascendency over global affairs. From international copyright to quarantine and disease control rules, Western states found ways of regulating the ‘varied functions of the common

existence of nations’, as Belgian Senator Édouard Descamps observed in 1895. Such means included the International Telegraph Union, for example, which was founded in 1865 in order to regulate the burgeoning telegraphic communication sector. Similarly, a convention signed to standardize tariff rules in 1890 in turn established the International Customs Tariff Bureau. Through the holding of conferences amongst the powers and the signing of treaties, Western political leaders added far-reaching extensions to the rules of the international system. And indeed, the rule of the international system extended to control all areas of global interest for the great powers from the neutralization of the Suez Canal through the Convention of Constantinople in 1888 to great power attempts at combating the increasing threat of anarchist terrorism at a conference in Rome in 1898.

Globalization compelled sovereign states to cooperate in the public administration of the international system. In an age of Western ascendency, the effect of their cooperation was profound. The governments of the great powers codified the rules of the international system in Western terms. Diplomacy was Western diplomacy. The international system was, if anything, a North Atlantic political-economic consortium with lesser states circulating in its orbit. Western defined norms became the norms of the global society—by which I mean not only sovereign nations but also those ‘uncivilized’ realms that were brought into the colonial and imperial calculations of the great powers.

International arbitration had an integral presence in these trends. Arbitration involves a third party rendering a final and binding award in a dispute based on prior agreement from the disputing parties. Similar to how a judge determines a judgement, the third party renders an award based on the evidence each party presents. Joint or mixed commissions were the most common type of third parties to be employed in the nineteenth century. These arbitral bodies consisted of commissioners selected from the disputing parties and, in the case of mixed commissions, headed by a referee, selected by the commissioners themselves or by a third-party state. Nominated arbitrators were usually sovereigns or heads of state, but also on occasion politicians, ambassadors or even governmental bodies, such as the Swiss Federal Council or the Senate of Hamburg. International tribunals, made up of experienced politicians, judges, or jurists, were used increasingly by 1900, reflecting the increased desire in diplomatic and legal circles for a more judicially-minded mode of dispute resolution.

It is difficult to speak in precise figures but suffice to say instances of pacific settlement, whether they were nominated arbitrators, international commissions, or
tribunals ranged in the hundreds in the nineteenth century. Such questions included matters involving the interpretation of treaties and international law; the adjudication of state action; pecuniary claims, which were the most prolific disputes referred to pacific settlement; and boundary disputes, the second—most common question. These types of conflicts were not necessarily new in their nature. Yet through the process of globalization, they increased in their frequency across the century. Practically every state, Western and non-Western, referred questions to a third party at one point or another in the century and the vast majority used it on numerous occasions.

Arbitration was used primarily because it offered a practical solution to a complex set of problems. Yet it also reflected the framework of nineteenth–century diplomacy, which was implicitly geared towards compromise and the peaceful resolution of disputes. President of Colombia University Nicholas Murray Butler spoke of this framework in 1907 as part of what he called the ‘international mind’. This international mind, Butler explained was:

nothing else than that habit of thinking of foreign relations and business, and that habit of dealing with them, which regard the several nations of the civilized world as friendly and co–operating equals in aiding the progress of civilization, in developing commerce and industry, and in spreading enlightenment and culture throughout the world.

Many of those in possession of this international mind were, as Butler distinguished, the great statesmen of the nineteenth century in the mould of Lord Palmerston, William Gladstone, and Count Cavour. The international mind was a conservative cosmopolitanism involving a sense of solidarity with members of the civilized society of nations as well as an engrained appreciation of the value of peaceful coexistence for the purposes of civilization, commerce, and progress. The congress system, established at the Congress of Vienna in 1814–1815, was the key driving force behind this internationalist outlook. Historian Paul W. Schroeder’s monograph *The Transformation of European Politics, 1768–1848*, argues that diplomacy after the Napoleonic Wars functioned within a collegiate atmosphere between the great

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21 ibid., p. 102.

powers based on notions of mutual restraint and balance.\textsuperscript{23} The congress system effectively placed a collective mandate for the management of European affairs onto the great powers in order to maintain a balance of power and keep conflicts contained.\textsuperscript{24} In other words, there were to be no more Napoleons, no more hegemonies, no general wars, and certainly no revolutions under the Congress formula.

As European powers became more globally orientated as a result of empire building and globalisation, this moderation became a feature of global diplomacy. The entanglements of formal and informal empire and the exigencies of dealing with non-Western states required the careful balancing of great power interests and the management of global affairs. In practice, arbitration attempted to regulate imperial interactions by overcoming the raw displays of power politics through a more rational, methodical means of resolving imperial issues. Although, there were plenty of instances where powers were by no means selfless or indeed even moral in their actions. As Steven Press points out, King Leopold of Belgium and the German Chancellor Bismarck embraced ‘rogue empires’, such as James Brooke 'Rajah of Sarawak', who brought his own kingdom in 1840, as legal precedents for pursuing their own empire in the Congo, Namibia, and Cameroon through similarly dubious means.\textsuperscript{25} The point of moderation was to overcome the bilateral power plays and aggressive actions of great powers by balancing out the collective and individual interests of all the great powers (often at the expense of smaller states or non-Western actors).

To that end, arbitration was not only a versatile instrument in the ‘workshop of diplomacy’, as American naval strategist Alfred Thayer Mahan put it, for which governments could avail ‘themselves freely at will’\textsuperscript{26} It offered a more legalistic, more civilized means of conducting international affairs. The idea of using arbitral and adjudicatory measures fed into distinct Western sensibilities of civilization and progress of the nineteenth century. From the crude ambitions of kings to the formation of nation states and the spread of liberty, the myth of progress had created a commonly held belief in the unique genius of Western civilization.\textsuperscript{27} As Butler observed on the eve of the second peace conference in 1907, ‘our political systems, our ethical standards, and our moral aspirations, are a development and are in development today.’\textsuperscript{28}

In this vein, international arbitration came to be the internationalist bellwether of what many nineteenth-century contemporaries regarded as the Occident’s naturally inclined progressive impulse. If international society could be remade and


\textsuperscript{26} A. T. Mahan, Armaments and Arbitration or the Place of Force in the International Relations of States, New York: Harper and Brothers, 1912, p. 2.

\textsuperscript{27} For more on contemporary ideas of liberal progress, see Carsten Holbraad, Internationalism and Nationalism in European Political Thought, Palgrave Macmillan: New York, 2003, pp. 40–65.

\textsuperscript{28} Butler, The International Mind, p. 7.
modified in order to be more humane, methodical, and impartial then it would be through the expanded use of arbitration. Pacific settlement was held up to be a civilized, scientifically promising, and, above all else, practical method of ending war between nation states. Its institutionalization and systematization represented, as French lawyer and writer Auguste Vavasseur put it in 1907, the ‘third stage of civilization’ in keeping with the ‘great moral progress’ of the age. To many contemporaries, arbitration was the civilized alternative to war—or at the very least a means of mitigating the likelihood of war. As German–American politician and commentator Carl Schurz postulated in his address at the Arbitration Conference in Washington in 1896:

To show that arbitration is preferable to war, should be among civilized people as superfluous as to show that to refer disputes between individuals or associations to courts of justice is better than to refer them to single combat or to street fights—In one word, that the ways of civilization are preferable to those of barbarism.

Historian Robert A. Nye demonstrates how male honour codes of chivalry penetrated nineteenth-century diplomatic practice. Third-party methods were heavily indebted to these codes, from the idea of impartial referees in mixed commissions to the selection of commissioners themselves, who in effect acted as the disputing states ‘agents’. If the aim of duels were to tame and regulate violence amongst gentlemen, as part of a civilizing process to reduce societal violence, then arbitration attempted to regulate international disputes to minimise violence amongst sovereign states. As Nye astutely argues:

The men who participated in the Hague conferences saw themselves at an historical endpoint of the civilising process, when the practices that had developed to contain and regulate individual conflict might be justifiably expanded to the pacification of international relations.

Historians generally recognize that nineteenth-century conceptions of arbitration were closely related to the cause of peace. Owing to the important role peace advocates played in advancing the cause of arbitration, histories of the peace movements consider the popular appeal of international arbitration in some detail.

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29 Paraphrased from August Vavasseur, *L’organisation d’une juridiction arbitrale internationale*, Monaco: Institut international de la paix, 1907.
32 ibid., p. 122.
In her book *Patriotic Pacifism: Waging War on War in Europe, 1815–1914*, Cooper argues that arbitration became a crucial international cause for those lobbying for peace.\(^{34}\) As opposed to those schemes that were commonly considered utopian (such as universal disarmament and the establishment of congress of nations), arbitration provided a persuasive and practical agenda for peace advocates.

Of course, the purpose of international arbitration was not to wholesale end all wars. The idea that arbitration or a world court could peacefully resolve all conflicts was dismissed by statesmen as a pipe dream. Nineteenth-century pacific settlement was first and foremost a political tool to clear through a range of complex trade and territorial issues. On a number of important occasions, it also played a role in resolving high stakes disputes, although this was usually after a political settlement had been reached, such as with the *Alabama* claims dispute.\(^{35}\) Ultimately, while it was a tool to facilitate the peaceful resolution of disputes, it was never a tool to end wars per se.\(^{36}\) The ideals of the peace movement nevertheless provided a vital headwind during the Hague conferences, compelling statesmen to consider the ways in which they could improve on the status quo and further civilize the international system.

In addition to the peace movement, internationalists played a key role in promoting the use of arbitration and creating a discourse for strengthening the role of international law. From the 1860s onwards, the internationalist movement, comprised largely of jurists, lawyers, and intellectuals, sought to enhance cooperation between nations through a strong rule of international law and the creation of international institutions.\(^{37}\) They sought to promote and extend the rule of international law from the latter decades of the nineteenth century onwards. Legal scholar Martti Koskenniemi captures this development in his book *Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870–1960*.\(^{38}\) He argues that these historical actors based their efforts on the premise that international law provided a means to make international society more civilized, more humane. One significant omission in Koskenniemi’s work, however, is the relationship of these legalists to the cause of arbitration. Similar to how arbitration was a pivotal part of the peace movement, it was also a key component of the internationalists’ programme of enhancing the rule of international law. Other historians looking at nineteenth-century internationalism touch upon the relationship between the internationalists and the agenda of arbitration in varying degrees.\(^{39}\) Jurist David D. Caron is one of the

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\(^{34}\) See Cooper, *Patriotic Pacifism*.

\(^{35}\) See Chapter 2.

\(^{36}\) This helps to explain why the legacies of the pacific settlement conventions last well beyond the First World War: it was never the purpose of arbitration to prevent major diplomatic failures, such as the July Crisis. For more on the relationship between arbitration and the First World War, see Conclusion.


few scholars to place the internationalists at the fore of the nineteenth-century resurgence of international arbitration. Caron notes the role of internationalist groups such as the Institut de droit international in drafting codes of arbitration in order to help strengthen the practice of arbitration and international law for example.

These various threads help explain those moments at The Hague in 1899 and 1907. This thesis brings together these contexts, investigating the political motivations behind the systematization and institutionalization of arbitration after 1794. It shows how international arbitration evolved from a combination of small, regular steps; through to a number of notable precedents; and then finally through an internationalized push towards a systematized regime of law and institutions at the fin de siècle and into the opening decade of the twentieth century. Working its way to the pivotal events of 1899 and 1907, this thesis uniquely demonstrates that The Hague’s system of pacific settlement had a long and important etymology in the global nineteenth century. It argues that the system of solving international disputes between states came to be a key feature in consolidating the paramountcy of Western standards of law and order over global affairs.

At present, there are only a handful of studies on individual arbitration cases in the nineteenth century. Most recently, historian Paul Gibb looks at the Bering Sea dispute (1886–1893) and the Venezuela boundary dispute (1895) as a ‘microcosm’ in order to explore the broader tenets of Anglo–American relations. Other examples of this approach include historians Michael Gismondi and Jeremy Mouat, who look at the Emery claim between Nicaragua and the United States in order to understand American foreign policy in the region. While they are perfectly acceptable as single case studies, they fail to provide any overview of the political and legal importance of nineteenth-century pacific settlement. Scholars who consider nineteenth-century pacific settlement in a more generalized sense often do so in order to deny its significance. Jurist and political scientist Quincy Wright for instance argues that democracy and constitutionalism, manifested by ideas of nationalism, contributed to the ‘revival’ of international arbitration and peace movements, ‘because constitutional democracies, functioning through deliberation and law internally,


41 ibid., p. 10.
were less apt than absolute monarchies in the game of power politics.’

The implication here is that arbitration provided a means for those states less able to ‘compete’ in the anarchic system. In a similar realist outlook, political scientist Kevin Narizny dismissed the development of arbitration treaties, describing them as ‘one-shot agreements for the arbitration of minor boundary disputes in distant imperial territories.’

One of the main reasons why arbitration has failed to receive attention is because of the tendency of scholars to view nineteenth-century diplomacy and the international system within the narrow parameters of military history. This reflects the traditional realist focus on confrontational aspects of international relations such as great-power rivalry as well as the reasons why wars break out. As such, the idea of the pacific means of settling disputes in the so-called age of great powers, with its medley of conflicts, culminating in the calamity of the First World War, hardly registers in this historiographical tradition. Historian A. J. P. Taylor for instance sees the ability of the state to pursue its interests and back it up through force as what essentially counted in the nineteenth century in his study of great power politics, *The Struggle for Mastery in Europe, 1848–1918*. Similarly, F. H. Hinsley considers the nature of great power rivalries as the primary source of restraints in international relations, assuming that states acted purely out of fear of another. Recent international histories have attempted to address the imbalance of traditional scholarship by moving away from simply cataloguing diplomatic incidents and wars to looking at how ideas of restraint, law and internationalism influenced the system. This thesis works within this new historiography by using arbitration as the lens to understanding the global dynamics of the period. Rather than arbitration simply being an ‘idealist’ construct that had limited applicable use in the high politics of war and peace, this thesis cross-sections the myriad uses of arbitration relative to the changing dynamics of globalisation and how it functioned within the framework of moderation and restraint.

Nineteenth-century arbitration also has an important legal aspect. Numerous legal experts have also explored pacific settlement, examining cases in a legalist manner and in some cases looking perfunctorily at the historical significance of the nineteenth century. Kennedy certainly comments on the lack of critical legal understanding of the historical context of nineteenth-century international law. This thesis attempts to flesh out the historical context as well as the long-term trends

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49 For an example of the legalist treatment of nineteenth-century international arbitration, see Ralston, *International Arbitration from Athens to Locarno*.
implicit in the use of nineteenth-century pacific settlement. After all, bringing disputes to pacific settlement mechanisms was often a prolonged and difficult undertaking—the exhaustive exchange of notes found in the Foreign Office archives certainly testify to that. The process entailed both a legal and diplomatic character. Diplomats relied entirely on the advice of juris–consults before proceeding further with claims against other states. In Great Britain, the Foreign Office relied on the Law Officers of the Crown, in their capacity as the chief legal advisors of the government.

Legal experts were crucial in drudging through the particulars of the claims and there were many claims and cases that were never subjected to arbitration in light of legal advice. Sir Travers Twiss then the Queen’s Advocate found that although some of the British claims against the Chinese authorities in 1870 may have some merit there was insufficient evidence for the British Government to insist on the payment of such claims.\textsuperscript{51} Similarly, in 1894, the Permanent Under–Secretary of State for Foreign Affairs, submitted a question to the Law Officers relating to the right of the Persian Bank Mining Corporation to submit their claims against the Persian Government to arbitration. The Law Officers found that the British Government would not be legally justified in giving their support to the Corporation’s claim for arbitration.\textsuperscript{52} At the same time, law officers were also utilized in order to determine whether other states had legitimate claims against the Crown. For example, in 1890, the Law Officers found that an American citizen’s claim respecting land grants in New Zealand had no grounds.\textsuperscript{53}

Other nations followed similar practices. In the United States, the secretaries of state, many of whom were lawyers by profession, personally dealt with the legal work of the State Department in early part of the century.\textsuperscript{54} By 1848, the United States Congress authorized the appointment of a legal clerk to deal with the increasing number of claims and in 1866 the office of Examiner of Claims was created. The founding of the Department of Justice in 1870 meant that the examination of claims and other legal affairs were handed over to that department. Other states set up legal departments reflecting the importance of international law to diplomacy. France had a litigation section under various directorates within the foreign ministry for much of the century.\textsuperscript{55} The Italian Ministry of Foreign Affairs’ law section, the Consiglio del Contenzioso diplomatico, was founded in 1857 under the former Sardinian Foreign Ministry, and in 1885 Germany set up a legal department.\textsuperscript{56}

Legal expects became important figures, helping to shape international law and in turn foreign policy. Many of the British law officers for instance were highly esteemed advocates drawn from the top tier legal institutions of Lincoln Inn or Doctors’ Commons. These figures included Sir Robert Phillimore who wrote the influential four–volume treatise \textit{Commentaries upon International Law} from 1854 to 1861 and Twiss, who prior to his ignominious resignation in 1872, was one of the

\textsuperscript{51} The Queen’s Advocate to Clarendon, 8 March 1870, FO 834/9. For more examples, see the confidential print series of the law officers’ reports FO 834.
\textsuperscript{52} Law Officers of the Crown to Kimberley, 11 May 1894, FO 834/18.
\textsuperscript{53} Law Officers to Colonial Office, 15 December 1890, FO 834/17.
preeminent legal minds of the age.\textsuperscript{57} Similarly, Louis Renault was the \textit{Jurisconsulte-Conseil} for the French Ministry of Foreign Affairs from 1890 to 1918. Renault played an important role in codifying the customs and procedures for the conventions for the pacific resolution of international disputes in 1899 and 1907.\textsuperscript{58}

Once these jurists had cast a legalist glance over the particulars of a dispute, diplomats still had to negotiate a suitable convention or treaty to set out the terms of reference. And if states could agree on the terms of reference (which tended to be the most difficult undertaking), it was often a herculean task for the third party to resolve the dispute adequately—and then, there was no guarantee that the third party would arrive at an award.\textsuperscript{59} The arbitration of the Portendick claims in 1844 illustrates this point. In 1834–1835, the French Navy blockaded the Atlantic coast of Morocco in their war against the Trarza. The French failed to give prior notice of the conflict thus affecting (neutral) British merchants engaged in the gum trade in the region. The French Government appointed a consultative committee in 1838 to examine the claims of British merchants for losses sustained during the war.\textsuperscript{60} The committee subsequently found the claims inadmissible.\textsuperscript{61} Eventually, after much pressure from the British government, French prime minister Marshal Soult accepted his British counterpart Palmerston’s suggestion for a joint commission to reconsider British claims.\textsuperscript{62} The commission was appointed in 1840. However, after further delays and changes in government, the commission did not meet until 1841. By 1842, the British Commissioners wrote to Aberdeen to express their lack of faith in the ability of reaching a settlement with the French.\textsuperscript{63} After further negotiations, the French government accepted the British government’s idea of bringing the matter to the arbitration of the King of Prussia, who in turn agreed that the British merchants were entitled to indemnification. He suggested the creation of a mixed commission to agree on the sum. Eventually the whole affair was wrapped up in 1844 after the commission adjusted the figure to 41,770.89 francs (as opposed to the original claim of 2,000,000 francs).\textsuperscript{64}

The route towards arbitration, in terms of referring a diplomatic dispute to a third party, was often a series of convoluted affairs involving years of negotiation and


\textsuperscript{59} Based on his experiences of the international tribunals of the Bering Sea arbitration the British Guiana–Venezuelan boundary arbitration of 1898, British Attorney–General Richard Webster noted the ‘immense labour’ involved in preparing cases, counter–cases, and arguments. See ‘Memorandum by Her Majesty’s Attorney–General on Points arising in International Arbitration’, FO 881/7265.

\textsuperscript{60} Division IV No. 11 Aston to Palmerston, 24 August 1838, FO 403/1.

\textsuperscript{61} ibid.

\textsuperscript{62} Division V No. 2 Bulwer to Palmerston, 31 August 1839, FO 403.

\textsuperscript{63} Division VI: The British Commissioners to Aberdeen, 4 July 1842, FO 403/1.

\textsuperscript{64} Darby, Modern Pacific Settlements, p. 13.
the constant exchange of notes. As the Portendick example demonstrates, the processes of international arbitration and diplomacy in the early nineteenth century were far from streamlined. But more importantly, the Portendick claims remind scholars that while it is possible to define arbitration in purely judicial terms, arbitral settlements were ultimately part of a political process. Indeed, given the diverse and regular use of pacific settlement, an examination of nineteenth-century understandings of the role of the third-party method has the potential to tell scholars much about the wider political and legal dynamics of the period.

As it stands, the most insightful accounts of nineteenth-century pacific settlement in its historical and legal sense are those works from legalists and internationalists, who flourished after the First World War. This scholarship, as Kennedy identifies, was ‘understood at the time both as project of renewal’ after the First World War and ‘as the systematic recording of practices and rules which had been devised in the previous century’. Jackson H. Ralston, the United States counsel for the 1902 Pious Fund Case, is a good example of such scholarship. Delivering a catalogue of past arbitration cases, Ralston’s 1929 study on international arbitration, *International Arbitration from Athens to Locarno*, made an attempt to offer perspective to the successes and shortcomings of arbitration in the ‘long’ nineteenth century. Although written much later, Manley O. Hudson the American Judge in the Permanent Court of International Justice also provided a comprehensive reading into the development of arbitration in his 1944 book, *International Tribunals: Past and Future*, linking pacific settlement to the development of international law during the period. Detailing both the successes and failures of international adjudication and its slow institutional growth, Hudson placed particular emphasis on the desirability and inevitability of a world court, capable of acting as the final arbiter over world affairs. With the Second World War in its final stages and contemporaries in the United States and elsewhere already considering the possibilities for new post-war order, Hudson’s 1944 analysis was an attempt at detailing a judicial means for attaining world peace and stability.

Modern-day scholars have largely failed to pick up where the these mid-twentieth-century jurists left off. The structural functionality of international law, in terms of how it was used to regulate the international system, is an oft-neglected subject for the historian as well as the jurist. New Zealand Judge in the International Court of Justice Sir Kenneth Keith observes how it has been a long while since the ‘overall structure and systems of law–making’ in international politics was examined in any detail. Keith’s comments reveal a need to more fully historicize the studies of jurists of international law and similarly situate international law more firmly in

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67 See Ralston, *International Arbitration from Athens to Locarno*; and Bustamante, *The World Court*.
the work of historians. Certainly, in recent years, there have been increasing calls for the modern development of international law to be properly historicized. As historian Scott Andrew Keefer argues:

At its core, the international legal system reflected the power and interests of the states engaged in it. While historians have addressed numerous aspects of foreign–policy decision making, one crucial element remains neglected: international law. The interdisciplinary dialogue between historians and international lawyers remains underdeveloped.71

Scott touches on a key point: law does not occur in a vacuum. If anything, international law is a variation of politics and power relations. As such, the need to develop the interdisciplinary dialogue between the historian and the lawyer is paramount in order to fully explore the role of international arbitration in the nineteenth century. Historian William Mulligan expands on why international law is vital to understanding international history, observing not only how studying legal norms adds ‘additional layers of complexity to interpretations based on military power, security and geopolitical interests', but also how international law is also the product of ‘power and interests’.72

What is required is a more global understanding of the normative function of pacific settlement mechanisms as part of the changing context of the nineteenth century, taking into consideration nineteenth-century understandings of diplomatic practice, of civilized state conduct, and of the changing needs of a complex world of international connections. This thesis emphasizes the fact that nineteenth-century instances of arbitration were first and foremost the products of complex political contexts. In so doing, it fills a critical gap in the historiography, not only by providing a much-needed overview of nineteenth-century pacific settlement, but also by delivering a wide-ranging perspective of nineteenth-century global history. As such, it crosses several disciplinary fields, drawing on diplomatic history, imperial history, international history, as well as the history of international law in order to trace the broad contours of historical forces and agents at play in global affairs.

In particular, Great Britain receives sustained attention throughout this thesis, reflecting its pivotal role in nineteenth-century international politics. Jurist Wilhelm Georg Grewe relates in The Epochs of International Law how the use of international arbitration amongst states fell into almost complete abeyance during the Spanish and French ages of the seventeenth and eighteenth centuries respectively.73 However, in contrast to those centuries, it was the nineteenth century that international arbitration experienced its rebirth. This was, as Grewe identifies, the British age. Great Britain employed commissions, tribunals, and other third-party mechanisms in well over 160 ad hoc instances from 1794 until 1904, when Great Britain signed an arbitration treaty with France thereby making arbitration obligatory in most disputes between the two powers.74 By comparison, the United States was second

73 Grewe, The Epochs of International Law, p. 517.
74 This figure derives from the index of Darby, Modern Pacific Settlements, 1904.
with over 90 similar instances for the same period.

This thesis elaborates further on Grewe’s point, bringing out the prominence of Great Britain in the nineteenth-century development of arbitration. It underscores the fact that Great Britain was the premier imperial power of the age and its use of arbitration provides a vital thumbnail of the global usage of arbitration. It was, as historian Daniel Headrick put it, the first truly global thalassocracy. With its ever-extending string of overseas holdings as well as its advantage in the realms of finance, industry, and trade, the British government’s foreign policy outlook was innately tied to the fortunes of the globalizing international system. Its empire and economic power made the nineteenth century a British age. However, this ‘British world system’ was not a structure of ‘global hegemony’, as historian John Darwin points out, but rather a range of ‘constitutional, diplomatic, political, commercial and cultural relationships’. Darwin continues, ‘if the British system was global, its fate was a function of the global economy and of shifts in world politics which it might hope to influence but could hardly control’. Given the particularly embedded nature of its commercial, political, and imperial interests to the international system, Great Britain had a particular interest in extending and entrenching the rule of international law. As result of its maritime hegemony, admiralty law was of vital importance in order to protect its maritime rights and policing powers on the high seas. As the colonial power par excellence, the concept of sovereignty, particular that of terra nullius, was of particular importance in subjecting uncivilized lands to British law.

Similarly, as this thesis demonstrates, its overseas commercial ties and imperial stakes meant that the principle of pacific settlement was vital in providing a methodical approach for settling the myriad of interstate disputes that invariably cropped up. The reasons for this ‘rage for order’ stemmed from a general desire for peace and stability in the international system and within the British world system. From boundary demarcation and delimitation of their north Western Indian frontier with Persia and Afghanistan to questions of indemnification of their nationals in Latin America, Great Britain’s international disputes were of a truly globalized nature, relying not just on the conventional channels of diplomacy but on pacific settlement. As the most potent power of the century, Great Britain was both a frequent and strong advocate for the use of pacific settlement. Moreover, Jurists Sir Hersch Lauterpacht and Sir Robert Yewdall Jennings argue that the most important British contribution to international law was in the field of international arbitration. By this, Lauterpacht and Jennings refer to the actual submission of

77 ibid., p. 2.
disputes to arbitration, the contribution Great Britain made to the development of ‘international organs for arbitral settlement’, and finally the British contribution to the ‘wider movement to bring about a wider measure of obligatory settlement of disputes’.

While placing Great Britain at the heart of nineteenth-century pacific settlement, this thesis also considers the developing role of the United States in global politics. A rising power and the second–most prolific user of arbitration, the United States was also notable in fashioning the development of pacific settlement alongside Great Britain. Many of the key arbitrations of the nineteenth-century were Anglo–American ones and indeed the United States was a forceful advocate for arbitration particularly in the Latin American context. In 1823, President James Monroe in 1823 placed a prohibition on the right of European powers to intervene in the Western hemisphere under the guise of the Monroe doctrine. The doctrine came in light of Russian claims in the Northwest coast of North America as well as a general fear that European powers, particularly the reactionary members of the Holy Alliance, would attempt to re-colonize or interfere in the affairs of the newly independent Latin American states.

The Monroe doctrine would come to play a vital role in the history of pacific settlement given that many instances of arbitration involved Western powers litigating against Latin American states—particularly in the closing decades of the nineteenth century. A number of historians identify this period as pivotal in positioning the United States as a global powerbroker. What the Americans regarded as overzealous European intervention in Latin America in several instances prompted the United States to interpose its good offices to resolve such disputes through arbitration. The assertion of the doctrine did not prevent European powers from intervening in Latin American states to occasion satisfaction for damages or to achieve a limited policy objective. However, the United States leveraged its power in the Western hemisphere to prevent the use of excessive force by European powers to obtain redress from wrongdoing on the part of Latin American states and instead encouraged the use of arbitration to resolve such differences.

With the United States’ economic output surpassing that of Great Britain in the 1890s, the British age was surpassed by the American age—in both a figurative and literal sense—by the early decades of the twentieth century. In the twentieth century, the United States become the global hegemon and was at the forefront of key international developments such as the creation of the League of Nations and its successor the United Nations. In that sense, the pacific settlement conventions

Press, 1929, p. 688.

ibid.


87 As Robert C. Hilderbrand observes, ‘Following the Japanese attack on Pearl Harbor, the appeal of the idea that peace was indivisible—and thus must be protected by an international organization—
developed between two epochs. The success of both conventions was due in no small measure to British and American support. And in the intervening years after the Hague peace conferences up until 1914, the United States would go on to take the lead advocating for arbitration. Utilizing a healthy degree of diplomatic activism, the State Department advocated for more extensive arbitration treaties between states as well as a world court. Certainly, by the 1920s, editor and author Edward Bok could rightly claim that the idea of a world court was a 'domestic' political question for Americans, highlighting the very personal crusade—if only in substance, given its colonial enterprises—of the United States in advocating for international justice.

This thesis does not offer a study of case law or a catalogue of the various instances of arbitration. Nor does it attempt to offer a comprehensive history of nineteenth-century pacific settlement. Rather, it seeks to explore the endeavours of statesmen in the use of pacific settlement across a substantial period of time (1794–1907), revealing how and why they brought particular disputes before arbitration. From a broader perspective, this thesis attempts to provide an impression of key trends and driving political forces that helped contribute to the pacific settlement conventions of 1899 and 1907 and the Permanent Court of Arbitration.

To that end, the remainder of the thesis is divided into six thematic chapters. Chapter 1 explores both the pre-nineteenth-century history of pacific settlement as well as the early development of arbitration in the opening stages of the nineteenth century. Drawing comparisons between the comparative difficulties of its implementation in the early modern period, this chapter demonstrates how the changing international climate allowed for the readier use of pacific settlement by the nineteenth century. In particular, it focuses on a number of elaborate early instances of pacific settlement including those which occurred as a result of the Jay Treaty of 1794, the Congress of Vienna, and the suppression of the international slave trade from 1807 onwards. This chapter argues that the commissions and tribunals created through these international agreements brought forth a renewed importance to the role of international arbitration in diplomacy.

Chapter 2 transitions to explore the use of pacific settlement in the management of great power politics. At one end, they provided a legal interface through which powers could refer a range of issues to third-party arrangements thereby relieving themselves from acrimonious discussion and helping to harmonize international relations between them. The ultimate purpose of these mechanisms was to take the dispute out of the immediate diplomatic sphere and place it within the safety valve of a third party in order to provide an effective final settlement to an outstanding issue. In the context of Anglo-American relations, where arbitration was
grew with American power; by the end of the war, leaders in Washington would feel responsible for maintaining the peace more or less everywhere in the world, at least partly because of their desire to avoid the errors of the past and prevent another world conflict.’ Robert C. Hilderbrand, Dumbarton Oaks: The Origins of the United Nations and the Search for Postwar Security, Chapel Hill: University of North Carolina Press, 1990, p. 5. For more on the American world order in the twentieth century, see Part III of Mazower, Governing the World. See also Boyle, Foundations of World Order; and Mark Weston Janis, America and the Law of Nations, 1776–1939, Oxford: Oxford University Press, 2010.

used on numerous occasions to resolve contentious disputes, pacific settlement became the primary means of reconciling differences between the two potentates and maintaining peace and stability in North America. In Europe, arbitration played a constituent role within the pre–existing structure of concert diplomacy. Collectively, their use in great power disputes underscored the moderation and restraint of nineteenth–century diplomatic practice that attempted to maintain harmonious and fruitful relations between states.

Chapters 3 and 4 go on to establish the global scale of pacific settlement in the nineteenth century. Chapter 3 explores how imperial powers employed arbitration to regulate their relations with non–Western states, particularly in terms of demarcating and delimiting the boundaries of their colonies in Africa and Asia. Much of the chapter focuses on the use of arbitral mechanisms by Great Britain in formalizing the boundaries of northwest India with Afghanistan and Persia. In so doing, this chapter demonstrates how arbitral mechanisms played a key role for imperial powers in order to secure and protect their increasing global stakes.

Following on, Chapter 4 looks at the use of arbitration in support of private claims, particularly in the developing capital markets of Latin America. Reoccurring issues involving pecuniary claims were as American jurist Philip Marshall Brown wrote often ‘too technical in some instances, and controversial in others, to be readily or properly settled by diplomacy.’\(^{90}\) As Brown explained, arbitration was therefore the ‘easiest method available’ to settle such ‘annoying difficulties.’\(^{91}\) And during the nineteenth century with the outgrowth of global capitalism and the movement of people, annoying difficulties abounded particularly with small Latin American states. Great powers proved particularly creative in organizing solutions to protect people and property, not necessarily at the expense of lesser states but certainly in the interests of their own nationals and their commercial interests. This set the pattern for nineteenth–century pacific settlement: great powers litigating against less well–organized, less developed, or less ‘civilized’ entities. Similar to Chapter 3, this chapter also demonstrates how pacific settlement provided a means of enforcing Western standards on non–Western states, underscoring the wider expansion of the Western–defined international legal regime.

Chapters 1, 2, 3, and 4 provide the context to understand the development of pacific settlement in the complicated, globalizing, Western–dominated international system. Chapters 5 and 6 link these developments up with nineteenth–century discourse on the role of pacific settlement and law in the international system. Chapter 5 considers how internationalist and peace movements in the West co–opted the idea of arbitration in the latter half of the nineteenth century. Their efforts were crucial in placing international arbitration onto the political agenda and building an international agenda for the further institutionalization and systematization of arbitration. This chapter demonstrates the ways that arbitration advocacy had brought the international system to the threshold of creating a more systematic approach to arbitration by the closing decades of the nineteenth century, creating a political climate in the closing decades of the century whereby certain statesmen felt compelled to make more substantive efforts in support of arbitration.

Chapter 6 explores in detail the Hague peace conferences as well as


\(^{91}\) *ibid.*, pp. 89–90.
subsequent efforts in advancing the cause of pacific settlement. Expanding on the arbitration advocacy discussed in Chapter 5, this chapter considers the motivating factors as well as the impediments behind the negotiations at The Hague for the systematization and institutionalization of pacific settlement. It argues that the general assumptions of the civilized society of nations and the shared desires to preserve and strengthen international law and order culminated in the outcome of the pacific settlement conventions in 1899 and 1907. The organization of pacific settlement created at The Hague reflected a century's worth of regular usage and political advocacy.
1 The origins of modern pacific settlement

The idea of submitting a dispute to an independent arbitrator, as jurist Kyriaki Noussia puts it, is a 'form of ordering human society as old as society itself'. As soon as people started to form social bonds and began trading with one another, mechanisms for solving problems were never far at hand. For example, by the medieval period, arbitration offered a generic method for resolving commercial disputes within guilds, among merchants, and in local jurisdictions across Europe. By the late nineteenth century, it also became a means of resolving industrial disputes between employers and unions. Various indigenous societies as well as legal regimes based on Chinese, Hindu, and Islamic jurisprudence had their own arbitral and third-party systems. Many of these systems dated back to ancient times and some, such as the panchayat system in rural India, remain in operation today.

The historical trajectory of arbitration as a tool for ordering society transposed itself onto the international realm in no short time. Once societies developed into political entities and came into contact with one another, pacific settlement invariably became a means of resolving disputes between states. The use of arbitration between states has a long lineage stretching back to the times of the ancient Greek poleis (city-states). As classicist Kurt A. Raaflaub argues, from the seventh to sixth centuries BCE, a highly developed political culture of political leaders, philosophers, and jurists (commonly called the ‘seven sages’) in the Greek political system established the ideal conditions for arbitration to act as means of resolving conflict amongst the poleis. Moreover, the ready adherence of states to submit their differences to arbitration was underpinned by the hegemonic status of Sparta, which wanted to maintain a modus vivendi through which stability and order could be maintained in the international system. With the emergence of Athens as a major rival to the Spartan order by the fifth century BCE, the political stakes became sufficiently high that the use of arbitration became difficult as either state hoped to achieve their imperial objectives through war.

International arbitration emerged once again during the medieval period in

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2 See ibid., pp. 11–15.
3 The first such instance of industrial arbitration legislation was the Industrial Conciliation and Arbitration Act passed in New Zealand in 1894. This was followed by many other states. Industrial arbitration was largely resisted by manufacturers, including ironically Scottish–American steel magnate Andrew Carnegie, who was a major advocate for international arbitration.
Europe. The hierarchical authority of the Holy See over European affairs enabled the pope to act as the final adjudicator of princes. In that sense, the Apostolic See represented the first permanent institution of mediation and arbitration. Similarly, the Holy Roman Emperor also acted as an arbitrator over the German states of the Holy Roman Empire for much of its existence. The concept of the sovereign state, which emerged from the Peace of Westphalia in 1648, for the most part rendered these supranational institutions and mechanisms obsolete. Nevertheless, the growing importance of international trade throughout the early modern period prompted states to find solutions for the settlement of damages for their traders and financiers using arbitral mechanisms. An Anglo–Dutch commission was half-heartedly created in 1654 in order indemnify merchants after the First Anglo–Dutch War (1652–1654). However, as the climate of international cooperation was not present in the age of power politics and mercantilism, it failed in its task. Other attempts at liquidating overseas debt and compensating merchants similarly failed including the Anglo–French commission in 1686, and the commissions of the Treaties of Ryswick in 1697, Utrecht in 1713 and Seville in 1729.

As these examples of arbitration reveal, international systems require a certain degree of order and cooperation amongst states in order for pacific settlement mechanisms to succeed. As was the case with the competition between Athens and Sparta in the fifth century BCE and the emergence of sovereign states and power politics in the early modern period, in situations of intense rivalry where states feel that more can be gained through warring or confrontation, pacific settlement typically becomes a less attractive option. On the other hand, political epochs where dominant powers or supranational structures create an established and predictable status quo, such as Spartan–dominated ancient Greece in the seventh and sixth centuries BCE or medieval Europe under the influence of the Holy See, pacific settlement often plays a role in maintaining that order.

7 Aldo Lanza, La santa sede e le conferenze della pace dell’aja del 1899 e 1907, Rome: Lateran University Press, 2002, p. 64.
12 ibid.
14 This supports the Hegemonic stability theory espoused by Charles P. Kindleberger, in which a
dependent entirely on context, requiring states to work on the general assumption that maintaining the peace and stability of the international system is in their collective interest. At which point, it follows that any international dispute, so long as it does not directly threaten the vital interests or national honour of a state, can invariably be resolved peacefully either through arbitration or other conventional diplomatic means.

Pacific settlement flourished in the nineteenth century precisely because of the changing political climate. A significant reason for this success came down to the evolution in political sensibilities, as identified in the Introduction, that increasingly placed a premium on balance and stability in the European political system and the global network of imperial and commercial interests at large. A pentarchy of great powers, in which Great Britain represented the first among equals, created the underpinnings of a stable status quo. Each power with their own recognized sphere of interests and responsibilities, was incentivized towards maintaining this status quo. On that basis alone, the powers proved more than willing to develop a system for peacefully managing differences primarily through the congress system. In her book *Power in Concert: The Nineteenth–Century Origins of Global Governance*, political scientist Jennifer Mitzen argues that the basis of global governance as the formation and maintenance of ‘face–to–face’ forum diplomacy began in the early nineteenth century. Mitzen looks to the Congress of Vienna and the ensuing diplomatic commitment to peace and restraint for the rest of the century as responsible for forging a working forum for great power consultations.

As this chapter demonstrates, these same powers were also committed to other means of maintaining peace and stability such as arbitration. The modern variant of pacific settlement found its origins in a context of fundamental change in the international system brought on by the forces of modernity. This chapter considers what factors instigated the ‘rediscovery’ of pacific settlement in the nineteenth century. It does so by exploring several key global events including the Jay Treaty signed between Great Britain and the United States in 1794, the Congress of Vienna in 1814–1815, and the suppression of the international slave trade from 1807 onwards. Each of these events in their own right proved important in recalibrating international politics. Through their commissions, tribunals, and arbitral agreements these events contributed towards the rebirth in arbitration. These events established pacific settlement as a key function of modern diplomacy, aimed at trouble shooting and providing solutions for international problems in order to stabilize great power relations.

Scholars deal with the modern origins of pacific settlement in a surprisingly cursory manner. Overwhelmingly, most point to the Jay Treaty as the sole instigator of nineteenth–century arbitration. Hudson for instance argues that the innovative use of mixed commissions of the Jay Treaty gave an ‘impetus’ to the revival of the judicial process of international arbitration that had long fallen into disuse in the


Western world. The president of the International Court Sir Muhammad Zafarulla Khan in 1972 went so far as to call the Jay Treaty an ‘historical landmark from which the trend which was to lead to the establishment of a true international judicial system is usually dated’. Given the important role that arbitration played in resolving the myriad of Anglo–American disputes across the nineteenth century, the Jay Treaty is a convenient starting point for historians. However, it is a deceptive false start. While the Jay Treaty might go towards explaining the extensive use of arbitration between Great Britain and the United States after 1794, it fails to adequately account for the general resurgence of pacific settlement mechanisms from a global perspective. In his dissertation on nineteenth-century international arbitration, Steven M. Harris criticizes the standard historiography on the Jay Treaty, drawing particular attention to the extensive nature of the Congress of Vienna commissions, which historians neglect as a potentially more important starting point.

