

INTERNATIONAL LAW

A TREATISE

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PREFACE

TO THE FOURTH EDITION

THERE are two methods of editing the text-book of an author who is no longer living. One is to treat as ~~the~~ the text as it finally left his hands, and to indicate the new matter by means of brackets. The other is to work in the new matter, freely and where it seems to fit best, but without giving warning of its presence. For me the choice had already been made. Mr. Roxburgh, who edited the third edition, decided with reluctance that the condition of the author's manuscript compelled him to adopt the latter method, and it is in my judgment the method which is most conducive to maintaining the book as a living exposition of the law. Unfortunately, Mr. Roxburgh could not be induced to undertake this edition, and Mrs. Oppenheim and Messrs. Longmans, Green & Co. have entrusted that task to me. I have endeavoured to discharge it with due reverence for the author's text, but I must warn the reader that if on any point he wants the author's *ipsissima verba* he must refer to the second edition, and then examine the third edition in the light of Mr. Roxburgh's prefaces.

• I regret to find that this volume is seventy-two pages longer than the third edition, but I am hopeful that, upon examination of the new matter which I have

felt bound to introduce, the reader will consider the enlargement to have been justified. These seventy-two pages by no means represent the whole of the new matter introduced, as a considerable amount of the text of the third edition has been put either into footnotes or into smaller type, and §§ 438-447 (International Prize Court) have been omitted for the reason stated on page 716. The establishment of the Permanent Court of International Justice is alone responsible for twenty of the new pages. Amongst the new, or mainly new, paragraphs, I may mention §§ 11*a*-11*d* (Conciliation), §§ 25*ab*-25*ag* (Permanent Court of International Justice), § 25*f* (Matters of Domestic Jurisdiction), §§ 25*h*-25*i* (Reduction and Limitation of Armaments), §§ 52*a*-52*e* (Compulsive Means of Settlement in relation to the Covenant), § 66*a* (War in Protection of the Covenant), § 82*a* (Alien Subjects in a Belligerent's Forces), § 101*a* (Effect of War upon Contracts), § 102*b* (Effect of Outbreak of War upon Enemy Civil Aircraft), § 181*a* (Defensively Armed Merchant-vessels), §§ 214*d*-214*g* (Proposed Air Warfare and Control of Radio Rules), § 269*a* (Indemnities and Reparation), §§ 292*a*-292*g* (Neutrality and the League), § 319*a* (War Zones), §§ 325*a*-325*c* (Passage of Men-of-War through Rivers, Natural Straits, and Canals), § 373*b* (Blockade of Canals), and § 380*a* (Instruments of Blockade).

The bibliographies which precede most of the sections inevitably grow in bulk. It would be easy to shorten the book by cutting them out. But I feel sure that it would be a mistake. 'Oppenheim' has in the past been for many readers the starting-point of an inquiry,

either academical or practical, and the bibliographies are in no small degree responsible for this fact.

I am deeply indebted to my friend and former pupil, Dr. H. Lauterpacht, Dr. Jur. of Vienna and LL.D. of London, for valuable assistance in the form of criticism and suggestion throughout; in particular has his knowledge of the European Continental literature been of great service. He has also relieved me of the revision of the lists of Abbreviations, Cases, and Contents, and of the Index. I must also express my thanks for the helpful co-operation of Messrs. Longmans, Green & Co., and of the printers, Messrs. T. & A. Constable, of Edinburgh, and their reader. The fourth edition of volume i. will appear in due course.

In conclusion, I may say that I am conscious that greater knowledge could have made this edition better than it is, and that I shall welcome criticisms and suggestions from all those who are fond of 'Oppenheim' and wish it well.

ARNOLD D. McNAIR.

CAMBRIDGE, ENGLAND,

July 1926.

