

DOCUMENTS ILLUSTRATIVE
OF
INTERNATIONAL LAW

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PREFACE

THERE are in existence several books of cases, dealing with the Law of Nations as a whole or with separate parts of it. Most of them are excellent, and nothing was further from my thoughts in compiling the present work than to enter into competition with them. What I have endeavoured to do is to produce a book which shall contain, not merely judgments and opinions given in connection with disputes brought before Courts for settlement, but documents of all kinds which bear on the formation and development of the rules of International Law.

The student reads in his text-books that certain authors who wrote some three centuries ago made such a deep impression on the collective mind of Western Europe that the principles most of them advocated became the foundations of a science of international relations unlike anything that had gone before it, though borrowing much from previously existing theories and institutions. I have given him extracts from some of the most distinguished of these writers, that he may see for himself how, and against what, they reasoned. He also reads that in modern times states have begun to settle for themselves by common agreement what rules they will obey in many departments of their mutual intercourse. I have placed before him all the great law-making documents in which these agreements are recorded. Further, he learns that in the interval between the great Jurists who watched over and controlled the infancy of International Law, and the great Conferences which have moulded its newest activities, treaties, judgments of prize-courts and arbitral tribunals, state-papers of all kinds, and even the opinions of private persons or associations of persons, influenced its development, and are likely still to do so, some of them in a more marked degree than before. I have given him specimens of all these to study.

The proposition that students are likely to derive much benefit from familiarity with a selection of such documents as

I have indicated is hardly likely to be controverted. But I am acutely conscious of the difficulty of making a selection which will be generally satisfactory. There can be no doubt about the inclusion of the Hague Conventions and other great law-making documents of recent times. But when we step beyond these, what principle is to guide our choice? In a case book the general opinion of the legal profession enables a compiler to distinguish between the more important and the less important judgments. But there is no such *consensus* to appeal to in the case of ordinary treaties and other state-papers. They form an enormous literature, which no one man can know, still less sift and weigh. And when, in addition to them, speeches of statesmen, writings of publicists, and transactions of societies have to be considered, it is clear that the selection from this mass of material of enough to fill a modest book of reference must be more a matter for unfettered individual judgment than for regulation by standardized tests. I could but choose according to my knowledge. But my sense of its limitations was greatly deepened as I went on. Within its boundaries I have taken by preference modern instances; and in arranging them I have followed the order adopted in my *Principles of International Law*. It was impossible to illustrate every part of the subject. In settling the points to be elucidated I was guided largely by my judgment as to what were likely to be most important in the immediate future, though doubtless I have laid stress almost unconsciously on the questions which interest me most. The selection, for instance, of what may possibly be regarded as a somewhat disproportionate number of documents in connection with the attempts to pierce the Isthmus of Panama, the Monroe Doctrine, and the position of the United States among the American Republics, was due in the first place to a conviction, which all share, of the vast importance of the questions raised by completion of the Panama Canal, but in a secondary degree to the intense interest I have long taken in the gradual evolution of something like social organization in the family of nations. Those whose judgments and predilections are altogether different would naturally have made a differ-

ent selection. I can only hope that mine may meet the needs of those for whom it was undertaken.

The book is intended for British and American students, and therefore dwells most on questions which concern them most intimately. It is divided into four Parts. The first deals with the nature, origin, and development of International Law, the second with questions arising out of the peaceful relations of states, the third with belligerency, and the fourth with neutrality. Clearly it is possible for a document to cover matters connected with more than one of these departments. Thus it comes about that what appears in one Part may often be used to elucidate questions which arise properly in connection with another Part. A case in point occurs in Part I where I reprint part of a judgment by Sir William Scott in order to point out the way in which Prize Court Judges may, and should, act as exponents of International Law in the process of deciding the case actually before them at the time. But the same extract will serve equally well to illustrate the nature and functions of Prize Courts, a question which falls properly into Part III. Similar instances occur frequently; and a careful teacher will direct the attention of his students to them. It will be found that the book can be used with any good modern treatise on International Law. I have inserted elucidatory notes at the end of many of the documents, but they cannot be regarded as substitutes for a systematic exposition of the subject.

I have laid a great variety of sources under contribution for my subject matter. The extracts from Machiavelli are taken from the piquant translation of *The Prince*, published in 1674, by Edward Dacres. The English version of Pufendorff is that of Basil Kennett, dated 1706, and the quotations from Vattel come from a translation of 1793. Whewell's translation of 1853 has been used in all but one of the extracts from Grotius. Many of the treaties and state-papers I have used have been printed and reprinted so often that it is superfluous to say from what publications I took them. Where the source is in any way special I have acknowledged it at the end of the document. But it is proper to add that the publications of the British

government have been used much more frequently than any others. I am indebted to the Controller of His Majesty's Stationery Office for permission to reproduce them. To him, and to the Foreign Office, I offer my sincere thanks.