This chapter, however, seeks to expand historical understandings on the origins of pacific settlement to consider the diverse international events that helped to contribute to its development beyond the Jay Treaty and the Congress of Vienna. By considering the origins of modern pacific settlement more broadly, this chapter argues that pacific settlement flourished in the nineteenth century primarily because a new global modus vivendi developed, primarily under great power auspices, providing the basis for a modern form of pacific settlement. In so doing, it lays out the global scale of pacific settlement, demonstrating how its use in the early period of the nineteenth century was reflective of a distinct sea change in the international climate in which the drivers of trade, empire, nationhood, and the search for stability had helped shape the new era.

While not the sole progenitor of the modern variant of pacific settlement, the Treaty of Amity, Commerce, and Navigation, also known as the Jay Treaty did apply the principle of international arbitration in a bilateral diplomatic context, restoring relations between rival states by addressing national grievances and animosity. In that sense, it demonstrated pacific settlement’s restorative role in the nineteenth century in levelling off long-standing conflict between states and inducing new ways of creating understandings and friendships. The American Revolution (1775–1783), which oversaw the thirteen American colonies declare their independence from the British Crown, created deep-seated animosity between the United States and Great Britain long after the war. The treaty aimed to resolve the catalogue of grievances that had antagonized both states since the end of the American Revolution, laying the foundations for a new era Anglo-American relations. On the part of the Americans, these grievances included issues relating to the British blockade of France in 1793, in which the Royal Navy had captured over 250 American vessels, as well as Great Britain’s on-going control over the Great Lakes. In turn, the British government admonished its American counterpart for failing to honour its

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17 Paraphrased from Hudson, *International Tribunals*, p. 3.
19 See Harris, ‘Between Law and Diplomacy’.
debts under the terms of the Treaty of Paris of 1783, which had put an end to the war. As part of the peace conditions, Article 4 recognized the right of creditors on either side to recover their debt through legal channels. Great Britain had established a commission to deal with American debt. A number of states passed laws preventing the recovery of British debts after the American Revolution. With the recovery of British claims through the American federal and state legal systems proving futile, in September 1791, the British Government appointed their first envoy to the United States, George Hammond eight years after the peace in order to negotiate the liquidation of British debts. In addition, the two states disputed the boundary line between New Brunswick (in British Canada) and Maine. The framers of the Treaty of Paris had placed the boundary along the 'River St Croix,' however there were questions over the determination of the river, thus leaving the whole question of the boundary in abeyance.

After several years of fruitless negotiation on these issues, war seemed possible. Named after the United States’ chief justice John Jay, the key author of the agreement, the Jay Treaty was an attempt at normalizing commercial intercourse between the two states. Neither government wished to go to war. The United States needed tariff revenue from British imports in order to bolster the secretary of the treasury Alexander Hamilton’s credit system and the British looked to secure the United States as its largest trading partner, which was essential to its war economy now that Europe was blockaded by the French. Jay suggested the use of an international commission to arbitrate those difficult questions that had not been resolved through negotiation to British foreign secretary Lord Grenville. Agreeing to Jay's suggestion, Grenville went to great efforts insisting on use of arbitration against the protests of creditors who demanded that the British government negotiate a lump sum settlement with the Americans. Both governments at this moment saw the benefits of reaching agreement and amity when only a few years earlier they were enemies. The decision to devolve certain issues to arbitration was a consequence of conciliatory foreign policy, aimed at solving complex issues.

The Jay Treaty stipulated in detail the number of commissioners, the manner in which they were selected, their payment, the location of the hearings, the manner in which dispositions, testimony, and papers should be examined, and the finality of the awards. The first commission determined the territorial sovereignty over the St Croix River which runs along Maine and New Brunswick. It was composed of three commissioners: one selected by the British government, another selected by the American government, and the third selected by these two commissioners.

21 See FO 95/512.
22 ibid.
23 ibid.
28 Darby, Modern Pacific Settlements, p. 3.
second commission adjusted the debt of British creditors from the colonial period. It consisted of five members: two selected by the British, two by the Americans, and the fifth selected on the unanimous agreement of the other four. The final arbitral body, which was composed in a similar manner to the second, recovered the debt that arose from the Royal Navy's blockade.

Overall, the Anglo-American experiment of 1794 was a successful undertaking. The St Croix River commissioners unanimously arrived at a decision identifying the river and fixing the boundary in the process in 1798. The commission relating to shipping claims made awards in the total of £2,330,000 in favour of the American claimants. The commission tasked to deal with American pre-war debts to British creditors was suspended, however, after much hostility between the British and American members, compelling the two governments to negotiate a direct settlement of £600,000 in 1802. While the third commission may have failed in its task (a not too uncommon feature of pacific settlement), overall, the legacy of the Jay agreement created a precedent of how to resolve wide-ranging disputes between the two countries peacefully. The use of arbitration in North America represented a civilized counterpoint to the bloody feuding that had enveloped Europe since the French Revolution in 1789. Although war between the United States and Great Britain broke out in 1812, the Jay treaty commissions provided a framework for future reference on how to settle questions without the waste and carnage of conflict.

The issues that sparked the War of 1812 were the result of new issues that arose from Britain's commercial war against Napoleon’s European empire during the latter years of the Napoleonic Wars (1803–1815). After a trade war between Great Britain and France in which both sides attempted to prevent neutral commerce from reaching one another, the United States responded in 1807 by cutting off all trade with Europe. By 1810, the United States lifted its ineffective and self-defeating policy of non-intercourse in return for the easing of blockades against neutral trade by Great Britain. However, the British continued to disrupt American shipping with the Royal Navy stopping American merchantmen to search for deserters as well as impress American sailors on the high seas. Construing the issue of impressment as a matter of national honour, President James Madison asked Congress to authorize war against Great Britain. The ultimate incentive for the war on the American side was the possibility of annexing the remaining British held territory in North America (present-day Canada). The British government for their part failed to grasp the extent of American grievances relating to the disruption of their trade and the impressment of their citizens. The tardiness of the British was unfortunate:

29 For more on the Jay Treaty commissions, see Lillich, 'The Jay Treaty Commissions'.
30 Darby, Modern Pacific Settlements, p. 3.
31 The commission also gave around £28,685 in favour of British claimants who also had their shipping interrupted by the Royal Navy's blockade. ibid., p. 4.
32 ibid., pp. 3–4.
33 Schroeder, The Transformation of European Politics, p. 436.
34 ibid., p. 437.
37 ibid.
Parliament rescinded the order in council on the practice of impressment just as news of the United States’ declaration of the war reached London! The opposite of what happened in 1794.

The Jay Treaty did not inaugurate a permanent era of amicable relations between the United States and Great Britain. Its effects were far subtler. It was successful in reconfiguring the basis of the post–colonial relationship between the former colony and imperial power. Once the Jay Treaty commissions dealt with the issues at hand, they established a precedent that future governments followed, especially when it came to commercial and geographical disputes. The North American political context was devoid of any working model of diplomacy in existence in Europe, which after 1815 would have the congress system. Thus, both states showed a strong tendency to imitate and follow established models of dispute resolution including arbitration. The Jay Treaty established a tradition of using comprehensive arbitral treaties in Anglo–American diplomacy, which would include the Treaty of Ghent in 1814, which ended the War of 1812, and the Treaty of Washington in 1871, which resolved the Alabama claims dispute.

After two and a half years of costly fighting, both belligerents came to the peace table in 1814. Great Britain and the United States sent commissions to negotiate the terms of peace. The Treaty of Ghent, signed on 24 December 1814, brought the costly War of 1812 to an end. Importantly, the treaty emulated the conditions of the 1794 Jay Treaty. It focussed on settling the unresolved disputes that had brought the two countries to war by means of an arbitral process. Of the eleven articles, the Treaty of Ghent stipulated the creation of three separate commissions, each composed of two commissioners, one selected by each contracting party. The fourth article created a commission to determine the ownership of the several islands in the Bay in Passamaquoddy. The fifth article appointed another commission to determine the Maine–New Brunswick boundary between the rivers St Croix and St Lawrence. The sixth article provided for a joint commission to determine the boundary of around the Great Lakes. This commission was tasked also with reviewing the boundary of the Lake of the Woods, under the terms of the seventh article.

The Treaty of Ghent commissions demonstrated that the Jay Treaty was not a

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40 For more on Anglo–American arbitration, see Chapter 2.
41 The British delegation consisted of three commissioners, including Sir James Gambier, Henry Goulburn, and William Adams. The American peace commission consisted of five commissioners, including John Quincy Adams, James Bayard, Henry Clay, Albert Gallatin, and Jonathan Russell.
one-off but rather part of an emerging feature of the developing Anglo–American relationship. Their efforts in 1794 and 1814 offered a working model of a functional bilateral relationship capable of resolving their differences peacefully and in a civilized, rational manner. As Massachusetts governor James Sullivan asked in 1797:

Why shall not all the nations on earth determine their disputes in this mode, rather than choke the rivers with their carcasses, and stain the soil of continents with their slain? The whole business has been proceeded upon with great ease, candor, and good humour.\(^44\)

Certainly, the Treaty of Ghent was not the only international agreement negotiated in 1814 that brought out the potential value of arbitration. The Congress of Vienna also created a framework for using pacific settlement. Where the Jay Treaty provided for a bilateral model, the Vienna model looked to a multilateral arbitration process. The congress was the foundational international event of the early nineteenth century, responsible for inaugurating a new world order of diplomacy. This world order was formed in reaction to the tumultuous international system of the eighteenth century. From the Seven Years’ War (1756–1763) to the French Revolutionary and Napoleonic Wars (1792–1815), Western statecraft functioned as a combination of self–defeating mercantilist policies, constant competition through power politics and regular bouts of warring.\(^45\) This difficult period induced a general shift in diplomatic outlook in the West.\(^46\) As Schroeder relates, many statesmen throughout the nineteenth century believed that the European system needed to be ‘balanced for purposes of stability, peace, and a tolerable international atmosphere.’\(^47\) The great powers as well as the various states and polities gathered at Vienna to create a comprehensive plan to stabilize European politics and resolve the myriad of territorial and political difficulties that arose from Napoleon’s reign over the continent.\(^48\) The aim of the congress was to establish a politico–legal regime under the collective hegemony of the European great powers of Austria (Austria–Hungary after 1867) Great Britain, France, Prussia (Germany after 1871), and Russia.\(^49\) At one end, the congress reaffirmed the sovereign rights of states yet also placed a mandate for the future workings of international affairs under the oversight of the great powers. With the eventual inclusion of the United States and the development of formal and informal empire in the latter half of the century, these states came to form a pentarchy of Western powers charged with creating consensus–based solutions to global problems. Arbitration was one tool they used to achieve this consensus.

Whilst reorganizing European affairs at Vienna, the framers of the new European concert devised a system of arbitral tribunals and mixed commissions to


\(^{45}\) See Schroeder, *The Transformation of European Politics, 1768–1848*.

\(^{46}\) ibid.


\(^{49}\) See Clark, *Hegemony in International Society*, pp. 74–98.
resolve a number of pecuniary and territorial claims against France.\textsuperscript{50} The issues brought to arbitration at the congress were not matters involving high stakes. Yet, they were of a suitably contentious nature that delegates thought it prudent to devolve them to a more specialized mechanism, capable of assessing the particulars of the individual cases. These issues included the pecuniary claims of the Allied powers against France, which were put before a commission in 1814, as well as the mutual pecuniary claims between France and Russia over the Duchy of Warsaw, which were similarly liquidated through a stand–alone commission. Other disputes, including France’s debt to the Netherlands, the revenue and customs regime of the Rhine as well as the inheritance claims of the Duchy of Bouillon, were also adjusted through arbitration under the terms of the Treaty of Paris in 1815 and the Congress of Vienna.\textsuperscript{51} Moreover, around ten separate arbitration commissions appeared from 1814 to 1815 to delimit the international boundaries of Europe.\textsuperscript{52}

From the Seven Years’ War up until the Napoleonic Wars, the West had witnessed a series of protracted and damaging conflicts. As historians Kevin H. O’Rourke and Jeffrey G. Williamson observe, this had made a shamble of trade, the transfer of technology, labour migration, and the flow of capital between the Atlantic world and beyond.\textsuperscript{53} The creation of a congress system in Europe after the Napoleonic Wars stabilized the continent and formalized a \textit{modus vivendi} for great powers. In the midst of this sea change, Western governments seemed prepared not only to create but also to abide by arbitral agreements and mechanisms. Scholars look at the Congress of Vienna from a variety of angles including the multilateral nature of the agreement; the notion of a ‘restoration’ to the world order; the concept of congress and ambassadorial agreements; even the use of neutrality and neutralization.\textsuperscript{54} Largely overlooked by historians, arbitration was also a critical element to the overall congress system that needs to be incorporated into any understanding of the functionality of the system. Arbitration was in keeping with the spirit of reconciliation and the active pursuit of consolidating the balance of power through rational, peaceful means.

The Congress of Vienna commissions laid the basis for using pacific settlement on a multilateral basis as a means of organizing solutions to wide-ranging international problems. Emboldened by the newfound stability after the congress and the state of cooperation, statesmen would go on to establish the slave trade tribunals and commissions, which represented the most extensive multilateral initiative of the age. The suppression of the slave trade was a British–led initiative aimed at ending the centuries–old institution that the British themselves had been

\begin{footnotes}
\item[51] For more on these two instances of arbitration see Albert Lapradelle and Nicholas Politis, eds, \textit{Recueil des Arbitrages Internationaux}, vol. 1, Paris: A. Pedone, 1905, pp. 218–268.
\item[52] Unfortunately, there is very little information on these commissions. For an overview, see W. Evans Darby, ed., \textit{International Tribunals: A Collection of Schemes Which Have Been Propounded}, 4e, London: J. M. Dent and Co., 1904, pp. 96–99.
\end{footnotes}
heavily involved in. The transatlantic slave trade was the model example of globalization in the early modern period. Slavery had been an integral part of the transatlantic economic system since the sixteenth century. Millions of enslaved Africans provided cheap labour for the developing colonies in the Western hemisphere.

By the time of the Napoleonic Wars, humanitarian and religious groups had taken up the cause of abolitionism in order to put an end to the cruel trade. In Great Britain, in particular, groups such as the Society for the Abolition of the Slave Trade, founded in 1787, and prominent political figures such as Sir Thomas Fowell Buxton, Thomas Clarkson, and William Wilberforce made it a cause célèbre of the age. Through their efforts, a groundswell of British public opinion created an impetus for reform. In 1807, parliament passed the Abolition of the Slave Trade Act preventing the movement of slaves to and from British ports. The United States declared the slave trade illegal, the same year as the British. At the Congress of Vienna, the powers signed the Declaration of the Eight Courts Relative to the Universal Abolition of the Slave Trade on 8 February 1815. The product of British diplomacy and influence at the congress, the declaration served as a seminal international product for the universal abolishment of the slave trade. By 1820, the Netherlands, France, Portugal, and Spain declared the slave trade illegal pursuant to the declaration at Vienna. When Brazil declared its independence from Portugal in 1822, it too declared the slave trade illegal in 1826.

As most nations were either unable or disinclined to actively enforce the ban, it fell upon the Royal Navy to police the illegal slave trade on the high seas. Aware that unilateral military strength alone was incapable of putting an end to the trade, the British government attempted to police these agreements with ‘cooperative legal action’ through ‘increasingly powerful treaties’, as jurist Jenny S. Martinez puts it. Great Britain negotiated the right to search and seize Brazilian, Dutch, Portuguese, and Spanish vessels suspected of being involved in the slave trade through a series of bilateral conventions. Under the terms of the conventions, a ship could only be searched if there were reasonable grounds to suspect that the vessel had slaves on board. In order to prevent wrongful seizure, these conventions provided rules for bilateral commissions to adjudicate the condemned slaving vessels. Each commission had a commissary judge, a registrar, and two commissioners of arbitration, one drawn from Great Britain and another from the other nation.
commissions were charged with deciding upon the legality of the detention of vessels suspected of engaging in the illicit trafficking of slaves.

The slave trade commissions were extensive. Initially, there were five slave trade commissions based at Havana, under Spanish jurisdiction; London and Serra Leone, under British; Rio de Janeiro, under Portuguese (later Brazilian); and Surinam under Dutch control. In 1862, British–American mixed courts were established in Sierra Leone, the Cape of Good Hope, and New York to adjudicate the activities of suspected British and American slave traders. In all, from 1817 to 1871, numerous international commissions and tribunals sat in Boa Vista (Cape Verde Islands), the Cape of Good Hope, Freetown, Havana, London, Luanda (Angola), New York, Rio de Janeiro, Surinam, and Spanish Town.64

Martinez argues that the abolition of the transatlantic slave trade was the most successful episode ever in the history of international human rights law.65 It certainly did succeed in disrupting and ultimately putting an end to the trade. The commissions condemned over 600 ships, liberating almost 80,000 slaves.66 The court at Sierra Leone alone disposed of 535 cases from 1819 to 1866, which assisted in emancipating over 55,000 slaves.67 In terms of scale and multinational endeavour, these arbitral mechanisms represented the first systematic approach to pacific settlement. Lauren Benton and Lisa Ford suggest they were in fact variations of pre-existing ‘British municipal law and modified prize law’ transposed beyond Great Britain’s imperial boundaries.68 The vital role Great Britain played in shaping the entire process cannot be overstated and without any international court system to take inspiration from, Great Britain’s well-established tradition of admiralty law would have provided a ready model. Still, the mixed commissions and the bilateral treaties represented an innovation in international law providing a precedent for the development of consular courts, bilateral arbitration treaties, and other adjudicatory devices.69 And certainly, governments would not attempt such an expansive framework of commercial regulation—for the whole point of the mechanisms were to indemnify merchantmen in case of wrongful seizure—until the signing of the arbitration treaties in the late nineteenth and early twentieth century.70

Similar to the Jay Treaty and the Congress of Vienna commissions, the slave trade commissions legitimated and highlighted the effectiveness of arbitration as an interface by which Western powers could achieve diplomatic objectives and enforce their will on global society. Of particular note, the slave trade commissions provided a template for regulating and policing international norms on a global scale through arbitration. Whilst the pacific settlement mechanisms of the Jay Treaty and the

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64 ibid., p. 79.
67 Hudson, International Tribunals, p. 5.
69 For more on consular courts, see Chapter 4.
70 For more on arbitration treaties in the late nineteenth and early twentieth centuries, see Chapters 4 and 6.
Congress of Vienna had a largely political character aimed at improving relations between states, the slave trade commissions pointed the way forward in applying a more legalistic approach to sorting through interstate disputes. While by no means perfect in their operation, they nonetheless demonstrated how such commissions could provide a clearing house for working through the minutiae of transnational issues under commonly applied rules. The slave trade commissions provided a foretaste, as the global economy entered a new stage of interconnectivity, particularly after the mid-nineteenth century when global commodity markets experienced greater integration, of how pacific settlement would first and foremost come to be a vital interface in the regulation of the globalized economic and political system under Western orientation.71

While the Jay Treaty often captures the attention of scholars, there was a global aspect to the early development of pacific settlement. The ad hoc international commissions and tribunals created through the Jay Treaty, the Congress of Vienna, and the suppression of the slave trade all helped to bring forth a renewed importance to the role of pacific settlement in the modern age of global diplomacy. While the renewal of arbitration in these instances lacked any systematic approach, the occurrence of these pacific settlements in tandem with one another pointed to the changing nature of diplomacy. In an era of ever-extending Western–dominance of global society, underpinned by a general working peace amongst the powers in the North Atlantic, arbitration emerged through the exigencies of improving and organizing global affairs. It provided a decidedly civilized format to litigate interstate disputes in keeping with the general understanding in the Western world that rules, order, stability, as well as Western dominance were all necessary precursors for defining the new century. It also established the supervisory role that Great Britain had over the international system. The British imprint was evident particularly in suppression of the slave trade but also in the congress system and the Anglo–American reconciliation. While it was no hegemonic power, the collective dominance of the great powers with the British as the first among equals in a sense guaranteed a stable status quo, allowing for the ready use of pacific settlement as one of many means of maintaining peace and the balance of power.

The enhanced usage of international arbitration in the form that it took particularly in the slave trade commissions was the brainchild of the new globalized age—providing an outlet to regulate global problems and integrate non-Western realms into the international system. From this basis, pacific settlement proliferated as a Western initiated means of framing and resolving global questions. In no small measure, the origins of modern pacific settlement were very much related to the new restoration of order and stability amongst the North Atlantic consortium of Western powers and its use reflected the renewed desire for more civilized means of settling disputes.

2 Pacific settlement and the management of great power politics

After 1815, pacific settlement functioned as an important tool in balancing great power interests and maintaining a stable status quo, exhibiting the restraint and moderation so characteristic of international politics at the time. Nevertheless, great powers’ use of arbitral processes during the nineteenth century was a Janus–faced beast: one face reflected the European context of the post–Vienna settlement; the other, the North American context where it featured as one of the primary means of managing Anglo–American relations. The two different contexts proved vital in fashioning arbitration into a permanent fixture in international politics. And certainly, after the Anglo-American Alabama claims dispute arbitration in 1870, international arbitration emerged as an integral component in international diplomacy, marking a distinct shift from the European congress system to a much more globalized form of great power diplomacy.

The European congress system possessed a variety of diplomatic techniques, political mechanisms, and unique geopolitical features that helped to shape the balance of power after 1815. A number of historians have explored how these elements placed contingencies on diplomatic practice and helped to shape the outcome of international events. Abbenhuis, for instance, argues that neutrality and the neutralization of strategic regions, such as Switzerland (neutralized in 1815), Belgium and the Netherlands (1839), played a key role in managing international crises and the international system at large.1 Similarly, Schroeder demonstrates how ‘intermediary’ or buffer states provided a series of restraints and barriers between the great powers of Europe in the nineteenth–century.2 Equally, pacific settlement functioned primarily to alleviate tension and helping to maintain the balance of power. After 1815, pacific settlement functioned as an important tool in balancing great power interests and maintaining a stable status quo, exhibiting the restraint and moderation so characteristic of international politics at the time.

British jurist Thomas Barclay argued in 1904 that diplomacy was ‘a mass of devices and procedure for keeping questions open till the propitious moment comes’ with the ultimate aim of resolving the issue and diminish the risk of war.3 The use of conferences and congresses had the effect of elevating a particular issue to the fore as conferences often involved all of the great powers. On the other hand, bilateral negotiations kept the dialogue going between the disputant parties. Arbitration was a method that attempted to do the opposite. By referring an issue to a third party, statesmen were attempting to take the issue out of the immediate diplomatic sphere. International arbitration helped to manage crises peacefully harmonizing international relations without leaving a rankling sense of injury amongst disputants.

Looking at an Anglo–Spanish commission established in 1823 to liquidate the

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1 See Abbenhuis, An Age of Neutrals.
mutual claims of both nations from the Napoleonic wars, historian Matthew McCarthy correctly identifies the dynamism of pacific settlement. The commission, as McCarthy observes, freed the two foreign ministries from having to intervene on the particulars of the claims themselves, in effect de-politicizing the issue. At a time of heightened tensions in the Iberian Peninsula with France intervening against the liberal revolutionaries in 1823, the establishment of the commission helped to maintain good relations between Great Britain and Spain. Governments still preferred to use the conventional channels of diplomacy, such as bilateral negotiation, to promptly resolve differences. However, as the Austrian chancellor Prince Metternich explained in 1847, when two parties failed to come to a direct understanding on matters, arbitration or mediation provided another option for resolution.

In other words, in Europe after 1815, arbitration played a central role maintaining the concert system. After the great powers reached their decisions at key diplomatic gatherings and events, minor issues were often devolved to mixed commissions or arbitral courts in the final protocols. For example, when the Kingdom of the Netherlands officially accepted the independence of Belgium in 1839, they signed the Treaty of London which the great powers had originally crafted in 1831 at the outset of the revolution. As part of the final settlement of the partition of Belgium, the treaty called for the creation of a joint commission to divide up the public debt as well as to examine any outstanding claims between Belgium and the Netherlands.

As another example, at the Congress of Paris in 1856, plenipotentiaries created an international commission to regulate commerce in the Danube River. The Congress of Berlin in 1878 formed yet another commission to regulate the Danube after the Russo-Turkish War (1877–1878). Similarly, the Treaty of Turin of 1860 created a mixed commission to determine the Franco-Italian border after the cession of Savoy and Nice from the Kingdom of Sardinia to the French Empire. The contentious Treaty of Frankfurt of 1871, in its turn, provided for a mixed commission to trace the spot of the new frontier and preside over the division of the province of Alsace and the departments of Lorraine between Germany and France.

In these instances, international commissions were constituent tools of diplomatic practice, employed to wind up the affairs resulting from annexation or territorial changes. As the French jurist Ferdinand Dreyfus identified in 1892: the use of arbitration clauses at the Congress of Vienna introduced ‘discretionary remedies’ to prevent or resolve disputes, while the mixed commissions created a communal means of executing collective agreements under a ‘European protectorate’.

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5 ibid., p. 135.
6 Metternich to Dietrichstein, 23 September 1847, HCPP, vol. LVII.29, no. 1097, 1849.
7 Darby, Modern Pacific Settlements, p. 82.
9 Alphonse Rivier, Principes du droit des gens, vol. 1, Paris: Librairie nouvelle de droit et de jurisprudence, 1896, pp. 564–565. There was also a mixed commission created in order to fix the level of debt between France and Sardinia as a result of the territorial changes
century, such commissions made up the bulk of arbitrations in Europe.\textsuperscript{12}

Due to its ability to offer a civilized means of resolving a dispute, arbitration acted as an interface of the public law of Europe. The Congress of Vienna established an ‘embryo’ of legal order by creating principles for managing conflict and crises in the international system.\textsuperscript{13} Arbitration became one of the concert system’s many manifestations in international agreements. The role of third-party mechanisms were enshrined in this legal order through the Congress of Paris in 1856. The twenty-third protocol in the final act of the congress explicitly reaffirmed that ‘those states that raise a serious dissent, before taking up the call to arms, have recourse, as circumstances admit, to the good offices of a friendly power.’\textsuperscript{14} Methodist minister and secretary of the London Peace Society Henry Richard petitioned representatives to include an arbitration clause in the final protocols of the congress.\textsuperscript{15} He received a supportive ear from British foreign secretary Lord Clarendon, who subsequently brought it up during the congress proceedings.\textsuperscript{16} After modification by Napoleon III and Palmerston, the arbitration clause became a facultative expression of mediation, which the contracting parties unanimously adopted that the congress.\textsuperscript{17} At the congress, the powers openly expressed the common assumption that in times of diplomatic crisis the powers had an obligation, according to circumstance, to seek mediation. In essence, it formalized pre-existing principles of the congress system and reinforced the use of third parties as a measure of best practice in diplomacy.\textsuperscript{18}

The great power family relied on both a general sensibility of moderation in preventing radical changes in the balance of power as well as a range of contingencies to allay tensions and manage international emergencies.\textsuperscript{19} The arbitral mechanisms of the congress system demonstrated how pacific settlement acted as a manifestation of programmed diplomacy initiated by the European great powers. Arbitration was a dynamic tool of a conservative system designed primarily to maintain the balance of power between the key players of the system. In broader terms, pacific settlement fitted into the general rationale of the congress system. The language and practice of diplomacy in Europe often represented a quasi-third-party process of great powers adjudicating and interceding between disputant parties based on maintaining and preserving the balance of power.\textsuperscript{20} In that sense, arbitration amongst European great

\textsuperscript{12} For more on these instances, see Harris, ‘Between Law and Diplomacy’, pp. 97–143.

\textsuperscript{13} Dreyfus, \textit{L’arbitrage international}, p. 111.


\textsuperscript{15} Robson, ‘Liberals and “Vital Interests”’, p. 49.

\textsuperscript{16} Ralston, \textit{International Arbitration from Athens to Locarno}, p. 238.

\textsuperscript{17} Robson, ‘Liberals and “Vital Interests”’, p. 49.

\textsuperscript{18} As French jurist Edgard Rouard de Card argued, it did not enshrine the principle of arbitration, but it introduced the beneficial nature of conciliation into great power diplomacy. Rouard de Card, \textit{L’arbitrage international dans le passé, le présent et l’avenir}, p. XIV.


\textsuperscript{20} This style of third-party settlement is evidenced in a variety of European flashpoints. The London conference on Belgium in 1831 determined the fate of the United Kingdom of the Netherlands in a manner similar to arbitration. The British plenipotentiary likened the conference’s decision to partition Belgium from the Netherlands as the ‘final arbitration’ on the dispute. Annexe B au Protocole No. 69, HCPP [House of Commons Parliamentary Papers], vol. XLII.I, no. 2, 1833.
powers is best viewed as part of the framework of processes and mechanisms that emerged from the Congress of Vienna that attempted to place restraints over states and moderate state behaviour.

While arbitration was a constituent tool of the European political system, Great Britain and the United States used arbitration quite differently. Over the century, both North American potentates regularly referred contentious issues between them to a third party for final settlement. ‘The cumulative result of their experience’, as Lauterpacht and Jennings observe, was an ‘imposing series’ of ‘great arbitration’ that acted as the capstone of nineteenth-century arbitration. As it stood, Great Britain and the United States were contracting parties to at least six major arbitration cases as well as several lesser ones. These included the arbitral commissions created by the Treaty of Ghent in 1814. Tsar Alexander I of Russia arbitrated a dispute over the interpretation of an article in the Treaty of Ghent in 1822. Similarly, King Willem I of the Netherlands rendered an award over the Maine–New Brunswick dispute in 1831, which was not carried through, as this chapter discusses. Also, the Alabama claims dispute of 1871, the Behring Sea dispute of 1893 and the Alaskan boundary dispute of 1903 were each resolved by international tribunals.

In some ways, the ‘crimson thread’ of Anglo-Saxon kinship meant that the two powers were more inclined to reach compromise through pacific settlement. This was particularly true as far as the British were concerned, which afforded the United States a greater degree of leniency than it would with other states. Looking at the mid-century when Palmerston’s Liberal Party dominated British politics, historian George Bernstein explains that Great Britain’s middle-class constituency perceived a ‘special relationship’ with the United States based on cultural, racial, and linguistic similarities. The perceived relationship helped to create a general policy of appeasement towards the United States, whose own foreign policy, fuelled by notions of manifest destiny, became more assertive towards the end of the century.

British policy in North America was largely devoid of special interests. Its objective was a passive one of maintaining the status quo vis-à-vis its territorial holdings in Canada. As a result, Great Britain played a weaker hand in North America than it did in the high stakes arena of Europe. Gladstone, then prime minister, privately noted in 1869 the extent of the British position, observing how

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22 The arbitration determined whether the United States was entitled to compensation over the loss of slaves under the article one. The Tsar found that the United States should be compensated. After the award of the Tsar, Great Britain and the United States set up a mixed commission to adjust the claims. Eventually, the British government agreed to pay $1,204,960 to fully settle the claims. Darby, *International Tribunals*, 4e, pp. 9–10.
25 Kenneth Bourne notes how American affairs were always subordinate in British foreign policy than those in Europe and even India in Kenneth Bourne, *Britain and the Balance of Power in North America, 1815–1908*, Berkeley: University of California Press, 1967, pp. 406–407. NB: By Canada, I am using shorthand to refer to those provinces in British North America (i.e. British Columbia, New Brunswick, Newfoundland, Nova Scotia, Ontario, Prince Edward Island, and Quebec) that form modern-day Canada. The actual nation of Canada was not fully formed until it was conferred dominion status in 1907 (even then Newfoundland only joined Canada in 1949).
‘the indefensible frontier in British North America’ had ‘made poor John Bull content to exhibit to Americans a submissiveness such he has never to my knowledge shown to any other people on the earth.’ Much of this was due to Great Britain’s global entanglements in Asia, Africa, and elsewhere in which their ‘credit’ and ‘power’ formed a ‘fund’, as Gladstone postulated, requiring thrifty use. Securing vital interests through negotiation or peaceful means freed Great Britain from involvement in prohibitive overseas enterprises. As historian Kenneth Bourne notes, Canada and India, which both had large land frontiers to defend, presented a particular problem for Great Britain whose defensive system was one of island security and the use of sea power. British India fielded a formidable army to protect itself from external and internal threat. On the other hand, Canada enjoyed no such luxury from the perpetually frugal metropole. Successive British governments thus felt compelled to temper specific Canadian issues to meet American demands so long as they were deemed reasonable and considered part of the greater good of maintaining amicable relations with the United States.

British passivity also developed in reaction to American foreign policy. Shadowing British hegemony in the early half of the century, the United States’ international heft grew exponentially in the latter half. Unlike Great Britain, the United States was neither hemmed in by the European political system nor overstretched with a far-flung string of global colonies. The United States had the freedom of movement to restrict its core interests to that of the Western hemisphere. On this count, the Monroe doctrine was a vital cornerstone of American foreign policy. Equally, to guard its unique position of dominance in the Western hemisphere, the United States frequently cast a watchful eye on its northern neighbour. American politicians were of two minds towards British North America. Many ‘expansionist’ politicians fully expected that the United States would annex Canada once the influence of the metropole waned. In opposition, others viewed Canada with fear, arguing that it could act as a rival to America hegemony in the region, forming a ‘second empire’ if it remained attached to Great Britain. In that sense, Great Britain’s presence in North America was an imposition for the United States that required careful management as part of their policy of nation building.

There is wide-ranging scholarship on the changing relationship between Great Britain and the United States in the nineteenth century. A number of scholars link

30 As a result, the Canadian government often took an independent line in Anglo-American disputes due to a suspicion that the Foreign Office was ‘willing to sacrifice Canadian interests’, as Paul Gibb argues. Gibb, ‘Selling out Canada?’, p. 820. See also Langhorne, ‘Arbitration’, p. 50.
31 For more on the Monroe doctrine, see Introduction.
33 See ibid.
34 See for example the following works: Bourne, Britain and the Balance of Power in North America;
the role that arbitration played in facilitating good Anglo-American relations throughout the century.35 Historian Bradford Perkins argues that by the fin de siècle, both Anglo-Saxon states had developed a permanent spirit of friendship and cooperation—a ‘great rapprochement’—facilitated through the peaceful resolution of a number of disputes through arbitration such as the Bering Sea and the Alaskan boundary arbitrations.36 By the end of the century, Great Britain and the United States operated under a modus vivendi in North America as well as a general understanding on numerous global matters.

If not quite an alliance, it was undoubtedly a special relationship. As this chapter demonstrates, Anglo-American relations, similar to the European political system, were fuelled by a sense of restraint and moderation. At the time of the Jay Treaty, Great Britain’s status was of the former colonial overlord of North America and the United States’ status as a peripheral, undeveloped agrarian nation. Suffice to say by the end of century, the situation was markedly different. The pragmatic and regular use of pacific settlement proved crucial in reconciling the changing dynamics of Anglo-American relations in North America.37 The special relationship between the British and American governments, which would develop into the twentieth century, was facilitated through nineteenth-century arbitration. Moreover, the record of Anglo-American arbitral settlement defined the nature of nineteenth-century arbitration. Barclay argued that ‘statesmen of the two great Anglo-Saxon communities’ brought the practice of pacific means of resolving international disputes to their ‘highest point of achievement’, particularly through the Alabama claims arbitration of 1871.38

The first major test of Anglo-American cooperation after the Jay Treaty was the Treaty of Ghent commissions.39 Whereas the Jay Treaty commissions were largely successful in determining an award for their boundary disputes, the Treaty of Ghent commissions were less successful, laying the foundations for future disputes between the two powers. The first commission determined their award in 1817, allotting the United States proportionally more of the islands in Passamaquoddy.40 On the other hand, the commissioners for the Great Lakes and the Lake of Woods boundary as well as the commissioners for the Maine–New Brunswick boundary failed to agree on an award for these disputes.41


36 Perkins, The Great Rapprochement.
39 For more on the Treaty of Ghent, see Chapter 1.
40 Darby, International Tribunals, 4e, p. 6.
41 Ibid. The Webster–Ashburton Treaty of 1842 settled the boundaries of the Great Lakes and the Lake of the Woods.
The Maine–New Brunswick dispute took several attempts to resolve. The first attempt involved the use of a nominated arbitrator. After a complicated process of balloting both contracting parties agreed to refer the dispute to the King of the Netherlands in 1828. In 1830, on the advice of his foreign minister, the King assembled a three–person committee including the foreign minister to study the matter and assist in arriving at a decision. The King gave his final award in 1831, based on a compromise boundary of his own design rather than an outright award in favour of either parties’ case. British government had already considered the possibility of a compromise boundary and believed it was the right of the arbitrator to have full discretion in that matter. The American minister at The Hague, on the other hand, immediately protested the award, arguing that it was not in the King’s remit to define his own boundary. The Senate likewise denounced the award and advised the President to enter into new negotiations directly with the British.

For their part, the British government under Palmerston agreed to keep the channels of negotiation open. However, despite a mutual willingness to negotiate a settlement, talks eventually fizzled out in 1833. It would be another decade before the dispute received a final settlement. A considerable part of the problem was due to the strong feelings over the boundary line in Maine. Congress was largely supportive of guaranteeing the best possible outcome for the state and the incumbent administration under democrat Andrew Jackson essentially went along with this position. Palmerston’s own policy was equally unhelpful, refusing a raft of American schemes for settlement. As a result, the question of the Maine–New Brunswick boundary remained in uneasy abeyance for much of the 1830s. Tensions over the undefined boundary finally spilled over when Maine occupied the region with militiamen in 1838. From 1838 to 1839, there were a series of bloodless yet troubling confrontations between militiamen and Canadian lumberjacks that worked in the disputed region. To compound the issue for the British at least, rebellions in Lower and Upper Canada from 1837 to 1838 seriously weakened British dominion in the region—something that was hardly helped by an ill-defined border.

These events, combined with the formation of new governments in both

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45 Carroll, ‘Kings and Crises’, p. 197.
46 Bankhead to Palmerston, 21 July 1832, HCPP, vol. XXXIX.1, no. 118, 1838.
47 Palmerston to Bankhead, 14 October 1831, HCPP, vol. XXXIX.1, no. 118, 1838.
48 For more on the negotiations after the King of the Netherland’s award, see Francis M. Carroll’s chapter on it in. Carroll, A Good and Wise Measure, pp. 172–194.
49 Some years after the King’s award, Andrew Jackson confided to a friend that he had initially planned to accept the award had his cabinet not remonstrated against it. As he said in the same breath, ‘I yielded to this recommendation, but sincerely I have regretted it since.’ Quoted from ibid., p. 194.
51 Ibid., p. 248.
countries, finally gave the necessary impetus to reinvigorate negotiations on the boundary. The conservative government of Sir Robert Peel sent Lord Ashburton on a special mission to the United States in order to negotiate directly with the secretary of state Daniel Webster. At the onset, Ashburton believed that both governments were better suited to determine the dispute than a third party, given what had happened with the first arbitration. The Maine–New Brunswick dispute demonstrated that arbitration was often no easier to settle a dispute than other means. Certainly, nor were the negotiations between Ashburton and Webster any easier. In both countries, the issue of the boundary possessed distinct domestic political implications. Webster had to contend with the powerful interests of Maine political leaders, whose influence in Washington had the potential to thwart any careful settlement. Ashburton on the other hand could hardly bring back to London a solution that appeared too much like a submission to American demands. The subsequent Webster–Ashburton Treaty signed in 1842 was the product of much difficult negotiation. The final boundary between Maine and New Brunswick was a compromise—although arguably more generous to the American side. Palmerston, now in opposition, derided the Peel government’s capitulation in the face of artful American diplomacy. Peel, however; prudently wished to put an end to the dispute, considering its resolution as crucial in maintaining good relations.

If the early Anglo–American arbitrations proved anything, it was that pacific settlement was mixed with success and failure. Both states had tested the limits of the applicability of arbitration in a range of disputes from mixed commissions and nominated arbitrators. At times, bilateral negotiation seemed best able to resolve the issues at hand. Yet they were not for want of trying to use arbitration as a tool of best diplomacy practice. Both states understood the stakes in the region and the bipolarity of their situation compelled them to come to understandings on issues sooner rather than later. For that reason, they proved more than willing to persevere in finding peaceful solutions to contentious problems. Arbitration provided a particularly useful remedy for resolving such problems and demonstrated the inherent desire for both states to maintain restraint and moderation in managing their relationship.