ABBREVIATIONS

OF TITLES OF BOOKS, ETC., QUOTED IN THE TEXT

THE books referred to in the bibliography and notes are, as a rule, quoted with their full titles and the date of their publication. But certain books, periodicals, and conventions which are very often referred to throughout this work are quoted in an abbreviated form, as follows :—

A.J.	=	The American Journal of International Law.
Alvarez, <i>Grande Guerre</i>	=	Alvarez, La grande guerre européenne et la neutralité du Chili (1915).
Annuaire	=	Annuaire de l'Institut de droit international.
Ariga	=	Ariga, La guerre russo-japonaise (1908).
Barboux	=	Barboux, Jurisprudence du Conseil des Prises pendant la guerre de 1870-71 (1871).
Barclay, <i>Problems</i>	=	Barclay, Problems of International Practice and Diplomacy (1907).
Bernsten	=	Bernsten, Das Seekriegsrecht (1911).
Bluntschli	=	Bluntschli, Das moderne Völkerrecht der civilisirten Staaten als Rechtsbuch dargestellt, 3rd ed. (1878).
Boeck	=	Boeck, De la propriété privée ennemie sous pavillon ennemi (1882).
Boidin	=	Boidin, Les lois de la guerre et les deux conférences de la Haye (1908).
Borchard	=	Borchard, The Diplomatic Protection of Citizens Abroad (1915).
Bordwell	=	Bordwell, The Law of War between Belligerents (1908).
Bulmerincq	=	Bulmerincq, Das Völkerrecht (1887).
B.Y.	=	The British Year Book of International Law.
Calvo	=	Calvo, Le droit international théorique et pratique, 5th ed., 6 vols. (1896).

Clunet	=	Journal du droit international.
Convention I.	=	Hague Convention for the Pacific Settlement of International Disputes.
Convention II.	=	Hague Convention respecting the Limitation of the Employment of Force for the Recovery of Contract Debts.
Convention III.	=	Hague Convention relative to the Opening of Hostilities.
Convention IV.	=	Hague Convention concerning the Laws and Customs of War on Land.
Convention V.	=	Hague Convention respecting the Rights and Duties of Neutral Powers and Persons in War on Land.
Convention VI.	=	Hague Convention relative to the Status of Enemy Merchant-ships at the Outbreak of Hostilities.
Convention VII.	=	Hague Convention relative to the Conversion of Merchant-ships into Warships.
Convention VIII.	=	Hague Convention relative to the Laying of Automatic Submarine Contact Mines.
Convention IX.	=	Hague Convention respecting Bombardment by Naval Forces in Time of War.
Convention X.	=	Hague Convention for the Adaptation of the Principles of the Geneva Convention to Maritime Warfare.
Convention XI.	=	Hague Convention relative to certain Restrictions on the Exercise of the Right of Capture in Maritime War.
Convention XII.	=	Hague Convention relative to the Establishment of an International Prize Court.
Convention XIII.	=	Hague Convention respecting the Rights and Duties of Neutral Powers in Naval War.
Cruchaga	=	Cruchaga-Tocornal, Nociones de Derecho Internacional, 3rd ed., vol. i. (1923), vol. ii. (1925).
Despagnet	=	Despagnet, Cours de droit international public, 4th ed. by de Boeck (1910).
Deuxième Conférence, Actes	=	Deuxième conférence internationale de la paix, Actes et Documents, 3 vols. (1908-1909).
Dupuis	=	Dupuis, Le droit de la guerre maritime d'après les doctrines anglaises contemporaines (1899).

- Dupuis, *Guerre* = Dupuis, Le droit de la guerre maritime d'après les conférences de la Haye et de Londres (1911).
- Entscheidungen = Entscheidungen des Oberprisengerichts in Berlin. Herausgegeben im Auftrage des Reichs-Justizamtes. Berlin, 1918, 1921.
- Fauchille = Fauchille, Traité de droit international public, 8th ed. of Bonfils' Manuel de droit international public, vol. i., part 1 (1922), vol. i., part 2 (1925), vol. i., part 3 (1926), vol. ii. (1921).
- Fauchille, *Jur. all.* = Jurisprudence allemande en matière de prises maritimes. Décisions de la Cour Suprême de Berlin. Recueil de décisions suivi des textes intéressant le droit international maritime publiés par l'Allemagne pendant la guerre (1914), by Fauchille and Charles de Visscher (1924).
- Fauchille, *Jur. fr.* = Jurisprudence française en matière de prises maritimes. Recueil de décisions suivi des textes intéressant le droit international maritime publiés par la France pendant la guerre (1914), by Fauchille (1916 *et seq.*).
- Fauchille, *Jur. ital.* = Jurisprudence italienne en matière de prises maritimes. Recueil de décisions suivi des textes intéressant le droit international maritime publiés par l'Italie pendant la guerre (1915), by Fauchille and Basdevant, 1918.
- Fenwick = Fenwick, International Law (1924).
- Field = Field, Outlines of an International Code, 2 vols. (1872-1873).
- Fiore = Fiore, Nouveau droit international public, deuxième édition, traduite de l'italien et annotée par Antoine, 3 vols. (1885).
- Fiore, *Code* = Fiore, International Law Codified. Translation from the 5th Italian edition by Borchard (1918).
- Gareis = Gareis, Institutionen des Völkerrechts, 2nd ed. (1901).
- Garner = Garner, International Law and the World War (1920).

