6
Sovereign Equality and Its Discontents

John Lukacs has claimed that the twentieth century lasted only 75 years, from 1914 to 1989 (Lukacs, 1993, 1). In the history of equality of states the century is even shorter, only the 39 years from 1907 to 1946. The issue of equality of states was raised at the 1907 peace conference in The Hague. The debate came to a close in San Francisco in 1946, when the concept of sovereign equality was included in the UN Charter. Thus, in a few years the concept of equality in international society was lively discussed and a principle of sovereign equality was finally settled. Today, that principle is often described as one of the cornerstones of international society and as intimately related to sovereignty. However, the reasons and normative arguments behind that contention are rarely mentioned. This chapter is a response to that often-omitted discourse.

It has been shown in the previous chapters that concepts of equality have been key to understanding the ordering of states within international society. It remains to investigate how twentieth-century international society can be understood from the point of view of equality and what meaning those notions of equality have brought. The period 1907–1946 is exceptional in the history of international relations since it covers the two world wars. Despite the wars, equality of states became a major concern for publicists, diplomats and international lawyers. Much of this debate naturally took place before, in between or after the wars. Equality was a central concept in the discussions about how to organise stable international orders after the wars. The Hague conferences came to an end at the outbreak of the First World War in 1914, but the attempts to reform diplomatic relations continued in the context of the League of Nations and the UN. Hence, neither the Versailles Conference nor the San Francisco Conference were merely restorative occasions but central attempts to reform international society following the credo of
The Hague conferences. Therefore the expression ‘The Hague process’ hereinafter symbolises the debate on equality of states during the entire period.

The first section reviews the debate on equality of states from The Hague conferences to the UN Charter. The second section sheds light on the influence on this process of the then dominating strands of legal thought, particularly legal positivism and legal realism. The final section analyses the concept of sovereign equality, the meaning it conveys as well as its advantages and discontents.

The demand for equal rights of states

The two Hague peace conferences represent a milestone in the articulation of international liberalism. In particular, the conversation among legal scholars was intense, displaying different opinions about the complexity of equality, sovereignty, self-determination and other principles and institutions of international law. The conferences dealt with several issues related to the organisation and procedures of international organisations, such as international arbitration, international courts and rules of warfare. One of the main ideas behind these occasions was to make international relations more inclusive, involving all the nations of the world. Consequently, equality of states was one of the central issues to be debated. At a practical level equality of states had to do with the voting procedures of the conferences. The letter of invitation to the first conference in 1899 already suggested that each party to the conference should have one vote regardless of the number of delegates (Hicks, 1907, 537). However, the questions of procedures were much more important than just determining procedures at the conferences. For, as Hicks argues, the conferences ‘enacted rules of conduct designed to be followed not only by the signatory states but by the whole world’ (Hicks, 1907, 538). It was at the second conference in 1907 that equality of states became a main topic. Despite the efforts to negotiate a solution, this remained an unsettled issue. Yet according to Simpson there are at least three good reasons for taking a closer look at the debates in The Hague: first, the different positions were defended by leading international lawyers of the time and hence ‘a rich source of jurisprudence’ was obtained; second, the argument for equal rights that was proposed at the conference and spurred much of the debate was, and still is, an extreme standpoint in the context of international society; third, the debate in The Hague led finally to the formation of a consensus around a limited or ‘diluted’ concept of equality of states (Simpson, 2003, 134). In what