As opposed to the bipolarity of North America, Europe with its pentarchy of competing great powers worked under a different set of rules. The use of arbitration was often embedded within the congress system. Nevertheless, the great powers frequently used ad hoc arbitration to resolve freestanding issues involving smaller states. In these instances, the congress system allowed great powers to interpose in

52 Ashburton to Webster, 13 June 1842, HCPP, vol. LXI.29, no. 439, 1843.
54 ibid., p. 329.
55 Carroll, A Good and Wise Measure, pp. 264–286.
56 The division of the territory was 7015 square miles for the United States and 5012 to Great Britain. See Jones and Rakestraw, Prologue to Manifest Destiny, p. 135. The Treaty among other things also resolved the boundary dispute over the Great Lakes and Lake of the Woods. Moreover, it granted the United States navigation rights in the river St John and established a means of jointly policing the suppression of the slave trade off the African coast.
57 Peterson, The Great Triumvirate, p. 329.
small state disturbances. During the troubled period of European politics from 1848 to 1871, when the rising spectre of nationalism threatened to unravel the status quo, great powers were either called upon by the disputing states or independently attempted to intercede in order to broker solutions amongst the various parties. During the 1848 uprisings in northern Italy, the British government alongside the French government offered their good offices to mediate with Austria and the other contending parties in northern Italy out of an impulse to maintain the welfare of the 'Italian nation' and rescue Europe 'from the calamities of war'. Palmerston was anxious to emphasize that Great Britain was not attempting to impose arbitration, but rather was proposing an arrangement mutually acceptable to the parties. As it stood, Austria regained control over Northern Italy and thus the idea of mediation was irrelevant. At the same time, unrest in Sicily in 1848 threatened to split the Kingdom of the Two Sicilies. In response, the Neapolitan Prime Minister suggested that the question of whether Sicilian soldiers should be garrisoned in Sicily could be brought to the arbitration of both Great Britain and France with the Pope acting as referee if the parliaments of Naples and Palermo failed to come to an agreement on the matter. British special representative, however, Lord Minto considered foreign intervention of this nature to be highly undesirable for such a domestic question.

Pacific settlement floated about in diplomatic correspondence in order to try and find some means of stabilizing the volatile geopolitical situation—but to no avail. The revolutions of the 1848 and 1849 demonstrated the geopolitical fault–lines on the continent, but also demonstrated the reasonably flexible nature of European politics. Through brutal force the powers suppressed the great revolutionary uprisings and micromanaged the political system relatively unabated. In the national wars of unification (Germany, 1864–1871 and Italy 1862–1871), the European system could accommodate the nationalizing missions of sovereigns so long as they were handled with restraint and through limited wars. Yet in disputes involving nationalism and the pursuit of national aggrandizement, the use of arbitration was least effective. At the London conference in 1864, the British presented an idea to arbitrate the border the German–Danish border with a third–party state. The German Conféderation, led by Austria and Prussia, was disinclined to submit the issue to arbitration, preferring instead to come to an agreement to pressure the Danish. At the onset of the Austro–Prussian War the idea of arbitration failed. After a French suggestion of arbitrating the dispute between Austria and Prussia, the Russian foreign minister Prince Gorchakov told the French ambassador that arbitration would be greatly difficult, given that military force would be needed in order to enforce any arbitral award. Political circumstances were the key

60 Bridge and Bullen, The Great Powers and the European States System, pp. 2–3.
61 Palmerston to Pasini, 18 October 1848, HCPP, vol. LVIII.1, no. 1122, 1849.
62 Minto to Palmerston, 3 March 1848, HCPP, vol. LVI.205, no. 1062, 1849.
63 ibid.
64 Schroeder, The Transformation of European Politics, pp. 800–802.
67 ibid.
determinant in deciding whether arbitration was considered suitable. European politics was layered with alliances and rivalries, balance of power dynamics, and various other complicating and multiplying kinds of great power interactions.

The effectiveness of pacific settlement in managing great power politics hinged on specific contexts and on the state of relations between the disputing parties. In times of great power tension and rivalry, even the mere suggestion of arbitration was a fruitless exercise. At other times, even if the nature of the dispute was serious, if great powers were willing to work together, then arbitration was an invaluable outlet for resolving outstanding difficulties. Nowhere was this more evident than in the two contemporaneous disputes that engulfed both sides of the Atlantic during the years 1870 and 1871. They coincided with one another, yet they were resolved very differently.

In Europe, a diplomatic crisis broke out between France and Prussia, centred on the candidate for the vacant Spanish throne in July 1870. Prussian Chancellor Count von Bismarck, quite possibly sensing an opportunity to ferment a Franco–Prussian confrontation in the hope of encouraging German unification, had successfully negotiated with the Spanish government to install Prince Leopold of Hohenzollern-Sigmaringen, a Catholic member of the Prussian royal house, onto the throne. Like a red flag to a bull, the domestically unpopular French government seized on the candidature, construing it as a provocation threatening French interests. After the Luxembourg Crisis of 1867, the French government had come to harbour suspicions over the designs of Prussia. Nevertheless, in spite of whatever Bismarck was concocting or how the French felt towards the Prussians, the dispute was viewed as a trivial one by many contemporaries and one that could be resolved peacefully through the conventional channels of diplomacy. Had a duplicitous Prussian policy not been met with an appallingly inept French position then the affray would have remained a minor footnote of history. It was not to be. Even when King Wilhelm of Prussia, on his own initiative, withdrew the candidature in response to French pressure on 12 July 1870, the French government further insisted that Wilhelm promise that no other Hohenzollern be forward as a candidate for the Spanish throne again. Failing to receive this assurance, and after the Prussian government published what the French deemed to be an insulting telegram, they declared war on Prussia on 19 July.

At the onset of the crisis, the third-party powers of Austria–Hungary, Great Britain, and Russia, alongside the lesser powers of Spain and Italy, attempted to facilitate the peaceful resolution of the incident. The pope too felt moved enough to

make an offer to mediate. On 15 July 1870, foreign secretary Lord Granville even appealed to the twenty-third protocol of the Congress of Paris, offering Great Britain up as a friendly power to both parties, in the hope of mediating a settlement without the need for the ‘great calamity’ of a war. Unsurprisingly, given the emotionally-driven French position, mediation failed. Eventually, Amadeo I of the Italian House of Savoy became the King of Spain on 16 November 1870 to replace Leopold. Once France and Prussia mobilized their armies, the issue of the candidature was hardly relevant. The Franco-Prussian War offered the potential for the creation of a German nation and a make-or-break moment for the domestically unpopular Napoleon III.

On 1 September 1870, German forces successfully routed the bulk of the French army at the Battle of Sedan, allowing them to sweep into the Champagne region to besiege Paris. Thoroughly defeated and diminished in its international standing, the French government signed the Treaty of Frankfurt with the now unified German Empire on 10 May 1871. The peace treaty required France to pay an indemnity of five billion francs with certain districts of France placed under German occupation until the balance was paid. Germany demanded the cession of Alsace and most of the districts of Lorraine as well as the strategic fortress of Metz. A raft of smaller stipulations rounded out what was a particularly delicate peace. The annexations provided a buffer to France, while the indemnity was intended to cripple the defeated power for at least ten to fifteen years.

While the European powers were busying themselves with the various ins and outs of the Hohenzollern crisis and ensuing conflict, Great Britain and the United States were involved in a far more serious dispute. Fortunately, the Anglo-American dispute was resolved peacefully through arbitration. The period from 1870 to 1871 were the pivotal years of the *Alabama* claims dispute—a question that excited much passion in Washington D.C. and put the British on the back foot. Important aspects of national honour and vital interests were at stake during the *Alabama* crisis. In April 1861, the United States Civil War broke out between the states of the Union and the secessionist Confederacy of southern states. Union naval forces promptly blockaded ports in the south. Because the act of blockade gave the insurrection an international character, the British government and several other European powers declared their neutrality, hoping to protect their trade interests in the region. The Confederacy lacked a high seas fleet capable of disrupting Union shipping and arranged to have a number of merchant vessels outfitted into commerce raiders. In Great Britain, Confederate agents contracted shipyards to construct a number of vessels which they converted to warships outside jurisdictional waters.

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75 Granville to Lyons, 15 July 1870, HCPP, vol. LXX.17, no. 167, 1870.


consular officials forewarned the British Foreign Office of the construction of vessels such as the *Alabama* as early as July 1862.\(^ {80}\) It was only in 1863 that the British authorities started to detain suspected vessels of war after enormous diplomatic pressure from the United States was placed on them.\(^ {81}\) By that stage, a number of ships had been built and subsequently outfitted as Confederate warships.

During the war, the *CSS Alabama* and a number of other cruisers (such as the *CSS Florida*, *CSS Georgia*, *CSS Rappahannock*, and *CSS Shenandoah*) wreaked havoc on Union shipping, capturing over 300 ships, with the *Alabama* taking 64 prizes alone.\(^ {82}\) The Union Navy eventually sank the *Alabama* off the French port of Cherbourg on 19 June 1864. Traversing across the globe, the Confederate ships caught worldwide attention, creating fear over the safety of American carriage. Increased insurance rates and the threat of the commerce raiders created a steep drop off in American shipping as merchants switched to foreign registered marine to carry their goods.\(^ {83}\) By the end of the Civil War, the overall tonnage of the American merchant fleet fell in half as American registered ships were sold off to foreign shipping firms.\(^ {84}\) The chief beneficiaries of this development were British ship–owners, who collectively purchased some 700 American ships, re–registering them under the British flag.\(^ {85}\) After the Confederacy surrendered and the war ended in 1865, the American government sent a summary of the claims to the British government the following year.\(^ {86}\) Upon analysing the claims, the British Law Officers of the Crown believed that under certain terms of reference the British government could be liable under international law to the claims of the United States.\(^ {87}\)

For the British government, the *Alabama* claims had placed them in an uncomfortable position. As Gladstone glibly conveyed to Granville in January 1871:

> I have often racked my brains to think how we can make an ostensible approximation on the *Alabama* question to the Americans, without a surrender of substantial interests and principles: for I am one of those who do not admit our case to be bad on the *Alabama* question.\(^ {88}\)

Gladstone was somewhat optimistic. The *Alabama* claims dispute was grave. Yet even at the height of tensions, there was no real threat of war between the two countries. As foreign office official Lord Tenterden observed in November 1870, ‘if such a state of things existed between any two European countries, war would be inevitable. Happily, this is not the case with the United States.’\(^ {89}\) On 8 May 1871, both nations

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\(^ {82}\) O’Connell, ‘Arbitration and Avoidance of War’, p. 35.


\(^ {84}\) Abbenhuis, *An Age of Neutrals*, pp. 111–112.


\(^ {86}\) Adams to Stanley, 17 September 1866, FO 414/29.

\(^ {87}\) The Law Officers to Stanley, 14 February 1867, FO 414/29.


\(^ {89}\) Memorandum by Tenterden, 19 November 1870, FO 414/31.
signed the Treaty of Washington in order to bring the dispute to a peaceful resolution. The treaty contained a clause with an expression of official regret on the part of the British for their lack of diligence in preventing the outfitting of blockade-runners bound for the Confederacy thereby violating neutrality laws. It called for an international tribunal to adjudicate the Alabama claims comprised of one American arbitrator, one British arbitrator, and three additional arbitrators selected by third-party states Brazil, Italy, and Switzerland respectively.

Sitting in the Hôtel de Ville in Geneva from 1871 to 1872, the tribunal consisted of Sir Alexander Cockburn of Great Britain, Charles Francis Adams of the United States, Federico Sclopis of Italy, President of the Swiss Confederation Jakob Stämpfli, and Marcos Antônio de Araújo of Brazil. On 14 September 1872, the tribunal rendered the award of $15,500,000 (£3,100,000) payable in gold to the United States. The outcome of the tribunal was a difficult one for the British public. Their liability was equivalent to five per cent of the annual national tax income according to Roy Jenkins. During the proceedings, the American agent asked for an indemnity of $24,000,000, including indirect damages. The arbitrators though rejected the notion of indirect damages and instead indemnified the direct damages on shipping caused by the British–build commerce raiders. The Swiss arbitrator wanted to award $18,000,000, the Brazilian a more gentlemanly $14,000,000, the final award of came closer to the Italian arbitrator’s middle ground recommendation. Despite the large size of the indemnity and the domestic public outcry, the British government accepted the award and paid the amount in full in gold to the Secretary of State on 9 September 1873.

The two different ways that the Hohenzollern crisis and the Alabama claims dispute were ‘settled’ highlight the tension of great power practices. Speaking to the House of Commons in 1873, Gladstone dwelled on the period 1870 to 1871. Looking at the Hohenzollern crisis, he postulated:

> If those questions were judged in the abstract, it would be impossible to conceive questions better qualified to be disposed of by arbitration, because it was in those matters of feeling that a sensible man in private life would endeavour, when he could not settle his difficulty, to obtain the intervention of a friend.

The opportunity to use arbitration during the crisis ‘came and went like a flash of lightning’, as Gladstone put it. A joint effort by Austria–Hungary, Great Britain, Russia, and Italy aimed at mediating the fallout of the Hohenzollern candidature between France and Prussia to avert a major conflagration and keep the balance of power from being upended. Restraint compelled states to exhaust all avenues before taking up arms. European statesmen were generally capable of exercising

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90 Robson, 'Liberals and "Vital Interests"', pp. 40–41.
92 Telegram from Tenterden, 2 September 1872, FO 5/1408.
95 ibid.
moderation and good sense in times of diplomatic crisis yet the Hohenzollern crisis highlighted the fatal complexities of great power politics. Unfortunately, the peacockery of the French government and the duplicity of Bismarck left the option for pacific settlement virtually in tatters.\textsuperscript{97} The crisis highlighted the haphazard and unpredictable nature of personal diplomacy and old world politicking.

Looking back at the \textit{Alabama} dispute, on the other hand, Gladstone was able to remind the House of Commons of how ‘providence’ had endowed both Great Britain and the United States with ‘immense advantages and facilities for the propagation of the principle of arbitration’.\textsuperscript{98} As he saw it, this providence enabled arbitration to be applied far more easily in North America during the \textit{Alabama} claims dispute than in Europe. Gladstone might have called it providence. However, the peaceful settlement of the \textit{Alabama} claims was by no means guaranteed. During the Civil War, British foreign secretary Lord Russell had initially refused to allow a commission to consider the question of British liability.\textsuperscript{99} Gladstone, then the Chancellor of the Exchequer, questioned this move, arguing that after the Congress of Paris in 1856 ‘a great responsibility is involved in refusing arbitration unless and until we are perfectly assured in our own minds that the demand for it is, in Parliamentary language, simply “frivolous and vexatious”.’\textsuperscript{100} In response, Russell argued that ‘England would be disgraced forever if such questions were left to the arbitration of a foreign government’, believing that ‘paying twenty millions down would be far preferable to submitting the case for arbitration’.\textsuperscript{101}

Much of the dispute came down to details. For the most part, the British government was prepared to acknowledge the direct claims of those American claimants that suffered deprivation from the British–built commerce raiders. However, it was not prepared to accept the much vaguer category of indirect damages that the American government was also pressing for. Indirect damages included the consequential injuries that came from the cruisers presence such as the increased insurance costs for American shipping. Moreover, for the British government arbitrating the claims also had the potential to place them in an embarrassing position regarding their conduct in the war as well as the effectiveness of their neutrality laws—questions concerning national honour and vital interests no less. Great Britain was unwilling to openly acknowledge its guilt and preferred to resolve the direct claims without involving other questions of its conduct during the war. As such, secretary of state William H. Seward deliberately held off resolving the issue in 1867, when Great Britain offered to refer the claims to a commission on the condition that the question of their neutrality was not brought up.\textsuperscript{102}

Negotiation between the two governments dragged on inconclusively until 1869, when Clarendon, the Foreign Secretary, and the American Minister in London Reverdy Johnson negotiated a convention for the arbitration of the claims. The agreement covered only the direct damages of private claimants, explicitly excluding indirect damages. Moreover, it freed Great Britain from having to apologize or

\textsuperscript{97} ibid.
\textsuperscript{100} Quoted from Robson, ‘Liberals and “Vital Interests”’, p. 41.
\textsuperscript{101} ibid.
\textsuperscript{102} Sexton, ‘The Funded Loan and the Alabama Claims’, p. 455.
acknowledge any guilt over its conduct. Unsurprisingly, the convention was unpopular in Washington. The Senate refused to ratify the convention, citing the inadequacy of the agreement in redressing American losses as well as the fact that it failed to hold the British government to account. President Andrew Johnson’s own unpopularity with lawmakers also proved unhelpful in aiding the passage of the treaty.  

After the failure of the Clarendon–Johnson convention, relations between Great Britain and the United States strained. In 1868, there was a genuine sense in diplomatic quarters, in the words of Tenterden, that a ‘happy solution’ could be reached, however by 1870 everything remained unsettled. By that stage, American politicians had seized on the Alabama claims as a ‘generic representation’ of grievance against the British. A number of senators led by republican Charles Sumner, chairman of the Foreign Relations Committee, linked the Alabama claims to a wide range of grievances and political interests in North America. Aside from the damages on shipping, there was a popular belief in Northern American states that Great Britain’s failure to police its neutrality had needlessly prolonged the war, causing much bitterness. Sumner even argued that costs arising from the Battle of Gettysburg were also part of the indirect damages that the British were liable for. To fully compensate American losses, both direct and indirect, Sumner spoke in favour of annexing Canada as well as claiming compensation to the inflated sum of $2 billion. Amid bombastic threats by Sumner and other supporters of the cause of Canadian annexation, President Ulysses Grant, who was elected in 1869, and his secretary of state Hamilton Fish lent their support to the idea of annexing Canada or at the very least enabling Canadian independence from the metropole.

Eventually by early 1871, American claims for Canada were dropped once it was clear that the United States government needed to resolve the dispute promptly to improve its overseas credit rating. After the Civil War, the United States had amassed a large national debt. To refinance the debt cheaply, the American government needed to convert their debt in Europe to a more favourable rate of interest. The government needed low–interest bonds, something that could not happen until the claims were settled and relations with Great Britain, which was the main source of finance, were improved. Moreover, the overbearing attitude of Anglophobic senators led primarily by Sumner lost favour with the

103 W. Stull Holt, Treaties Defeated by the Senate: A Study of the Struggle between President and Senate over the Conduct of Foreign Relations, Baltimore: Johns Hopkins Press, 1933, p. 114.
104 Memorandum by Tenterden, 19 November 1870, FO 414/31.
105 ibid.
108 ibid.
109 The Grant Administration’s attitude towards Canada was one of ambivalence between total annexation and independence from Great Britain, presumably to remove the British presence in North America or to facilitate the annexation of Canada in time. Take for instance the words of Fish who told the British ambassador on 14 June 1870: ‘I do not want your Canada, but I do want it to be independent, I want it not to be a cause of dispute between the two countries, and to cease to be a thorn in our sides…’ Thornton to Clarendon, 14 June 1870, FO 361/1.
111 ibid.
administration. Seizing the opportunity, the liberal ministry of Gladstone sent Canadian Sir John Rose, a trusted personage in the back channels of Anglo–American diplomacy, to Washington in order ascertain the state of feeling in the American capital in December 1870. Before Rose’s departure, Tenterden had devised a memo suggesting the use of a joint high commission to decide an appropriate course of action and renegotiate the failed convention of 1869 and decide. Tenterden’s idea was based on the precedent of the negotiating commission that preceded the Treaty of Ghent. Rose coordinated with the British ambassador in Washington, meeting with key politicians and lawmakers in order to bring the plan to life.

After securing American agreement, a high commission of five British commissioners (including the Canadian prime minister Sir John A. Macdonald) and five American commissioners, led by Fish, met in Washington in March 1871. Three months of tense negotiation ensued. In order to put an end to all outstanding disagreements and establish a basis for Anglo–American friendship, the commission also was tasked with recommending solutions to a number of other issues, including the right of navigation in the River St Lawrence and other navigation privileges that lapsed with the Elgin–Marcy Reciprocity Treaty of 1854 with Canada in 1854.

From a legal point of the view, the Treaty of Washington and the subsequent arbitration of the Alabama claims played a pivotal role in formalizing the duties and responsibilities of neutral states. The concept of exercising ‘due diligence’ in policing their own neutrality was a major development in international law that would define how states would act in times of war in the future. According to article 6 of the treaty, the tribunal was required to base their decision on three assumptions. The first, that a neutral government is bound to use due diligence to prevent the outfitting of belligerent warships. Second, the neutral governments are obliged to prevent belligerent ships from making use of their port facilities. Finally, governments were bound to exercise due diligence to prevent people within their jurisdiction from violating the laws of neutrality. By agreeing to these three rules, Great Britain and the United States had codified the duties of neutral states, setting out rules for nations to observe in the future.

The Alabama claims arbitration was a turning point in the history of international arbitration. Of particular significance was the use of a tribunal to adjudicate the claims. Historian Richard Langhorne likened the tribunal to a type of ‘collegiate international court’ which set a pattern for a number of key arbitrations, including the Bering Sea dispute and the Venezuela boundary dispute of 1895. The effect of utilizing a tribunal of legal experts reflected the need for more judicially

112 As the British ambassador noted, Grant and Fish increasingly resented the populist ‘tyranny’ of Sumner. Thornton to Clarendon, 14 June 1870, FO 361/1. See Robson, ‘The Alabama Claims and the Anglo–American Reconciliation, 1865–1871’, p. 17.
113 Specifically, Granville asked Rose to, ‘ascertain what is the real state of the case not only as regards public men, but also as regards persons not usually taking part in public affairs, but who may exercise influence on the settlement of political questions.’ Granville to Rose, 19 December 1870, FO 414/31.
115 Memorandum by Tenterden, 19 November 1870, FO 414/31.
116 ibid.
120 Langhorne, ‘Arbitration’, p. 44.
based awards. Because the dispute touched on questions on the state practice of neutrality in times of war, the award of the tribunal could act as a precedent in terms of the liability of states for direct and indirect claims. Thus, the arbitration required a legal ruling made by experts as opposed to a compromise settlement.

Commissions which constituted the bulk of arbitrations in the nineteenth century, frequently rendered awards based on brokering a political compromise between parties as opposed to decisions based on a strict interpretation to law or justice.\textsuperscript{121} Nominally independent in character, commissions often functioned on an adversarial basis with commissioners generally siding with the party that had selected, in essence making the referee important in breaking the tie. Similarly, nominated arbitrators were more political than legal, underscoring the nineteenth-century arbitration as haphazard and unreliable for deriving solid legal reasoning or precedents. For this reason, a tribunal was constituted for the \textit{Alabama} claims, reflecting the increased desire in diplomatic and legal circles for a more judicially minded mode of dispute resolution.\textsuperscript{122} In that sense, as Langhorne identified, the \textit{Alabama} claims arbitration did not produce a change simply by increasing confidence or attention to the effectiveness of arbitration, but by inducing a procedural change.\textsuperscript{123} The Geneva tribunal fermented a procedural evolution that would take place through the development of general arbitration treaties and under the pacific settlement conventions.\textsuperscript{124}

The Anglo-American relationship provided an exemplar of restraint and moderation through the use of peaceful and civilized avenues of dispute resolution. In no small measure, the \textit{Alabama} claims arbitration set the tone of nineteenth-century pacific settlement, bringing the third-party method into a new phase of diplomatic practice. It was a seminal achievement of nineteenth-century international politics, representing the future role that international law would play in diplomacy. Certainly, Great Britain and the United States continued to trail blaze a path, showing how legal mechanisms could play an even greater role in harmonizing great power relations. The Anglo-American record was followed by the Bering Sea arbitration in 1893. In a bid to control sealing off the Alaska coast, the United States claimed control over the Bering Sea in 1881, which was disputed by the British government.\textsuperscript{125} From 1886 to 1889, American authorities seized several Canadian vessels, resulting in a tense diplomatic standoff between Great Britain and the United States. After intensive negotiations both powers agreed to jointly police the Bering Sea and establish a tribunal. The tribunal met in Paris in 1893 to determine the jurisdictional boundaries of the sea as well as to assess the damages that arose from America’s seizure of Canadian vessels. The tribunal’s award found largely in favour of the British case, stating that the Bering Sea was part of the high seas, thus no state could claim exclusive jurisdiction over it.

Another important arbitration centred on the question of the Alaska boundary in 1903. Before handing Alaska over to the United States in 1867, Russia and Great Britain had agreed on a boundary. However, certain mountain ranges and

\textsuperscript{121} ibid.
\textsuperscript{122} ibid.
\textsuperscript{123} ibid.
\textsuperscript{124} See Chapter 6.
\textsuperscript{125} For more on the Bering Sea dispute, see Gibb, ‘Selling out Canada?’.
geographical landmarks indicated in the agreement around what is now known as the Alaskan panhandle, a coastal strip of fiords and islands, did not exist thus requiring a settlement between the United State and Great Britain after the Alaskan purchase. The need to settle the boundary was widely recognised by both sides. However, it remained unsettled for several decades due to its isolation and relative unimportance. A gold rush along the Klondike river in British Columbia in 1897 kicked off renewed interest in the region. After several decades and plenty of stop-start negotiations before a tribunal was finally constituted to determine.

In 1903, a treaty negotiated between Sir Michael Herbert the British ambassador in Washington and the United States secretary of state John Hay provided for a six-person tribunal. The tribunal largely found in favour of the American case, awarding much of the boundary line proposed by the United States. Unsurprisingly the award sparked popular anger in Canada against the British, whom many accused of sacrificing Canadian interests in place of Anglo–American relations by agreeing to such generous terms of arbitration. Moreover, although the British pointedly nominated three 'men of honour' to the tribunal and the Americans used three 'notoriously parti pris politicians', the British government put some private pressure on the leading Briton Lord Alverstone to side with the Americans in a bid to settle the dispute.

These post–Alabama arbitrations served to highlight how great power pacific settlement was a reflection of the cooperation and restraint in the international system. Great Britain had more to gain from using arbitration to promptly resolve the disputes, particularly in light of these new power dynamics. Great Britain was no longer the only powerbroker of the international system and Europe was no longer the focus of great power struggles. The international system was becoming multipolar with the rise of the United States and Russia changing the dynamics of great power politics into a more global theatre as opposed to a traditionally European one. Mulligan identifies how the global balance of power had shifted by the 1870s onwards to the primary benefit of Russia and the United States. With the end of French dominance on the continent with the emergence of a unified Germany, the Anglo–French alliance could no longer actively restrain Russian ambition in Western and Central Asia as was the case in the Crimean War. Moreover, the United States had emerged stronger after the Civil War and Great Britain was in no position to offer opposition to America's assertive role. In a similar vein, historian Paul Gibb describes the situation when he notes, that the rise of the United States as well as Germany as global powers turned Great Britain into 'first among equals'. This status, Gibb argues, was dependent upon 'cooperation as much as confrontation'. Gibb sees British rapprochement with the United States as a pragmatic response to American assertiveness based on a series of compromises and concessions stemming

126 In 1886, the United States Minister observed to Salisbury, 'while the territory was still of little importance and the land of little value, the boundary should be more satisfactorily drawn'. Salisbury to West, 12 January 1886, FO 414/60.
127 See Gibb, 'Selling out Canada?'.
128 Langhorne, 'Arbitration', p. 50.
130 Paul Gibb, 'Selling out Canada?', p. 819.
from the Bering Sea dispute and the Alaska boundary dispute. The aim of British foreign policy in this instance was to ensure Great Britain’s place ‘among the top three powers in the twentieth century’ with the other two being Germany and the United States.

In broader terms, these post–Alabama arbitrations reflected a seismic shift in the nature of great power relations between Great Britain and the United States as well as Great Britain and the other European powers. Great power politics was now unmistakably global. The Alabama was one of the first global great power arbitrations, alongside several others as the following chapter identifies. At one end the global nature of the Alabama dispute arbitration appears obvious: the use of a tribunal based in Geneva, made up of judges from around the world, to decide on a dispute involving Great Britain and the United States on the high seas. Yet it was global because the balance of power was now global, diplomacy was now global—international law was now global. The idea of a European concert and a public law of Europe, while still important, was no longer the primary expression of great power politics. Diplomacy had integrated pacific settlement and international law into the processes of globalization, as the following chapter elaborates. The Alabama dispute was the more well-known portent of this change and signalled the general direction for arbitration into the fin de siècle: Statesmen were willing to incorporate arbitral processes into the global great power order and indeed were equally amenable towards greater legalism and enhancing international law.

131 ibid.
132 ibid.
In 1885, the British Crown established a protectorate over the lands of the Tswana, calling it Bechuanaland, modern-day Botswana. The following year two Tswana tribes, the Bakwena and the Bamangwato, were embroiled in a serious dispute. The issue centered on the ownership of wells in Lephepe, one of the main routes north from the trading hub of Molepolole. The Bakwena claimed that the wells belonged to them since time immemorial. The Bamangwato asserted that their livestock had watered themselves from those wells since ancient times. The situation was compounded after the British demarcated the Tswana chiefdoms into separate reserves (while claiming the lion share of Tswana land for themselves). The wells sat in a poorly defined area between the Bakwena and Bamangwato reserves. The two tribes appealed to the British authorities to determine the ownership of the wells. An arbitral commission consisting of army officers and colonial officials headed by General Goold-Adams was subsequently set up to consider the particulars of the case. Meeting at the site of the wells, the chief of the Bamangwato represented his people’s claims, while an eminent elder represented the Bakwena, each with their followers in attendance. The commission took witness testimony presented from both sides. After considering the evidence presented, the commission rendered their award, dividing the wells between the two.

The Lephepe wells dispute exemplifies how the growth of colonial and commercial empires emanating from the west into the ‘peripheral’ regions of Africa, Asia, and Latin America had brought independent or quasi-independent non-Western states ‘into what was now becoming a world system of diplomatic contacts’ as the historian M. S. Anderson argues. From an Anglo–French joint naval commission that governed (rather unsuccessfully) the island of New Hebrides in 1887 to the Anglo–Afghan boundary crimes commission set up in 1910 to deal with cross–boundary banditry along the Afghan–Indian border, the Lephepe wells dispute offers a thumbnail for a larger picture of ad hoc commissions and third–party mechanisms in the non–Western world. Arbitration functioned as a key element in imperial expansion and inter–imperial relations.

In an age of great power moderation and restraint, statesmen proved more than able to organize peaceful solutions amongst themselves in order to build and consolidate empire. In 1884, for example, Bismarck called for the convocation of a conference to formalize the competing claims surrounding the Congo river basin in Central Africa. The conference neutralized the river basin, guaranteed freedom for

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4 ibid. p. 254.
6 For more on the work of the British–Afghan Border Crimes Commission, see IOR/L/PS/10/37/1. For more on the New Hebrides Joint Naval Commission, see the confidential print correspondence FO 534/20.
7 For more on the conference, see Forster Stig, Mommsen Wolfgang and Robinson Ronald, eds,
trade and shipping for all states, and formalized the respective claims of the various states. Similarly, when the Boxer Rebellion in China (1900–1901) threatened the foreign legations in the treaty ports and their influence in Beijing, Austria–Hungary, Great Britain, France, Germany, Italy, Japan, Russia, and the United States formed an eight–nation alliance in order to put down the Boxers.  

Although the nineteenth century is littered with plenty of notable instances of imperial power grabs and flashpoints such as the Anglo–French standoff during the Fashoda Incident of 1898 (and to say nothing of the genocidal practices of colonial administrators), great powers still proved more than willing to exercise a high degree of restraint and moderation amongst themselves in the pursuit of empire. Chapters 1 and 2 identified the development of enhanced great power relations and the establishment of general peace in which pacific settlement acted as an agent of great power politics, helping to facilitate a new modus vivendi for the international system. This chapter explains that the Western powers were also particularly adroit at finding common ground when their imperial interests were at stake. Concepts of balance of power, restraint, and stability developed into global ones as the ‘far eastern question’ became no less relevant than the ‘Polish question’, particularly for globally competitive powers. To that end, the Western powers used pacific settlement mechanisms as tools to manage their interactions with other states and quasi–states in their pursuit of formal empire. This chapter explores how pacific settlement both managed and extended formal empire in the context of globalization and global diplomacy. It argues that the use of pacific settlement mechanisms demonstrated the importance of arbitration as a globalizing tool for regulating formal empire and enforcing Western standards of law and order upon non–Western entities and their people.

Arbitration was an integral part of global diplomacy and played a key role in balancing out great power interests on a global scale by offering a methodical means of sorting through some of the inevitable problems involved in empire–building. The emergence of pacific settlement mechanisms in the imperial context stemmed from the imperial powers’ twin needs to firstly consolidate and order their empires and, secondly, to maintain a global modus vivendi with other imperial powers.

One of the key uses of international arbitration in matters of empire was in the delimitation and demarcation of territory. Demarcation involved the process of ascertaining and awarding a boundary, which was usually determined by a nominated arbitrator or a mixed commission, while delimitation was the actual process of topographically marking a prearranged boundary line, which was almost exclusively done by a mixed commission. The use of pacific settlement in determining boundaries reflected the changing pattern of Western imperialism. As historian Lauren Benton describes, Western powers initially focused on controlling trading zones such as ports and riverine regions from the early–modern period up to the

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early nineteenth century. With the increasing recognition of sovereignty by the, however, these powers sought to exercise control over bounded space and the people who lived therein by the mid-nineteenth century.

The demarcation and delimitation of colonies was an attempt to impose sovereignty over uncivilized realms in order to rationalize the expansive and complicated space that frequently encapsulated independent or quasi-independent indigenous groups. Sir Arthur Henry McMahon observed the difficulties of determining boundaries in 1935, referring to his experience with the Durand Line between Afghanistan and British India (now Pakistan):

For purposes of actual demarcation it was necessary not only to determine whether the various tribes concerned should rightly come under British or Afghan rule, but to ascertain—and this was a much more difficult matter—what were the territorial limits of such tribes. Semi—or wholly nomadic as some of these were, they often, at certain seasons of the year, overlapped each other’s territories, and the actual position of their intervening boundary was sometimes a matter of mere supposition or tradition. Needless to say, the raising of any question about their mutual boundary stirred up tribal feeling to a pitch of frenzy, and in the case of some of the strong, warlike tribes concerned, created situations of considerable anxiety and even danger, especially when local sentiment was further inflamed through outside intrigue.

Defining boundaries meant understanding the local terrain, tribal and social groupings, ecosystems, cultural heritage and political allegiance, as well as economic and traditional ways of life for the locals. But above all else, the creation of international boundaries was an attempt to formally place their colonial holdings under a Western–legal frame that legitimated and reinforced their empire-building in the eyes of other imperial powers.

The British empire was overwhelmingly the largest, covering almost one third of the world’s surface and roughly one quarter of the world’s population at its peak in the early twentieth century. It is unsurprising therefore that Great Britain used pacific settlement prolifically in managing its empire. Equally, the use of pacific settlement reflected Great Britain’s interest in rationalizing and ordering their own sprawling imperial holdings. Benton and Lisa Ford argue that after the Napoleonic Wars, Great Britain engaged in a frenetic ‘refurbishment’ of British imperial law to provide better governance structures for inside the colonies and beyond. The aim was to order the empire through the creation of a constitutional rubric in which the Crown sat at the head of a professional bureaucracy, capable of intervening to prevent misrule and despotism in the politically fragmented colonies.

Pacific settlement mechanisms employed in the imperial context had some basis in Great Britain’s ‘rage for order’. Pacific settlement mechanisms provided a similar means of organizing the external relations of its empire. Indeed, even before

11 Benton and Ford, Rage for Order.
the West had configured the *modus vivendi* amongst themselves in order to project onto the global theatre, Great Britain had already developed their own style of pacific settlement to regulate its already extensive stakes on the subcontinent by the eighteenth century. Overlooked by Indian and international historians alike, the first and most significant scheme of quasi–pacific settlement in the emerging modern period was in the Indian subcontinent as part of Great Britain’s struggle for supremacy over the princely states.

As early as the eighteenth century, the Right Honourable East India Company employed arbitral agreements as a means of interceding and resolving disputes amongst the various states and kingdoms of India. The Honourable Company’s use of arbitration reflected both the relative inroads they had made in dominating the Indian political system as well as the weakness of indigenous powers. In the nineteenth century, roughly three fifths of the Indian subcontinent were under direct British control; the princely states, consisting of the remaining two fifths; as well as the tiny French and Portuguese enclaves and tribes on the peripheries.\(^\text{12}\) The princely states ranged in size from large entities such as Hyderabad with 82,700 square miles and small states of only a few acres.\(^\text{13}\) For the British, treaties provided the means of creating imperial authority and entangling Indian rulers into the web of the colonial system.

During the period of Company rule (1600s–1858), successive princely states, as a result of either defeat in war or political pragmatism, came under the orbit of the Honourable Company through treaties of allegiance and fealty between them and the company. The most pervasive aspect to these treaties was the removal of the princely state’s ability to engage in bilateral relations with other powers and the requirement of Indian rulers to submit claims between themselves to the arbitration of the company.\(^\text{14}\) The effect of these two clauses was profound: it disengaged the rulers from the international system and placed them firmly within the company dominated Indian political system. All of these treaties contained generic, and depending on circumstances specific, arbitral clauses. For instance, the conditions of the Rajah of Nungklow’s agreement in the north–east of India, specifically stated that in placing himself under the ‘general control and authority’ of the political officer at Cherrapunji he was obligated to refer all disputes between himself and the local chieftains to the officer.\(^\text{15}\) Such an obligation was part of the standard bargain the princely states made with the Honourable Company across the subcontinent. Arbitral clauses featured as part of their subsidiary system, impressing an image of paternal authority over the pre–existing regional power arrangements. The impact of these arbitration clauses was looked upon with some degree of alarm by many rulers.\(^\text{16}\) The Maharaja of Jaipur in 1816 for example protested that such a clause would extend to the arbitration of claimants over Jaipur; for which there were several,

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\(^\text{13}\) ibid., p. 10–11.


and that it would have scope to assess the relations between the Maharaja and the sirdars (lords).17

Given the sensitivities of rulers, when arbitration was employed it very often failed. In 1802, after the after the jagirdars (feudal lords) revolted against Baji Rao II the Peshwa of Pune and head of the Maratha Confederacy, the Peshwa signed the Treaty of Bassein with the company. In return for protecting the Peshwa, the company demanded the ceding of territory, provisions to allow British forces to be permanently garrisoned in the Peshwa’s territory, as well as the cessation of treaty-making and foreign policy making responsibilities to the British. One of the most contentious clauses was a requirement for the Peshwa to submit outstanding territorial claims concerning the lands of the Nizam of Hyderabad and Maharaja of Baroda to the arbitration of the company.

Ostensibly, the company’s aim was to maintain the internal cohesion of the Maratha confederacy by resolving friction amongst the states of the confederacy as part of its wider effort at building an alliance system that could maintain the stability on the subcontinent necessary for the Honourable Company’s commercial activities.18 In effect, however, the agreement made the Peshwa into a feudal vassal of the British. The arbitral clauses emphasised this point particularly. The Peshwa, who saw himself as the supreme head of the Maratha Confederacy (of which the Nizam and Maharaja were party to), greatly resented the idea of the British being able to intervene in affairs between sovereign and princes.19 Nonetheless, the Peshwa was aware that his tenuous authority over the confederacy meant that he was unable to enforce his claims against the rulers.20 Reluctantly, he agreed to submit his differences with the Nizam and Maharaja to the Governor-General.

The British negotiated a compromise award in which the Nizam would set aside land for the Peshwa if the Peshwa in turn agreed to end the chout (tribute).21 Unfortunately, the Peshwa was unsatisfied with the arrangement and the arbitration went nowhere. Similarly, the arbitration between the Peshwa and the Gaekward regarding the Peshwa’s territorial and economic interests in Gujrat dragged on until the British suspended their arbitration.22 Not long after the Treaty of Bassein, it had come largely apparent as far as the British were concerned that the Peshwa was incapable of compromising with the rulers of the other princely states and unwilling to exercise moderation in its dealings with the jagirdars. The Peshwa did not help his case, when he was strongly implicated in the assassination of the Gaekward’s prime minister, who had arrived to negotiate a settlement, at the court in Pune in 1815. The British negotiated another treaty in 1817 that pointed guilt of the murder at one of the Peshwa’s ministers Trimbakji Dengale and forced the Peshwa to surrender territory. The failure of both arbitrations as well as the cloud surrounding the murder of the Maharaja’s prime minister and the general belligerency of the Peshwa, resulted in hostilities breaking out the same year, ending with the defeat of the Peshwa and

17 Prinsep, A Narrative of the Political and Military Transactions of British India, pp. 152–153.
19 See ‘Letter from the Governor General to the Secret Committee; dated the 25th November 1802’, HCPP, vol. XII.1, no. 116, 1804, p. 36.
20 Henry Thoby Prinsep, A Narrative of the Political and Military Transactions of British India, p. 75.
21 ibid.
22 ibid.
the dissolution of the confederacy in 1818.