- Garner, *Developments* = Garner, Recent Developments in International Law (1925).
- Gemma = Gemma, Appunti di diritto internazionale (1923).
- Gessner = Gessner, Le droit des neutres sur mer (1865).
- Grotius = Grotius, De Jure Belli ac Pacis (1625).
- Grotius, Annuaire* = Grotius Annuaire International.
- Grotius Society* = Transactions of the Grotius Society.
- Hague Regulations = Hague Regulations respecting the Laws and Customs of War on Land, adopted by the Hague Peace Conference of 1907.
- Hall = Hall, A Treatise on International Law, 8th ed. (1924) by A. Pearce Higgins.
- Halleck = Halleck, International Law, 4th English ed. by Sir Sherston Baker, 2 vols. (1908).
- Hartmann = Hartmann, Institutionen des praktischen Völkerrechts in Friedenszeiten (1874).
- Hatschek = Hatschek, Völkerrecht als System rechtlich bedeutsamer Staatsakte (1923).
- Hautefeuille = Hautefeuille, Des droits et des devoirs des nations neutres en temps de guerre maritime, 2nd ed., 3 vols. (1858).
- Heffter = Heffter, Das europäische Völkerrecht der Gegenwart, 8th ed. by Geflecken (1888).
- Heilborn, *Rechte* = Heilborn, Rechte und Pflichten der neutralen Staaten in Bezug auf die während des Krieges auf ihr Gebiet übertretenden Angehörigen einer Armee und das dorthin gebrachte Kriegsmaterial der kriegführenden Parteien (1888).
- Heilborn, *System* = Heilborn, Das System des Völkerrechts entwickelt aus den völkerrechtlichen Begriffen (1896).
- Hershey = Hershey, The Essentials of International Public Law (1912).
- Higgins = Higgins, The Hague Peace Conferences (1909).
- Hoijer = Hoijer, La solution pacifique des litiges internationaux (1925).
- Holland, *Prize Law* = Holland, A Manual of Naval Prize Law (1888).
- Holland, *Studies* = Holland, Studies in International Law (1898).

Holland, <i>War</i>	=	Holland, The Laws of War on Land (1908).
Holtzendorff	=	Holtzendorff, Handbuch des Völkerrechts, 4 vols. (1885-1889).
Hurst	=	Hurst and Bray, Russian and Japanese Prize Cases, vol. i. (1912), vol. ii. (1913).
Hyde	=	Hyde, International Law chiefly as interpreted and applied by the United States, 2 vols. (1922).
Kleen	=	Kleen, Lois et usages de la neutralité, 2 vols. (1900).
Klüber	=	Klüber, Europäisches Völkerrecht, 2nd ed. by Morstadt (1851).
Kohler	=	Kohler, Grundlagen des Völkerrechts (1918).
Kriegsbrauch	=	Kriegsbrauch im Landkriege (1902). (Heft 31 der kriegsgeschichtlichen Einzelschriften, herausgegeben vom Grossen Generalstabe, kriegsgeschichtliche Abtheilung I.)
Land Warfare	=	Edmonds and Oppenheim, Land Warfare. An Exposition of the Laws and Usages of War on Land for the Guidance of Officers of His Majesty's Army (1912).
Lawrence	=	Lawrence, The Principles of International Law, 7th ed. revised by P. H. Winfield (1923).
Lawrence, <i>Essays</i>	=	Lawrence, Essays on some Disputed Questions of Modern International Law (1884).
Lawrence, <i>War</i>	=	Lawrence, War and Neutrality in the Far East, 2nd ed. (1904).
Lémonon	=	Lémonon, La seconde conférence de la paix (1908).
Liszt	=	Liszt, Das Völkerrecht, 12th ed. by Fleischmann (1925).
Ll. R.	=	Lloyd's Reports of Prize Cases (1914-1924), by Aspinall and De Hart.
L. N. Off. Jo.	=	Official Journal of the League of Nations.
L. N. Treaty Series	=	League of Nations Treaty Series, Publication of Treaties and International Engagements registered with the Secretariat of the League.

