

**THE LEAGUE OF
NATIONS AND THE NEW
INTERNATIONAL LAW**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649509034

The League of Nations and the New International Law by John Eugene Harley

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

www.triestepublishing.com

JOHN EUGENE HARLEY

**THE LEAGUE OF
NATIONS AND THE NEW
INTERNATIONAL LAW**

THE LEAGUE OF NATIONS
AND THE
NEW INTERNATIONAL LAW

BY

JOHN EUGENE HARLEY, A.M.

FORMERLY CARNEGIE FELLOW IN INTERNATIONAL LAW
HARVARD UNIVERSITY
ASSISTANT PROFESSOR OF POLITICAL SCIENCE,
UNIVERSITY OF SOUTHERN CALIFORNIA

NEW YORK
OXFORD UNIVERSITY PRESS
AMERICAN BRANCH: 35 West 57th Street
LONDON, TORONTO, MELBOURNE AND BOMBAY
1921

Gr. 1558.21.10
1



*Strabel fund
(Class of 1877)*

Copyright, 1921
BY OXFORD UNIVERSITY PRESS
AMERICAN BRANCH

Printed in U. S. A.

TO
MY MOTHER
AND
THE AMERICAN BOYS WHO
DIED IN FRANCE

*"It is wicked not to try to live up to
high ideals and to better the condition
of the world." — THEODORE ROOSEVELT*

December 11, 1918

100

1

1

1

1

1

1

1

INTRODUCTION

THAT for which Hugo Grotius plead is coming to pass: war is to be outlawed. Certain kinds of war are to be regarded, for the first time in history, as illegal; and, that which is of equal importance, the nebulous thing known as international law is, likewise, for the first time in history, to have a sanction so that the word "illegal" as applied to the action of States will have real significance.

This is the subject of Mr. Harley's treatise. Few things could be more timely and few statements could be more basic, more refreshingly new nor more happily made. Take this bit, summarizing the kinds of war which are now become illegal for the signatories to the Paris Covenant:

1. A war of conquest or external aggression is illegal;
2. A war resorted to by one member after the matter in dispute has been the subject of an arbitral award which is complied with by the other disputant is an illegal war;
3. A war is illegal if resorted to by a member in disregard of a unanimous recommendation by the Council (excluding disputants) which is complied with by the other disputing member;
4. All wars between members of the League are illegal if begun before a *delay period* of from three to nine months has elapsed."

Under the Paris Covenant a signatory beginning war illegally is deemed, *ipso facto*, to "have committed an act of war against all other members of the League," who must thereupon discontinue intercourse of every kind with the offender and may be called upon to make war upon it.

Isn't this worth while, even if the Covenant had done nothing more? But the Covenant does much more. Besides planning new instruments for settling disputes peacefully, such as the court of law, the Council and the Assembly; for controlling the armament madness — the sense of security which will follow the punishment of the wanton aggressor will make this possible — for united action to better the conditions of labor, the Covenant plans that great step toward more enduring peace, namely, the definition of that law under the reign of which the nations may live together and compose their interests just as the individual has long done under municipal law. Mr. Harley points out that these ends are to be achieved by a "new international person" to which the nations surrendered only those attributes of sovereignty needed to effect the purpose in view. In so doing they feel that they are making the residue and more vital part of their sovereignty — that which was retained by them — more secure from outside interference and attack. This is nothing other than the principle, long ago recognized, that true liberty is attainable only through a surrender of license — in this case the license to indulge in the pastime of war whenever it suited a people or their rulers to do so. Under the League, something of that license still persists, but much of it, as we have seen, is gone. Another sovereign right hitherto highly prized, the right to remain neutral, was likewise surrendered in the common interest. The aim of the surrender, as Mr. Harley sees it, is to clothe a "continuous international agency" with just so much power as will make reasonable of expectation "the maintenance of international peace and security, and the promotion of international coöperation, through the development of international law." This agency is not a State, for the territories of the nations

which have set it up are not its territories and their peoples are not its nationals. According to Mr. Harley's view, it does not exercise the powers which Confederations have usually exercised, and, at the same time, is more than an Alliance the action of which is not continuous but which, as a rule, comes into play only under specified conditions. At the same time, this "new international person," the League of Nations, is a subject of international law, its officials and representatives enjoy diplomatic privileges and immunities when engaged on the League's business, and in connection with its trusteeship of the Saar Basin it is vested with legal title to, and authority over, the actual territory administered.

It will be seen, from this brief introduction, what new problems Mr. Harley is here dealing with and what interest and importance attaches to them.

THEODORE MARRBURG