By the opening decades of the nineteenth century, the political arrangement of India was clearly one defined according to the rules set by the Honourable Company. After the company defeated the forces of the Peshwa, it had in effect attained a virtual hegemony over the subcontinent—but a patchwork one at that. The system of paramountcy between the company and the princely states meant that the states (of which there were some six hundred) were not part of the international system but were embedded within the closed off network of the British imperial world.23 Paramountcy created a client–based relationship between the princely states and the Indian government, founded on British military supremacy recognised by legal authority.24

While India sat outside the realm of international law, the Indian government, which overtook responsibilities for British India from the Company in 1858, nevertheless created a politico–legal culture to rule over the subcontinent, a type of ‘Indian Political Law’, as colonial official Sir William Lee–Warner put it, or alternatively an institution sui generis, as Buta Singh argues in his doctoral thesis on paramountcy.25 As a report tabled for parliament argued sometime later:

...when they [the Princely States] came to transfer to the Crown those sovereign rights which, in the hands of the Crown, constitute paramountcy, international law still applied to the act of transfer. But from that moment onwards the relationship between the states and the Crown as Paramount power ceased to be one of which international law takes cognizance.26

Once company rule ended in 1858 through the Government of India Act, the Crown expanded the subsidiary system and increased the efficiency of third party methods of resolution in India. In 1877, a council of arbitration made up of five Privy Councillors was created in order to provide a mechanism for resolving financial claims between the Imperial Government and the Indian Government. Similarly, in the 1920s a court of arbitration which rulers could refer questions involving the Indian Government if they were dissatisfied was established.27

Arbitration was a key tool in managing India. The jewel of the British empire was too large in terms of land mass and population and too sophisticated in its pre–existing political structures to be simply ruled directly by the British. The use arbitral mechanisms over the princely states was one of many tools for the maintenance and recognition of British authority over the subcontinent. The first major instance of this was in 1793, when Governor General Lord Cornwallis created a committee of arbitrators to liquidate the large debts of Muhammad Ali Khan Walla Jah, the Nawab of the Carnatic. The Nawab had borrowed heavily from the nabobs in the wake of the devastating Carnatic Wars against the French. The nabobs were a wealthy class of

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25 ‘Indian Political Law’ paraphrased from ibid., p. 38.
27 See ibid.
British merchants who made their fortunes on the subcontinent.\textsuperscript{28} Their political influence was keenly felt back in London during the 1780s when the Nawab defaulted on his debt, which numbered in the millions of pounds. The scandal in London over the debt compelled Whig MP Edmund Burke to make an impassioned attack on the nabobs in 1785 as well as a plea in support of the Nawab, who had fought for the Crown.\textsuperscript{29} By the time the commission had finally liquidated the claims in 1806, Azim–ud–Daula the new Nawab had been forced to cede most of his holdings along the Coromandel Coast to the British government, which took over the debt. Burke’s attempt to reign in the crony capitalism of the Honourable Company, not just in his defence of the Nawab, underscored the fact that much of India was entangled through a type of contract law that relied on the inequality of states and the supremacy of the British.

In practice, pacific settlement mechanisms were not employed so much to resolve differences between princely states, but rather offered intrusive ways of intervening in the affairs of the princely states. A particularly notable instance of this was in 1875, when the Government of India created a commission in order to investigate charges against the Maharaja of Baroda Malharrao for attempting to poison the British resident Colonel Phayre. With the appointment of Phayre in 1873, British authorities began clamping down on what they regarded as the Maharaja’s misrule of Baroda.\textsuperscript{30} The power of the resident at the durbar, or royal court Baroda had diminished greatly with the ascension of Malharrao in 1870, who had a tendency to rule arbitrarily without any British oversight.\textsuperscript{31}

Eager to regain control over the state, the suspected poisoning of Phayre in 1874 provided a unique opportunity to resolve the issue. In what was a particularly sensitive case, the Viceroy Lord Northbrook appointed a commission consisting of three British commissioners—Sir Richard Couch, the president of the commission, and army officers Sirs Richard John Meade and Philip Sandys Mevill—and three Indian commissioners—the Maharajas of Jaipur and Gwalior and Sir Dinkar Rao, the former Diwan of Gwalior.\textsuperscript{32} The Advocate–General for Bombay Sir Andrew Scoble led the prosecution and eminent barrister Serjeant William Ballantine defended Malharrao. Ballantine succeeded in creating a hung jury with all of the Indian commissioners finding Malharrao not guilty of the charge and the British commissioners siding with the prosecution.\textsuperscript{33} Relations between Calcutta and Malharrao however were broke beyond repair. Despite the outcome of the commission, Northbrook passed orders deposing Malharrao on charges of gross

\begin{footnotes}
\item[29] See “Speech delivered by the right honourable Edmund Burke, on the motion made “For papers relative to the directions for charging the Nabob of Arcot’s private Debts to Europeans on the revenues of the Carnatic”", in \textit{Parliamentary Register 1780–1796}, vol. XVIII, 1785, pp. 596–626.
\item[31] ibid., pp. 108–109.
\end{footnotes}
misrule. Rather than removing the Maharaja through legal proceedings, the Indian government used its paramountcy to remove him on political grounds.

The Indian experience of arbitration was a particularly important example of British attempts at regulating and controlling their empire. In light of the vast and complex arrangements of pacific settlement in the Indian subcontinent, and given the similarly pervasive role that Western-defined standards of law would play in the nineteenth century on other non-Western polities, the Indian example is the most important of the first nineteenth-century forays of pacific settlement in the imperial context. The establishment of consular courts and tribunals in Africa, Asia, and the Middle East, which will be discussed in Chapter 4, represented a more rigorous and methodical attempt at expanding Western norms and legal standards in empires, both formal and informal.

With a general resurgence in empire building, pacific settlement became a particularly important tool in managing inter-imperial relations from the 1870s onwards. The success of the *Alabama* claims arbitration coincided with this spate in global arbitrations, serving to highlight how pacific settlement had entered into a new phase of legitimacy as a particularly versatile tool for the global context. While the *Alabama* claims at the time received and indeed even today continues to receive more scholarly attention, arbitration was used expansively in various corners of the globe, profoundly impacting the boundaries of peripheral regions. The 1870s became the decade in which arbitration was well and truly legitimated as great powers sought strategies for maintaining the same standards of moderation and restraint in North America and Europe in the peripheral regions of Asia, Africa, and beyond. During this period, the great powers began conceiving of a more globally-based balance of power. By 1870, the theatre of great power politics had sprawled out across the globe. Arbitration therefore became vitally important in building and consolidating a *modus vivendi* in the colonies and overseas holdings of the powers.

Arbitration had become an amenable and ubiquitous feature of the international system and indeed it seemed a tool innately suited for resolving global problems. Even Germany, the so-called nation of ‘blood and iron’, proved more than willing to submit a significant number of questions regarding their colonies to arbitration. In 1885, Bismarck suggested arbitrating the issue of the ownership of the Caroline Islands to Pope Leo XIII. Spain had initially been reluctant to resolve the issue through arbitration, preferring instead to settle the issue through direct negotiation. However, as Francis X. Hezel identifies, Catholic Spain could hardly refuse an offer, and Bismarck, fully aware that Germany’s claims on the islands were slim and regarding the islands as expendable, felt that referring it to the Pope would offer an honourable way out of the impasse.34

Again in 1889, German colonial authorities were questioning the legitimacy of the British East Africa Company’s concession of the island of Lamu, off the coast of Kenya. Without hesitation, Bismarck promptly suggested to prime minister Lord Salisbury that the matter be put to arbitration in order to ‘avoid all friction’ between the two governments.35 Prominent Belgian statesman Baron Lambermont rendered an award the same year. This arbitration preceded the Heligoland–Zanzibar treaty of

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35 Malet to Salisbury, 19 January 1889, FO 84/2012.
1890 in which Great Britain agreed to cede the North Sea island of Heligoland to Germany in return for Germany’s cession to Great Britain of its claims over Zanzibar. An Anglo–German Commission was subsequently created for the delimitation of the boundary between both spheres of influence on the East Coast of Africa in what is modern-day Kenya and Tanzania.

Germany’s use of arbitration in these instances were hardly surprising. Statesmen placed a premium on maintaining peaceful, working relations more so in the peripheral regions of the globe, not because they were unimportant but because the complicated nature of territorial questions in Africa and Asia necessitated rational and civilized means of arranging solutions. Even after the adoption of Kaiser Wilhelm II’s expansionist policy of Weltpolitik in 1891, Germany still sought a *modus vivendi*, signing a general arbitration treaty with Great Britain in 1904 and even referring the contentious Casablanca affair with France to arbitration in 1908.\(^{36}\)

Africa was the textbook example of the ability of the great powers to come to mutual beneficial arrangements. The great power’s ‘scramble’ for colonies in Africa was the climax of nineteenth-century Western imperialism. Such was the success of European efforts at penetrating the hinterland of the ‘Dark continent’ by 1914, the only independent African states left were Liberia and Ethiopia. Because much of the African continent was devoid of formal boundaries, Western powers invented boundaries setting out their respective spheres and colonial holdings, relying mostly on commissions to delimit or demarcate the boundaries. Most of this occurred as a result of bilateral agreements between the colonial powers designed to delimit their respective spheres of influence over key regions. Such agreements included the Heligoland–Zanzibar of 1890 as well as several follow up agreements between Great Britain and Germany in 1893 and the Anglo–Italian Treaty of 1891 which recognized the British sphere of influence over the Upper Nile and set out the respective spheres of influence for the other contracting parties.\(^ {37}\) In 1898, an Anglo–French agreement partitioned the disputed region of northern Nigeria, marking ‘the end of one period and the beginning of a new one in West African history’, as one Colonial Office official noted.\(^ {38}\) The convention specifically focused on the Sokoto Caliphate encompassing a diverse range of emirates and ethnic groups. In 1902, a joint Anglo–French commission was assembled in order to delimit the frontier between the river Niger and Lake Chad (i.e. northern Nigeria), under the terms of the agreement.\(^ {39}\) At the time of the signing of the convention, delegates had already laid out the geometric coordinates of the border. As Western knowledge of the region was scanty, it fell to the commission to define and lay the border.

The most crucial example of the role that pacific settlement played in managing inter-imperial relations was in Central Asia during what became known as the ‘great game’ in the latter half of the nineteenth-century. This ‘game’ between the Great Britain and Russia in Central Asia was a manifestation of the strategic diplomacy employed by both potentates to stabilize the Eurasian geopolitical core—the veritable pivot

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\(^{36}\) For more on both the treaty and the Casablanca affair, see Chapter 6.  
between Asia and Europe—each to their own benefit. From two different ends, Great Britain from its southeast position in India and Russia from the north sought to extend their influence in Central Asia. The main focus of their efforts was on preventing the weaker states at the core of Western and Central Asia, namely the Ottoman Empire, Persia, and Afghanistan, from falling under the influence of the other, whilst in turn placing restraints on these states.

In the 1870s, pacific settlement became a key tool for managing this complex region. Fear of Persian invasion of the Balochistan (the sprawling desert region sitting across Afghanistan, British India (modern day Pakistan), and Persia) spurred a general change in policy for the British, which had previously attempted to keep Balochistan as an informal intermediary zone. Several boundary arbitrations created permanent boundaries between Afghanistan, British India, and Persia, in a sense formalizing the hinterlands and removing the possibility for conflict over territory. By 1905, the hazy frontier zones between these three countries transformed into a series of undulating permanent boundaries. The formalization of boundaries kept the regional balance of power, preventing the so-called Great Game from being anything other than a low-level competition between two imperial powers.

The use of pacific settlement in Central Asia was borne out of the complex geopolitics of the region. With British hegemony on the Indian subcontinent virtually attained in 1818, the Honourable Company began pushing up into the north-Western hinterland, waging war against the Sikh empire based in Lahore until its dissolution in 1849. From the mid-nineteenth century, Russia began steadily extending its influence over the various khanates in Central Asia, under the guise of ‘civilization’ as Russian foreign minister Prince Gorchakov put it. In 1865, Tashkent fell to the Russians effectively ending their ‘stationary’ position and exposing the other vulnerable khanates to Russian takeovers. Bukhara and Samarkand fell in 1868. By 1873, Russia had taken over most of the remaining khanates and firmly entrenched their position in Central Asia with the construction of the Trans-Caspian railway in 1879. The only effective intermediary states separating Great Britain and Russia were Afghanistan and Persia.

For much of the remaining decades, both great powers shadowed each other from a distance, maintaining a watchful vigilance over one another, while attempting to co-opt and control Afghanistan and Persia as satellites. For Great Britain, the aim was to prevent Russia from dominating the region and to ensure that the defensive bulwark of Central Asia between Russia and British India was maintained. This was in keeping with the unofficial external strategy defence of British India based on the principle of intermediary and buffer zones in order to stave off potential invasion from other powers. Siam kept Great Britain (in Burma) and France (in Indochina)

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41 Telegram from Thornton, 22 March 1870, FO 60/386.


at a safe distance. At the same time, Burma kept Siam and France away from the important Bengal region and bulked up eastern flank of British India. Equally, the Himalayan regions of Tibet, Sikkim, and Bhutan provided a roof over the top of the important provinces of the Hindustan heartland, insulating India from China. In a similar fashion, Afghanistan and Persia blocked Russia's invasion route to the Punjab and beyond.

Within each geo-political theatre, British India attempted to maintain enough space between them and other powers. In general, this strategy proved effective in safeguarding the subcontinent from the external threat of invasion. The only regional power capable of mounting an invasion of India was Russia and even then, war was rightly seen as impossible. As a paper prepared for the Imperial Defence Committee noted in 1906:

A Russian campaign against India would entail special conditions differing from those of almost all wars in modern times. The invaders would realize that, in the most favourable circumstances, a successful issue could not be expected in less than two and a half or three years and that no considerable engagement could be fought for more than eighteen months during which an expenditure of fully £100,000,000 [...] would be incurred. In the interim, the best part of the Russian army would be massed in idleness in the inhospitable regions of Central Asia, where sickness, discontent, and general deterioration would supervene. Meanwhile the position of Russia in Europe would be sensibly weakened, and the large forces which the British Empire, if fighting for existence, could create would be steadily growing in strength.

While British officials rightly viewed the possibility of a Russian invasion of India as impossible, Russia was still in a position to bear pressure on Great Britain. Russia was eager to consolidate its holdings in Central Asia, with an aim towards creating a


47 Number of Troops that can be Maintained by a Single Line of Railway (With special reference to a Russian Advance against India via Herat and Kandahar), no. 22, CAB [Records of the Cabinet Office] 38/11. Lord Lansdowne also related a conversation he had with the Tsar at Balmoral in 1896, which demonstrated the implausibility of a Russian invasion on India: ‘On India he [the tsar] gave spontaneously the strongest assurances, saying he was so glad he personally seen India, as it had convinced him of the absurdity of Russia ever trying to obtain it. He said that a few Russians had been induced to express a wish for an attack on India by the folly of our newspapers and public men, who were always talking of it; but no sane Russian Emperor could ever dream of it.’ Cabinet Memorandum, 27 September 1896, no. 35, CAB 37/42.

natural defensive zone up to the Hindu Kush.\textsuperscript{49} In that sense, Russia regarded their expansion in Asia as a 'logical extension of territory'.\textsuperscript{50} By contrast, Great Britain saw its role 'as a defensive one' against Russia which constituted the primary threat to India.\textsuperscript{51}

For Great Britain, Balochistan acted as an interlocking set of safety zones, providing multiple intermediaries against Russia as well as Persia and Afghanistan. By the late nineteenth century, the British portion of Balochistan extended as far as the deserts of Makran and Sindh, peppered with tribes, other small polities, as well as the predominating Khanate of Kalat. These states, while friendly to Great Britain, where nevertheless regarded to be neutral parties between Persia and Great Britain in that region. The British marvelled at their policy, as the Indian Government wrote to the Secretary of State for India in a memo in September 1869:

As our Western frontier is now situated, we are comparatively free from the necessity of frequent communication with Persia, Turkey, Russia, or any great Asiatic power.

It will ever be our object, by the cultivation of the most friendly relations with Khelat [i.e. Kalat], Afghanistan, and the minor nations and tribes on our border, to show them that from us they need have no fear of aggression, and that it is our policy, without making their neutrality the subject of treaty with any other Power, to maintain their independence, and secure for them a national existence.\textsuperscript{52}

However, there were concerns in India that Great Britain’s relative non–interference might put at risk the entire Central Asian region. In the same memo, the Indian government also warned of the fragility of this policy should Persia seek to disrupt the status quo:

But if, without objection or effort on our part, a great power like Persia should ever absorb the regions lying between Sindh and Makran (desert and inhospitable though they may be), the safe and prudent policy which we deem essential to British interests would be rudely terminated.

We should open to the charge that we had permitted a friendly people to be enslaved; our moral influence with the neighbouring states would be seriously weakened, and we should be brought at once face to face with a great power, with whom our diplomatic relations would ever be a source of the greatest anxiety and danger.\textsuperscript{53}

The government’s warning in 1869 to the metropole was not hypothetical. Leaving these buffer zones free to their own devices created a power vacuum, which both Persia and Afghanistan were increasingly interested in filling. For much of the latter half of the nineteenth century, both Islamic polities sought to develop into modern nation states, partially as a result of the creeping presence of Russia and Great

\textsuperscript{49} ibid. p. 2
\textsuperscript{51} ibid.
\textsuperscript{52} Mayo, Mansfield, Durand, Maine, Strachey, Ellis to Argyll, 2 September 1869, FO 60/385.
\textsuperscript{53} ibid.
Britain and the exigencies of dealing with their presence on Western terms. Central to this largely Western process of nationhood was the territorialisation of their political identity by creating formal borders and exercising centralized political control over their territory.

From the mid-century onwards, Persia had increasingly sought to extend its influence into Afghanistan and Balochistan. As far back as 1847, Persian officials had shown designs on the Afghan city of Herat, prompting the British to issue a warning to the Persian Government of the ‘evil consequences’ that would arise. Regardless, the Persian’s continued to harass the Afghans over the question of territory for a number of decades—compelling Great Britain to declare war against Persia in 1856. The subsequent Treaty of Paris of 1857 signed between the British and the Persian, called for Persia to surrender claims over Herat and stay out of internal affairs of Afghanistan. However, the situation was not to last. In March 1860, Persian aggression with local tribes in the northern portion of Balochistan in Sistan had prompted Lord Mayo the Viceroy of India to write to London to push the British Government to resolve the frontiers of Balochistan. This fell on deaf ears. To make matters worse, when Afghanistan and Persia were at loggerheads over Sistan again in 1863, foreign secretary Lord Russell—thoroughly sick of entire affray and unwilling to take a firm stance on the unfathomable political intricacies of Balochistan—stated in stark terms that it was up to the Afghans and Persians to resolve their territorial differences ‘by the force of arms’. Two years later, Persia took up Russell on his suggestion invading Sistan and subduing the Baloch and Afghan tribes in the area.

Persian expansionist policies in the northern portion of Balochistan affected primarily Afghanistan, allowing Russell to take an indifferent stance. However, by the late 1860’s, the Qajar dynasty also laid extensive claims in Great Britain’s sphere of interest including Kalat and the Makran Coast. Part of the problem lay in the telegraph convention signed in 1868 between the two governments. After the Indian Rebellion, the British sorely needed to enhance its telegraphic communications between the metropole and the empire. In 1861, when the British finally got around to exploring the possibility of setting up a line along the Makran Coast to the Persian port city of Bunder Abbas, the uncertainty of the territorial situation was apparent.

In 1865, Persia capitalized on the situation, offering terms to determine a formal boundary between the two states. The offer was rejected by the British, who did not want to alienate the Baloch tribes by the delimitation of a boundary that could potentially divide Balochistan into Persian and British territory. Their focus was to create a space for telegraph lines, while allowing the tribes some degree of independence. Eventually the two agreed to a telegraphic convention in 1868. The convention which followed on from a previous one secured the telegraphs through disputed territory but did not formalize the boundaries beyond acknowledging the limits of the Persian influence. The Shah however used the terms of the 1868

55 Foreign Office to Sheil, 6 January 1847, FO 60/128.
56 Mayo to Argyll, 10 March 1869, FO 60/385.
57 ibid.
58 Mayo, Taylor, Durant, and Stracey to Argyll, 13 November 1869, FO 65/385.
59 See ‘Correspondence on the Progress of Persia in Mekran and Western Beluchistan’, FO 65/385.
60 ibid.
telegraph convention as Great Britain’s tacit recognition of Persia’s territorial rights in Makran, Banda Abbas, and Sindh. The British naturally disputed that, prompting Persia to claim a breach of treaty conditions.

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The territorial problems of both Makran and Sistan demonstrated the geopolitical necessity of defining each state’s respective share of Balochistan. As the India Office noted to Baron Hammond in 1869:

It is certain that the Persian frontier is very ill-defined, and that the existing uncertainty with respect to territorial rights is the cause of much difficulty and embarrassment to the British Government.

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In terms of the Sistan territory dispute, Russell’s successor Lord Clarendon in 1868, eager to resolve the Perso–Afghan stand-off and to improve on Russell’s counterproductive position, came around to the view that the question of Sistan should be resolved through arbitration. Given the lengths Great Britain had gone to keep the Persian encroachment on Afghanistan in check, arbitrating the border was necessary in order to resolve the Afghan–Persian frontier and avert the collapse of Afghanistan.

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In terms of the British–Persian boundary arbitrations, the point of these was not so much to define Great Britain’s Western frontier as much as it was to define Persia’s eastern frontier. The tendency of Persia to extend eastwards caused conflict with local tribes and challenged Great Britain’s supposed predominance in the region. By 1870, the British were walking a tight rope balancing out Persian demands for a formalized boundary, local tribal demands to be left to their own devices, and the need to maintain stability in Central Asia as a whole. In a briefing to the secretary of state for India the Duke of Argyll, the intelligence section of the Indian Government concluded that if Great Britain failed to act, particularly in light of Persian aggressive stance towards local tribe:

We should be open to the charge that we had permitted a friendly people to be enslaved; our moral influence with the neighbouring states would be seriously weakened, and we should be brought at once face to face with a great power, with whom our diplomatic relations would ever be a source of the greatest anxiety and danger.

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Moreover, given the inroads that Russia was making into Central Asia, the Makran frontier could conceivably be a type of cordon sanitaire no less important than the frontier towards Afghanistan and the North–East, as the Viceroy’s secretary explained to the India Office.

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To the British, it seemed as though they had little choice but to abort its policy of avoiding formalised boundaries. To that end, an arbitral commission presented itself as the only conceivable way to determine the boundaries given the considerable dearth of knowledge on the geography of the region for all parties. Eager to guarantee

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61 Mayo, Mansfield, Durand, Maine, Strachey, Ellis to Argyll, 2 September 1869, FO 60/385.
62 ibid.
63 India Office to Hammond, 5 May 1869, FO 65/385.
64 Mayo, Napier of Magdala, Strachey, Temple, Stephen, Ellis, and Norman to Argyll, 7 July 1870, FO 60/386.
65 Mayo, Mansfield, Durand, Maine, Strachey, Ellis to Argyll, 2 September 1869, FO 60/385.
66 Gonne to Aitchison, 23 October 1869, FO 60/385
their territorial rights, Persia proved more than willing to submit the boundary questions to arbitration in keeping with article VI of the Treaty of Paris. In no small measure, the use of arbitration provided both Afghanistan and Persia with the opportunity to create an internationally recognized boundary over what was in reality an autonomous tribal region, all under British acquiescence. In that sense, all parties had something to gain in cauterizing Balochistan.

In 1870, as the Franco-Prussian War was underway and the Alabama claims dispute was reaching a highpoint, arbitration was successfully employed by Afghanistan, Great Britain, and Persia in Central Asia. That year two arbitral commissions were created, both headed by Major-General Sir Frederic Goldsmid, who acted as the final arbitrator. The first was an Afghan–British–Persian commission for the Sistan boundary. The second was a British–Persian commission for the Makran boundary. The Makran arbitration was a relatively seamless affair: the commission met on the frontier in January 1871 and by September the final boundary was signed off in Tehran. The Sistan arbitration on the other hand was a particularly difficult affair. The inhospitable conditions of the region were compounded by the fact that Sistan was in a state of rebellion. Then there was the Afghan–Persian enmity that brought the Afghan and Persian commissioners at odds with one another. Nevertheless, Goldsmith rendered an award at Tehran in August 1872.

Balochistan is frequently cited as a prime example of the disregard that colonial authorities had for local people in delimiting frontiers. Much of this perspective is borne out of the contemporary geopolitical problems of Afghanistan and Pakistan and the subsequent rise of Baloch nationalism. However, the Baloch tribes were undoubtedly a pawn in the geopolitics of the great game. The cauterization of Balochistan signaled the transformation of Central Asia from a frontier region into a Westphalian system of boundaries and nation states. Numerous other boundary disputes in Central Asia demonstrated irreversible trend towards the territorialisation of space as well as the capacity of pacific settlement to manage the geopolitics of the region.

After conquering Turkistan in 1885, Russia seized and occupied Afghan forts in the Panjdeh oasis, north of the Afghan city of Herat. The threat of further Russian expansion into Afghan territory triggered the Panjdeh incident. After sensitive negotiations, Great Britain and Russia agreed to set up a joint commission in order to delineate the northern frontier of Afghanistan with Russia. The commission created a boundary including the disputed Panjdeh territory firmly in Russian territory. The arbitration was hardly to the benefit of Afghanistan, but for Great Britain it effectively put a halt to Russia expansion.

68 ibid., p. 244.
69 Darby, Modern Pacific Settlements, p. 28.
70 ibid., p. 27.
From 1885 to 1907, several more boundary settlements occurred. In 1891, Great Britain at the behest of the Afghan Amir established a joint commission to demarcate the frontier between Afghanistan and India. The commission met in 1894 and completed its work in 1896, creating the so-called Durand Line. In 1896, the central Baloch region underwent a boundary arbitration after Persian aggression against the British princely state of Kharan compelled the British to react with a boundary commission. In this instance, arbitration was borne out of a fear that Persia was once again attempting to extend their influence eastwards. Persia had encroached into the British half of Balochistan, from Jālq. Their aim, the British surmised, was to ‘harry or cajole’ key chieftains, such as the Khan of Kharan, into submission while ‘nibbling’ at those tracts which were loosely dependent on princely states in the region. The British therefore regarded the boundary arbitration as the best means to put an end to Persian ‘intrigue’ and ‘aggression’ in Balochistan, reassure the ‘people and rulers’ of Mekran that the British had not lost interest in them, and finally act as a ‘countermove’ to Russia to demonstrate that Britain had ‘not abandoned the field to Russia, and do not fear her’.74

Certainly, Russia featured strongly in all of Great Britain’s calculations of Central Asia. It was for this reason that the creation of formal boundaries was of paramount importance in containing Russia as well as the intermediary states of Persia and Afghanistan. Pacific settlement provided, for Great Britain, the least officious means of creating mutually acceptable boundaries, by which all parties could respect. By 1907, Great Britain and Russia reached a general accord on their respective spheres of influence in Central Asia, thereby paving the way for the Anglo-Russian entente. In no small measure, the use of pacific settlement played a confidence-building role in establishing this entente. The boundary disputes from 1870 to 1907 had the potential to act as flashpoints for conflict, however, they were managed a relative degree of restraint.

One of the more irregular and undoubtedly most contentious instances of arbitration involving empire was the long-running Venezuela–British Guiana boundary dispute. Although the dispute involved the British colony of Guiana and Venezuela, the crisis that it created in 1895 undoubtedly touched a nerve in Washington, precipitating a remarkable change in American foreign policy. Whereas Africa and Asia was ostensibly a free for all, as far as most of the great powers were concerned, the Western hemisphere was a more complicated situation. The Venezuelan crisis of 1895 reflected a pivot to Latin America by the United States, redefining the Monroe doctrine and re-positioning the United States as a ‘protective’ imperial power in the Western hemisphere.75 For the United States, pacific settlement featured as a tool through which they could interpose in European–Latin American disputes and maintain its protective stance over the Western hemisphere.

The particulars of the dispute centred on the boundaries between Great Britain’s plantation colony of Guiana and Venezuela. Since the founding of Venezuela in 1830, the question over the boundary with Guiana had been an ongoing one. German naturalist Robert Schomburgk was commissioned by the British to survey...

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73 ‘Persia and North–West Baluchistan’, 19 September 1893, FO 60/627.
74 Ibid.

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the Western boundaries of Guiana in 1841. Unfortunately, the British authorities were not particularly eager to push for a settlement based on Schomburgk’s survey—the Schomburgk line was not officially published until 1886.

In 1844, Venezuela put forward the Essequibo river as the natural frontier, which would effectively reduce British Guiana to a sliver compared to the Schomburgk’s proposed line. Aberdeen counteroffered that same year with an equally advantageous line for Venezuela, at least compared to the Schomburgk line, with the boundary beginning at the Moruka river in the north. This offer was rejected and negotiations on the boundary question were not resumed until 1878. In what became a series of ‘barren diplomatic exchanges’, Great Britain and Venezuela continued negotiations until 1882, when both came to the conclusion that arbitration was the only option. A treaty was agreed to in 1886 until the Gladstone government was replaced by the conservative Salisbury government which declined the arbitration clause. Both parties were seeking to attain the most advantageous boundary for themselves. Venezuela asserted their claim as representing the whole territory between the Orinoco and the Essequibo, based on the Captaincy-General of Venezuela of the Spanish colonial period. In order to ensure that any territorial settlement did not result in any loss in territory, Great Britain did not want to give up on the full extent of its claim while admitting Venezuela’s claim.

Continued Venezuelan encroachment on the disputed territory and complaints by settlers in 1886, compelled the British Government to proclaim the Schomburgk line as the minimum limit of Great Britain’s territorial claim. The American ambassador in Caracas offered their nations good office to arbitrate the boundary dispute, however Venezuela broke off relations in 1887 in response to the British declaration.

After seven years of no diplomatic contact and no end to the dispute in sight, Venezuela appealed to the United States for a resolution, citing the Monroe doctrine. American William Lindsay Scruggs, acting as an advisor for the Venezuelan government, published a pamphlet British Aggressions in Venezuela: The Monroe Doctrine on Trial in the summer of 1894. Appealing to the Monroe doctrine, the pamphlet warned that if Britain succeeded in its immoderate demands then it would be tantamount to a victory against the United States, gaining Great Britain control over a vital region of the Western hemisphere. Scruggs propagated on behalf of the Venezuelans, ensuring that the pamphlet was distributed to President Grover Cleveland, state governors, congressmen, and journalists to ensure it made an impact in Washington and in the press. To stoke the fires, Venezuela further aggravated

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77 Olney to Sayard, 20 July 1895, FO 80/362.
78 Ibid.
79 Ibid.
80 Ibid.
81 Ibid.
82 Memorandum by Mallet, 27 May 1895, FO 80/362.
83 Kimberley to Pauncefote, 23 February 1895, FO 80/361.
the situation by crossing the Schomburgk line and occupying land one mile from a British police station on October 1894.\footnote{Memorandum by Mallet, 27 May 1895, FO 80/362. The British government made formal protests, but the Venezuelan Government refused to withdraw asserting their right over the occupied land. Consequently, the British Colonial police were ordered to retake possession of the land occupied by the Venezuelans once it was vacated and to hold the land unless threatened with force. In March 1895, British police retook the land only to be arrested by the Venezuelans. Eventually, all individuals were eventually released.}

By 1895, political interest in Washington over the affray had well and truly been sparked as a result of Scruggs pamphlet and Venezuelan lobbying. The Cleveland administration reacted in kind. Going into a particularly longwinded spiel on the finer points of the Monroe doctrine, Richard Olney wrote a note to the British on 20 July 1895 that the Venezuela boundary dispute fell within the purview of the Monroe doctrine (the doctrine of ‘American public law’).\footnote{Olney to Sayard, 20 July 1895, FO 80/362.} In what became an infamous outburst, the secretary of state stressed:

> Today, the United States is practically sovereign on this continent, and its fiat is law upon the subjects to which its confines its interposition. Why?...
> It is because, in addition to all other grounds, its infinite resources combined with its isolated position render it master of the situation and practically invulnerable as against any or all other powers.\footnote{ibid.}

Olney forcefully pushed Great Britain to accept arbitration on the dispute. The Olney interpretation of the Monroe doctrine (sometimes called the Olney Corollary) claimed that the United States had the prerogative to mediate boundary disputes in the Western hemisphere. Olney’s ‘twenty–inch gun’ dispatch specifically played into populist fears of British imperial adventure in the Western hemisphere and the belief that the United States had a special position in the region to ward off such advancements.\footnote{Sexton, *The Monroe Doctrine*, pp. 203–205.} Historian Jay Sexton argues that the conservative Democrat Cleveland, whose foreign policy outlook was largely non–interventionalist, pivoted in 1895 in order to counter against the populist wing of the Democrats as well as the Republicans, who were both advocates of forceful foreign policy particularly in terms of the Monroe doctrine.\footnote{ibid. pp. 202–205.}

Historian Paul Gibb argues that the British bungled their response to Olney’s dispatch, needlessly drawing out the dispute and overlooking the finer points of America’s concerns.\footnote{See Gibb, ‘Unmastery Inactivity?’} While bewildered that the American government seemed prepared to support Venezuela’s ‘bogus’ claims, the Salisbury government was largely unfazed.\footnote{See memorandum dated 2 September 1895 in Colonial Office to Foreign Office, 11 September 1895, FO 80/363.} Certainly, the Law Officers seemed adamant that the Monroe doctrine had no place in public international law.\footnote{Law Officers to Salisbury, 12 October 1895, FO 80/363.} With that in mind, Salisbury responded coolly to Olney’s note in November, questioning his interpretation of the Monroe doctrine:

> The Government of the United States is not entitled to affirm as a
universal proposition, with reference to a number of independent States for whose conduct it assumes no responsibility, that its interests are necessarily concerned in whatever may befall those States, simply because they are situated in the Western Hemisphere. 94

The British response stoked the flames in Washington with Cleveland publicly announcing his own plan to arbitrate the dispute and enforce the outcome militarily if necessary in November. Similar to the Alabama claims dispute, the standoff between Great Britain and the United States eventually ran out of steam. In January 1896, the Kaiser’s telegram to the President of the Transvaal Republic, congratulating the republic for defeating British irregulars during a raiding expedition, had well and truly captured British attention away from the relatively obscure Venezuelan boundary. 95 Moreover, Cleveland’s bellicose announcement created a ‘small panic’ in the New York stock market. 96

Nevertheless, the dispute had placed Anglo-American relations in a difficult spot, requiring Great Britain to concede against the more forceful American position. 97 The Olney corollary was a ham-fisted announcement to the world that the United States was now a great power on the rise. 98 All Great Britain could do was to accept this reality. Although Olney was at pains in his note to emphasize that the fact that United States had no plans to subjugate Latin America, the forceful interpretation of the Monroe doctrine essentially interlinked its global status with its hegemonic role over the Western hemisphere. By 1895, the United States had created the outlines for a de facto imperial control over Latin America. The full extent of the United States’ interest in the region would become apparent in the early twentieth century as its commercial interests deepened particularly in Central America. 99

The British agreed to submit the boundary dispute with Venezuela to arbitration in 1897. If Venezuela thought they had succeeded in bringing the United States to bear on the British in support of their cause, they were sorely disappointed when the treaty of arbitration that was signed by Great Britain and the United States failed to live up to expectations. 100 The treaty gave specific instructions to the arbitrators to take into account land had been settled and occupied—effectively circumscribing Venezuela’s extensive claims over British Guiana. 101 The Venezuelan President likened the treaty to a ‘national humiliation’. 102 The actions of the Cleveland administration however was not on promoting Venezuelan interests but on asserting American imperial interests over the Western hemisphere. 103 For much of the century, the Monroe doctrine had become a largely passive idea in United States foreign policy. However, Olney had expanded the role of the Monroe doctrine

98 ibid.
99 See Chapter 4.
101 ibid., pp. 159–160.
102 ibid., p. 161.
103 ibid., p. 151.
to fit the particular context of the dispute, demonstrating the United States’ evolving understanding of the Monroe doctrine and of the United States vital interests vis-à-vis the Western hemisphere.

In 1898, a tribunal met in Paris. In what seemed more like an Anglo–American arbitration the arbitrators selected by Venezuela were Americans, as was their defence team. It consisted of Martens as the chairman with Lord Russell of Killowen, Lord Chief Justice of England and Lord Justice Richard Henn Collins, Lord Justice of Appeals, selected by Great Britain; Melvin V. Fuller, Chief Justice of the United States Supreme Court, and David J. Brewer, an associate justice of the Supreme court, both selected by the United States.104 In what was a largely favourable award to the British case, the tribunal made their verdict in 1899, which more or less followed the Schomburgk line.105 In 1900, an Anglo–Venezuelan commission was assembled in order to demarcate the line based on the award of the tribunal.106 The work was completed in 1904.

Latin Americanist Robert Arthur Humphrey characterised the Venezuela crisis as one of the most momentous episodes in the history of Anglo–American relations.107 Certainly, it brought into stark relief the reality of the United States’ hegemony in the Western hemisphere and the relative vulnerability of Great Britain’s situation. As Chapter 2 identified Great Britain attempted to respond to the United States’ increasing assertiveness in world affairs. The United States’ forceful pronouncement against Great Britain changed the nature of how the United States visualised its role in Western hemispheric affairs, and forced European powers as well as Latin American states to contend with an actively–enforced Monroe doctrine. It is not surprising that the boundaries between British Guiana and Brazil (1904) and French Guiana and Brazil (1900) were demarcated through arbitration with little difficulty on the part of the European colonial powers.

Great Britain’s failure to come to an understanding with Venezuela over the boundary highlighted how pacific settlement was a tool for mutual cooperation between imperial powers as well as a tool to control regions of imperial interest. It would take the United States to stake its indirect claim over the entire Western hemisphere before the British could be compelled to utilize pacific settlement in the same way that it did in Central Asia, where a watchful Russia, in effect compelled them to come to boundary arrangements with Afghanistan and Persia. In these instances, arbitration played a key role in formalizing Western colonial holdings and provided a means for establishing international boundaries between themselves and other imperial powers as well as non–Western states in far–flung regions.

The significance of pacific settlement in the pursuit of empire was ultimately tied to the consolidation of Western influence over global society and the territorialization of the ‘uncivilized’ realms. Again, pacific settlement proved a vital tool for the maintenance of the modus vivendi amongst the great powers and provided a means for regulating and ordering empire in an increasingly globalized age. In a similar manner, arbitration proved equally important in consolidating

Western interests in the emerging global economy as a tool for informal empire, as the next chapter explains.
4 The political economy of pacific settlement

Observing how international law acts as ‘the vernacular through which power and wealth justify their exercise and shroud their authority’, Kennedy likens law to the link that binds ‘centres and peripheries to one another’ and ‘structures their interaction’.\(^1\) International law codifies the dynamics of power, organizing the activities of the international system within a framework that extends and maintains the influence of certain states over the system. Kennedy's understanding of the political economy of law is a familiar yet compelling evolution of the post–Marxian characterization of power relations, stressing the primacy of wealth in political power and the perpetuation of the power nexus. Like many critical legalists, Kennedy's observations underscore the political economy of law, as an objective of policy.\(^2\) Applied within a nineteenth–century context, the entrenchment and advancement of international law represented an attempt by Western powers to regulate relations between themselves and other states. Governments and contemporaries utilized the language of international law as a projection of order, predicing it on the *de jure* logic of universality, yet organized in terms of *de facto* power relations.

As part of the globalized nature of diplomacy, pacific settlement featured as a key element to the emerging nineteenth–century legal regime. It exemplified the power nexus of the nineteenth–century world order from the supposed universality and equality of states under the law of nations to the reality of the great powers' control over the function of global society. The way great powers enforced their world view on the rest of global society was done under the guise of civilization, masking their dominance under a mirage of self-servong justifications for their actions. And arbitration acted as an agent of this power nexus, featuring as a means of enforcing principles of the international law in non-Western corners of the world.

In his book *The Standard of 'Civilization' in International Society*, Gerritt Gong argues that Western states used broadly defined ‘standards of civilization’ in order to determine whether other states could be considered part of the club of nations.\(^3\) Such standards were often a means of maintaining exclusiveness, based on notions of shared racial, cultural, and political identities amongst Western states, rather than a universal code of conduct. Nevertheless, states from other parts of the world could enter the Western international system provided they had the capacity to adhere to Western international norms and behave in an appropriate manner. Specifically, civilized conduct for states was a question of whether a sovereign state could adhere to treaties, commercial contracts, and other Western norms. In a globalizing age of commerce, civilized conduct was based on the need to maintain the optimal business conditions for foreign investors; their ability to maintain order and good governance over their territory; as well as their ability to accept the global *status quo* of European

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great powers.

Pacific settlement was a tool for enforcing Western-induced visions of what civilized conduct represented. There was a general desire amongst governments and merchants to ensure that the civilizing influence of law, extended to encompass all regions where Westerners and Western powers did business. Chapter 3 demonstrated how arbitration featured as an agent of great power interests in building formal empire and managing inter-imperial relations. This chapter argues that pacific settlement also reflected the power relations and conflicts between the peripheral and core states inherent in the evolving global political economy. It acted as an instrument for sorting through the myriad of private claims disputes. In so doing, pacific settlement aided in establishing and enforcing legal principles of trade, investment, and finance over a largely anarchic yet increasingly interconnecting world.

It is unsurprising that pacific settlement was co-opted as an agent of global capitalism in the nineteenth century. The process of industrialization in Great Britain, the United States of America, and parts of Western Europe throughout the nineteenth century created greater efficiency and productivity, generating increased demands for new markets and raw materials as well as generating spare capital, ready for investment. As such, merchants, financiers, and venture capitalists, or the nabobs of the age, increasingly invested in the undeveloped, high-return markets of Latin America, Asia, and Africa. Spare capital funneled out of London, New York, Paris, and Berlin, in the latter half of the nineteenth century into a variety of commercial enterprises. Historian Cyrus Veeser argues that international concessions, usually in the form of a grant, privilege or franchise, became an important means projecting global capitalism. Western-held concessions granted investors tremendous legal rights over resources in foreign states in exchange for their investment. Less developed states in Latin America and Asia incentivized foreign investment through generous concessions that provided extensive legal rights for the investor.