- Longuet = Longuet, *Le droit actuel de la guerre terrestre* (1901).
- Lorimer = Lorimer, *The Institutes of International Law*, 2 vols. (1883-1884).
- De Louter = De Louter, *Le droit international public positif*, 2 vols., French translation of the Dutch original, 2 vols. (1920).
- Maine = Maine, *International Law*, 2nd ed. (1894).
- Manning = Manning, *Commentaries on the Law of Nations*, new ed. by Sheldon Amos (1875).
- Martens = Martens, *Völkerrecht*, German translation of the Russian original, 2 vols. (1883).
- Martens, G. F. = G. F. Martens, *Précis du Droit des Gens moderne de l'Europe*, nouvelle éd. par Vergé, 2 vols. (1858).
- Martens, R.
Martens, N.R.
Martens, N.S.
Martens, N.R.G.
Martens, N.R.G. 2nd Ser.
Martens, N.R.G. 3rd Ser.
- These are the abbreviated quotations of the different parts of Martens, *Recueil de Traités*, which are in common use.
- Martens, *Causes célèbres* = Martens, *Causes célèbres du droit des gens*, 2nd ed., 5 vols. (1858-1861).
- Mérignhac = Mérignhac, *Traité de droit public international*, vol. i. (1905), vol. ii. (1907), vol. iii^a. (1912).
- Mérignhac-Lémonon = Mérignhac et Lémonon, *Le droit des gens et la guerre de 1914-1918*, 2 vols. (1921).
- Meurer = Meurer, *Die Haager Friedenskonferenz*, 2 vols. (1905-1907).
- Moore = Moore, *A Digest of International Law*, 8 vols., Washington (1906).
- Moore, *Arbitrations* = Moore, *History and Digest of the Arbitrations to which the United States have been a Party*, 6 vols. (1898).
- Moore, *Current Illusions* = Moore, *International Law and Some Current Illusions, and other Essays* (1924).
- Nippold = Nippold, *Die zweite Haager Friedenskonferenz*, 2 vols. (1908-1911).
- Nys = Nys, *Le droit international*, 3 vols., 2nd ed. (1912).

Ortolan	=	Ortolan, Règles internationales et diplomatie de la mer, 2 vols., 3rd ed. (1856).
Perels	=	Perels, Das internationale öffentliche Seerecht der Gegenwart, 2nd ed. (1903).
Phillimore	=	Phillimore, Commentaries upon International Law, 4 vols., 3rd ed. (1879-1888).
Piedelièvre	=	Piedelièvre, Précis de droit international public, 2 vols. (1883-1895).
Pillet	=	Pillet, Les lois actuelles de la guerre (1901).
Pistoye et Duverdy	=	Pistoye et Duverdy, Traité des prises maritimes, 2 vols. (1854-1859).
Pradier-Fodéré	=	Pradier-Fodéré, Traité de droit international public, 8 vols. (1885-1906).
Pufendorf	=	Pufendorf, De Jure Naturae et Gentium (1672).
Reddie, <i>Researches</i>	=	Reddie, Researches, Historical and Critical, in Maritime International Law, 2 vols. (1844).
R.G.	=	Revue générale de droit international public.
R.I.	=	Revue de droit international et de législation comparée.
R.I. (Geneva)	=	Revue de droit international, de sciences diplomatiques, politiques et sociales.
Rivier	=	Rivier, Principes du droit des gens, 2 vols. (1896).
Rivista	=	Rivista di diritto internazionale.
Rolin	=	Rolin, Le droit moderne de la guerre, 3 vols. (1921).
Satow, <i>Diplomatic Practice</i>	=	Satow, A Guide to Diplomatic Practice, 2 vols. (1917).
Schramm	=	Schramm, Das Prisenrecht in seiner neuesten Gestalt (1913).
Schücking und Wehberg	=	Schücking und Wehberg, Die Satzung des Völkerbundes, 2nd ed. (1924).
Scott, <i>Conferences</i>	=	Scott, The Hague Conferences of 1899 and 1907, vol. i. (1909).
Scott, <i>Cases</i>	=	Scott's Cases on International Law (1922).
Spaight, <i>Land</i>	=	Spaight, War Rights on Land (1911).

