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## PREFACE

THE idea of writing a book on maritime international law had preoccupied Professor Alexander Pearce Higgins for many years before his regretted death in 1935. Like other international jurists in this country and in the United States, he had been struck by the anomaly that neither of the two great naval Powers possessed any specialised treatise on the subject. There can be little doubt that, had he lived long enough to accomplish his object, he would have produced a work which for clarity of exposition and sound scholarship would have taken a worthy place among his other publications. He was an acknowledged authority on the law of the sea, a subject which as Professor of International Law he had taught with distinction both in the University of Cambridge and of London. His lectures marked, indeed, an important contribution to the development of that Anglo-American school which, although mainly based on the customs and rules evolved by the English-speaking nations, yet tended to international understanding and goodwill.

Professor Pearce Higgins's work was not, however, limited to the doctrinal exposition of international law. He combined, to a degree which is not often met, academical with practical knowledge. When the first Great War broke out, he was appointed adviser in international law and prize law to the Procurator-General and Treasury Solicitor, and appeared in many leading cases before the Prize Court and the Judicial Committee of the Privy Council. In 1919, he went to Paris as adviser in international law to the Admiralty during the Peace Conferences of that year. He was also one of the British members of the Permanent Court of Arbitration at The Hague. On the other hand, his lectures on maritime international law at the Royal Naval War and Staff Colleges at Greenwich brought him into close touch with many senior naval officers, with whom he delighted to discuss the actual realities and the everyday problems of the sea services. Unfortunately, his exacting duties, especially during the war period of 1914-18, seriously impaired his health, so

that when he laid down his pen in 1933, his manuscript was only half finished. As Professor Pearce Higgins's friend and former pupil, it fell to me to try to complete his work and bring it up to date.

The publication of this treatise during the present crisis may raise controversial views as to the advisability of publishing any books on international law at a time when the whole world is witnessing so many recurrent and flagrant violations by our enemies of the generally accepted rules of warfare. If, after careful consideration, I have decided not to delay any further the issue of this volume, it is because I feel convinced that these very violations actually demand a re-affirmation of the existence of international law. At the same time, they point again to the fact that international law, in its organic development towards a regular system of law, has up to now been unprovided with the requisite sanctions to enforce its rules. This serious defect may be mainly accounted for by the theories of absolute sovereignty which still survive from the Middle Ages and are responsible for the misleading proposition that each State is entitled to constitute itself sole judge of its actions. But the speed of modern communications, and the growing interdependence of nations in the economic, commercial, and social field, are bound ultimately to put an end to isolationist policies. Nations must realise that their united contribution to the maintenance of peace is indispensable if the supremacy of law and justice is to be established in the international sphere as it has eventually been established in the internal affairs of all civilised States.

In his Preface to the eighth edition of Hall's *International Law*, Professor Pearce Higgins pointed out that "jurists cannot 'make international law,' but their duty is to take cognisance of all the changes which occur, and to make suggestions for improvement in the law." One important suggestion in this respect is that no rules should be laid down in any law-making treaty of the future unless they are implemented by an organised system of sanctions capable of ensuring their full observance by all the signatory States. Such a condition necessarily implies a substantial change in the existing structure of the international community entailing a definite limitation on the ideas of absolute sovereignty which have prevailed up to now. But

the experience of the last twenty years proves that it is not only useless, but dangerous, to erect again an International Society lacking compulsory judicial, legislative, and executive functions. This is amply shown in the breakdown of the League of Nations, due principally to the large discretionary powers it left to individual States and to the illusory belief in "collective security" which it engendered among peace-loving nations and which made them an easy prey to the aggressive "Axis" Powers. Happily, the collaboration and the sense of realities which have inspired the acceptance by all the United Nations of the great principles contained in the Atlantic Charter justify the hope that the lessons of the past will not be forgotten in the shaping of the forthcoming Peace Treaties, and that a reconstructed Society of Nations will this time be built on solid foundations enabling it to meet adequately the problems of the future and to preserve ordered peace and progress in international relations.

I wish to express my grateful appreciation to the Board of the Faculty of Law of the University of Cambridge for the grant allocated out of the Whewell Fund in aid of the publication of this book. My thanks are also due to Messrs. Longmans, Green & Co., and to the printers, Messrs. Neill & Co. of Edinburgh, for their kind co-operation.

C. JOHN COLOMBOS.

4 PUMP COURT,  
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*January 1943.*

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# THE INTERNATIONAL LAW OF THE SEA

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## LIST OF ABBREVIATIONS.

*This list does not include the well-known abbreviations of the  
law reports of British and American cases*

- |                      |       |   |
|----------------------|-------|---|
| A. J. I. L.          | . . . | American Journal of International Law (Washington, D.C., 1907- ).   |
| Annuaire             | . . . | Annuaire de l'Institut de droit international (Paris and Brussels, 1875- ).   |
| Annual Digest        | . . . | Annual Digest of Public International Law Cases, edited by H. Lauterpacht (London, 1919- ).   |
| Brierly              | . . . | The Law of Nations, 2nd edition (Oxford, 1936).   |
| B. & C. P. C.        | . . . | British and Colonial Prize Cases, Vol. I edited by J. M. Trehern; Vols. II and III edited by A. Wallace Grant (London, 1915-1922).  |
| B. Y. I. L.          | . . . | British Year Book of International Law, edited by Sir Cecil J. B. Hurst (London, 1920- ).   |
| Colombos             | . . . | A Treatise on the Law of Prize, 2nd edition (London, 1940).   |
| Fauchille            | . . . | Traité de droit international public: Vol. I (in 3 parts), Peace (Paris, 1922-1926); Vol. II, War (Paris, 1921).  |
| Garner               | . . . | International Law and the World War, 2 volumes (London and New York, 1920).   |
| Gidel                | . . . | Le droit international public de la mer (Le temps de paix), 3 volumes (Paris, 1932-1934).   |
| Grotius Transactions |       | Transactions of The Grotius Society (London, 1916- ).   |
| Hague Air Rules      | . . . | Rules contained in the General Report of the "Commission of Jurists to consider and report upon the revision of the rules of warfare," The Hague, 1922-1923; Miscellaneous, No. 14 (1924) [Cd. 2201]. |
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PART I.

THE INTERNATIONAL LAW OF THE SEA  
IN TIME OF PEACE.