As the world capital of finance, the city of London truly dominated the global economic system. Direct foreign investment and portfolio investment emanating from London were responsible for fuelling global economic development from the

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8 *ibid.*

laying of submarine cables across the globe to the development of railways in the empire and in Latin America. In Argentina, for example, British companies owned and operated 66 per cent of its railway network by the end of the nineteenth century.\textsuperscript{10} With the development of refrigeration in the 1870s, cattle from the plains of Argentina were carried on these railways, slaughtered, and then exported to Britain and other markets. In a circular fashion, Argentina became part of a globalized food circuit of net agricultural exporters such as Latin America, the United States, and Australasia and food importers such as Britain and Western Europe.\textsuperscript{11} By 1875, British overseas investment alone amounted to £1,000 million.\textsuperscript{12} The global circuit of financial and commercial interests linked what were previously peripheral regions of the world to the Eurocentric international system.

Such economic stakes resulted in Great Britain and other creditor powers taking a protective hand in support of their intrepid entrepreneurs. Prior to the full separation of public and private international law in the 1920s, issues of private claims regularly suffused the business of foreign ministries.\textsuperscript{13} The number of private claims were at times staggering: the United States–Mexican Commission established by convention signed in 1868, for example, dealt with over 2,000 mutual claims.\textsuperscript{14}

Because only states were considered valid legal parties in international disputes, governments increasingly sought the remedy of arbitration as the \textit{de facto} means of resolving such disputes.\textsuperscript{15} For the most part, private claims from foreigners were put to the attention of their local consul or diplomatic representative. In other instances, company directors or investors based in the home country would petition their foreign ministry directly.\textsuperscript{16} At a time when foreign ministries were still relatively small (at least by today’s standards), the foreign minister or secretary was frequently involved in wading through the particulars of these cases. As a result, private claims could give relatively dry questions of commercial law and torts a highly political character, which other governments could not too readily dismiss without causing

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\textsuperscript{12} Anderson, \textit{The Ascendancy of Europe}, p. 16.
\textsuperscript{13} By this, I refer specifically to the Geneva Protocols of 1923 and 1927 that (among other things) helped make arbitral awards between non–state parties enforceable internationally. The New York Convention of 1959 extended this principle, creating the foundation of modern international arbitration. Of course, jurists and legal experts had been engaging with the field of private international law from the 1880’s onwards.
\textsuperscript{15} In assessing the particulars for the Delagoa Bay Railway arbitration of 1898 between Great Britain and the United States and Portugal, the British law officers did not consider the Portuguese Delagoa Bay Company as being ‘any way to be entitled to be considered as one of the parties to such arbitration’. No. 3 Law Officers to Salisbury, 16 March, 1891, FO 834.17, p. 7.
\textsuperscript{16} See for example, the time the Bolivar Railway Company petitioned the Foreign Office for action against Venezuela for their losses during civil unrest in 1902, writing: you know how we suffered in ’99 for a period of five months; we are now experiencing a repetition of those horrors and unless something is done to re–awaken a sense of respect for the foreigner (which appears, by the by to diminish with each revolution) it will become quite impossible for some of us to remain in the country.’ Thomas to Haggard, 22 January 1902, FO 80/443
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diplomatic tension.

International commercial arbitration tested the limits of the role of states intervening in the internal affairs of other states. With the increasing global entanglements of financial and commercial interests between private individuals and states, intervention through the use of arbitration was often required, as far as most great powers were concerned, in order 'to project the legal standards of industrial capitalism inside the frontiers of less-developed states' Veeser identifies. The rise of private claims arbitration reflected both the changing relationship between the state and the citizen as well as the paramountcy of protecting people and property in an era of globalization. When Chile was in a state of unrest in July 1890, the British consul requested special protection of the nitrate railways and for British lives and property. British merchants had already issued a joint letter of protest against the Chilean government in relation to the lack of adequate protection to the lives and property of British subjects. Diplomatic corps felt obliged to act on behalf of their citizens and citizens themselves felt emboldened enough to seek assistance and protection. When law officers were asked to comment on a draft bill to extend British jurisdiction to crimes and offenses committed in the neighbourhood of a number of British settlements along the West Coast of Africa, they stressed:

that the ground on which the proposed extension of British jurisdiction rests is that of necessity—the necessity of protecting life and property in districts where there is no law, and where offenders could not be tried and punished at all, unless tried and punished by British courts. This necessity appeared to us to extend to the punishment of civilized as well as uncivilized criminals, and we thought that the object of extending our jurisdiction would be in a great degree defeated if it became known that a civilized man was permitted to do with impunity that which was punished as a crime in a savage...

Great Britain's particular interest in ordering their empire and extending the rule of law over the uncivilized realms of the world was borne out in terms of ensuring that people and property was protected.

Consular courts, for which Great Britain had the largest network, subjected their nationals to the law of their country as opposed to that of the local jurisdiction. The nineteenth-century development of extraterritoriality over states was in part an attempt at carving out a legal enclave for Western merchants to do business according to Western rules overseas. The effect of these consular courts

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18 Kennedy to Salisbury, 21 July 1890, FO 16/299.
19 ibid.
20 The Law Officers to Granville, 14 December 1870, FO 834/9, p. 5
was particularly successful in protecting merchant and foreign nationals’ interests in undeveloped non-Western states. In a report to Granville, the ambassador at Constantinople marveled at the versatility of the consular court in 1871, noting:

The unsatisfactory and loose dealing with litigation, which in former days gave so much trouble to the Embassy and the Foreign Office, is no longer experienced; and the endless delays, chicanery, and nugatory character of Mixed Commissions, and Judgements by Arbitration which could not be executed, have disappeared.

Whether for expedition, cheapness, and regularity, Consular Courts have proved successful, and several foreign Powers are endeavouring to promote still further similar institutions in their consulates.23

Expedition, cheapness, and regularity was music to the ears of foreign office officials. The problems of using third-party methods of pacific settlement, for which there were many, could be easily overcome in non-Western regions where unequal treaties could be forced upon the indigenous rulers.

Where losses sustained from government actions might have historically been the risk that foreigners had to bear, the growing political importance of the merchant classes as well as the higher volume of overseas nationals gave rise to an increased desire to protect citizens abroad as well as their commerce.24 As Chapter 1 demonstrated, the success of the Jay Treaty commissions as well as the enhanced level of cooperation amongst states in the post-Napoleonic years were pivotal in establishing the role of arbitration as a means of attaining redress in the developing realm of international trade and commerce. The use of arbitration for private claims was part of a much more comprehensive attempt at creating systems and mechanisms to regulate Western capitalism across the globe. This chapter argues that private claims arbitration is vital to understanding nineteenth-century pacific settlement. Industrialized powers litigated against less developed nations to such a degree that the overwhelming majority of instances of arbitration in the nineteenth century were based on the pecuniary claims of companies and individuals from the west against governments in Latin American as well as the non-Western world. While nations generally avoided from inferring in contract disputes between their nationals and overseas private entities, when foreigners sustained injuries from brigandage, mob violence, civil war and insurrection, pillage or the violation of neutral property in times of war, and other acts of wrongdoing committed by governments, diplomats frequently intervened on behalf of their nationals in order to obtain satisfaction.

The use of arbitration by great powers was indicative of the commonly held belief in the right of such states to intervene in the affairs of small states. Intervention became the prerogative of the great powers since the formulation of the concert of Europe in the aftermath of the Napoleonic Wars.25 It was for the most part reserved

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23 Francis to Granville, 10 December 1871, HCPP, vol. LX.579, no. 530, 1872.
for instances when lesser states acted in ways contrary to the commercial and legal standards defined by the powers. In an age where chartered companies enjoyed tremendous economic, political, and even military power, ruling over colonies, such as Britain’s Honourable East India Company did until 1858, the interests of investors and companies played a key role in formulating government policy. Certainly, this period witnessed some particularly impressive examples of crony capitalist intervention. In 1839, for instance, the British Government and the Honourable Company jointly fought a war against China whose ban on opium was particularly damaging to British trade. Foreign policy increasingly intersected trade policy to such a degree that the use of naval power through gunboat diplomacy was employed regularly to coerce, bombard, and block the ports of those rulers resistant to the new capitalist order.

Whereas, many parts of Africa and Asia were under the legal and military control of Western powers, either through unequal treaties or colonial administration, Latin America and a handful of sovereign non-Western states were ostensibly outside the milieu of direct legal entanglements such as through consular courts. This was certainly no coincidence. Conflicts over contracts, damages, monopolies, and private and public debt became inter-state disputes, given that Latin American courts and governments often failed to uphold the same standards of contract law expected of civilized nations. While an ostensive part of the Western world, their failure to apply evenly the standards and practices expected of civilized nations, in matters such as the fair treatment of foreign citizens, honouring foreign held public debt, respect for commercial contracts and the private property of foreigners, often created a conflict between inexperienced Latin American governments and the great powers.

For Latin Americans, the nineteenth century was a period of incessant conflict and political instability. Brutal wars and acrimonious civil conflicts waged periodically across the region as infant democracies and caudillaje (military dictatorships) struggled to impose their order over the infant nation–states of Latin America. One American official calculated that Venezuela alone experienced over 100 revolutions or civil disturbance of varying degrees over the course of the nineteenth century. This general struggle for political authority coincided with the effects of burgeoning trade and commercial links in the region. The global circulation of finance as well as the enhanced global networks of trade and business interests from Europe and North America filtered into the highly profitable and relatively undeveloped economic base of Latin America. Unsurprisingly, these Western

26 For more on the Opium War, see Peter Ward Fay, The Opium War, 1840–1842: Barbarians in the Celestial Empire in the Early Part of the Nineteenth Century and the War by which They Forced Her Gates Ajar, Chapel Hill: University of North Carolina Press, 1997.
28 Draft to Fagan, 14 May 1868, FO 80/189.
30 Alan M. Taylor, ‘Foreign Capital in Latin America in the Nineteenth and Twentieth Centuries’,
business interests were often at the blunt edge of Latin American strife. As the British–owned Bolivar Railway Company complained to one Foreign Office official on the state of affairs in Venezuela in 1902:

You know how we suffered in '99 for a period of five months; we are now experiencing a repetition of those horrors and unless something is done to re–awaken a sense of respect for the foreigner (which appears, by the by to diminish with each revolution) it will become quite impossible for some of us to remain in the country.\textsuperscript{31}

In one incident, the company reported a foreman being forced by drawn sword to act as a railway driver for Venezuelan soldiers, eventually being wounded in the head when the train was overturned by rebels.\textsuperscript{32} Importantly, as shabby as these incidents were, capitalists were not prepared to accept the volatility of Latin American states as a market risk to hedge against. Rather, the Western powers projected their standards of civilization and state conduct, regularly intervening in support of their nationals in order to settle the damages sustained in the aftermath of hostilities. To that end, as trade and empire facilitated a globalized world under the podium of the west, the need to extend law and the standards of the west to encompass a range of regions became something of a necessity in the minds of statesmen in order to protect the life and property of their nationals.\textsuperscript{33}

Before Latin America became an important part of the Western balance of trade, examples of private claims intervention were predominately based in those less organized southern European states such as Greece, the Italian states, and Portugal. Because of the highly–connected nature of European politics and the presence of the European congress system such interventions invariably involved outside powers and other states to the dispute. In 1849, for example, Austrian troops on behalf of the Grand Duke of Tuscany occupied Livorno and were accused by the British consul of plundering a British merchants unused villa to damages amounting £3000. Queen's Advocate John Dodson wrote from Doctors' Commons asserting that the actions of the troops were wanton acts of plunder rather than out of unavoidable operations.\textsuperscript{34} The Tuscan Government declined to grant any indemnification for the losses suffered by the British subjects because Tuscan subjects were to receive no compensation. Moreover, the circumstances in Livorno rendered it necessary to call in the Austrians to put down the rebellion and the Tuscan government could not take into consideration any 'unforeseen and casual losses' that might occur.\textsuperscript{35} Dodson found the Tuscan reasoning to be misunderstood: if they wish to deprive their citizens of the right to claim for indemnification that it should be no reason for them to deny justice to foreigners.\textsuperscript{36}

In a bid to alleviate tension, Sardinia–Piedmont offered their good offices to intercede on the matter.\textsuperscript{37} At the same time, the Tuscan government suggested the

\textsuperscript{31} Thomas to Haggard, 22 January 1902, FO 80/443
\textsuperscript{32} ibid.
\textsuperscript{33} Cf. The Law Officers to Granville, 14 December 1870, FO 834/9, p. 5
\textsuperscript{34} Queen’s Advocate to Palmerston, 31 July 1849, FO 425/25.
\textsuperscript{35} Hamilton to Palmerston, 13 September 1849, FO 425/25.
\textsuperscript{36} Queen’s Advocate to Palmerston, 5 October 1849, FO 425/25.
\textsuperscript{37} Marquis D’Azeglio to Palmerston, 26 January 1850, FO 425/25.
arbitration of a friendly power, recommending that the Tsar of Russia could be asked to arbitrate the dispute.\textsuperscript{38} Great Britain declined the idea of arbitration arguing that by accepting the good offices of the Sardinian Government ‘they could not submit to the arbitration of any foreign power claims of British subjects which rest on such indisputable grounds’.\textsuperscript{39} Regardless of Great Britain’s position, the Russian Government at any rate declined to act in the matter, given they could not agree with the principle on which the claims were founded and also because relations with Great Britain were somewhat strained at that point in time.\textsuperscript{40} Eventually, an arbitration proposal was created which called on the King of the Belgians to make an award on the interpretation of international law, ‘according to which strangers resident in foreign countries cannot pretend to be admitted to a more favourable position than that which is accorded to natives.’\textsuperscript{41} In the end, the whole affray was resolved once dispatches from Austrian troops revealed that the damage done to the house was based on the suspicion that national guard troops had taken refuge there. Thus, the damage was a natural and unavoidable consequence of war.

The involvement of Austria, Tuscany, Belgium, Russia, and Great Britain was not unusual in Europe. Disputes of this nature had a habit of bringing in outside states to alleviate tension. In such instances, the good offices of a third–party state did not in of itself constitute a means of resolving a dispute, rather it merely provided the disputing states with a proactive third party to help facilitate some sort of peaceful settlement process.\textsuperscript{42} In that sense, whenever a state offered their good offices, whether it was a great power or not, arbitration, as a means of attaining a peaceful element, was frequently a constituent element to the offer.

One particularly well–known incident involving private claims and great power intervention was the Don Pacifico affair between Great Britain and Greece.\textsuperscript{43} After sustaining damages from an anti–Semitic mob in Athens in 1847, Don Pacifico, a Portuguese Jew with dual British nationality, demanded compensation from the Greek government for their failure to protect his property. British foreign secretary Lord Palmerston supported Don Pacifico’s demands. After failing to receive satisfaction from the Greek government, Palmerston sent a naval squadron to blockade the port of Piraeus in January 1850. Great Britain’s blockade caused considerable antagonism amongst the European powers, particularly France and Russia, which both had special interests as protectors of the Greek kingdom.\textsuperscript{44} France attempted to mediate the dispute but recalled their ambassador in London in protest over Great Britain’s blockade. Eventually a settlement was reached whereby the Greek government paid Pacifico £5,000 in compensation for loss of property. Pacifico received a further £150 for loss of documents, which was determined by an

\textsuperscript{38} Duke of Casigliano to Hamilton, 1 March 1850, FO 425/25.
\textsuperscript{39} Palmerston to Hamilton, 22 March 1850, FO 425/25.
\textsuperscript{40} See Bloomfield to Palmerston, 17 April 1850, and Hamilton to Palmerston, 12 April 1850, FO 425/25.
\textsuperscript{41} Hamilton to Palmerston, 24 May 1850, FO 425/25.
\textsuperscript{42} For more the idea of the good office, see Raymond R. Probst, ‘Good Offices’ in the Light of Swiss International Practice and Experience, Dordrecht: Martinus Nijhoff, 1989, pp. 10–12.
\textsuperscript{44} See Dolphus.
international commission. While Palmerston’s actions resulted in European–wide indignation as well as the near collapse of the government, the Greek government indemnified Don Pacifico and Palmerston forcefully demonstrated the rights and duties of a great power towards their overseas nationals.45 While facing down the threat of a confidence vote in the House of Commons, Palmerston steadfastly defended the doctrine that foreign debt could be collected through force and coercion. In his four-and-a-half-hour long speech to the Commons, he drew parallels between the rights of an Englishman overseas and that of a Roman in ancient times, who could use the legal plea _civis romanus sum_ thereby subjecting himself to the laws of Roman citizens.46 Just as Romans were safeguarded from the injustice of barbarians and the laws of slaves, so too British subjects—wherever they were in the world—would be protected from ‘injustice and wrong’.47

Palmerston’s doctrine came to epitomize the interventionalist approach of great powers in pursuing the private claims of their nationals against small states. While the British were roundly criticized by the other powers, many of them were equally as guilty of exercising similar degrees of interventionalism when the occasion arose. Pacific settlement played a vital role usually as the final outcome of great power intervention, often employed as the ‘carrot’ to the ‘stick’ of coercion. Most of the time, arbitration involving these claims found in favour of the complainant with the only issue being the degree of compensation to be awarded, and in cases of multiple claims, which claims should and should not be admitted. The use of a legal mechanism as opposed to a political settlement such as diplomacy gave a certain degree of equitability. United States secretary of state Elihu Root noted arbitration was often unscrupulously extended to a ‘class of adventurers’ that traded on the ‘necessities of weak and distressed governments’, often lodging ‘exorbitant and unconscionable demands’ to a third party.48 Based on this, Root suggested that such private claims benefited from investigation from impartial arbitrators rather than ‘immediate and peremptory enforcement’.49

It was well known that arbitrators tended to award much less than what the plaintiff party filed for.50 At the tribunal for Venezuelan claims in 1903, the arbitrators awarded the United States around three per cent of their total claims, Germans 27 per cent, and the British 63 per cent.51 Jurist Jackson Ralston noted that in this instance, the tribunal was used simply as ‘international clearing houses’ by the powers, although Great Britain made an effort to present only those claims that they considered were of good character, thus explaining their higher success rate.52 In that sense, arbitration was of great benefit to smaller states, providing them with the possibility of arranging a much fairer deal. However, conflicts would emerge over the

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47 ibid.
49 ibid.
51 Ralston, _International Arbitration from Athens to Locarno_, p. 224.
52 ibid.
regularity at which large states made demands. This was not a criticism of arbitration but of the fairness of litigating such issues without first seeking recompense through the juridical systems of each state as well as the presumption that Western powers were entitled to a special degree of protection.

Across the nineteenth century, arbitration established numerous precedents in the emerging field of international commercial law, creating the foundations for a global capitalist order. Some of these precedents were considered particularly onerous by the governments that were subject to the litigation. For instance, in the absence of government complicity, many weaker, less well-organized countries were still held accountable by larger states on the basis that indifference or a failure to uphold rules of law on the part of the smaller state invited injuries. This principle was the basis of Great Britain’s pursuit of Don Pacifico’s claims. Likewise, during the civil war (1859–1863) against the rebel *federales*, the ruling *conservadores* promulgated a law that effectively meant that the Government was not accountable for injuries sustained by foreign subjects from insurgents in time of conflict. American, Spanish, and British diplomats protested the prevention of governments to procure satisfaction for their subjects. In response to foreign pressure, the Venezuelan government made a plan in 1868 to liquidate all domestic and foreign debt, which at that time included Great Britain, France, Spain, and others,) and claims by sequestering a total of forty percent of the Government’s revenue to the settlement. Even these terms were not suitable to the French government, whose total aggregate claims were much higher.

The unequal state of affairs was all too evident in such situations. In 1851 when there were disturbances in New Orleans, the American government, while agreeing to indemnify the Spanish Consul for the losses he sustained, refused to acknowledge the claims of Spanish subjects, arguing that foreign subjects were protected by the same laws as American citizens. Likewise, in January 1905, riots erupted in Russia, resulting in extensive losses and damages to private property from merchants from numerous European states. The British Government enquired into compensation from the Russian Government, however the Russians replied that compensation was not in accordance with Imperial law. In that sense, the question of governmental liability was essentially a judgement on the competency of the state in question. Few great powers would consider it prudent or courteous to question the competency of another power.

Other forms of governmental liability for instance included the failure to bring offenders to justice or the inadequate punishment of guilty individuals. One particularly acrimonious instance of gunboat diplomacy broke out between Brazil

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54 Orme to Russell, 21 July 1860, FO 80/268. Another law was passed in 1873 aimed at preventing diplomatic recourse for private companies. These had virtually no effect as governments continued to press the claims of their nationals with increased regularity in Venezuela. Thomas to Haggard, 22 January 1902, FO 80/443.
55 ibid.
56 Fagan to Stanley, 7 August 1868, FO 80/192.
57 ibid.
58 Orme to Russell, 21 July 1860, FO 80/268.
59 Lamsdorff to Hardinge, 12 October 1905, FO 65/1738.
and Great Britain in 1861 when local inhabitants wrecked and plundered the British barque *Prince of Wales* off the coast of Brazil. British officials were unconvinced of the Brazilian authority’s inquest into the incident and suspected foul play when the Brazilian government were unable to account for the whereabouts of the crew.  

Failure on the part of Brazilian authorities to fully investigate such claims, the British Government then demanded compensation for the pillage and for the families of the victims. Brazil refused to admit the claim. Relations were further strained when in June 1862, three officers of the *HMS Forte* were arrested in Rio de Janeiro for disturbances. The British considered the arrest to be an insult and demanded satisfaction, which the Brazilians again refused. The British vessels of war in response blockaded the port of Rio de Janeiro, capturing five merchant ships. In order to cease hostilities, the Brazilians acceded to British demands for reparation for the *Prince of Wales* and agreed to submit the differences from the *HMS Forte* incident to the arbitration of the King of Belgians. Finding that it was a matter of Brazilian law and that no insult had been committed, the King awarded in favour of the Brazilians. Prior to the award being made, the British Government ended relations with Brazil over points of the agreement. After this particularly acrimonious episode, Portugal offered its good offices to mediate and restore relations between the two countries in May 1864.

Perhaps the most controversial precedent established through arbitration was the responsibility of governments for historical debt. Governments that were successfully installed as a result of civil war or insurrection were liable for the acts of their side as well as that of the government they overthrew—a principle that was upheld with great difficulty. This was particularly the case during the Venezuelan crisis of 1902. At the time, Venezuela was under an extraordinarily brutal and corrupt regime headed by General Cipriano Castro who had seized power in a revolution in 1899. Castro’s rule was marked by frequent rebellion and disorder, affecting the significant foreign economic stakes in the developing country. Much of the foreign investment in Venezuela was held up in speculative enterprises and infrastructure mostly contracted by the Venezuelan government. The most significant British investment included the Harbour of La Guaira, which amounted to a one–million-pound investment. The Berlin–based bank *Disconto Gesellschaft* bankrolled the Krupp company’s railway enterprise in Venezuela was valued to the tune of well over 60 million marks. Prior to the 1899 revolution, the then–Venezuelan government issued bonds and loans to these companies. The British held a consolidated debt dating back to 1881 with annual interest. The *Disconto Gesellschaft* likewise held government bonds in lieu of the guaranteed minimum returns for its railway

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61 See the enclosures of Vereker to Russell, 4 June 1862, HCPP, vol. LXXIII.121, no. 73, 1863.
62 Christie to Russell, 15 December 1862, HCPP, vol. LXXIII.121, no. 73, 1863.
63 Christie to Russell, 23 August 1862, HCPP, vol. LXXIII.121, no. 73, 1863.
65 Lavradio to Russell, 27 May 1864, HCPP, vol. LXXVI.31, no. 3585, 1866.
67 Chairman to Under–Secretary, 12 January 1902, FO 80/443.
At the beginning of his reign, Castro indicated that the newly installed government was not responsible for the public debt of the past regime. Protestations from key financial stakeholders in London and Berlin proved decisive in persuading their governments to intervene. In 1901, the German government suggested that the claims be adjusted by the Permanent Court of Arbitration, which was rejected by Castro. Clearly frustrated at the Venezuelan stance, the British approached their German counterparts mooting the possibility of joint action against Venezuela in January 1902. After consulting with the United States government, which stated that it would not object to ‘punishment’ of ‘misbehaviour’, Germany and Great Britain delivered a final ultimatum on 7 December 1901 to make an agreement with the Bondholders. On 9 December, the blockade began in earnest. The Anglo-German flotilla sank several Venezuelan ships, seized others, blockaded ports and bombarded forts. Two Italian warships also joined the blockade.

After a public backlash over the incident and renewed fears that Germany might wish to secure territorial compensation from Venezuela, the Roosevelt administration quickly changed its position over the blockade. Washington attempted to seize the initiative by pressuring the British and Germans into lifting their blockade and submit their claims to the arbitration of Roosevelt. The blockading powers as well as the supporting European nations however could not agree on those class of claims which could be admitted without reservation. As far as the United States government and the public saw it, Germany had acted with a particular degree of aggressiveness, threatening to mount a military offensive on Venezuela if German debt was not honoured. This forced Roosevelt to threaten military intervention against Germany in February 1903. The British Government sensing the seriousness of the incident also attempted to moderate Germany’s actions in January. On 13 February all parties came to a compromise, negotiating a protocol in Washington which lifted the blockade and required Venezuela in turn to commit one third of its custom house duties to cover the claims. It also provided for

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70 Maass ‘Catalyst for the Roosevelt Corollary’, p. 386.
71 Tomz, Reputation and International Cooperation, p. 133.
72 On hearing reports of the German Government taking steps to enforce payment from the Venezuelan Government, the Council of Foreign Bondholders wrote to the British government, petitioning the British Government to take steps to secure the settlement of British claims. Cooper to Under-Secretary, 3 January 1902, FO 80/443.
73 Maass, ‘Catalyst for the Roosevelt Corollary’, p. 386.
74 ibid.
75 ibid., p. 385.
76 Tomz, Reputation and International Cooperation, p. 134.
78 ibid., pp. 578–579.
80 Nancy Mitchell argues that Germany in fact acted with a high degree of tepidness. See Mitchell, ‘The Height of the German Challenge’.
81 Anderson, ‘The Venezuelan Claims Controversy at the Hague, 1903’, p. 583
82 ibid.
mixed commissions to resolve the claims of all nations with the Russians to select three arbitrators from the Permanent Court of Arbitration.\textsuperscript{83}

The Americans originally intended for the negotiations to provide a protocol for the permanent court, however, the blockading powers preferred instead to reach a direct settlement in Washington.\textsuperscript{84} The protocol provided a framework for resolving the numerous claims against Venezuela, however, the blockading powers took issue at the fact that all states, including those that did not take part in the blockade, were to be given equal treatment in the mixed commissions.\textsuperscript{85} Demanding that their claims receive first payment Great Britain, Germany, and Italy took their case to the permanent court in 1904 against Venezuela. The court found that the blockading powers were indeed entitled to preferential treatment in the payment of their debts and that the neutral states that adhered to the 1903 protocol could not benefit from any privileged position. By 1905, the collective debt from 1881 to 1896 had been consolidated with Venezuelan customs tariffs placed as security for the bond and the debt was finally paid off by 1930.\textsuperscript{86}

Given the entrenched nature of pacific settlement, arbitration presented itself as the only option to resolve the dispute—a fact that was further demonstrated by the United States’ intervention in the dispute. Their involvement in a sense signaled a new era of how public debt and pecuniary claims was managed in Latin America by placing the good offices of the United States at the centre and articulating a new policy based on the Monroe doctrine.\textsuperscript{87} In his presidential address to the United States Congress on 6 December 1904, Roosevelt emphasised:

\begin{quote}
Chronic wrongdoing, or an impotence which results in a general loosening of the ties of civilized society, may in America, as elsewhere, ultimately require intervention by some civilized nation, and in the Western Hemisphere the adherence of the United States to the Monroe Doctrine may force the United States, however reluctantly, in flagrant cases of such wrongdoing or impotence, to the exercise of an international police power.\textsuperscript{88}
\end{quote}

Roosevelt’s speech placed a mandate on the collection of outstanding public debt that Latin American states had accrued in the hands of the United States.\textsuperscript{89} At the same time, he stated that the United States needed to be prepared to secure ‘justice’ for others and for themselves by backing up claims through military, and particularly naval, force.\textsuperscript{90} In that sense, Roosevelt not only prevented European intervention but also sought to recognise the concerns of European capitalists and the importance of honouring such debt on the part of Latin American states.\textsuperscript{91}

\textsuperscript{83} ibid., p. 530.
\textsuperscript{84} ibid.
\textsuperscript{85} ibid.
\textsuperscript{86} Tomz, Reputation and International Cooperation, p. 134.
\textsuperscript{88} Quoted from ibid., p. 314.
\textsuperscript{90} ibid.
\textsuperscript{91} ibid.
In what became known as the Roosevelt corollary to the Monroe doctrine, Roosevelt was clearly referencing the experience of the Venezuelan crisis. However, a new public debt crisis this time in Santo Domingo (now known as the Dominican Republic) once again brought the prospect of joint European intervention against the Latin American state. Roosevelt was attempting to circumvent a repetition of the Venezuelan crisis. The timing of the speech provided justification for the United States to supervise the debt repayment of Santo Domingo thereby preventing European powers from intervening. However, more importantly, Cyrus Veeser argues that the corollary was direct disavowal of blindly pursuing venture capitalist interests. As Vesser notes, ‘Roosevelt groped toward a new strategy to coordinate U. S. foreign–policy goals and private economic activity abroad. In the process, he pulled U. S. policy out of the Gilded Age and pushed it into the Progressive Era.’ Under Roosevelt’s formula, American dominance over the Western hemisphere would be based on notions of equability and justice. His successor in 1909 President William Howard Taft’s ‘dollar diplomacy’, which represented a tactical shift of using financial incentives and rewards instead of force to guarantee American diplomatic and commercial interests in developing countries.

Roosevelt’s intervention signaled a new approach ostensibly away from Palmerston’s doctrine towards an equitable but more regularized form of norms between creditor and debtor nations. Historians look at the Venezuelan Crisis in terms of Roosevelt’s response and how it signaled a new era of American power. His forceful intervention, due partly to pressure from the American public and also from his own belief in pursuing a strenuous foreign policy, sat at a critical juncture of American politics. The assertion of American power over the largely anarchic Western hemispheric community was an attempt not only at demonstrating that the United States was a great global power but also a rebalancing of interests in order to bring order and evenhandedness in the great power–small state relationship.

The Roosevelt Corollary highlighted the tensions of the emerging global capitalist system between the peripheral states and the core financial stakeholders. The Roosevelt Corollary was thus interrelated to attempts to place global society

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93 For more on the Santo Domingo debt, see Veeser, ‘Inventing Dollar Diplomacy’.
94 ibid.
within a legal frame in order to standardize and rationalize the global trade system. By the time of the Venezuelan crisis, the global economy was more fully integrated, pacific settlement had entered a new stage of development: the first Hague convention had been signed and in the intervening years a more extensive network of bilateral arbitration treaties was in the works. In 1874, for instance, the Italian parliament unanimously adopted a resolution to include in all commercial, extradition, consular, and postal treaties, a compromissory clause for arbitration to adjust any differences in the interpretation of any part of the treaty. Arguing that national interests often hijacked issues of right and international law such as in the American Civil War, the Luxembourg Crisis, and Franco–Prussian War, deputy and jurist Pasquale Stanislao Mancini believed that arbitration clauses would not result in an end to war.¹⁰⁰ Rather, as Mancini saw it, arbitration was a means of protecting the laws of international society, of interpreting and regulating conventions, and determining their limits. A system of arbitration therefore could regulate those questions of a legalistic nature that regularly suffused the business of foreign ministries. As Minister of Foreign Affairs in 1881, Mancini was active in negotiating commercial treaties with arbitration clauses with Belgium in 1882 and Great Britain in 1883. The work of negotiating treaties continued long after his resignation in 1885 with over twenty treaties with arbitration clauses concluded at the turn of the century.¹⁰¹

Mancini touched on a commonplace notion amongst statesmen for how a regularized system of pacific settlement could keep the cogs of international trade oiled and running smoothly. To that end, Great Britain also followed suit signing a number of commercial treaties, containing clauses for arbitration. Great Britain and Greece signed a treaty of commerce and navigation in 1886 which created commissions of arbitration in the event that a controversy arose in the interpretation of the treaty and the two contracting parties could not come up with an amicable agreement.¹⁰² In the event that the commission could not come to an agreement on the dispute, then the treaty further provided for a tribunal to come to a final binding award. In 1886, Uruguay and Great Britain signed a commercial treaty, which contained an article to refer any questions regarding the treaty to arbitration if amicable agreement had been exhausted. They inserted similar arbitration clauses in their treaties with Mexico in 1888, and Portugal in 1891. The practice extended to other nations such as Denmark, the Netherlands, Norway, Sweden, Switzerland which all included arbitration clauses in their treaty negotiations with other counties. In addition to these bilateral treaties, arbitral clauses inserted in General Postal Union Treaty of 1874 and the Convention on International Transport by Rail of 1890, which created a permanent court of arbitration. Various multilateral instruments from the Universal Postal Convention of 1874, the General Act of

¹⁰² ‘The Ambatielos Claim (Greece, United Kingdom of Great Britain and Northern Ireland),’ 6 March 1956, United Nations, Reports of International Arbitral Awards: Recueil des sentences arbitrales, vol. XII, p. 87.
Brussels of 1890, and the Railway Freight Transportation Convention of 1890 included provisions for arbitration.

As global and commercial relations deepened into the latter decades of the nineteenth century, the need for a systematic framework for regulating global capitalism merged. Arbitration was front and centre: it acted as the primary means of regulating commercial interactions across boundaries and served as the vehicle through which governments could develop an improved legal infrastructure. Arbitration treaties represented an attempt to create order in the expanding realm of trade, representing a precursor to the World Trade Organization and its system of commercial dispute resolution. When considered in full, the use of arbitral clauses in commercial treaties as well as the espousal of the Roosevelt corollary was reflective of the ever-increasing flow of people, capital, and goods and the need to implement commonly-held standards of resolving disputes. The haphazard and often inequitable nature of great power intervention in matters involving private claims, as represented by the Palmerston doctrine, was superseded by attempts to regularize the enforcement of private claims against other states through arbitration. By 1902, the gunboat diplomacy of the Venezuela crisis was reminiscent of a bygone age of managing private claims disputes in the mid-nineteenth century. After the first Hague peace conference and the advent of arbitration treaties, such a diplomatic technique was no longer considered appropriate in global society.

Yet to return to Kennedy's observations at the beginning of the chapter, international law and the use of pacific settlement in the nineteenth century represented the dynamics of political power and the relationship between core and peripheral actors in the international system. The dominance of the great powers in global society resulted in the international legal regime attaining a coercive character in order to create the business conditions ideal for their nationals. Arbitration provided a legal interface through which Western powers could resolve questions with states that were either poorly run, in a regular state of crisis, or where the application or rule of law was precarious—all defined by Western standards. It signaled greater attempts to place the world into a legal frame in which Western powers could interact with each other and do 'business' with the rest of the world, whilst enjoying a degree of protection.

The arbitration agenda for peace in the civilized world

The pacific settlement conventions of 1899 and 1907 were indicative of a fundamental shift in official mind–sets towards arbitration by the *fin de siècle*, reflecting a growing trend inaugurated in the nineteenth century and developed during the twentieth century of building the legal and institutional infrastructure of a more global, industrialized world. The myriad global uses of arbitration had established pacific settlement as an integral agent of international law and order. The use of consular courts and mixed tribunals in the non–Western world, the international courts for the suppression of the slave trade, and the arbitral mechanisms used in support of European concert diplomacy in some ways had already demonstrated the capacity of nineteenth–century statesmen for building the governmental infrastructure for greater forms of global governance through judicial means. While most of these international courts were *ad hoc* and circumscribed for particular purposes, the creation of a permanent international court to hear disputes between states as well as a system of pacific resolution mechanisms was hardly a great leap of faith. Nineteenth-century statesmen were well versed in the versatility of arbitration and its vital role in global politics. It all came down to creating the necessary drivers to push statesmen to go down the path for such a court. From the mid-nineteenth century onwards, internationalist and peace movements played a key role in creating these drivers. Their advocacy was crucial in rolling out initiatives that sought to entrench international arbitration. They played a key role in convincing governments as to the merits of systematizing and institutionalizing arbitration beyond its remit at the time, primarily in the form of a world court. Some historians misunderstand the role of the peace and internationalist movements and their relationship to the evolution of pacific settlement in the nineteenth century. Nominally historians either negate the significance of their collective contribution in the creation of the Permanent Court of Arbitration and other endeavours in support of arbitration or fail to distinguish the complex drivers behind their creation.

The pacific settlement conventions were not simply the products of statesmen, but also reflections on the state of popular attitudes towards arbitration at the time. Given that arbitration was a key tool of imperialism, trade, and great power politics, as the previous chapters attest to, the fact that it came to have extraordinary political

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104 See, for example, historian Geoffrey Best, who argues ‘NGOs were not yet in the political glossary, and nothing of that formidable sort happened at The Hague, but there were what we would call ‘fringe meetings’ and much lobbying of such delegations as were prepared to receive them. I put it like that because I find in the British delegation’s reports no mention at all of such “outsiders”, and I do not believe the German or Russian delegations would have seen any, but the United States’ delegation was obliged to see citizens of their great democracy, and a sore trial it found them.’ Best, *Peace Conferences and the Century of Total War*, p. 623.

and popular appeal is particularly significant. Public opinion became strongly supportive of the idea of a world court and the greater use of arbitration. The idea of a world court may have appeared like a bridge too far for many statesmen, given sensitivities over sovereignty and the fear that a world court could place serious restrictions on state action. Nevertheless, the various programmes and suggestions by peace and internationalist movements gave governments plenty of ideas to consider.

The Hague peace conferences and the pacific settlement conventions was not a carte blanche acceptance of everything that public opinion wanted. Rather, it was a considered response to the popular appeal of arbitration as much as a response to the needs of states for an improved arbitral process. In other words, the regular use of arbitration, particularly after 1870, and its integration in the processes of global diplomacy had already placed statesmen on the path of systematizing and institutionalizing pacific settlement, public opinion and arbitration advocates provided an important headwind. The rollout of enhanced arbitral mechanisms at the two Hague conferences of 1899 and 1907 was a manifestation of the conservative internationalism of statesmen that sought better means of regulating international society. Yet at the same time, their actions at The Hague were a nod to the unprecedented international support garnered for pacific settlement by grassroots peace and internationalist movements.

Governments seeking to maintain the favour of the public regularly gauged opinion in instances when arbitration was employed or new initiatives in support were undertaken. After the pioneering Anglo–French arbitration convention was signed in October 1905, for example, the British ambassador Edward Monson duly observed to Foreign Secretary Lord Lansdowne that while the ‘limited scope’ of the agreement may not have satisfied ‘the unreflecting apostles’, those ‘eminent French jurists and diplomatists’ unanimously supported the convention. To that end, the purpose of the convention was achieved. The Anglo–French agreement provided, as Monson advanced:

...an opportunity of making a substantial advance, which a more ambitious arrangement would be unable to secure; and if, under its operation, experience should teach us that our apprehensions as to the danger of reposing an unlimited confidence in this kind of tribunal are unfounded, it will be easy be dropping precautions that will have become unnecessary, to accept and establish the idea of arbitration in its most developed form.

Public opinion and the idea of a court of public opinion played a very real role in influencing statesmen. The nineteenth century was an age of increased

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106 Indeed, this is still a key political point of contention for the International Criminal Court created in 1998.
107 The records relating to arbitration in Records of the Foreign Office, for example, frequently contained newspaper clippings, observations on the state of public opinion from diplomats, memorials, and petitions. The files relating to Dogger Bank incident in 1904 are replete with such documents, see FO 65/1729–1732.
108 Monson to Lansdowne, 16 October 1905, FO 83/2167.
110 See Daniel Hucker, ‘International History and the Study of Public Opinion: Towards Methodological
participation in political discussion amongst the middle and working classes. Particularly in the more liberal societies of Western Europe and the United States, the gradual extension of enfranchisement heralded an age of mass politics, fuelled by the development of a burgeoning newspaper and periodical press.\textsuperscript{111} Arbitration advocacy developed from a largely middle class foundation towards a populist ideal. In 1848, for instance, a petition calling for the use of arbitration in place of war presented to the House of Commons had 200,000 signatures gathered from meetings across Great Britain.\textsuperscript{112} By 1873, a similar petition this time had over one million signatures with support, as the petition’s sponsor Henry Richard noted, from many of the prelates and clergy of the Church of England and, ‘above all’, the working classes through their trade unions and councils.\textsuperscript{113} That steady growth in support continued well into the \textit{fin de siècle}. Peace societies, internationalist organizations, church groups, workingmen’s associations, free traders, feminist and suffragette groups, and other progressive elements formed a cross section of interests in support of a variety of initiatives aimed at the advancement of international arbitration.

At the same time, the changing dynamic of opinion within officialdom through the emergence of a social elite of jurists, politicians, and members of government that subscribed to notions of peace and internationalism by the closing decades of the century played a pivotal role in making substantive steps in advancing the idea of a permanent court of some sort. Such political figures tended to be from the liberal ranks of the political divide. One might say these were figures more susceptible to idealism or, as Arno Mayer states, those more inclined to join the party of ‘movement’.\textsuperscript{114} It was certainly true that in the United States, the progressive arm of the Republican Party was a stalwart of pro-arbitration sentiment, as was the case with the Liberal Party in Great Britain and the \textit{Parti radical} in France. In spite of such tendencies, however, support for arbitration often cut across party lines.