Spaight, <i>Air</i>	=	Spaight, <i>Air Power and War Rights</i> (1924).
Spaight, <i>Commerce</i>	=	Spaight, <i>Aircraft and Commerce in War</i> (1926).
Strupp, <i>Grundzüge Strupp, Wört.</i>	=	Strupp, <i>Grundzüge des positiven Völkerrechts</i> (1922).
	=	Wörterbuch des Völkerrechts und der Diplomatie, ed. by Strupp (begun by Hatschek), 3 vols. (1923-1926).
Suarez	=	Suarez, <i>Tratado de Derecho internacional público</i> , 2 vols. (1916).
Takahashi	=	Takahashi, <i>International Law applied to the Russo-Japanese War</i> (1908).
Taylor	=	Taylor, <i>A Treatise on International Public Law</i> (1901).
Testa	=	Testa, <i>Le droit public international maritime</i> , traduction du Portugais par Boutiron (1886).
Toynbee, <i>Survey, 1920-1923</i>	=	Toynbee, <i>Survey of International Affairs, 1920-1923</i> (1925).
Toynbee, <i>Survey, 1924</i>	=	Toynbee, <i>Survey of International Affairs, 1925</i> (1926).
Twiss	=	Twiss, <i>The Law of Nations</i> , 2 vols., 2nd ed. (1884, 1875).
Ullmann	=	Ullmann, <i>Völkerrecht</i> , 2nd ed. (1908).
U.S. Naval War Code	=	<i>The Laws and Usages of War at Sea</i> , published on June 27, 1900, by the Navy Department, Washington, for the use of the U.S. Navy and for the information of all concerned.
Vattel	=	Vattel, <i>Le droit des gens</i> , 4 books in 2 vols., nouvelle éd. (Neuchâtel, 1773).
Verzijl	=	Verzijl, <i>Le Droit des Prises de la grande Guerre</i> (1924).
Walker	=	Walker, <i>A Manual of Public International Law</i> (1895).
Walker, <i>History</i>	=	Walker, <i>A History of the Law of Nations</i> , vol. i. (1899).
Walker, <i>Science</i>	=	Walker, <i>The Science of International Law</i> (1893).
Wehberg	=	Wehberg, <i>Das Seekriegsrecht</i> (1915) in Stier-Somlo, <i>Handbuch des Völkerrechts</i> .

Wehberg, <i>Kommentar</i>	=	Wehberg, Kommentar zu dem Haager Abkommen betreffend die friedliche Erledigung internationaler Streitigkeiten (1911).
Westlake	=	Westlake, International Law, 2 vols., 2nd ed. (1910-1913).
Westlake, <i>Chapters</i>	=	Westlake, Chapters on the Principles of International Law (1894).
Westlake, <i>Papers</i>	=	The Collected Papers of John Westlake on Public International Law, ed. by L. Oppenheim (1914).
Wharton	=	Wharton, A Digest of the International Law of the United States, 3 vols. (1886).
Wheaton	=	Wheaton, Elements of International Law, 8th American ed. by Dana (1866).
Zorn	=	Zorn, Das Kriegerrecht zu Lande in seiner neuesten Gestaltung (1906).
Z.I.	=	Zeitschrift für internationales Recht.
Z.V.	=	Zeitschrift für Völkerrecht.

TABLE OF CASES

[*Note*.—The following is a list of cases which received judicial consideration. Throughout the Index at the end of the volume will be found a number of cases and incidents which were the subject of diplomatic discussion or contemporary record.]

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- Amiral Gauteaume, The*, (1914) Garner, i. § 319. § 186, p. 328.
- Andersen v. Marten*, [1908] A.C. 334. § 435, p. 711.
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- Annaberg, The*, (1916) 2 B. and C.P.C. 241. § 90, p. 184.
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- Antwerpen, The*, [1919] P. 252 (n.) ; 3 B. and C.P.C. 486 (n.). § 405, p. 661.
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- Atalanta, The*, (1808) 6 C. Rob. 440. § 409, p. 675 ; § 412, p. 678.
- Atlanta or Stella Polare*, (1919) Fauchille, *Jur. ital.*, 435. § 91, p. 188.
- Atlas, The*, (1919) *Entscheidungen*, ii. 321 ; and on appeal, *Grotius, Annuaire* (1924), p. 252. § 403a, p. 658 ; § 436, p. 714.
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