Much of the political support for international arbitration and a world court often hinged on each individual’s own proclivities towards the ideal of perpetual peace. In fact, the most prominent pro-arbitration president in the United States was Democrat Grover Cleveland, who was in office from 1885–1889 and 1893–1897. Cleveland was president during the negotiations for the Olney–Pauncefote treaty and shared in the free trade and pro-arbitration agenda in line with the Cobden Club.\textsuperscript{115} Numerous Democrats were also keen proponents of arbitration such as


\textsuperscript{113} \textit{House of Commons Hansard}, series III, vol. 217, 1873, c. 54.


\textsuperscript{115} For more President Cleveland’s position on arbitration and free trade, see Marc–William Palen, ‘Foreign Relations in the Gilded Age: A Free–Trade Conspiracy?’, \textit{Diplomatic History}, vol. 37, no. 2, 2013, pp. 217–247. For more on Cleveland’s position on arbitration, see also Cleaver, \textit{Grover Cleveland’s New Foreign Policy}.  

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Congressman Bryan, who was instrumental in negotiating a series of arbitration treaties as Secretary of State, as well as Congressman Field II, who had written in support of a high tribunal of arbitration in 1872.\footnote{116}

French writer Albert Thibaudet’s concept of ‘sinistrisme’ in which progressive ideas gradually move towards the political centre as newer, more radical one substitute them on the political left, was also an important factor.\footnote{117} American historian Thomas Balch had suggested to President Lincoln the creation of an arbitral court to resolve the Alabama claims as far back as 1864. Lincoln considered it ‘a very amicable idea’, however in typical droll manner, he observed that it was not yet possible because the millennium was a ‘long way off’.\footnote{118} Nevertheless, he counselled Balch: ‘start your idea. It may make its way in time as it is a good one’;\footnote{119} After great difficulty in finding an editor to take his motion seriously, Balch managed to publish his idea in the form of a letter to the editor of the New York Tribune on 13 May 1865.\footnote{120} Liberal MP Richard Cobden, undoubtedly one of the most ardent advocates for peace in British politics at the same time, sent a supportive letter and had it not been for his death in 1865, he would have brought it up in the House of Commons.\footnote{121} Political necessity it seemed was the mother of invention. In 1864, the idea of an arbitral court was widely considered idealistic and unworkable. By 1871, politicians were discussing it in earnest. Although it is highly unlikely that Balch and Cobden influenced the decision to employ a tribunal, it was nevertheless a remarkable anticipation of the Treaty of Washington, as Scottish jurist James Lorimer identified.\footnote{122}

Politicians moved by the generation. Thus, Prime Minister Gladstone, a liberal of the mid-nineteenth century, who had used arbitration as a matter of ordinary foreign policy including for the Alabama claims dispute, nevertheless considered arbitration treaties to be novel inventions.\footnote{123} He advanced a positive yet cautious attitude towards the advancement of international arbitration.\footnote{124} However, after another change of the political guard, politicians had moved on from this position. Within less than a generation Gladstone’s reticence towards arbitration treaty was outdated even in conservative quarters. During negotiations on the Anglo–French arbitration treaty in 1903, conservative foreign secretary Lansdowne even went so far as to say to the French ambassador that Great Britain was ‘notorious’ for its favourable disposition towards arbitration, citing their use as evidence.\footnote{125} While he noted that while there were certain questions that no ‘self–respecting’ country would submit unconditionally to arbitration, the British Government had ‘no desire to throw cold water upon the movement, which seemed to us to be in the right direction

and to be supported by persons who were entitled to our respect.’ Lansdowne was simply echoing his leader’s sentiment. Conservative Prime Minister, from 1902 to 1905, Arthur Balfour declared himself a ‘great believer in arbitration’, encouraging it wherever he could. As Balfour saw it, arbitration treaties offered ‘a great engine for preserving the peace of the world’. And yet even Balfour’s position was circumspect when compared to the political opposition. Liberal Prime Minister, from 1905 to 1908, Henry Campbell–Bannerman was a particularly staunch advocate of international arbitration and disarmament. Indeed, he was one of the few world leaders to seriously push the cause of disarmament at the second peace conference at The Hague.

Behind advocacy for international arbitration was the wide-ranging discourse of how to construct a more ordered, rational international system through international law and institutions, and how to create the conditions for a universal peace amongst nations. The nineteenth century witnessed a resurgence in the intellectual and popular expression of ideas of peace and nonviolence. In the non-Western world, non-violence and peace were construed often in terms of resistance to the pacification attempts of Western colonizers. During the 1870s and 1880s, Māori spiritual leader Te Whiti o Rongomai founded the Parihaka settlement in the Taranaki region of New Zealand’s North Island. It was a village built on land confiscated by the British Crown from the Taranaki Wars (1861–1863). Based on Te Whiti’s teachings of non-violence, a mixture of traditional spirituality and Christian scripture, followers maintained peaceful protest through their occupation of the land until armed constables seized the land in 1883. Dedicated agendas of peace were widely expressed within the context of reformist religious discourse. From the 1880’s, the Ahmadiyya movement, which spread across India, for example, placed a particular emphasis on the peaceful nature of Islam. The founder of this movement, Mirza Ghulam Ahmad, who proclaimed to be the movement’s prophet, emphasised non-violence to the point of stressing to his followers, complete loyalty to the British Crown.

In Persia and the Ottoman Empire, the Bahá’í faith, founded in the mid-nineteenth century, articulated a comprehensive peace manifesto that included a world court as well as the abolishment of war. The founder of the faith Bahá’u’lláh completed the Kitáb–i–Aqdas, the holy book for Bahá’í’s in 1873, which called on people to ‘establish universal peace and summoned all the nations to the divine banquet of international arbitration’. When `Abdu’l–Bahá’, Bahá’u’lláh’s son, 

126 ibid.
128 ibid.
131 Unfortunately, there is a lack of historical scholarship on non–western conceptions of war and peace during the nineteenth–century.
continued the mission of his father, he became a major proponent of international arbitration in the late nineteenth and early twentieth century. He wrote explicitly in support of an arbitral court and incorporated the concept of international arbitration into the broader tenets of the Bahá’í faith. Bahá’í ideas filtered into Western consciousness through the Lake Mohonk conferences on arbitration, inaugurated in 1895 until 1916. These conferences were part of a series of conferences (with one on American Indians and another on African Americans) sponsored by Quaker–resort owner Albert Smiley. In 1911, Persian diplomat and Bahá’í adherent, Mirza Ali Kuli Khan spoke at the Lake Mohonk conference on arbitration in New York, relating Bahá’í teachings to the Western agenda of peace.

The Lake Mohonk Conference on arbitration was a major meeting place of stalwarts of the arbitration movement. Khan’s participation paved the way for ‘Abdu’l-Bahá to speak at the conference in 1912 on the oneness of humanity. From 1910 to 1913, ‘Abdu’l-Bahá journeyed across the west in order to build the strength of the Bahá’í faith in North American and Europe. During his travels in the United States, ‘Abdu’l-Bahá met with a number of members of the American peace society, reputedly at his own insistence. The confluence of Western and non–Western ideas of peace through the Bahá’í faith and the Lake Mohonk conferences was unusual to say the least. Ultimately, most arbitration advocates in the West, either explicitly or implicitly, saw the advent of such a court or a fully codified body of international law as being limited to the civilized world of sovereign nation states. In an age of imperialism

135 For more on the Lake Mohonk conference series on American Indians and African Americans, see Larry E. Burgess, ‘We’ll Discuss it at Mohonk’, Quaker History, vol. 60, no. 1, 1971, pp. 14–28.
137 For more on the Lake Mohonk conferences, see Burgess, ‘We’ll Discuss it at Mohonk’.
140 Although it must be noted that other non–westerners were also invited to speak at Lake Mohonk, although it was more of a rarity than anything else. Such speakers included Protap Chunder Mozoomdar, the leader of Brahmó Samaj the reformist Hindu movement from Bengal, for example spoke at the 1900 conference during his visit to the United States. Mozoomdar, who maintained a close relationship with Christian leaders, spoke of the spiritual importance of international arbitration. For Protap Chunder Mozoomdar’s speech at the conference, see Lake Mohonk Conference on International Arbitration, Report of the Sixth Annual Lake Mohonk Conference on International Arbitration, 1900, Lake Mohonk, NY: Lake Mohonk Conference on International Arbitration, 1900, pp. 27–29.
and Western confidence in their own moral and cultural superiority, the idea of submitting international disputes to arbitration presupposed that the parties would be equals, or at the very least sovereign, in the international system. That is not to say that all were indifferent to the fate of those individuals whom they deemed lacking in the requisite degree of sovereignty and civilized sensibilities. Nineteenth–century notions of universalism compelled at least some individuals and groups to consider the numerous non–Western societies and people in world affairs. In the 1890s, Afghan Emir Abdur Rahman Khan launched a number of raiding parties into Kafiristan (modern day Nuristan in the east of Afghanistan) in order to convert the ‘kafirs’ or non–believers to Islam. Outrage at what many outsiders believed to be ‘exterminating raids’ prompted the International Arbitration and Peace Association, alongside the British and Foreign Anti–Slavery Society and the Aborigine Protection Society, to send memorials in 1896 to the Secretary of State for India, requesting that the Government use its influence to prevent the atrocities.\(^\text{142}\) The British Government declined to intervene, arguing that the conversion was neither violent nor compulsory.\(^\text{143}\) Nevertheless, it showed how the arbitration advocates concerned themselves in the general commonweal of humankind even if it was from the Eurocentric standpoint.

A number of key arbitration advocates in the latter half of the century were also anti–imperialist by nature. Influential French politician and peace activist Frédéric Passy in particular believed that those non–Western peoples under the imperial domination of great powers should have the right to self–determination. Passy even went so far as to liken the seizure of lands from indigenous people in Asia and Africa as ‘their Alsace and their Lorraine’.\(^\text{144}\) The sentiments of Passy however were by no means the rule to the widely held racial and cultural prejudices of the age. Almost all supporters of arbitration took great heart in the moral, intellectual, and cultural superiority of Western civilization. Many held deep–seated attitudes on the need to protect the society of civilized nations from the fratricidal strife of conflict. Overwhelmingly, the international mind was one that accepted the fruits of imperialism or justified it on the grounds of the generic need to ‘civilize’.\(^\text{145}\)

The idea of arbitration as a mechanism of peace presupposed that war was an extension of statecraft. In other words, war was an objective enterprise of states as opposed to a struggle of races and ideologies \textit{per se}. Arbitration advocates and statesmen alike almost exclusively saw arbitration as a method of preventing conflict between sovereign states. Instances of asymmetrical warfare—or in the words of Friedrich Engels those ‘homespun’ wars of national independence such as those in the Caucasus (1817–1864) and Algeria (1830–1884)—were generally outside the purview of the general arbitration movement.\(^\text{146}\)

\(^{142}\) For the petition and the British Government’s subsequent response, see HCCP, vol. LXI.249, no. 262, 1896.

\(^{143}\) ibid.


\(^{145}\) For more on the dynamics of internationalism and imperialism, for example, see Koskenniemi, pp. 98–178. See also Cortright, \textit{Peace}, p. 47.

\(^{146}\) ‘The Chances of the War’, \textit{Pall Mall Gazette}, 8 December 1870, p. 1. As Engels noted, wars amongst
The earliest peace societies emerged not long after the end of the Napoleonic Wars. The longest running peace society was founded in London in 1816 as the Society for the Promotion of Permanent and Universal Peace. It eventually came to be known as the London Peace Society as auxiliary societies formed in other parts of Great Britain. In the United States, the first local peace societies from the genteel social circles of New England in New York, Maine, New Hampshire, and Massachusetts were first founded in 1815. Eventually they amalgamated themselves to form the American Peace Society in 1829. In France, the Duc de la Rochefoucauld–Liancourt founded the Société de la Morale chrétienne in 1820 in order to advocate for an end to war in addition to an end to slavery, prison reform, as well as a range of other social causes. The Société de la paix founded in Geneva in 1830 by wealthy aristocrat the Comte de Sellon, who wrote on numerous progressive causes including the end of the death penalty as well as arbitration.

Most early societies consisted almost exclusively of enlightened aristocrats, religious leaders, and the middle class. There were nuances of thought between the various peace organizations and activists. Quaker ideas of non-violence were particularly important in the Anglo peace societies for example, while the utopian socialism of Saint–Simon and Charles Fournier were particularly influential for French peace advocates.

Free trade was also a prominent ideological factor in the peace movement particularly by the mid-century. Liberal agitator Richard Cobden, for instance, not only took to spreading the doctrine of free trade through his efforts at repealing the Corn Laws in 1846, Cobden’s free trade advocacy dovetailed into the general ideal of universal peace. Cobden saw free trade as a step towards the end goal of universal peace. The Cobden Club, an organization that aimed at spreading the ideology of Cobden, was thus a major advocacy group for peace and arbitration. At the behest of a peace conference in Brussels in 1848, Cobden submitted a petition with 200,000 signatures to the House of Commons in 1849, requesting the adoption of obligatory arbitration in matters of foreign policy. The motion failed on the floor with 176 so-called civilized states were ‘mere conventional wars’ in which governments sued for peace once ‘as soon as their military machinery had broken down or become worn out’.

By the time that the sixth annual report of the society was published in 1822, there were some 17 auxiliary societies with correspondence established by the London Peace Society in other cities and towns, see Sixth Annual Report of the Committee of the Society for the Promotion of Permanent and Universal Peace, London: T. Hamilton, 1822, p. 6.

For more the early American peace societies see Whitney, The American Peace Society.


ibid.

Similarly, French politician Frédéric Bastiat, a free trade contemporary of Cobden, also looked at free trade from the perspective of peace, believing that free trade would harmonise economic interests and ensure peace. Bastiat’s ideas would influence peace advocates of the latter half of the nineteenth century such as Passy. Clinton, Frédéric Passy, p. 36.

noes and 79 ayes, mostly from Whig politicians. While unsuccessful, it was the first time that arbitration was discussed in the House and the sizeable minority was heartening enough for peace advocates. Even Viscount Palmerston, who was unready to accede to the motion, praised the petition as an indication of the ‘sincere and honest disposition to maintain peace’ in the country.\(^{155}\)

From the 1860s onwards, labour and working class groups also became powerful vocalists in support of peace and arbitration, albeit with a different emphasis. The \textit{Ligue internationale de la paix et de la liberté} established in 1867 in France with key figures such as Victor Hugo, Giuseppe Garibaldi, and Jules Favre at the helm had strong republican and socialist elements.\(^{156}\) Their support for peace had a different trajectory to that of other groups and individuals. For them peace amongst peoples required social justice, self-determination, democracy, and human rights.\(^{157}\)

Many middle–class peace activists kept their distance from this agenda out of distrust or fear of the revolutionary scope of the ‘red international’.\(^{158}\) Nevertheless certain working–class peace advocates were able to gain the trust of their middle–class counterparts. Randall Cremer was one such figure. A carpenter by trade, Cremer was active in the labour movement, eventually making it into the House of Commons under the Liberal Party ticket for an East London constituency in 1885.\(^{159}\) While not a ‘public figure of the first rank’, Cremer was nevertheless a significant actor in the arbitration agenda, founding the Workmen’s Peace Association in 1870.\(^{160}\) While most peace journals took a lofty, moral platform, The association’s official organ, the \textit{Arbitrator}, scintillated with wit and irony at British imperial ambition, continental patriotism, and the wastefulness of the establishment. Their critique went beyond just generalised ideas of ‘civilization’, into more socially orientated ideas centred on how peace benefited the working class and conversely how war lined the pockets of capitalists. Nevertheless, Cremer represented the acceptable face of working–class arbitration advocacy. He partnered with Passy in founding the Inter–parliamentary Union, the first dedicated political lobby group for arbitration, in 1889. Prior to that, Cremer garnered the signatures of 234 members of the House of Commons for a memorial in favour of an Anglo–American arbitration treaty in 1887. A delegation headed by Cremer and Lord Playfair presented the memorial to President Cleveland in a meeting arranged by industrialist and philanthropist Andrew Carnegie, in effect

\(^{155}\) For more on the reception of the motion in the House of Commons, see \textit{House of Commons Hansard}, series III, vol. 106, 1849, cc. 53–121.

\(^{156}\) Cooper, \textit{Patriotic Pacifism}, p. 36.


\(^{158}\) Many of the more eminent figures who worked to extend arbitration, such as the left–wing Passy, were particularly distrustful of socialist peace agendas. Clinton, ‘Frédéric Passy’, p. 43.


\(^{160}\) \textit{ibid.}, p. 49.
placing the issue of an Anglo-American arbitration treaty at the centre of politics in both countries.\footnote{161 Nelson M. Blake, ‘The Olney–Pauncefote Treaty of 1897’, \textit{The American Historical Review}, vol. 50, no. 2, 1945, pp. 228–229.}

Women also figured prominently in the peace movement. Austrian Baroness von Suttner was perhaps the most famous female peace advocate. After the publication of her pacifist novel \textit{Lay Down your Arms!} in 1889, she cemented her position in the movement, corresponding with key figures of the period such as Swedish industrialist and philanthropist Alfred Nobel as well as emerging figures like James Brown Scott, who acted as an advisor for the American delegation at the second Hague conference and acted as chronicler of the peace conferences.\footnote{Bertha von Suttner, \textit{Die Waffen nieder! Eine Lebensgeschichte}, Dresden: E. Pierson’s Verlag, 1893. For more on Suttner see Brigitte Hamann, \textit{Bertha von Suttner: A Life for Peace}, Syracuse, NY: Syracuse University Press, 1996.} In the peace societies, there were a large number of women, particularly in America, with notable advocates such as Elizabeth Cady Stanton, Lucretia Mott, and Julia Ward Howe, all of whom were also prominent activists in other movements such as the abolition of slavery, female suffrage, and temperance.\footnote{For more on woman and the United States peace movement, see Harriet Alonso, \textit{Peace as a Women’s Issue: A History of the U. S. Movement for World Peace and Women’s Rights}, Syracuse, NY: Syracuse University Press, 1993.} In 1871, the American Peace Society, the largest peace organization in the United States, allowed women to serve as officers. Their presence in the society was sizable. As president of the American Peace Society Benjamin Trueblood noted by 1910, women were as numerous as men in the organization, even outnumbering them in some branches.\footnote{Paraphrased from John M. Craig, ‘Hannah Johnston Bailey: Publicist for Peace’, \textit{Quaker History}, vol. 84, no. 1, 1995, p. 4.} Sharing in the ideals of peace and abhorrence to war, the feminist and suffragist movements were often involved in the peace movement. The United States Women’s Christian Temperance had a section devoted to arbitration and peace activism, headed by the energetic Quaker Hannah Johnson Bailey.\footnote{ibid., pp. 3–16.}

Even the less liberally inclined nations such as Austria–Hungary, Germany, and Russia came under the influence of peace and arbitration developments. A peace society was formed in Russia in 1909 with Prince Dolgorukov and Count Komarovsky as its head, with branches in Moscow, Tallinn, and St Petersburg and a membership list of three hundred people by 1911.\footnote{For more on Russian pacifism, see Alexander Tchoubarian, \textit{The European Idea in History in the Nineteenth and Twentieth Centuries: A View from Moscow}, Ilford, Essex: Frank Cass & Co., 1994, pp. 62–68.} In Vienna, Suttner founded the \textit{Österreicher Friedensgesellschaft} in Vienna in 1891.\footnote{For more on Austrian pacifism, see Richard R. Laurence, ‘The Peace Movement in Austria, 1867–1914’, in Solomon Wank, ed., \textit{Doves and Diplomats: Foreign Offices and Peace Movements in Europe and America in the Twentieth Century}, Westport: Greenwood Press, 1978, pp. 21–41.} Four years later, the \textit{Société hongroise de la paix} was founded in Budapest. Germany also possessed a peace similar to other nations in Europe. The most important German organization was the \textit{Deutsche Friedensgesellschaft}, founded in Berlin in 1892. Admittedly, German pacifists were the ‘poor relations’ of the peace societies in Western Europe, unable

The peace movement went to great efforts towards demonstrating the folly and irrational nature of war through literature, while at the same time pushing for measures towards permanent peace such as disarmament, the abolishment of standing armies, and use of arbitration to replace war. However, arbitration provided a legitimate platform in which to project the discourse of peace. As armaments were ever increasing and advances in military technology were constantly made, calls for disarmament were falling on deaf ears in political circles. Arbitration therefore figured as the most practical expression of the lofty ideas of world peace. Almost every peace advocate could agree on the necessity of arbitration or some other form of adjudication amongst states in order to provide agency to the programme of world peace.

Unlike the Anglo–Saxon peace societies that often possessed distinct religious overtures, the continental variety morphed towards the principle of pacifism in the latter half of the century. Modern–day connotations of pacifism centre on notions of complete non–violence. Pacifism in the late nineteenth century represented a form peace advocacy dedicated to secular, humanist principles through the creation of a judicial process. This ‘pacifisme ancien style’, as historian Norman Ingram terms it, fused the concept of universal human rights to the agenda of arbitration, defining peace as a human right and in turn placing a greater emphasis on a legal agenda.\footnote{See Norman Ingram, ‘Pacifisme ancien style, ou pacifisme de l’Association de la paix par le droit’, \textit{Matériaux pour l’histoire de notre temps}, vol. 30, 1993, pp. 2–5.} The focus for pacifists was not so much disarmament but a system of arbitration. As Passy often stressed, there could be no talk of disarmament without first establishing a mechanism to resolve disputes peacefully.\footnote{Clinton, ‘Frédéric Passy’, p. 47.} While this did not contradict the
Anglo-Saxon peace movement, it did offer a subtly different point of view on aspects of war and peace.

Anglo-Saxon peace advocates often emphasised complete non-violence in line with Quakerism and other religious grounds. British peace activists had vigorously protested against the Militia Bill of 1852 and many such as Cobden condemned Great Britain’s involvement in the Crimean War. That is not to say that all Anglo peace movements were oblivious to the complexities of war and peace. The moral dilemmas of the American Civil War had forced some to rethink the idea of complete non-violence. However, European pacifism had few qualms in advocating for patriotic wars. Pacifists such as Jean Jaurès, Gaston Moch, Ernesto Teodoro Moneta, and Passy regularly extolled the virtues of patriotism and national service. Moch, who was also a military officer, supported the idea of levée en masse, while Jaurés and Teodoro both advocated for military reform in France and Italy respectively in the form of defensive militias of the citizenry. To many within the pacifist movement, war and peace was not necessarily clear-cut in matters of national defence and interest.

Much of this pragmatism had to do with context. The conservative straightjacket of the European concert and the rights of sovereigns had stymied the seemingly natural right of peoples to form nations, as many liberal thinkers argued at the time. Belgian jurist Gustave Rolin–Jaquemyns, for example, wrote in 1869 how the congress system and the conservative Holy Alliance ‘had turned Kantian ideas in favour of absolutism and dressed them in the garb of mysticism.’ The subjugation of Polish and Italian nationalists by the reactionary powers of Russia and Austria–Hungary respectively had made their liberation through war a progressive cause for many in Europe. It was therefore without any sense of irony that Garibaldi, the charismatic leader of the Italian Risorgimento, who had fought in France, Italy, and Latin America on behalf of ‘liberty’, also acted as a major figurehead in the European peace movement. For the continental liberal, war at times became a necessity in order to attain a genuine European peace—that is the peace of peoples and nations, as opposed to a peace of sovereigns and powers. For once peoples had their own nation-states then it followed that the society of nations would be a just and democratic one through which a foundation of cosmopolitanism could unify the peoples of Europe.

The formal teaching of international law and the establishment of professorial chairs in the subject at universities in Europe and the Americas helped to create a professional cadre of international law specialists eager to influence their discipline.
in its practical application. This was reflected in the internationalist movement, which included a range of influential legalists such as Calvo, Italian law professor and authority on international law Pasquale Fiore, and influential British expert on international law and economics Thomas Barclay. While peace was the implicit ideal behind their ideas, in keeping with the progressivism of the age, the creed of internationalism was more focused on the role of the international in facilitating intercourse between nations.

Internationalism formed a series of programmes and agendas. Internationalists saw in arbitration an interface to international law. The systematization and institutionalization of arbitration featured as one of the main areas of focus for the internationalists. The founding of the Red Cross in 1863 signaled both a ‘golden age’ in the development of the laws of war as well as a renewed interest in the role of law in international politics. After witnessing the suffering and poor treatment of the dead and wounded in the aftermath of the Battle of Solferino in 1859, Swiss national Henry Dunant wrote an account of it in *Un souvenir de Solferino* published in 1862. In *Un Souvenir*, Dunant proposed the establishment of local humanitarian societies to provide care for the wounded irrespective of nationality in times of war. Gustave Moynier and Dunant both part of a philanthropic society in Geneva established a committee of five, which would in time form the International Committee of the Red Cross, to examine the issue in a private conference in 1863. The following year the committee persuaded the Swiss government to host a diplomatic conference to adopt a set of rules governing the treatment of the wounded in war. The Geneva Convention of 1864 created not only the first norm of international humanitarian law but also heralded the development of rising international sentiment. It demonstrated how organized programmes could successfully lobby and influence state actors.

Following the example of the Red Cross, other internationalists established organizations to provide a forum for their ideas. The International Law

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182 Historian Mark Mazower provides a solid treatment of the ideological underpinnings of the internationalist movement. Mazower, *Governing the World*.

183 After all, as the Lord Chief Justice of England Lord Russell of Killowen observed in 1896, ‘no one can doubt that sound and well-defined rules of international law conduce to the progress of civilization and help to ensure the peace of the world.’ *International Law and Arbitration: The Annual Address Before the American Bar Association*, Philadelphia: Dando Printing and Publishing Co., 1896, p. 34.


Association (originally called the Association for the Reform and Codification of the Law of Nations) was founded in Brussels 1873. At the onset, the association aspired to develop a codified body of international law. It had a sizeable British presence with its office based in London and presidents of their regular conferences including distinguished British jurists such as Lord Alverstone, Lord O’Hagan, and crown law officers Phillimore and Twiss. Nevertheless, conference presidents also included eminent figures from elsewhere including Belgian Prime Minister Auguste Beernaert and Italian Prime Minister Paolo Boselli. The association made a number of small achievements primarily in private international law, which in time would become the organization’s primary focus. While it failed to achieve dramatic developments to status quo, it did provide a platform for rigorous legal debate on aspects of international law. From 1873 to 1907, the International Law Association held twenty-four conferences around Europe and the United States. At these conferences, the association made some thirty-seven resolutions by the time of the second peace conference at The Hague on practical legal matters from principles for international law to govern bills of exchange in 1876 to a model treaty for the implementation of foreign judgments in 1903. A number of their resolutions became legal principles in time. The 1877 conference at Antwerp, for instance, codified the law of the general average for ship and cargo owners. Through their efforts, most shipping and commercial firms subsequently adopted the so-called ‘York–Antwerp Rules’. In a similarly collegial environment of intellectual dissemination and in the same year that the International Law Association first convened, the Institut de droit international was also formed in Ghent by a group of equally prominent international jurists in order to research and advocate on behalf of international law. While the International Law Association was open to a range of interested individuals from different backgrounds, the institute restricted membership to legalists, reflecting a much more specialized desire to explore the philosophical and normative aspects of international law. The founding members possessed a strongly continental character with Dutch jurist Tobias Asser, Moynier, and Belgian politician Gustave Rolin–Jaequemyns, as well as Johann Kaspar Bluntschli from Switzerland, politician Pasquale Stanislao Mancini and jurist Augusto Pierantoni from Italy, as well as Belgian jurist Émile de Laveleye. Nevertheless, founding member also hailed from other areas such as Calvo, Lorimer, Field II, and Russian jurist Wladimir Besobrasoff. The institute made great inroads in the formulation of new principles in international law. When statesmen failed to ratify the Brussels Convention in 1874 for instance, the institute established a working committee to analyse the issue of laws on war, adopting the Oxford Manual of the Laws and Customs of War in

192 See Koskenniemi, pp. 11–97.
This would in turn form the basis of the conventions relating to the laws of war for the first peace conference at The Hague in 1899.

Without a doubt the most influential peace and internationalist institution was the Inter–Parliamentary Union founded by Cremer and Passy at a conference in Paris in 1889. After the near success of the Olney–Pauncefoote treaty in 1897, Passy and other French deputies invited Cremer and a cohort of British parliamentarians to Paris to explore the idea of Anglo–French inter–parliamentary cooperation on a general arbitration between the two countries. Member of Parliament Herbert Gladstone, the son of William Gladstone, called the meeting 'historical'. The event was poorly attended, owing to the fact that it did not suit the calendar of British MPs. Despite the lukewarm success of the initial encounter, participants nevertheless persevered. They organized a conference the following year, coinciding with the Universal Exhibition in Paris. The first conference consisted of ninety–four representatives including fifty–five French members, twenty–eight British, five Italians, and one from Belgium, Spain, Denmark, Hungary, the United States, and Liberia. Originally called the Inter–Parliamentary Union of International Arbitration, in 1899 the last words were dropped yet arbitration remained at the fore of the organisation's raison d'être.

The union was very much an intersection of internationalism and peace interests focused primarily on arbitration. It represented a fundamental development in arbitration advocacy: the union was an assemblage of lawmakers from a variety of parliaments across the world. It included those politicians such as Cremer and Passy who were active in the peace or internationalist movements as well as those parliamentarians favourable towards the advancement of arbitration. In time, the union would become a vital forum for politicians from around the world to petition for arbitration in political circles.

The Inter–Parliamentary Union conferences provided undoubtedly the most crucial forum for arbitration advocacy. The Brussels conference in 1895 adopted a resolution in favour of college of arbitrators, sending a detailed memorandum in support of it to various governments. The memorandum, which was written by eminent Belgian jurist Édouard Descamps, explained the need for such an institution in pragmatic terms for statesmen, arguing:

The institution of such an International College of Arbitration is well justified by the present state of relations between nations. International life, facilitated in these days by so many agencies, has

196 ibid.
198 See, for example, the Foreign Office copy that was published as a confidential print document for the general distribution amongst government officials in ‘A Memoir on the Organization of International Arbitration', FO 881/7229.
received an immense development, as seen in the multiplication of points of contract, and of relations which give rise to an increasing number of conflicting judicial claims. Hence Governments are frequently obliged to espouse the cause of their countrymen, and hence the increasing need of judicial organization adapted to this situation.\footnote{ibid.}

As Descamps furthered, the ‘new international order of things’ necessitated the creation of an institution to regulate international arbitration and to eliminate the ‘haphazard character’ behind the implementation of arbitration.\footnote{ibid.} International arbitration needed a permanent institution through which the third-party method could be regularized. The proposal for a college was more modest than the world court that many individuals envisioned. Yet the proposal was important: The Permanent Court of Arbitration in 1899 bore many similarities to the International College of Arbitration proposed in 1895. The Union had a remarkable degree of influence during its early years. The 1904 conference held in St Louis made a resolution calling for a diplomatic conference to be held in order to address the questions raised at the first peace conference at The Hague.\footnote{John W. Foster, Arbitration and The Hague Court, New York: Houghton, Mifflin and Company, 1904, pp. 136–137.} It called upon the President of the United States to invite all the nations to send delegates to such a conference. President Theodore Roosevelt responded in kind by proposing a second peace conference, which Tsar Nicholas II subsequently convoked again in 1907.

In the early half of the nineteenth century, critics could easily dismiss arbitration advocacy as hopelessly impractical. In many countries, the common perception of permanent peace and a world court was often that it belonged to the realm of the idealist or utopian—an ignominious charge many advocates went to great lengths to eliminate. Fyodor Fyodorovich Martens, one of a handful of prominent Russian internationalists of the age, even attacked the ‘utopians’ as the ‘most dangerous enemies of the progress of international law’.\footnote{Martens, ‘International Arbitration and the Peace Conference at the Hague’, p. 604.} Marten’s viewpoint was in no way unique. Many advocates, who were likewise part of the political establishment, also emphasized how ‘utopia’ could not be confused with ‘solid progress’, as Belgian Senator Baron Descamps stressed in his 1895 memorandum.\footnote{For more on Marten’s role in The Hague peace conferences, see Pustogarov, Our Martens.}

In that sense arbitration advocates fought a kind of rear-guard action against the so-called utopians in order to appeal to the moderates of the political establishment. For these pragmatists, utopianism ranged from the complete non-violence of the Quakers to the spiritual pacifism of Henry David Thoreau and Leo Tolstoi. These types seemingly paid scant attention to the formulation of practical resolutions in support of world peace. Nor did the so-called utopians think much of their counterparts. As Tolstoi derided, the obsession of the peace movement with

\footnote{‘A Memoir on the Organization of International Arbitration’, FO 881/7229.}
'reading addresses, writing books, choosing presidents, vice–presidents, and secretaries and meeting and talking first in one city and then in another’ was unrelated to the prime question of personal moral responsibility—of whether one should take part in military service.205

 Arbitration advocacy was also a battle in overcoming the conservative mentalities of statesmen. For the most part, the arbitration agenda that peace and internationalist advocates pushed stood at the avant garde of what even the most moderate politician was prepared to consider, given the fears that a grandiose scheme of arbitration could seriously inhibit their independent course of foreign policy. In some ways, not referring certain issues to arbitration was one thing, after all states need to find the best outcome for their own circumstance. However, reluctance to extend arbitration came down to a general fear that the use of arbitration, which benefited great powers, if turned into a system that existed outside the foreign office could be detrimental to their own interests. As most sober men of affairs would acknowledge, states needed the freedom of action to undertake unilateral action in support of their own vital interests when necessary. The idea of subjugating foreign policy carte blanche to judicial oversight was antithetical to the sensibilities of most self–respecting statesmen and many contemporary commentators. For great powers, there were invariably unresolved political and national grievances that could never be brought to third–party scrutiny, for fear that they would diminish power or cause embarrassment.

 Arbitration advocates thus had to broker a middle ground capable of working within the conservative world of statecraft. They were helped in some way with the presence of moderately inclined statesmen who were generally positive to the idea of expanding the usage of arbitration. Arbitration advocacy became a study in the possible. Guarded pragmatism became the key watchword. While there was an element of idealism behind the idea of arbitration and its ability to end war, it was nevertheless deliberately poised as a highly practical enterprise by many of the leading members of the movement. Passy in particular regularly framed the message of peace in practical terms thereby placing the idea of arbitration into the mainstream of Western public opinion.206 Such was the gradual turnaround of opinion that Trueblood was able to stress how the idea of universal peace, ‘which seemed a little while ago the dream of disordered brains’, had ‘suddenly transformed itself into the waking vision of the soberest and clearest of intellects’ by 1899.207 In the latter half of the nineteenth century, the co–opting of arbitration by a new generation of peace activists, internationalists, and various other individuals and groups had made the business of peace and arbitration into a far more considered enterprise. As such, the objective role of law needed to become the ‘recognized basis’ for peace, as far as the likes of Descamps saw it.208

 Many stressed that arbitration had to be attained through a modus vivendi in which the rights of states to direct the course of their own foreign policy were

206 Clinton, ‘Frédéric Passy’, p. 34.
208 ibid.
respected. The realities of great diplomacy compelled many to ground their expectations in caution and pragmatism. Especially, in the latter half of the nineteenth century, political context alerted contemporaries to the fact that war was never far around the corner, ready to undo the work of peace activists and internationalists.

The acrimoniousness of the Franco–Prussian War had profoundly affected the future course of the arbitration movement. The Paris Commune in March 1871 had shown the threat of communism from below, while the war itself had shown the ghastly horrors of modern mass warfare. And then of course, there was the residual Franco–German enmity that had placed a question mark over the myth of European cooperation and fraternity. The belief in Franco–German partnership on the continent, which Napoleon III had tried to bring about with Bismarck until the falling out during the Luxembourg Crisis of 1867, was now in tatters in the wake of the war. The cauterization of French soil for many contemporaries in Europe meant that long lasting peace seemed like a house of cards in light of the objective realities of European politics.209

Many of the peace activists were thus conflicted by the desire for permanent peace but also for the need for justice. One of the biggest proponents of peace, for instance, Hugo firmly stated that there could be no peace until France was fully restored. 210 He finally severed all links to the European peace movement after 1876.211 In other cases, arbitration took on greater significance in the European peace movement after the Franco–Prussian War.212 Passy renamed his peace society, the Ligue internationale et permanente de la paix, founded in 1867, to the Société française pour l’arbitrage entre les Nations in order to reflect the emphasis on advancing the cause of international arbitration. In the decades following the war, Passy focused his attention on a ‘systematic approach’ towards affecting a basis for permanent peace, becoming in the process the ‘architect of the pacifist system of organizations’.213

During the period, France boasted the most ‘sophisticated’ and ‘vigorous’ peace movement on the continent.214 It was thus unsurprising that the shock of the Franco–Prussian War should profoundly shape French peace societies and by definition impact upon Europe as a whole. After the smoke and din of battle, few were under any illusions as to the realities of attaining world peace. On 28 February 1871, scarcely a month after the belligerents had signed the armistice, Regius Professor of History at Cambridge Sir John Robert Seeley delivered a lecture in support of a ‘feasible and statesmanlike scheme of arbitration’ in Europe.215 Seeley

211 ibid.
213 Wild, ‘Frédéric Passy’, p. 35.
spoke on behalf of many peace advocates and internationalists. Introspection in the wake of the fratricidal strife of the Franco–Prussian War created new ideas and brought others more forcefully out from the background. In 1870, the British Reform League set up a Workmen’s Peace Committee. After 1871 it was renamed as the International Workmen’s Peace Association and developed a plan for the establishment of a ‘high court of nations’. Numerous peace societies had sprung up in the 1860s thus the trial by fire of the Franco–Prussian War, forced peace advocates in Europe to develop more a pragmatic basis of advancing their ideals. Moreover, it was no coincidence that the Institut de droit international and the International Law Association were founded in the wake of the conflict. The Institut was founded off the back of individuals such as Moynier, who had admonished the lack of respect both belligerents had for the Geneva Conventions of 1864, proposing that an international legal institution should be established capable of investigating such breaches.

The years following 1871 were, as Butler might even have put, the ‘busy years’ of arbitration advocacy. The aim for most arbitration advocates was to educate the public as to the virtues of arbitration in place of war, while at the same time attempting to change the policies of their respective governments. Great effort was placed on the production of persuasive literature in order to spread general enlightenment on the subject of international arbitration and polemicizing on behalf of its extension. Such was the vast corpus of work on the subject that after the second peace conference at The Hague, the Library of Congress compiled a bibliography of references with international arbitration under the supervision of Appleton Griffin the chief bibliographer. In that sense, the arbitration movement demonstrated the global transfer of ideas, identities, political models, and policy initiatives of the nineteenth century.

Cities such as Brussels, Geneva, London, New York, and Paris, each with large concentrations of publishing houses, newspaper presses, and academic and cultural environments, formed flourishing international hubs. From these cities, the advent of telegraphy, a global postal system as well as increased rates of international travel facilitated in turn the creation of an internationalized public sphere. Publicists from

216 Hinsley, Power and the Pursuit of Peace, p. 124.
217 The year 1867 was a particular milestone with four separate peace organisations being founded: the Union de la paix founded in Le Havre by Félix Santallier; the Ligue internationale et permanante de la paix founded by Frédéric Passy in Paris; the Ligue international de la paix et de la liberté founded in Geneva by Jules Barni and Charles Lemmonier; and the Ligue international de la paix par la justice also founded the same year in Paris and Brussels. Indeed, F. H. Hinsley argues that a fundamental ideological development in international law occurred after 1870 centring on Hegelianism in which the state was the ‘realization of the moral idea and as absolute end’. F. H. Hinsley, Sovereignty, 2e, Cambridge: Cambridge University Press, 1986, pp. 208–209.
218 Durand, ‘The Role of Gustave Moynier in the Founding of the Institute of International Law (1873)’, p. 543.
219 Taken from his memoir Nicholas Murray Butler, Across the Busy Years: Recollections and Reflections, 2 vols, New York: Charles Scribner’s Sons, 1939.
Paris had audiences not just in France, but also across Europe and the Western hemisphere, while conferences in Brussels counted delegates from similarly diverse corners of the world. The development of such communication networks were crucial in fleshing out the arbitration movement beyond representing the ideas of a handful of groups and individuals in some cities, into a broad based ideal. Advocates were well aware of the importance of the public—as President of the American Peace Society William Ladd noted public opinion was the ‘queen of the world’. The nineteenth-century concept of public opinion was more a representation of the dominant tendencies of thought amongst the educated classes, as liberal politician Herbert Fisher once put it, referring to those ‘average men’ who held a ‘strong belief in civil liberty and peaceful persuasion’. Regardless, the movement went to great lengths to court this public opinion in order to expand its popular appeal and attain greater influence in political circles.

Direct political action through petitions and legislative petitioning to forward the mission of peace and arbitration into the realm of foreign policy represented the next stage of the arbitration agenda. Even as early as the 1830s, the American Peace Society had begun to circulate petitions to state legislatures and the United States Congress in support of arbitration. In 1829, the Massachusetts Peace Society had circulated a petition in favour of a court of nations, gaining signatures in the thousands, including that of the lieutenant governor, the state secretary, three generals, twenty-nine state senators and 34 representatives in addition to numerous other influential public figures. Eventually in 1838, a resolution recommending the principle of arbitration in the adjustment of international disputes was unanimously passed in the lower house of the Massachusetts legislature and with only two dissenting votes in the Senate.

After 1871, a catalogue of successes ensued, demonstrating the inroads arbitration advocates had made within the political establishment and public opinion at large. In July 1873, Richard, now a liberal member of parliament, presented a motion in the House of Commons requesting that the government work with a view towards establishing arbitration as a permanent method of resolving differences amongst states. Prime Minister Gladstone had recommended that the motion be withdrawn, finding it still to be premature. Regardless, it passed with a majority of ten votes—the first time that a motion for arbitration was successfully passed. Its importance was symbolic; the Gladstone government made no efforts in promoting the system of arbitration nor did the Disraeli government that succeeded in 1874.

The British example inspired other legislatures to follow suit. The United States House of Representatives unanimously passed republican congressman Steward L. Woodford’s motion that the President should insert arbitration clauses in future treaties. Similar resolutions were also passed in the Second Chamber of the Swedish Riksdag in November 1874, the Dutch House of Representatives also in

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222 Quoted from Hinsley, Power and the Pursuit of Peace, p. 95.
November, and the Parliament of Belgium in January 1875. More milestones would follow into the 1880s onwards. In December 1887, Passy put forward a motion in the Chambre des députés to ‘take advantage of all favourable occasions to enter into negotiations with other governments to promote the practice of arbitration and mediation.’

One hundred and twelve deputies from the ranks of the radicals, republicans, and conservatives voted for the proposal to be presented to the Ministry of Foreign Affairs, although the foreign minister rejected the proposal. In June 1888, Senator Ben Sherman introduced a resolution to allow the President to refer those disputes to arbitration which could not be resolved diplomatically, it unanimously passed the senate but not read in the House. Both chambers finally passed the resolution in 1890. In the same decade, there were numerous other proposals in legislatures in Denmark, Norway, Spain, Sweden, and elsewhere in Europe.

Admittedly, very few of these resolutions resulted in any substantial change in the course of each nation’s foreign policy. In broader terms, the importance of these legislative actions was subtle. They signaled the pattern across many Western states towards a general acceptance in political circles of the need to institute some measures in support of a system of arbitration.

Prior to The Hague peace conferences, the closest that contemporaries came to instituting a system of arbitration was in 1897. That year Great Britain and the United States were on the verge of signing a comprehensive arbitration agreement. Negotiated by the American Secretary of State Richard Olney and the British ambassador in Washington Sir Julian Pauncefote in January 1897, the Olney–Pauncefote Treaty of 1897 endeavoured to resolve all disputes through arbitration if the standard diplomatic channels failed. Of course, the wording of the treaty applied the principle of compulsory arbitration in a guarded manner. All pecuniary claims were to be referred to arbitration and all awards would be final.

The treaty placed several restraints in order to safeguard both parties from poor arbitral decisions. The fourth article for instance provided for a court composed of judges of the supreme courts of Great Britain and the United States if one party protested the award based on an issue of fact or international law. As Pauncefote emphasized, the appeal court would arrest ‘faulty or doubtful judgement would’ making ‘it possible to refer great issues to arbitration without the risk of a disastrous miscarriage of justice.’ And, above all else, the treaty specifically disallowed questions of national honour to be brought to arbitration except by special agreement.

Smaller states in the past had signed compulsory arbitration agreements. However, this agreement was the first comprehensive arbitrated treaty drafted by two great powers. The Anglo–American record of arbitration and the perceived special relationship between the two powers meant that such an agreement seemed like a natural outcome. All the signs looked promising for Great Britain and the United States to lead the way with a general treaty of arbitration. The United States Congress had passed numerous resolutions in favour of the use of international arbitration in the past. In 1890, it had passed a resolution specifically encouraging

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226 Quoted from Clinton, ‘Frédéric Passy’, p. 50.
227 See Arnoldson, Pax Mundi, pp. 8–39.
229 Ibid.
the signing of general arbitration treaties with other states.\textsuperscript{230} Thus the defeat of the treaty is more baffling than anything else. In the Senate, it was unable to garner the three votes necessary for the two-thirds majority in order for it to pass.\textsuperscript{231}

The failure of the proposed treaty was not so much down to the inherent improbability of these two countries agreeing to an arbitration agreement. The century was filled with antecedents of Anglo–American arbitration. They had pioneered the use of arbitration. The special relationship between the two Anglo–Saxon nations made it natural to assume that they would take a further step. The two governments at the time were working under this assumption and encouraged by public opinion negotiated this agreement. In the context of the late 1890’s, American senators from both political parties used a number of grievances against Great Britain to prevent the treaty from being ratified.\textsuperscript{232} As Olney argued, generic Anglophobia and the recent memory of the Venezuelan crisis of 1895 made Great Britain particularly unpopular with American lawmakers.\textsuperscript{233} Moreover, resentment aimed at the Cleveland administration as well as a growing desire amongst senators for the legislature to be more assertive in foreign policy matters all helped to prevent the passage of one of the most important pieces of legislation aimed at advancing the cause of arbitration up until that point.\textsuperscript{234}

It was a humiliation for the United States government. As Olney related to prominent American diplomat Henry White:

\begin{quote}
The defeat of the General Arbitration Treaty by the Senate is a source to me—as no doubt to you—of infinite disappointment and chagrin. The country, of whose every act and attitude you and I would always like to be proud, seems to me to have been placed in a most humiliating and mortifying position.\textsuperscript{235}
\end{quote}

Republican President William McKinley in his first inaugural address to Congress in 1897 had gone so far as to claim that ‘the adjustment of difficulties by judicial methods rather than force of arms’ was to be a cornerstone of United States foreign policy.\textsuperscript{236} There was a corollary thought in the wider cause for international arbitration that many held in the Western hemisphere. The idea of arbitrating disputes amongst states came to be an ‘essentially American ideal’, as American legal authority James Brown Scott put it.\textsuperscript{237} At the time, international arbitration was no more a unique diplomatic tool of other ‘liberal’ states such as Great Britain, France, or even Italy.\textsuperscript{238} Moreover, the United States Congress defeated and gutted more arbitration treaties than the House of Commons either did. The legislature would

\textsuperscript{231} Combs, The History of American Foreign Policy from 1895, p. 12.
\textsuperscript{232} For more on the failure of the Olney–Pauncefote Treaty, see Blake, ‘The Olney–Pauncefote Treaty of 1897’.
\textsuperscript{233} Holt, Treaties Defeated by the Senate, pp. 159–160.
\textsuperscript{234} ibid.
\textsuperscript{236} Caron, ‘War and International Adjudication’, p. 10.
\textsuperscript{237} Quote taken from Scott, An International Court of Justice, p. 4.
\textsuperscript{238} As previously mentioned in the Introduction, the United States used arbitral mechanisms in 90 instances by 1904, making it a distant second to Great Britain with 160 odd instances.
continue to enact self-defeating campaigns against the executive by thwarting the arbitration endeavours of certain presidents.239

Nevertheless, numerous American statesmen attempted to interlink the ‘new style’ of American diplomacy to the cause of international arbitration, forging arbitration into an American ideal as much as an ideal of the civilized society of nations.240 Cleveland and Roosevelt’s forceful intervention in the Venezuela–Guiana boundary crisis and the Venezuelan crisis respectively had demonstrated not only the increasing prominence of the American presence in global affairs but also its preference for pacific settlement means of resolving disputes, particularly in the Western hemisphere.

In spite of the frequent tension between the legislature and executive arms of the United States, there was a genuinely held belief that the advocacy and use of international arbitration to resolve disputes peacefully was uniquely American in its outlook. In 1881, secretary of state James G. Blaine sent invitations for a Pan–American congress at Washington, placing emphasis on the ‘international regulation of disputes’ in the invitation.241 Blaine had attempted to intervene in the war between Chile and Peru, arguing that America possessed ‘moral right and duty’ to arbitrate over the political affairs of the Western hemisphere.242 The failure of that intervention prompted him to place the issue of arbitration at the fore of his Pan–American agenda. However, when the new administration of Chester A. Arthur took office after the assassination of James A. Garfield in September 1881, the new president, suspicious of Blaine’s grandiose Pan–American ideas, cancelled the congress.

When Blaine became Secretary of State under Benjamin Harrison in 1889, the conference was called again, this time with a greater focus on trade in addition to the plan of arbitration. The conference consisted of most of American states with the notable exceptions of Canada and other colonial states.243 The conference’s committee on general welfare submitted a plan of arbitration to the delegations.244 The first article of the plan called for the adoption of arbitration as a principle of American international law for the pacific settlement of a range of differences.245 Moreover, it called for the use of arbitration in all disputes as well as a template for the creation of an arbitration court to resolve such differences. The plan was drawn up into a treaty and signed by eleven states (Bolivia, Brazil, Ecuador, Guatemala, Haiti, Honduras, Nicaragua, El Salvador, United States, Uruguay, Venezuela) on 28 April 1890. However, the treaty lapsed after the parties failed to exchange the ratification in a timely manner.246 Nevertheless, Blaine called the convention the ‘Magna Charta

239 For more, see Boyle, *Foundations of World Order*, pp. 31–32. See also ‘The Arbitration Treaties Dead’, *The Advocate of Peace*, vol. 67, 1905, pp. 50–52.

240 There is a significant historiography on the role the United States played in using and advocating for international arbitration. See by way of an illustration the following works: Boyle, *Foundations of World Order*; O’Connell, ‘Arbitration and Avoidance of War’; and Kuehl, *Seeking World Order*.

241 ‘Memorandum forwarded confidentially by Sir Julian Pauncefote with regard to the International American Conference’, FO 881/5907.

242 ibid.

243 Argentina, Bolivia, Brazil, Chile, Columbia, Costa Rica, Ecuador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Paraguay, Peru, Salvador, the United States, Uruguay, and Venezuela.


245 ibid., p. 41.

246 ibid.
which abolished war and substitutes arbitration between the American Republics, as the first and great fruit of the International American Conference.\textsuperscript{247}

Not everyone shared Blaine’s enthusiasm. Following the conference, Secretary James Blaine sent a copy of the arbitration treaty to the governments of Europe, inviting them to sign a similar treaty. Of those that acknowledged the receipt of the treaty, only Switzerland expressed a willingness to enter into an agreement. Moreover, there were notable Latin American critics of the ulterior motives of Blaine’s pan-Americanism. At the conference, Cuban writer José Martí wrote vehemently against American designs at creating a Pan–American system for the Buenos Airean newspaper \textit{La Nación}.\textsuperscript{248} He argued that the plan for binding arbitration and a customs union served to advance American interests over Latin American states as part of America’s hegemonic imperialism. Pauncefote also observed a confrontational dynamic at the conference, stating that ‘despite the nominal character of the conference as one of “each for all and all for each,” it is really a conference between the United States on the one side and all of Spanish America on the other.’ \textsuperscript{249}

If anything, the conference and its less than impressive outcome was reflective of a particular strain of Pan–American arbitration advocacy. The age of Pan–Americanism with the United States at the helm meant that arbitration provided a tool and an ideal for strengthening America’s authority over the Western hemispheric political system, based on a paternalistic understanding of maintaining peace and stability.\textsuperscript{250} The first conference inaugurated a new tradition of Pan–American conferences: there would be eight more Pan–American conferences, the final one held in 1948 in Bogotá created the Organization of American States.

The first Pan–American conference also demonstrated just how the idea of systematizing and institutionalizing arbitration had penetrated policy thinking and the significant buy in it had attained in popular and political opinion. It was only a matter of time before there was another opportunity to make a significant gesture such as a permanent international court. Arbitration advocates became successful in bringing public attention to arbitration and reinforcing the importance of arbitration and how it could be expanded to statesmen. Such was the confidence of the arbitration movement in the future of their cause, Vaucluse deputy Jules Gaillard of the extreme left was able to duly note in the \textit{Chambre des députés} in 1883 how:

\begin{quote}
International arbitration is another chimera and like other noble and grand ideas, this idea will triumph one day after having victoriously traversed the first phase in which it was labelled as utopian and the second phase where it was discussed, for it to reach the third phase, which is when it triumphs.\textsuperscript{251}
\end{quote}

\textsuperscript{247} Quoted from Caron, ‘War and International Adjudication’, p. 9.
\textsuperscript{249} ‘Memorandum forwarded confidentially by Sir Julian Pauncefote with regard to the International American Conference’, FO 881/5907.
\textsuperscript{250} Latin Americans had their own unique ideas of arbitration that at times included and excluded the United States. Arbitration as an American ideal was thus a multifaceted rhetorical device that played on distinct notions of identity and thinking regarding the western hemisphere.
\textsuperscript{251} \textit{Journal officiel de la République française. Débats parlementaires. Chambre des députés}, 11
The notion of peace amongst nations captured the imagination of such enlightened Western sensibilities. In the closing decades of the nineteenth century, however, initiatives aimed at furthering the cause of peace that ‘had once been rejected out of hand now garnered greater respect’, as historian Michael Clinton notes. This greater degree of respect foregrounded the eventual systematization and institutionalization of international arbitration in the fin de siècle.

December 1883, p. 2745.

252 Clinton, 'Frédéric Passy', p. 50.
The period spanning the fin de siècle up to 1914 witnessed a variety of pivotal episodes in the advancement of pacific settlement. At one end, the Hague conferences stood as the harbingers of change, signaling both the culmination of nineteenth-century legal practice and forming the foundations for twentieth-century developments in international law. International arbitration was at the centre of this evolution able to gain the consensus of the governments required for its institutionalization and systematization—due in large part to the experience of using arbitration globally as well as the groundswell of public support. The Hague inaugurated a general transition in the international system from an ad hoc legal system towards a more codified, adjudicatory network of tribunals, international institutions, as well as a more professionalized cadre of jurists. \(^1\) Equally, the signing of general arbitration treaties amongst the great powers interlinked the pacific settlement conventions with bilateral relations between states. In addition, the active use of the Permanent Court of Arbitration and other aspects of the pacific settlement conventions, such as the international commissions of inquiry, was important in normalizing the Hague structures. Finally, the pacific settlement conventions helped inspire additional forms of institution building with the creation of the Central American Court of Justice in 1907.

The Hague peace conferences are often considered in parenthesis to the vivid events of the pre–1914 period of power politics. Some scholars even dismiss the significance of the pacific settlement conventions as ‘marginal’. \(^2\) However, the conferences were representative of a unique period in the advancement of arbitration from the fin de siècle up to 1914 in which the third-party mechanism developed in leaps and bounds. The Hague peace conferences act as the historical watershed moment of international arbitration and were symbolic of a general metamorphosis in the evolution of arbitration. As historian Randall Lesaffer put it, the permanent court acted as a ‘highly visible and marketable’ outcome of the conference, which ‘held promise for further institutionalisation’. \(^3\) The creation of the permanent court and the pacific resolution conventions provided tools to build a world order in line with other efforts at extending the praxis of international law in the system.

The product of remarkable personal vanity and hopeless idealism, the origins of the Hague peace conference of 1899 were hardly promising, as many historians have recounted in detail. \(^4\) Borrowing heavily from the contemporary language of


\(^4\) Maartje Abbenhuis, ‘An Error in World History? Revisiting the Hague Peace Conferences of 1899 and
peace discourse, Russian foreign minister Count Muravyov circulated a note on 27 August 1898 to accredited representatives of the powers at St Petersburg. It postulated on the current state of affairs, observing that in view of the increasing cost of armaments as well as the ever-present threat of war, a conference was needed in order to examine the question of arms limitation. It stated that if convoked:

This conference would be, by the help of God, a happy presage for the century about to open. It would converge into a single powerful force the efforts of all the States which sincerely wish the great conception of universal peace to triumph over the elements of disturbance and discord. It would at the same time cement their agreement by a solemn avowal of the principles of equity and law, upon which repose the security of States and the welfare of peoples.

The reasons influencing the Tsar hinged largely on Russian interests. Without a doubt, Nicholas envisioned his disarmament initiative as a magnanimous gesture on behalf of humanity. Yet nor was it simply the case that the note was borne out of complete idealism or a sense of posterity. Russia was also falling desperately behind in the arms race with other European nations, principally Germany. More circumspect observers at the time emphasized this military reality, noting that if the Tsar’s call for disarmament amounted to anything then it would be to the benefit of Russia.

Whatever the Tsar had in mind, the idea of a disarmament conference entered into diplomatic correspondence as representatives at St Petersburg informed their masters back home. Perhaps unsurprisingly, the cabinets of Europe viewed the Tsar’s grandiose scheme for peace with bewilderment and, in some circumstances, downright hostility. German Kaiser Wilhelm II was particularly resentful at what he regarded as a ‘foolish enterprise’ that had ‘imprudently’ made the question of armaments the subject of a conference. Aside from the question of disarmament, which for Germany was a nonstarter, the Kaiser expressed concern that a conference such as this would invariably pit the German delegates against their French counterparts. Germany was not alone. Reactionary grumbles were emitted from many of the crowned heads and royals of Europe. Fearful of excessive reform and liberalism in principle, political leaders in Vienna felt much the same as their German counterparts. As it was, the reaction of the so-called liberal governments was not


6 ibid.


8 ibid., pp. 104–105.


10 ibid., p. 92.

11 Abbenhuis, ‘An Error in World History?’.

12 For more on Austro–Hungarian diplomacy during the peace conferences, particularly the second
much better. French officials appeared more concerned that their Russian ally had failed to consult them. British prime minister Lord Salisbury could scarcely conceal his sarcasm at Russia’s seeming ignorance of the international climate.

The incredulous bolt out of the blue it seemed caught the cabinets of Europe off guard more than it had inspired spontaneous pacifist tendencies. But this was Europe. And while no statesman was imprudent enough to insult the Tsar for his folly, the importance of the invitation went well beyond the Tsar’s sensitivities. Once the public caught wind of the note’s contents, the idea of a disarmament conference became a reality. Even if some newspapers and writers expressed a dim view of the proposed conference’s chances of success, the reaction of the public was markedly more positive than that of their governments. Peace activists sent a flurry of petitions to politicians and polemicized to the public. In Great Britain, for example, church groups, community organizations, town councils, workingmen’s associations, and women’s groups inundated the Foreign Office with reams of petitions. Millions of people personally wrote to the Tsar and prominent peace advocates of the day, such as sensationalist newspaper editor W. T. Stead, lead public campaigns to capture the attention of statesmen. Internationalists began dreaming up schemes or resubmitting old ones for consideration to politicians.

Information was a key weapon for advocates to ensure the success of the conference. The London Peace Society published a volume on past proposals for international tribunals edited by William Evans Darby, which they sent to all the delegations attending the conference. The pacifist impulse of public opinion compelled cabinets and foreign ministries to consider their positions. The disarmament conference, which in time would be referred to as the peace conference, took flight publicly and thus became something more than the Tsar’s personal horse and pony show. Political leaders had to give serious consideration to the conference and attempt to achieve something, if nothing else, to avoid international embarrassment for the Tsar as well as the ire of the public that generally had low expectations of what their leaders would achieve.

14 ibid., pp. 100–101.
15 Clark, Legitimacy in International Society, p. 77.
17 ibid., p. 409.
20 For more, see also Daniel Hucker, ‘British Peace Activism and “New” Diplomacy’. 116
conference focused solely on universal disarmament would surely fail, numerous officials within the Russian foreign ministry including Martens and Muravyov worked towards creating a more comprehensive conference programme. They explored a range of practical measures that would support international law and contribute towards the conference’s general premise of maintaining peace. Through their efforts, the conference programme, which was distributed to participating states on 30 December 1898, featured a much more defined agenda based on eight premises:

1. An understanding stipulating the non-augmentation for a term to be agreed upon, of the present effective armed land and sea forces, as well as the war budgets pertaining to them; preliminary study of the ways in which even a reduction of the aforesaid effectives and budgets could be realized in the future.
2. Interdiction of the employment in armies and fleets of new firearms of every description and of new explosives, as well as powder more powerful than the kinds used at present, both for guns and cannons.
3. Limitation of the use in field fighting of explosives of a formidable power, such as are now in use, and prohibition of the discharge of any kind of projectile or explosive from balloons or by similar means.
4. Prohibition of the use in naval battles of submarine or diving torpedo boats, or of other engines of destruction of the same nature; agreement not to construct in the future war-ships armed with rams.
5. Adaptation to naval war of the stipulations of the Geneva Convention of 1864, on the base of the additional articles of 1868.
6. Neutralization, for the same reason, of boats or launches employed in the rescue of the shipwrecked during or after naval battles.
7. Revision of the declaration concerning the laws and customs of war elaborated in 1874 by the Conference of Brussels, and not yet ratified.
8. Acceptance, in principle, of the use of good offices, mediation, and voluntary arbitration, in cases where they are available, with the purpose of preventing armed conflicts between nations; understanding in relation to their mode of application and establishment of a uniform practice in employing them.

The programme touched on a number of contemporary topics relating to the international system. As Martens put it, the practical aim of the conference fundamentally changed to focus not so much on disarmament or the abolition of war but rather to examine and study ‘the conditions under which the great Powers of Europe and of the entire world live, so far as military force is concerned.’ Of particular significance was the inclusion of Article 8, which focused on pacific dispute resolution. The inclusion of this article in particular reflected the topicality of international arbitration. The wide-ranging nature of the article certainly provided sufficient opening for delegations to consider the place of arbitral mechanisms in the

22 ‘Russian Circular Note Proposing the Program of the First Conference’, p. 4.
international system as well as other pertinent questions of pacific dispute resolution and the repose of international society.

While the question of universal disarmament was ostensibly the main objective of the conference, it became clear that no government wanted to discuss the issue of disarmament too deeply. The first commission concentrated on the issue of disarmament and arms control. In keeping with the general mood of the delegations assembled, this commission confined itself to vague declarations of support for the premise of disarmament. In that sense, it failed to achieve 'an immediate practical result' as the French delegation's report to their foreign minister stated. Nevertheless, delegates did manage to agree on a number of conventions prohibiting the use of expanding bullets, asphyxiating gases, and aerial bombardment by balloon. The second commission dealt with questions concerning the laws of war, focusing specifically on the conduct of belligerents and neutrals as well as maritime warfare. It enjoyed a greater degree of success with two key conventions covering a number of aspects to the laws of war signed by delegations. The second commission had shown at the very least that the conference was not in vain. However, statesmen were well aware that advancements in the laws of war were hardly capable of generating much in the way of public support. The point of the conference was to avoid armed conflict, tinkering with the laws of war, regardless of its merit, seemed paradoxical.

Statesmen knew that they needed to achieve something substantial. In order to satisfy public opinion, the success of the third commission, which was charged with assessing the question of arbitration and other forms of pacific settlement, was vital. Hay for instance instructed the American delegation to remain circumspect when discussing the various articles of the programme at the conference and in general 'not to give the weight of their influence to the promotion of projects the realization of which is so uncertain'. On the topic of international arbitration, however, Hay recognized this as the most fruitful avenue of discussion, counselling the delegates at length to use all possible influence to advocate for the advancement of arbitration. This went for many other delegations. Most governments recognized the article relating to arbitration as the one capable of yielding the most success and thus gave their delegates a relatively free hand in supporting measures in advancing arbitration.

Once the conference was underway, Belgian delegate Descamps spoke for many when he stressed the general accord amongst delegates and the public on arbitration, particularly with the idea of a permanent court:

28 Ibid., p. 8.
The institution of a permanent tribunal of arbitration responds to the juristic consciences of civilized peoples, to the progress achieved in national life, to the modern development of international litigation, and to the need which compels States in our days to seek a more accessible justice in a less precarious peace.  

Arbitration thus became the main focus of the conference. As American delegate Frederick William Holls noted, the examination committee charged with examining arbitral proposals on behalf of the third committee in particular, came to symbolize ‘the success or failure of the conference as a whole’. Many onlookers pinned their hopes on the third commission and the work of the examination committee to create something lasting and worthwhile.

The pacific resolution conventions were if anything a long overdue response to the growing complexities of ad hoc arbitration and to constant public advocacy. However, as far as some peace advocates and internationalists were concerned, the response of governments failed to comprehensively address their concerns. Even at the conference, the limited nature of the court prompted d’Estournelles to draw attention to the ‘ludicrous situation’ of creating institutions to prevent war—‘except when war is threatened!’ The French delegation then attempted to invest the court with the power of initiative in offering up its good offices in a dispute. While that appeared far too intrusive for most states, Article 27 of the convention did declare that it was the duty of signatory states to remind disputing parties the court was available to them.

Many critics focused on the weaknesses of the permanent court. Under the 1899 convention, the court consisted of the International Bureau, responsible for the administrative dealings of the court, and a list of Members of the Court, who could act as arbitrators. In times of conflict, the disputing parties could select two arbitrators from the list. The four arbitrators would in turn elect an additional umpire. In that sense it was neither a court nor was it permanent in any sense. It was more like a college of arbitrators—effectively a list with an office. While noting the necessity of the permanent court, New York lawyer R. Floyd Clarke wrote an article to the American Journal of International Law in 1907, pointing out its inadequacies:

> The court lacks two essentials of a proper permanent court of justice. First. It lacks a limited number of judges to whom all its business should be referred, appointed for life during good behavior, and Second. It lacks

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32 ibid., p. 710.
33 State parties to the conventions were entitled to nominate up to four persons to the list of members of the court, each to serve six-year terms. In its opening years, governments chose prominent figures such as lawyers as well as former and serving foreign ministers, diplomats, professors, judges, and members of parliament. For the full list of the first members of the permanent court, see ‘List of Members of the Permanent Court of Arbitration’, The American Journal of International Law, vol. 4, no. 3, 1910, pp. 264–278.
permanent salaries paid to those judges, without regard to the business or lack of business before the court and continuing during such appointment for life. The first essential produces a logical continuity in the decisions of the court out of which would develop, under the operation of the principle of *stare decisis*, a system of international law as reasonably consistent and logical as is possible in human affairs, just as the case law growth in England has given us the “common law of England” the Hague would give us a common law of nations. The second essential produces a wise, impartial and unbiased temper of mind in the judges—as far as such conditions can be obtained. Under such conditions the future judge is not imperiled by the nature or effect of his decisions.

In light of these and many other shortcomings, Clarke advocated for the permanent sitting court of appointed judges in order to establish a true court of justice capable of interpreting and creating a body of law and precedent. Many other arbitration advocates, particularly lawyers, also derided it, postulating with renewed vigour for a fully-fledged world court.

While the second conference failed to create a permanent court of arbitral justice as many advocates wished for, there was still a sense that things were moving in the right direction. As historian Andrew Webster notes of disarmament at the first conference, ‘if the ideas were still too unfamiliar to be acceptable, or indeed for some delegates to perceive as worthy of serious consideration, they nonetheless opened a conversation on specific approaches to international disarmament that continues to this day.’ Certainly, this was true of the idea of the international court when it was discussed at the second conference. At The Hague, the idea entered diplomatic discourse as a matter of serious discussion—it would take a world war and a major internationalist push before the Permanent Court of International Justice would be created in 1922.

Such was the changing torrent of opinion regarding arbitration that, as Scott noted, ‘the burden of proof’ had shifted and the opponent of institutionalization felt compelled to justify their opposition. The change of position did not mean that the ‘battle’ was ‘won’, as Scott cautioned, but it was now only a matter of time before there was a fully-fledged international court. In his instructions to the American delegation at the second peace conference, secretary of state Elihu Root saw the peace conferences as part of a general trend. Root wrote at length to the delegates to emphasize that while the results of the second conference was likely to yield modest

35 ibid., pp. 403–407.
39 ibid., p. 2–3.
results each peace conference would field advancements in peace and international law by successive steps. As he advised the delegates:

You should keep always in mind the promotion of this continuous process through which the progressive development of international justice and peace may be carried on; and you should regard the work of the Second Conference, not merely with reference to the foundations which may be laid for further results in future Conferences.

The secretary clearly envisioned that the peace conferences would become regular diplomatic events, following a similar arrangement as the recently initiated Pan-American conferences identified in Chapter 5. A third peace conference was originally planned for 1914, later rescheduled to 1915, and then was finally cancelled entirely with the outbreak of the First World War. There was little doubt that the conference would have met to discuss the logical culmination of past efforts at institutionalizing arbitration through an arbitral court of justice. The 1913 Lake Mohonk Conference recommended to the Secretary of State to form an international preparatory committee for the third peace conference. Secretary of state William Jennings Bryan obliged sending a note to inviting participants from the second conference to form a committee in 1914. A follow-up note proposed postponing the conference for 1916, while allowing states to consider a programme in 1915. On 26 June 1914, the Netherlands sent out invitations for the committee—unfortunately Archduke Franz Ferdinand was assassinated two days later.

The peace conferences held at The Hague in 1899 and 1907, nevertheless, provided an unprecedented global forum. The ‘ethnic structure’ of the conferences, as Martens put it, was unique and acted as a clear signal of the global significance of the issues at hand. At the first conference, delegations came from Austria–Hungary, Belgium, Bulgaria, China, Denmark, Germany, Great Britain, Greece, France, Italy, Japan, Luxembourg, Mexico, Montenegro, the Netherlands, Persia, Portugal, Romania, Russia, Serbia, Siam, Spain, Sweden and Norway, Switzerland, Turkey, and the United States. Although the European powers still dominated proceedings, the conferences witnessed the beginnings of a more global style of collective decision-making amongst states. The most significant absence at the first conference was that of the Latin American states with Mexico being the sole participant from that region. This omission was remedied in 1907 when Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Dominican Republic, Ecuador, Guatemala, Haiti, Nicaragua, Panama, Paraguay, Peru, Salvador, Uruguay, and Venezuela all sent delegations.

Their presence was keenly felt. Latin American states also managed to get delegates to sign the carefully worded Convention Respecting the Limitation of the Employment of Force for the Recovery of Contract Debts as had been their aim at the

41 Ibid., p. 72.
42 Ibid., pp. 72–73.
43 Boyle, Foundations of World Order, p. 84.
44 Ibid., pp. 84–85.
conference of American States the year before. The convention effectively prohibited the use of armed force to the recovery of contract debt without first adjusting the claims through arbitration. Of similar significance was the inclusion of sovereign non-Western states such as Persia, Siam, and China. Aside from the ‘colourful appearance’ of their court dress, their place at the conference went in some way towards proving their general acceptance in the international system as sovereign, civilized states. Yet, as English jurist John Westlake pointed out, it still fell short of recognizing their voices as being of equal importance with those of the Western powers. While the non-Western delegations from Asia did not lead developments at the conference, they nevertheless worked as diligent parties.

In testimony of the importance each government attributed to the issue of arbitration, the third commission consisted of the top delegates of each of the powers. Many of them were stalwarts of the internationalist and peace movements themselves as well as supporters for the advancement of international arbitration. These individuals included Descamps, representing Belgium; Pauncefoote, Great Britain; Léon Bourgeois, d’Estournelles, and Renault, France; Martens, Russia; Asser, the Netherlands; Rolin–Jaequemyns, Siam; and Holls, the United States. Within this grouping of key figures certain delegations possessed more influence than others and indeed certain delegates through their own ‘character and ability’ enjoyed a high degree of influence in directing proceedings. Scott noted the personal dynamics at play, explaining how individual delegates spoke as the representative of their state, yet at the same time they often represented their own views. The persuasiveness of personal arguments in support of arbitration and the depth of individual convictions had a profound effect on rallying the support of other delegates, who sought the instructions of home governments which for the most part permitted their delegates to vote according to the ‘convictions developed’ in the conference.

Throughout the proceedings of the third commission was the steady hand of Bourgeois, who was elected to serve as its president—a position he would hold again for the second conference. Bourgeois seemed the natural choice for such a position. He had served as prime minister of France and had held various other key government appointments. His experience made an indelible impact. Speaking at the opening session of the third commission, Bourgeois carefully set the agenda, placing

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47 For more on the forcible collection of public debt, see Chapter 4.
53 Ibid., pp. 166–167.
54 Ibid.
emphasis on topics such obligatory arbitration and institutionalization in a bid to ensure their success.\textsuperscript{55} Very much an internationalist from the political left, Bourgeois was under no illusions as to his preference, choosing to discuss at the length the various types of international institutions.\textsuperscript{56} The first being, in the words of Bourgeois, a ‘simple intermediary organ’ aimed at alerting disputing parties to the terms of the existence of the conventions and offering to facilitate an arbitral procedure. The second type was an institution with the power to offer conciliation prior to legal proceedings. The third one was for an outright judicial organ in the form of an international tribunal. After setting the agenda, Bourgeois solicited the opinions of the delegations.\textsuperscript{57}

While there had been reluctance to advance the cause of an international court in previous years, the conference it seemed provided a unique opportunity for delegates to openly follow their instincts. A prime example of this was Pauncefote, who became in effect ‘the father’ of the Permanent Court of Arbitration, as Scott put it.\textsuperscript{58} At the first sitting of the commission, Martens took the initiative by presenting Russia’s proposal.\textsuperscript{59} The Russian proposal, consisting of 52 articles, called for a convention to streamline the procedural aspects of arbitration and other third–party dispute resolution mechanisms.\textsuperscript{60} The Russian proposal was a thoughtfully developed one, very much reflective of Martens’ input into it as the main contributing author. However, it lacked an actual plan for a permanent tribunal—ostensibly one of the main rallying cries of the arbitration movement. In a ‘sort of plain, dogged way’, Pauncefote caused a stir, arguing that their proposal for new codes and rules did not ‘greatly advance the grand cause’ and that a permanent international tribunal would be necessary.\textsuperscript{61} He further insisted that serious consideration be given to ‘the grave question’ of a permanent arbitral tribunal, asking that delegations pronounce their disposition on the question and that it be discussed as part of the commission.\textsuperscript{62} The strong disposition of the British delegate towards creating a permanent court meant that the idea could not be dismissed without proper discussion.

Although British prime minister Salisbury lent his support to the promotion of arbitration in his instructions, Pauncefote quite independently of his government, presented his own proposals for a permanent arbitral court.\textsuperscript{63} This was hardly surprising. As the British Government’s main representative at Washington from 1889 to 1902, Pauncefote was a strong advocate of the extended use of arbitration, having been intimately involved in the arbitration of the Venezuela crisis and the negotiations for the ill-fated Olney–Pauncefote treaty.\textsuperscript{64} In 1896, Pauncefote had

\textsuperscript{56} ibid., p. 30.
\textsuperscript{58} Scott, \textit{The Status of the International Court of Justice}, p. 17.
\textsuperscript{59} Bourgeois, Bihourd, and d’Estournelles de Constant, ‘Rapport adressé au ministre des affaires étrangères’, p. 29.
\textsuperscript{60} Martens, ‘International Arbitration and the Peace Conference at the Hague’, p. 607.
\textsuperscript{61} Foster, \textit{Arbitration and The Hague Court}, p. 61.
\textsuperscript{62} Bourgeois, Bihourd, and d’Estournelles de Constant, ‘Rapport adressé au ministre des affaires étrangères’, p. 29.
\textsuperscript{63} Gibb, ‘The Role of Sir Julian Pauncefote in the Anglo–American Rapprochement’, p. 165.
\textsuperscript{64} For more on the Venezuela crisis of 1895, see Chapter 4. For more on the Olney–Pauncefote Treaty, see Chapter 5.
penned a draft document on the issue of the advancement of arbitration, which circulated in the Cabinet and Foreign Office. This proposal would help form the basis of the Olney–Pauncefote treaty and, in many ways, provides a clue as to the origins of the Permanent Court of Arbitration. In it, he observed that while a system of arbitration was an 'entirely novel arrangement', it could be adopted under certain circumstances. Pauncefote reasoned that because such a system could only be created through experimentation as opposed to antecedent, 'it would be wise to commence with a modest beginning, and not to hazard the success of the principle by adventuring it upon doubtful ground.' To that end, he suggested a court of appeal for which arbitration cases could be referred to in case of a doubtful judgement of an arbitration award. The aim would be to alleviate the perceived haphazard nature of arbitration thereby encouraging more states to submit disputes to arbitration safe in knowledge that the decision could be reviewed judicially in case of miscarriage of justice.

The logic behind Pauncefote's proposal in 1896 was evident in 1899. The Permanent Court of Arbitration, which itself was a version of the arbitral college proposed at the Inter–Parliamentary Union’s conference in Brussels in 1895, was kept modest in order to provide a basis for future experimentation. Interestingly, only the American delegation had received instructions from their government to propose 'at an opportune moment' a plan for an international tribunal, much to the surprise of American delegate Andrew Dickson White. The American project was to create a permanent bench of judges, sitting in full court to adjudicate cases, similar to the United States Supreme Court. Given the complexities around the selection process for permanent judges, however, the Americans were content to support Pauncefote's vastly simplified proposition. Most other delegates too came to favour the 'less daring' yet sound British proposal as well.

Nevertheless, even Pauncefote’s permanent court was by no means guaranteed to succeed at a conference involving states each with a diverse range of attitudes. Pauncefote was likely guilty of being too hasty in suggesting that delegates immediately reveal their positions on an arbitral court at the first session. Aware that premature discussion might put the enterprise at risk, experienced diplomat and Italian delegate Count Nigra urged that discussion should be reserved as the last order of business so that delegates would have time to examine the idea. Bourgeois seconded Nigra, suggesting that the Russian proposal was before the commission and the examination committee would first need to study Pauncefote’s proposal before reporting back. Nigra’s intervention was timely, given the difficulties to come

65 See the 'Draft despatch to Sir J. Pauncefote', no. 14, CAB 37/41.
66 See Chapter 5.
70 Bustamante, The World Court, p. 43.
over Germany's position on an international court. Although this conference was not one of contending alliances, he would play an important role in conciliating the various interests of the Triple Alliance powers. Nigra had proved himself apt in managing his own country's peculiar difficulties over the conference. Fearing that the Holy See might gain representation at the conference potentially and push for the arbitration of the Roman question ("la delicate questione"), Italy very nearly boycotted the conference and afterwards initially planned to oppose any proposals for an arbitral court.72 Once those fears dampened and cooler heads prevailed, Nigra prudently solicited and received new instructions that were more supportive of progress in the area of arbitration. Certainly, this was more in keeping with Italy's pioneering work of inserting arbitration clauses into bilateral agreements in the past. The Italian government was able to quickly alter its position in favour of an arbitral court with the other delegations being none the wiser:

The Italian government's position was 'complicated' by their association with Germany under the Triple Alliance.73 After all of the powers had expressed support for the creation of permanent court (some with modest reservations), the German delegation under jurist Philipp Zorn threatened to unset the whole happy affair, expressing reservations over the court.74 Zorn himself seemed reasonably amenable to the proposals for arbitration at the conference, however he was hogtied by his government's instructions.75 Midway through the negotiations, Zorn felt compelled to depart for Berlin in order to solicit definitive instructions on the question of arbitration. Most delegations were in support for more comprehensive arbitral measures, or at the very least were shrewd enough to make the necessary nods to the general sentiments of the third commission such as Austria–Hungary represented by Count Welsersheimb.76

Germany was very much out of step with the general sentiments of the conference. While Zorn was a man of modest internationalist sensibilities, the rest of the German delegation had a decidedly reactionary character.77 Germany's first delegate and the ambassador at Paris Count Münster astounded White, a former ambassador to Berlin, when he declared arbitration as 'injurious' to German interests. Münster summarized the extent to which military planning permeated German diplomatic calculations, exclaiming:

Germany is prepared for war as no other country is or can be; that she can mobilize her army in ten days; and that neither France, Russia, nor any other power can do this. Arbitration, he said, would simply give rival

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72 See Umberto Leanza and Federica Mucci, 'La partecipazione dell'italia alla prima conferenza per la pace del'aja del 1899', La comunità internazionale, vol. 54, 1999, p. 7.
74 See Bourgeois, Bihourd, and d'Estournelles de Constant, 'Rapport adressé au ministre des affaires étrangères', p. 33.
76 Although as White notes, the Austrian delegate was under a similar degree of pressure as Nigra in terms of conciliating his own views with that of his German counterpart. See White, Autobiography of Andrew Dickson White, vol. 2, p. 300.
77 See Koskenniemi, Gentle Civilizer of Nations, pp. 210–211.
powers time to put themselves in readiness, and would therefore be a great disadvantage to Germany.\(^{78}\)

The reactionary pronouncements of Münster complemented those of the second delegate jurist Baron von Stengel.\(^{79}\) On the eve of the conference, Stengel infamously wrote a pamphlet deriding arbitration and exclaiming the virtues of war!\(^{80}\) Of course, Germany’s position was not based on any particular belligerent position. Rather, it was undoubtedly the more cautious of the powers, not wishing to involve itself too deeply into untested waters, while keeping that all important freedom of action in managing its foreign policy.\(^{81}\)

The guiding philosophy of the third commission was to ensure consensus amongst all the participating states. The permanent court would therefore require German support in order for it to proceed. This resulted in a tremendous degree of patience on the part of other delegates, who sought to allay German concerns. As writer Denys Myers describes, Nigra appealed to Zorn in a ‘spirit of conciliation’, emphasizing the significance of the court and the dangers of overlooking the sense of impatience in public opinion about creating such a court.\(^{82}\) Privately, Nigra wrote to the Italian foreign minister Emilio Visconti–Venosta, suggesting that if Germany were to openly reject the proposals of the commission then Germany would be faced with a ‘grave responsibility’ for its actions before ‘world opinion’.\(^{83}\) Evidently alarmed, Visconti also worried openly about the ‘unfavourable impression’ in public opinion if a member of the Triple Alliance failed to sign the conventions.\(^{84}\) While he noted that Italy would have no difficulties in signing the conference conventions, Visconti suggested that if Germany, and Austria–Hungary for that matter, ‘could not bring themselves’ to sign them, then the best course of action would be to sign the protocols as annexes to the conventions.\(^{85}\) After that, a new meeting could be arranged in a date ‘not too far away’ (Visconti gave 1 October as an example) so that the conventions could be closely examined, allowing for the delegates to simultaneously sign the agreements.\(^{86}\)

In an ill–conceived position, German was completely isolated. The Austro-Hungarians were largely passive and Italy was supportive of most of the initiatives at the conference. The German Government was particularly disappointed at Italy’s position, relating to its ambassador at Berlin the alarming tendency of Nigra to support ‘idealistic’ proposals as opposed to more ‘practical ones’.\(^{87}\) The situation was certainly not helped when the Russian Government started praising Nigra for his

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\(^{79}\) See Koskenniemi, Gentle Civilizer of Nations, pp. 211–212.

\(^{80}\) See Karl von Stengel, Der ewige Friede, Munich: C. Haushalter, 1899. Long after the end of the conference, he would continue to deride it as an imposition on national sovereignty.


\(^{85}\) ibid.

\(^{86}\) ibid.

commitment to peace. Fortunately, Zorn was able to return to The Hague to declare Germany’s definitive acceptance of an arbitral court. Zorn played no small part in persuading his government, although the sense of isolation that Germany felt was undoubtedly a deciding factor. Germany’s reservations over a Permanent Court of Arbitration made it look positively outdated and reactionary. The embarrassment that it had caused, compelled Germany to become a thoroughly active supporter of the cause of arbitration at the second conference. These were symptomatic of deeper fault-lines in European politics. To expand on historian Solomon Wank’s argument, these micro-conflicts at the conferences represented nothing more than the confrontation between modern political forces and public opinion versus power politics and reactionary attitudes.

While the permanent court was a lost battle for the German government, Germany did succeed in vetoing the significantly more contentious issue of obligatory arbitration. The Russian proposal had devised a number of articles that sought to distinguish between those types of disputes that ought to be expeditiously referred to arbitration and those that needed to be excluded. Because most delegates could admit the principle of obligatory arbitration in instances which did not involve national honour or vital interests, much of the negotiation on obligatory arbitration focused on attempts to draw up a list of justifiable disputes. Again, Zorn appeared generally supportive of obligatory arbitration, however, as the French delegation surmised in their report, instructions from his government forced him to be more taciturn. The German government felt that investing the convention with an obligatory character represented an unbearable attack on national sovereignty. Fearing that the issue of obligatory arbitration could derail the main project of the permanent court, it was dropped in favour of keeping arbitration a facultative process. The commission contented itself to recommending the use of arbitration as a tool of best practice to signatory states.

The convention created all the components for an arbitral system yet it remained essentially toothless given that delegates had failed to agree on giving arbitration an obligatory character. Thus, it simply reinforced the ad hoc nature of arbitration. The next logical step after the conference was for more comprehensive arbitration agreements between states in order to support the 1899 convention. Chapter 4 identified the early development of arbitration treaties in the latter half of the nineteenth century. However, the haphazard nature of their implementation meant that they remained piecemeal and irregular at best. The signing of the 1899 convention provided states with the necessary impetus to negotiating more

89 For more on Germany at the second conference, see Dülffer, Regeln gegen den Krieg?
90 Wank, ‘Diplomacy against the Peace Movement’, pp. 56–57. See also Jost Dülffer’s study on the diplomacy of the two conferences. Dülffer, Regeln gegen den Krieg?
92 ibid., p. 42.
95 Bourgeois, Bihourd, and d’Estournelles de Constant, ‘Rapport adressé au ministre des affaires étrangères’, p. 34.
comprehensive arbitration agreements. The first such agreement was signed by Great Britain and France in October 1903. As part of Great Britain’s strategy of freeing itself from extraneous conflict with other powers, the *entente cordiale* was a series of Anglo–French agreements in which both powers settled a number of global controversies and antagonisms amongst themselves.⁹⁶ As British prime minister Balfour saw it, the entente was a perfect bargain in which each side gave up the ‘power of hampering the natural and free development of the other’.⁹⁷

A key component of this was an Anglo–French arbitration treaty. The treaty provided for obligatory arbitration over differences ‘of a judicial order, or relating to the interpretation of treaties’ amongst great powers—once again explicitly omitting questions of national honour and vital interests.⁹⁸ Consisting of scarcely three articles, the treaty, which would remain valid for a period of five years, called for the referral of disputes to the newly established Permanent Court of Arbitration.⁹⁹ News of the treaty sparked widespread interest across Europe.¹⁰⁰ Not long after the Anglo–French agreement, Great Britain signed arbitral conventions with key European nations Austria–Hungary, Germany, and Italy, as well as several small states, concluding sixteen arbitration treaties by 1914.¹⁰¹ Other states started to negotiate arbitration treaties creating a number of combinations: in 1905, for example, Italy and Peru signed an arbitration treaty, as did Belgium and Greece, Denmark and Russia, Spain and Sweden and Norway, and so on.

From 1904 to 1905, United States secretary of state Hay negotiated eleven arbitration treaties, including one with Great Britain.¹⁰² Unfortunately when the Senate ratified these arbitration treaties, it amended sections of the treaties, effectively depriving the treaties of their obligatory character: The new wording of the treaties meant that the *compromis* of all cases would have to be submitted to the Senate for consent. As jurist Francis Anthony Boyle argues, the effect of the amendments was twofold: United States President Roosevelt felt that it encroached upon the prerogatives of the executive in matters of foreign policy, while at the same time hollowing out the United States’ obligation to refer disputes to arbitration.¹⁰³ Roosevelt refused to send the amended agreements to the other contracting parties for ratification.¹⁰⁴ Despite these obstacles, Hay’s successor as secretary of state Root negotiated some twenty–five arbitration treaties with Roosevelt’s support after the second Hague conference, this time with provisions requiring the Senate to first authorize the scope of the arbitration of a dispute.¹⁰⁵ After Root’s groundwork, secretary of state William Jennings Bryan proposed binding arbitral treaties

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⁹⁷ Tomes, *Balfour and Foreign Policy*, p. 121.
⁹⁹ ibid., pp. 174–175.
¹⁰⁰ For more on the arbitration treaties Great Britain signed, see FO 83/2167.
¹⁰³ ibid. See also ‘The Arbitration Treaties Dead’, *The Advocate of Peace*, vol. 67, no. 3, pp. 50–2.
between the United States and other states in 1913. Great Britain was one of the first powers to take up Bryan’s offer, signing one with the United States after the war.

By 1914, the exact figure of treaties with arbitration clauses was innumerable, but doubtless to say numbered in the hundreds. These agreements were pivoting in strengthening the pacific dispute convention and establishing the structural basis for obligatory arbitration in diplomatic practice. As Lauterpacht notes, these treaties created an interconnected web of bilateral commitments, constituting the basis for obligatory arbitration for a period of twenty years, until they were replaced by more comprehensive multilateral devices such as the Covenant of the League of Nations and the Charter for the United Nations. These treaties contained obligatory arbitration clauses for issues regarding the interpretation of commercial treaties and issues of a legal nature. Almost all of the arbitration treaties had escape clauses for issues involving national honour and vital interests. The Dutch–Danish arbitration treaty signed in 1904 was the main exception, calling for obligatory arbitration for all disputes.

Most of the treaties included reference to the Permanent Court of Arbitration, thereby helping to systematize the pacific dispute resolution convention. While excluding issues of national honour and vital interests, these treaties covered disputes issues regarding the interpretation of commercial treaties and issues of a legal nature. Because the arbitration treaties tended to exclude important political questions from obligatory arbitration, the ultimate effect of these treaties was to create a more methodical means of regulating private claims arbitration. This was evidenced by the fact that most of those cases brought before the Permanent Court of Arbitration pursuant to bilateral arbitration treaties involved private claims. For example, in 1914 Norway and the United States signed an arbitration treaty, in 1922 both agreed to refer an issue regarding the claims of Norwegian ship–owners against the United States government during the First World War in accordance to the treaty.

The signing of arbitration treaties also represented a new stage in diplomacy. As Barclay argued, the actual terms of the Anglo–French agreement were of secondary important; its essential feature was that ‘it focused the wish of two nations for prolonged peace between them’. In that sense, the arbitration treaty was merely one of the different manifestations of the Anglo–French rapprochement, representing the ‘practical’ element of the entente: the ‘entente pratique’.

Reflecting the initial intention of the Anglo–French treaty, other arbitration agreements were a recognition of non–rival status between contracting parties. Thus, it was unsurprising that France and Germany never signed one, while the Anglo–German agreement showed a desire for positive relations.

The work of 1899 continued again with a second conference of 1907. Whereas the Tsar initiated proceedings of the first conference, the Inter–Parliamentary Union instigated the second. At their conference in St. Louis in 1904, the assembled

members of Congress from the United States and parliamentarians from Europe adopted a resolution to invite the President of the United States to call for a new peace conference to deal with questions of international arbitration. President Roosevelt accepted the challenge to initiate a second peace conference. Without the lofty words of the Tsar’s rescript, secretary of state Hay’s proposal for a second conference, which was first sent to signatories of the 1899 conventions, was far more practically concerned with addressing the unfinished business from the first conference. As it was, the Russo–Japanese War postponed the convocation of the second peace conference until 1907, once the residual din of war had well and truly diminished. The Russian Government, not to be outdone by the Americans, muscled in and retook the initiative to call for the conference in 1906, proposing a programme for the second conference.

In the first peace conference, disarmament had been the first order of the agenda. At the second conference, arbitration was now the prime focus with disarmament deliberately left off the agenda. The first commission of the second conference dealt with international arbitration. The second commission focused on improvements to the laws and customs of land warfare, including the rights and obligations of neutrals on land and the opening of hostilities. The third and fourth commissions looked into issues relating to maritime warfare, including naval bombardment, private property at sea, contraband, blockade, neutrality, and the creation of naval warfare codes. Similar to the first conference, delegates made a number of considerable improvements to international law, particularly in fields relating to neutrality and maritime warfare. Yet the first commission remained the focal point. The first commission of the conference dealt with the issues surrounding arbitration, focusing on five key outcomes:

1. Enhancements to the 1899 Convention for the Pacific Settlement of International Disputes
2. A convention concerning the limitation of the use of force for the recovery of contractual debt.
3. Convention for the establishment of an international prize court.
4. A declaration on obligatory arbitration.
5. A Vœu recommending the implementation of a draft Convention for the establishment of a court of arbitral justice.

It was divided into three subcommittees: one to look at commissions of inquiry, obligatory arbitration, and contractual debt; a second to look at a possible new court of arbitration; and a third to consider the Permanent Court of Arbitration and procedure from the 1899 convention.

112 See ibid., pp. 59–63
115 ibid., p. 40.
Thanks in large part to the spate of arbitration treaties, the general cause of arbitration had ‘advanced by leaps and bounds’ by the opening of the second peace conference, as American delegate Joseph Hodge Choate observed. Nevertheless, the second conference was devoid of the novelty of the first and thus susceptible to lowered expectations. Root warned delegates at the National Arbitration and Peace Congress in April 1907 not to expect much from the second peace conference at The Hague. Root was partially correct. Similar to 1899, no delegation other than that of the United States was instructed to propose the formation of a more comprehensive international court to supplement the Permanent Court of Arbitration. The American project for a Court of Arbitral Justice, which would have created a far more definitive international tribunal, and for obligatory arbitration failed. Remarkably, the American proposal received tacit support from Great Britain, Germany, and France, however, after months of negotiation parties were unable to agree upon a method of appointing judges.

Nevertheless, there were a number of noticeable advances. In 1899, the principle of obligatory arbitration was fought on every level. In 1907, most delegates agreed at least in principle to obligatory arbitration, although it was not formally ratified in the convention. While Germany was against obligatory arbitration in the first peace conference, it signed an arbitration convention with Great Britain in 1904 and was active in discussing arbitration in the Second Peace Conference. The searing political and public disaster of Germany’s position compelled them at the second conference to play an active role. In 1907, German delegate Baron von Bieberstein was careful to stress its support for obligatory arbitration but did not believe that a multilateral treaty was the conductive process to promoting arbitration given the difficulties to determining which disputes were justiciable. Instead German delegation recommended that the bilateral arbitration treaties first establish the legal precedents in terms of which disputes could be admitted to obligatory arbitration.

It was left for the final act of the conference to recommend that signatories adopt a draft convention for an arbitral court and endorse the principle of obligatory arbitration. Bourgeois presided over the first commission. His ‘unwavering support’ for arbitration as well as his ‘conciliatory attitude’ once again set the agenda for the commission. The second peace conference was an attempt to reprise the first conference. While obligatory arbitration and a permanent sitting court failed, the success of the conference derived largely from the refinements it made to the 1899 convention, which created a more streamlined arbitral process. Of equal significance, the Russian Government also proposed amendments in order to increase the usefulness and efficiency of the international commission of inquiry, their most important contribution to the 1899 convention. The first ever use of the

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119 ibid., p. 1.
121 ibid.
123 Grey to Fry, 12 June 1907, HCPP, vol. CXXIV.583, no. 3857, 1908.

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commission in 1905 in order to resolve the Dogger Bank dispute between Great Britain and Russia had demonstrated some serious flaws such as a lack of pre-existing rules of procedure which resulted in considerable delay. Another 22 articles were added to remedy the situation.

Perhaps the most exciting element to the second conference was the presence of Latin American states in the decision-making process. The tradition of promoting arbitration in place of war was a well-established part of Latin American political identity, viewed by its proponents as a means of bringing a closer union between Latin American states, which itself had been a key goal of many Latin American political leaders.\(^{124}\) Jurist Liliana Obregón argues that a ‘creole legal consciousness’ amongst elites in Latin America created a distinct Latin American interpretation of international law in the nineteenth century.\(^{125}\) As Chilean diplomat Don Agustin Edwards observed, the close union in which Latin American states fought to achieve independence ‘compelled the Latin–American statesmen to think continentally’, while constraining ‘the statesmen of Europe to consider and to treat the Latin–American nations continentally’.\(^{126}\) Based on notions of regional identity and the particular political conditions of Latin America, this legal and political consciousness resulted in a strong belief in the possibility of pacific settlement to provide a new world way of managing Latin American affairs in contrast to the old world diplomacy of the congress system.

Arbitration was used to delimit and demarcate the post-colonial boundaries of the infant Latin American nations. As Grewe observes, in South America, most of the land borders were fixed by way of arbitration; Brazil had all of its land borders determined through arbitration.\(^{127}\) Latin American states also had form for including arbitral provisions as a matter of ordinary foreign policy. In 1832, Colombia and Peru signed a treaty to arbitrate a boundary claim as well as war debt from their last war in 1828 and 1829.\(^{128}\) The treaty also contained a general provision preventing either state from declaring war against the other without first submitting their complaints to the arbitration of another state. Peru would go on to sign friendship and alliance treaties containing arbitration clauses with Ecuador in 1831 and Bolivia in 1840.\(^{129}\)


\(^{126}\) Don Agustin Edwards, 'Foreign Policy in Latin America Historically Considered', *Cambridge Historical Journal*, vol. 1, no. 3, 1925, p. 288.


\(^{129}\) See ibid., pp. 11 and 25.
More bilateral arbitration agreements followed in the 1840s onwards. These agreements contained strongly pacifist clauses such as the one found in the treaty of peace, friendship, and commerce signed by Costa Rica and Honduras in 1850. Article XV of the treaty stated:

The two republics bind themselves never to make war against each other, nor will either give assistance in attacks that may be made on the other. If differences should arise they will always settle them by arbitration; and only in case one of them will not abide by such arbitration, will the other be permitted to make use of arms.

Various Latin American states included clauses in their respective constitutions calling for their governments to first exhaust the use of arbitration to settle differences with other states before appealing to war. After the overthrow of Brazilian Emperor Pedro II, progressives in Brazil drew up a new republic constitution in 1891. One of the clauses authorized the national congress to declare war only once the avenue of arbitration had been exhausted. Of these, progressives who helped frame the constitution was Finance Minister Rui Barbosa, who would go on to represent Brazil at the Second Hague Peace Conference. A ‘dominating personality’, Barbosa acted as the voice of Latin American and small state interests, defending the principle of equality of states under international law and the equality of their influence in international affairs. After Latin American states became signatories to the 1907 convention, arbitration treaties proliferated across the Western hemisphere. Brazil for example signed agreements with virtually every Latin American state.

At The Hague, the Latin American delegations launched a concerted effort at the conference to introduce the principle of non-intervention into international law led by Argentinian foreign minister Luis María Drago. At the Third International Conference of American States held in Rio de Janeiro in 1906, a year before the second Hague conference, the Latin American states pressed for the acceptance of the Drago doctrine. In response to the Venezuelan crisis, Drago attempted to create a legal norm for protecting Latin American interests from overzealous foreign litigation. On 29 December 1903, Drago sent a note to the ambassador in Washington on 29 December 1903, arguing that public debt should not ‘occasion armed intervention nor even the actual occupation of the territory of American nations by a European power’. His note caused a stir. After much lobbying in Latin America and Drago’s own astute defense of his note in a number of publications, the so-called Drago doctrine became a rallying cry in the Western hemisphere.

130 These included Colombia–Venezuela in 1842; Guatemala–Honduras, 1845; Costa Rica–Salvador; 1845; Mexico–United States, 1848.
131 Quoted from Manning, Arbitration treaties among the American nations, p. 30.
132 These states included Brazil, Dominican Republic, Ecuador, and Venezuela. For more, see Gonzalo de Quesada, Arbitration in Latin America, Rotterdam: M. Wyt and Zonen, 1907, pp. 125–126.
133 Of these progressives who helped frame the constitution was Finance Minister Rui Barbosa, who would go on to represent Brazil at the Second Hague Peace Conference. de Quesada, Arbitration in Latin America, p. 126.
At the third Pan–American conference at Rio de Janeiro in 1906, delegates discussed whether to bring up the question of admissibility of the use of force for the collection of public debts. Some objections were raised at the question in that form, fearing that it might affect the credit of some Latin American states amongst European capitalists. The final resolution at Rio was reframed accordingly:

To recommend to the Governments therein that they consider the point of inviting the Second Peace Conference at The Hague to examine the question of the compulsory collection of public debts, and, in general, means tending to diminish between nations conflicts having a peculiarly pecuniary origin.

Drago’s doctrine was part of a long–line in Latin American jurisprudence attempting to deal with the realities of the new global capitalist system. Paris–based Paraguayan legalist Carlos Calvo had developed a variant of Drago’s doctrine in his 1863 treatise on international law. Calvo wrote of the inherent tension between how great powers treated each other and how it differed with states from the new world. Calvo did not believe that governments were responsible for losses incurred during internal strife, arguing:

To admit in such cases the responsibility of governments, i.e., the principle of indemnity, would be to create an exorbitant and fatal privilege essentially favorable to powerful states and injurious to weaker nations, and to establish an unjustifiable inequality between nationals and foreigners.

The Calvo doctrine, which continues to have credence in non–Western circles, was an expressed rejection of the idea that there was a minimum international standard, regarding commercial and private claims disputes as based on national standards.

Drago’s doctrine was a much more circumspect version of the Calvo doctrine and indeed at the second Hague conference it too would receive further mollification in order to satisfy the great powers. While the United States and the Latin American states agreed to advocate for a reassessment of the question of the collection of public debt, delegations at the Hague conference ratified a watered–down version of the Drago doctrine based on American delegate General Porter’s formula in the form of the Convention respecting Limitation of Employment of Force for Recovery of Contract Debt to the general dismay of Latin American States. In contrast to the Drago doctrine, Article I of the convention stated in a more guarded manner:

137 ibid.
138 ibid.
140 Quoted from Hershey, ‘The Calvo and Drago Doctrines’, p. 27.
141 ibid.
142 Scott, Instructions to the American Delegates to The Hague Peace Conferences and their Official Reports, p. 77. For more on the Porter Convention, see Boyle, Foundations of World Order, pp. 80–81.
The Contracting Powers agree not to have recourse to armed force for the recovery of contract debts claimed from the Government of one country by the Government of another country as being due to its nationals.

This undertaking is, however, not applicable when the debtor State refuses or neglects to reply to an offer of arbitration, or, after accepting the offer, prevents any compromis from being agreed on, or, after the arbitration, fails to submit to the award.

The fact that a convention created in the first place was a remarkable example of the emerging influence of Latin America, although the fact the United States sponsored the convention meant that the great powers could not overlook it.

Certainly, the Pan–American conferences had demonstrated the Western hemisphere’s capacity to work towards a more comprehensive system for adjudicating between states. The culmination of the Latin American approach to arbitration came in 1907. All Latin American states were invited to the second conference in 1907 and all, except Costa Rica and Honduras participated. The same year as the second peace conference Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua met in Washington to attend the Central American peace conference. The outcome of close political union amongst the Central American states and inspired by the work of the Hague peace conferences, these states established the Central American Court of Justice. In 1902, these states signed the Treaty of Corinto, establishing an arbitral tribunal similar to the Permanent Court of Arbitration. While that tribunal failed to become adequately operational and the treaty eventually became a dead letter, the Central American Court of Justice, which was created after the second peace conference in 1907, was somewhat more successful. With its stated objective of maintaining permanent peace in Central America, it was given the competency to hear all matter of disputes between the signatories. Originally headquartered in Cartago, when the building was destroyed in an earthquake in 1910, it moved to San José where Carnegie donated funds towards it construction. The inadequate judicial procedure and the withdrawal of Nicaragua from the court after it did not rule in its favour in a dispute with Costa Rica resulted in the court dissolving in 1918 after 10 years of operation.

The advancement of arbitration and adjudication in Central America represented an attempt at encouraging closer political union and maintaining peace in the region. What occurred in Latin America reflected the pioneering nature of Western hemispheric politics. Yet in many ways it was a microcosm of the wider global trends in building international institutions for peace building. The Hague conferences, the arbitration treaties, and the Central American Court of Justice were key moments in the development of pacific settlement. They created the


145 ibid., pp. 128–129.
foundations for an enhanced system of arbitration and in so doing, they changed the practice of pacific settlement.

Unfortunately, it was touch and go in the years immediately after the first peace conference if the pacific settlement convention and the permanent court would be a success. It was only in 1902 after a conversation with influential French politician Baron Paul–Henri–Benjamin d’Estournelles de Constant that President Theodore Roosevelt helped save the Permanent Court from ‘dying of inertia’. At the behest of d’Estournelles, Roosevelt asked the secretary of state John Hay to find a case with a willing litigant state for the court. The result was the Pious Funds claims, a particularly old and relatively unimportant dispute with Mexico. This modest gesture, historian Warren F. Kuehl summarizes, was sufficient to ‘thrust both Roosevelt and the United States into the world’s limelight, with both receiving applause as the saviour of The Hague structure.’

From that inaugural case until 1914, a range of different countries including great powers such Great Britain, France, Germany, Italy, the Ottoman Empire, and the United States brought fourteen separate cases before the permanent court. This coincided with an intense bout of ad hoc arbitration cases, as Mulligan calculates between 1904 and 1908, there were sixty instances of arbitration and a further 50 cases between 1908 and 1909 alone. A particularly important case that was brought before the Hague court was the dispute involving Great Britain, Germany, France, and Japan on the taxation of foreign owned land in Japan in 1905. Consequently, Japan refrained for many years from referring international disputes to arbitration. The decision reinforced a notion amongst Asian states that despite their representation at The Hague peace conferences, they did not enjoy parity. In 1909 China refused to refer a boundary dispute with Portugal over Macau, citing the bias in international law towards Western states, preferring instead to negotiate a direct settlement in the interests of maintaining at least some agency over the outcome.

Of equal significance, Great Britain and Russia created the first commission of inquiry in 1905 to investigate the Dogger Bank Incident the year before. During the Russo–Japanese War, the Russian fleet en route to the Pacific Ocean opened fire on British fishing trawlers operating from Hull in the shallow waters of Dogger Bank in the North Sea on 21 October 1904. Mistaking the vessels for fast moving Japanese torpedo boats that were falsely rumoured to be operating in the vicinity, two trawler men were killed and scores other wounded as well as substantive damage to property as a result of the incident. After protracted and particularly sensitive negotiations, both the foreign secretary Lord Lansdowne and Nicholas II separately

146 Kuehl, Seeking World Order, pp. 59–60.
147 ibid.
151 ibid.
suggested the idea of the commission in order to ascertain facts and determine appropriate reparation. Prompted by the good offices of France a commission of five high ranking naval officers (one each from Great Britain and Russia, one from Austria-Hungary, one from the United States, and one from France with legal assessors) met in Paris in January 1905. The commission found that the commanding officer of the fleet, Admiral Rozhdestvensky, was directly responsible, although it was careful not to cast aspersions on the competency of the Admiral and his staff. Finally, it awarded Great Britain £65,000 in compensation—in return the British Government desisted in its requests to have the Russian naval officers responsible punished.

The use of the commission for the Dogger Bank incident highlighted how disputes touching on national sensitivities could be resolved peacefully under the new Hague conventions. Several other key instances of arbitration between Great Britain and the United States in 1910 over fisheries rights in the North Atlantic and Great Britain and France over the extraterritorial rights of the French in Muscat in 1905 further highlighted the newfound role of the permanent court in international affairs. However, the importance of the permanent court was reinforced during the Casablanca Affair. On 25 September 1908, six deserters, three of them German, from the French Foreign Legion attempted to flee from their station in Morocco under the protection of the German consulate in Casablanca. The French authorities forcibly seized the deserters creating an international crisis. The Germans proposed that the differences from the Casablanca incident should be settled through arbitration. Germans wanted the legal questions to be arbitrated, at the same time they wanted France to apologize for their actions and immediately release the deserters. France on the other hand wanted both parts of the incident arbitrated before an apology could be issues to avoid prejudicing the case. Both France and Germany agreed to refer the incident to the Permanent Court of Arbitration at The Hague.

In what was a particularly delicate arbitration case, given the rival status of both contracting parties, the court bench consisted of political appointees, some of whom had been directly involved in the diplomatic exchange of notes during the crisis. The following year, the court found that both parties’ officials acted in error: the Germans for offering protection to the German deserters of the Foreign Legion and the French for attempting to obtain the deserters by violating the protection of the German consulate. Three years earlier German and French brinksmanship had threatened to bring about another war in Europe over the question of France’s control of affairs in Morocco. A second Moroccan crisis in 1911 proved just how sensitive both powers were over the region. Yet after the Hague court’s ruling, both governments issued a joint–statement accepting the award and expressed their

153 Hardinge to Lansdowne, 28 October 1904, FO 65/1729.
154 Boyle, Foundations of World Order, p. 76.
157 Lauterpacht, The Function of Law in the International Community, p. 231. Specifically, the bench consisted of Sir Edward Frey and Louis Renault, selected by the French Government and Guido Fusinato and Johannes Kriege, selected by the German government, with Hjalmar Leonard Hammarskjöld as referee.
official regret at the incident. A month before the joint–statement, d'Estournelles addressed the Prussian House of Lords, signaling a tentative rapprochement between the two.

It seemed that arbitration had germinated and grown in the changing global context of the nineteenth century. While it had been integrated by the 1870s, certainly by 1907, arbitration had become ‘part of the furniture’, a veritable institution of global politics. The outgrowth of nineteenth century practices and thinking around international law and order had in effect culminated in the pacific settlement conventions. The successful resolution of the Casablanca affair at The Hague highlighted both the possibilities for the new pacific settlement conventions to provide the agency for a more rational, peaceful international system as well as its imperfections in light of the practical realities of great power politics. The ruling of the permanent court was not with controversy, as British officials observed:

The award makes no appeal to a sense of strict logic or abstract justice. Clearly the arbitrators consider the French to have been in the right. But in order that a just verdict may not offend Germany,… the award satisfactorily settles the dispute. But whether it will inspire confidence in the judicial character of arbitration in general, must be very doubtful… the main result of the arbitration is satisfactory, but the methods of compromise, and the petty provisos by which it is qualified rather detract from its value as a political pronouncement.

The ruling was undoubtedly a political settlement aimed at appeasing both rivals in what had become a high stakes environment as opposed to a strictly legal one aimed at arriving at a disinterested adjudication of the facts. It belied the often–unsatisfactory coalescence between the demands of diplomacy and the principles of justice. The application of international law depended on the political context. In that sense, the fact that the Casablanca Affair had been resolved via pacific settlement highlighted the importance of the period as one of improved and refined diplomatic processes—but it was a fragile one still depending on the nature of great power relations.


Conclusion: The historical legacies of nineteenth-century pacific settlement

To immortalize the sense of progress and hope that the Hague peace conferences and the Hague conventions seemingly induced, Scottish–American steel magnate and peace advocate Andrew Carnegie funded the construction of The Hague’s Peace Palace, which opened in 1913 as a home for the Permanent Court of Arbitration.¹ The historian, of course, cannot be struck by the irony of the palace’s inauguration. Scarcely one year after the opening of the Peace Palace, the First World War erupted. It is this seeming incongruity of events from the Hague peace conferences to the fratricidal strife of the First World War within less than two decades that has led many historians to maintain a peculiar skepticism over the historical legacies of what occurred at The Hague.² Undoubtedly, the ease at which war broke out certainly places a question mark on the overall sincerity of political leaders in quest for peaceful relations and a well-regulated international system in 1899 and 1907. The readiness of these same governments to cast aside international norms for military exigencies such as the German violation of Belgian neutrality in 1914, the use of unrestricted submarine warfare and asphyxiating weapons in 1915 certainly places a question mark over The Hague’s ongoing relevance.

When considered in the abstract, the pacific settlement conventions failed to penetrate the old rivalries of the great powers. General peace amongst Western powers for much of the nineteenth century was based on the ability of states to manage their affairs through a number of pacific settlement mechanisms and techniques including concert diplomacy, good offices, mediation, negotiation, and arbitration and adjudication. Great power rivalry existed under the surface and occasionally cropped up yet this was managed through diplomacy based on the premises of moderation and restraint. By 1914, however, the modus vivendi had ebbed away and the Hague conventions provided no substitute.³

Typically, historians are all too ready to approach the countdown to 1914 as an almost certainty, listing off the various flashpoints.⁴ It seemed that the limited

² For a succinct overview of the problems of some historiographical traditions on the Hague peace conferences, see the introductory chapter of Abbenhuis, For the Peace of the World. Not all scholars see the Hague peace conferences in such a light. Numerous peace, legal, and international scholars present a more nuanced and other cases more laudatory view. See by way of an illustration, the following: Maartje Abbenhuis, Christopher Ernest Barber, and Annalise R. Higgins, eds, War, Peace and International Order? The Legacies of the Hague Conferences of 1899 and 1907, Abingdon: Routledge, 2017; Best, ‘Peace Conferences and the Century of Total War’; Caron, ‘War and International Adjudication’; and Cooper, Patriotic Pacifism.
⁴ This is evident in a number of ways. First off, numerous governments after the First World War set about producing diplomatic documentary collections on the origins of the war. See Mulligan, The Origins of the First World War, pp. 8–9. Annika Mombauer discusses the significance of these collections and the ensuing historical debates over war guilt and the path to war in The Origins of the First World War: Controversies and Consensus, London: Longman, 2002. There are numerous historical tomes devoted to topic of the origins of the First World War, many of which are fine diplomatic
mechanisms of The Hague proved incapable of maintaining their relevance against the constant discharge of power politics in Europe. The diplomatic failure that was the July Crisis of 1914 left no one under any illusions as to the dismal futility of attempting to impose pacific means to resolve disputes that touched on high-stake geopolitical fault lines. The July Crisis had all the symptoms of shoddy statecraft: swaggering brinksmanship, poor decision-making, and a deliberate failure to exhaust all avenues for pacific resolution. A well-meaning system of arbitration could hardly succeed under such circumstances. English writer and civil servant Leonard Sidney Woolf said as much, writing sometime after the outbreak of the war:

Systems and machinery, it is said, are not the way to prevent war, which will only cease when men cease to desire it: Europe, relapsed today into barbarism, shows that men will never cease to desire it: we must face the fact that International Law and Treaties and Arbitration will never prevent periodical shatterings of our civilization: one week in August, 1914, was sufficient to sweep away the whole elaborate progress of a century.

As a contemporary to the unfolding horrors of the war and part of the generation of disillusioned internationalists, Woolf's pessimism is entirely understandable. Without denying the momentousness of 1914, it is worth qualifying Woolf's observations with the benefit of hindsight. As it is, systems, institutions, and norms act merely as the interface in which international actors make decisions, often with fatal consequences. And certainly it would be easy to dwell on the confrontational aspects of the years leading up to 1914 and write off the work of the Hague conferences. But there are other ways of viewing their historical significance, especially since writing off The Hague would be akin to writing off the nineteenth century international system more generally. After all, it is for a reason that the preamble of the 1899 pacific convention was so loquacious in its pronouncements for peace and solidarity among civilized nations as well as its quest to extend the empire of law.

Historical perspective here is key. For instance, rather than taking a short-term view of The Hague that many historians do, legal scholars sweep over 1914 and 1939 to look at the ever-continuing refinement of 'international organization for the maintenance of peace and security' across the twentieth century, as jurist David D. Caron puts it. This is no surprise. Legalists are not afraid to take a longitudinal view of international law, drawing links between the likes of Hugo Grotius, Johann Kaspar Bluntschli, and Hersch Lauterpacht in a single breath without the reservations that historians often have. However, The Hague was all about the big picture. If there was any doubt of an actual system of law it was certainly made real through these conventions and in turn they created a precedent for how diplomats and jurists could


7 Caron, 'War and International Adjudication', p. 4.
build things together.

Legalists Hans Jonkman and Laurence de Blocq van Scheltinga noted in 1998, how the first peace conference constituted the outcome of an evolution in doctrine and practice in arbitration and adjudication over the course of a century. Sitting at the fin de siècle, between two different centuries, and two different epochs, the pacific settlement conventions opened a new chapter, while simultaneously closing an old one. If the twentieth century was all about the creation of international institutions for a global society, the nineteenth century was all about creating this global society. Paul Schroeder, who has a tendency for flipping history on its head (which more often than not is needed), declares that while war sometimes 'just happens' (such as in 1914), peace is often artificial in its practice, requiring more explanation. To borrow heavily from this axiom, 1914 was an ugly aberration of diplomacy, 1899 and 1907, on the other hand, were deliberative undertakings representative of a trend that historians occasionally overlook in their race to explain 1914. The establishment of the Permanent Court of Arbitration and the system of pacific dispute resolution mechanisms drawn up by The Hague conventions were by no means natural things and thus require explanation.

The nineteenth-century practice of pacific settlement as a tool of restraint and civilized conduct created the groundwork for regulating arbitral mechanisms at The Hague. The myriad of uses for arbitration made it into a versatile and at times an invaluable tool for managing relations between states in what was a complex, globalizing period. It is worth noting that at one level, the history of nineteenth-century arbitration is one of steady success, fuelled by a burgeoning arbitration agenda, leading up to the founding of the Permanent Court of Arbitration. At another, it was also replete with failures, as Caron observed. For every instance of arbitration in the nineteenth century there were countless other instances when arbitration was suggested but not employed. These failures were important: demonstrating not only the limitations of nineteenth-century pacific settlement in so far as its efficacy in resolving international disputes, but also the limits that statesmen placed on the use of pacific settlement in order to maintain the functioning of the congress system for which arbitration was a corollary tool.

In an era when the idea of institutional global governance was confined to the realm of internationalist polemics, international arbitration was at the avant garde of the international system. Ideas advanced in support of the creation of the Permanent Court of Arbitration were the same sort that informed the 'new diplomacy' of United States President Woodrow Wilson in the post-war era. After 1918, parliamentary diplomacy became the new avant garde as international arbitration and adjudication became a commonplace norm of international society. After 1918, peace advocacy and internationalism was expressed through the parliamentary structure of the League of Nations and in other avenues. Still, there

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9 Warren F. Kuehl argues a similar point in Seeking World Order.
10 Paraphrased from Schroeder, 'International Politics, Peace, and War', p. 158.
11 Caron, 'War and International Adjudication', p. 10.
13 Cf. Mary Ellen O’Connell, who argues that by the end of the first world war, 'American enthusiasm
are few examples of international agendas that had buy–in from political elites and popular organizations quite in the way that arbitration did. Indeed, as Abbenhuis summarizes, ‘arbitration was clearly a product of its time’. Nineteenth–century pacific settlement highlighted the complexities of the international system and the need for more institutional development in order to better regulate the system and maintain the harmony of relations between states.

The legacies of nineteenth–century pacific settlement are deeply engrained in the modern international system. Arbitration is now a vital part of the machinery of international law. Former judge of the International Court of Justice Bruno Simma notes how nowadays, international courts and tribunals are ‘proliferating’ and the ‘caseload of some of these institutions appears to explode.’ Today, the Permanent Court of Arbitration is the oldest legal body in the international system and one of the busiest. Today, some 115 states have acceded to one or both of the founding conventions of 1899 and 1907. Even in recent times, arbitration still presents itself as an innovative mechanism for dispute resolution, still capable of generating intrigue in the international community. In 2014, riots broke out in Chile over the International Court of Justice’s award regarding the historic dispute over Chile and Peru’s maritime boundary. In 2016, the Permanent Court of Arbitration rendered an award in favour of the Philippines in a dispute over sovereignty of the South China Seas and the Spratly Islands with China under the terms of the Law of the Sea Convention—a ruling that China has rejected.

Moreover, as the neoliberal world order witnesses heightened stages of interconnectivity in terms of free trade and transnationalism arbitration acts, much as it did in the nineteenth century, primarily as a tool for global capitalism. Anti–globalization groups and third world nations often look at modern–day international arbitration with suspicion, deriding arbitration for its role in reinforcing the neoliberal capitalist order. This form of pacific settlement has been important in formulating the basis of transnational law: the international law of individuals, for international arbitration had declined, and by the end of the twentieth century, it had virtually disappeared, replaced to some extent by enthusiasm for other institutions devoted to peaceful settlement, such as the United Nations and the International Court of Justice.’ O’Connell, ‘Arbitration and the Avoidance of War’, p. 31.

14 Abbenhuis, An Age of Neutrals, p. 147.
16 In 2015, for example, the permanent court administered 135 cases. In 2014, it administered 128. Figures taken from the court’s annual reports. See https://pca-cpa.org/en/about/annual-reports/ (last accessed 18 January 2017).
states, corporations, and non-government organizations. In modern times, arbitral chambers are accused regularly of being pro-business and pro-Western at the expense of the developing world by observers. The development of the investor-state principle, where companies can seek redress from governments in investment and trade treaties, in particular has become a particularly odious demonstration of neoliberalism at the international level. Investor-state dispute settlements have the potential to affect domestic laws regarding healthcare, the environment, and labour rights. Arbitral chambers are legal spaces outside the control of nation-states, outside the democratic process, and therefore looked upon with suspicion. The origins of the international law-capitalist nexus can be traced to the nineteenth-century evolution of international law. If anything, modern-day criticism of transnational law is a mirror of the same debates of Western commercial powers attempting to strong-arm fledgling Latin American states into using arbitration to litigate the private claims of their citizens. As this thesis demonstrated, the modern global capitalist system and the system of international law emerged concurrently in the global nineteenth century and the same issues that arose during the Venezuela crisis and in the debates at The Hague over the Drago doctrine are being played out in today’s hyper-globalized system.

Pacific settlement was ostensibly regarded by contemporaries as a civilized tool for promoting peace and maintaining stability. One of the most profound legacies of nineteenth-century pacific settlement was in the manner that it helped to create the legal architecture of the modern international system. The regular use of arbitration in the nineteenth century would have major long-term repercussions. In 1899, the international system had moved from the nineteenth century to the twentieth century. At one end, international arbitration was a reflection of a more ordered international system; of a desire to implant a more rigorous legalism so that the society of states more closely resembled domestic societies with their laws and courts. The development of arbitration was reflective of a comprehensive pattern in which the international system was placed under the growing legal architecture of norms, treaties, conventions, and institutions. The legacies of the Hague would see expression not only in the founding of the Permanent Court of International Justice in 1922, but equally in the creation of the League of Nations in 1919. From this, international courts proliferated. To paraphrase from jurist David Caron, ‘the spirit that drove’ 1899 animated a chain of developments leading up to the 1998 Rome Conference on the International Criminal Court demonstrating an ever-continuing refinement of ‘international organization for the maintenance of peace and security’.

In all, nineteenth-century pacific settlement sits at the foundations of the modern international system, providing the first foray into Western attempts at

21 These criticisms can be witnessed in the contemporary debate in Asia-Pacific nations over the Trans-Pacific Partnership. For an alternative perspective on transnational arbitration courts, see Scott Miller and Gregory N. Hicks, *Investor-State Dispute Settlement: A Reality Check*, Lanham, MD: Rowman and Littlefield, 2015.
building a civilized, rational world order that could provide stability and prosperity in an age of globalization. It represented the first attempt at consolidating and extending the emergent system of international law. The precedent of the pacific settlement conventions of 1899 and 1907 created a framework for instituting greater structural reforms. As Butler observed in 1907 with a reasonable degree of confidence and indeed foresight:

The nations of the earth are faced by problems of amazing complexity and difficulty. The spread of democracy, while it has greatly complicated these problems and enlarged their scope, has also hastened the day of their satisfactory and beneficent solution.

Unless all signs fail, we are entering upon a period of internationalism...  

Butler was certainly correct in reading the Hague conferences and its conventions as a signal of a new era of continued development of international law.

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