I have also to express my gratitude to the International Law Association for allowing me to reprint the comprehensive report presented by their Committee on Aviation in 1913, and to the Syndics of the Cambridge University Press for leave to use Doctor Whewell's translation of the great work of Hugo Grotius, *De Jure Belli ac Pacis*. My cordial thanks are hereby rendered to Doctor James Brown Scott, the distinguished Secretary of the Carnegie Endowment for International Peace and Director of its International Law Division, for permission to take a few reports from his valuable collection of *Cases on International Law*, and to reprint various treaties and other documents from *The American Journal of International Law*, of which he is Editor-in-Chief. Doctor John Bassett Moore, Hamilton Fish Professor of International Law and Diplomacy at Columbia University, New York, has kindly allowed me to transfer to my own pages several extracts from his *International Law Digest*, and I wish to express to him my gratitude for the permission to use such a monument of American industry and scholarship. In preparing the present collection for the press I have received much help from Mr. E. J. Passent, M.A., of Downing College, Cambridge, whose careful research enabled me to find documents I should otherwise have missed. I wish to express my sense of obligation to him for his assistance, and to my friend, Doctor Courtney Stanhope Kenny, Professor of English Law in the University of Cambridge, for valuable advice given to me out of the treasures of his wisdom and experience

T. J. LAWRENCE.

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DOCUMENTS ILLUSTRATIVE OF INTERNATIONAL LAW

PART I

DOCUMENTS ILLUSTRATING THE NATURE, ORIGIN, AND DEVELOPMENT OF INTERNATIONAL LAW

1. Excerpts from Nicolo Machiavelli, 1469-1527

CALCULATED CRUELTY

From whence it is to be observed, that he who usurps the government of any State is to execute and put in practice all the cruelties which he thinks material at once, that he may have no occasion to renew them often, but that by his discontinuance he may mollify the people, and by his benefits bring them over to his side. He who does otherwise, whether for fear or ill counsel, is obliged to be always ready with his knife in his hand; for he can never repose any confidence in his subjects, whilst they, by reason of his fresh and continued inhumanities, cannot be secure against him. So then injuries are to be committed all at once, that the last being the less, the distaste may be likewise the less; but benefits should be distilled by drops, that the relish may be greater. — (*The Prince*, ch. viii.)

WAR

A Prince, then, is to have no other design, nor thought, nor study but war and the arts and disciplines of it; for, indeed, that is the only profession worthy of a prince, and is of so much

importance that it not only preserves those who are born princes in their patrimonies, but advances men of private condition to that honourable degree. — (*The Prince*, ch. xiv.)

OPPORTUNE LACK OF MORAL PRINCIPLE

A tender man, and one that desires to be honest in everything, must needs run a great hazard among so many of a contrary principle. Wherefore it is necessary for a prince who is willing to subsist to harden himself, and learn to be good or otherwise according to the exigence of his affairs. . . . No man, I am sure, will deny but that it would be an admirable thing and highly to be commended to have a prince endued with all good qualities; but because it is impossible to have, much less to exercise, them all by reason of the frailty and crossness of our nature, it is convenient that he be so well instructed as to know how to avoid the scandal of those vices which may deprive him of his state, and be very cautious of the rest, though their consequence be not so pernicious, but where they are unavoidable he need trouble himself the less. Again, he is not to concern himself if run under the infamy of those vices without which his dominion was not to be preserved; for if we consider things impartially we shall find some things in appearance are virtuous, and yet, if pursued, would bring certain destruction; and others, on the contrary, that are seemingly bad, which, if followed by a prince, procure his peace and security. — (*The Prince*, ch. xv.)

THE VALUE OF BLOODSHED AND FEAR

I say every prince is to desire to be esteemed rather merciful than cruel, but with great caution that his mercy be not abused; Caesar Borgia was counted cruel, yet that cruelty reduced Romagna, united it, settled it in peace, and rendered it faithful: so that if well considered, he will appear much more merciful than the Florentines, who rather than be thought cruel suffered Pistoia to be destroyed. A prince, therefore, is not to regard the scandal of being cruel, if thereby he keeps his subjects in their allegiance and united. . . . Nevertheless, he

is not to be too credulous of reports, too hasty in his motions, nor create fears and jealousies to himself, but so to temper his administrations with prudence and humanity that neither too much confidence may make him careless, nor too much diffidence intolerable. And from hence arises a new question, Whether it be better to be beloved than feared, or feared than beloved? It is answered both would be convenient, but because that is hard to attain, it is better and more secure, if one must be wanting, to be feared than beloved. . . . I conclude, therefore, according to what I have said about being feared or beloved, that forasmuch as men do love at their own discretion, but fear at their prince's, a wise prince is obliged to lay foundation upon that which is in his power, not that which depends on other people, but, as I said before, with great caution that he does not make himself odious. — (*The Prince*, ch. xvii.)

THE USE OF DISSIMULATION

How honourable it is for a prince to keep his word, and act rather with integrity than collusion, I suppose everybody understands: nevertheless, experience has shown in our times that those princes who have not pinned themselves up to that punctuality and preciseness have done great things, and by their cunning and subtilty not only circumvented, and darted the brains of those with whom they had to deal, but have overcome and been too hard for those who have been so superstitiously exact. For further explanation you must understand there are two ways of contending, by law and by force; the first is proper to men; the second to beasts; but because many times the first is insufficient, recourse must be had to the second. It belongs, therefore, to a prince to understand both, when to make use of the rational and when of the brutal way. . . . A prince, therefore, who is wise and prudent, cannot or ought not to keep his parole, when the keeping of it is to his prejudice, and the causes for which he promised removed. Were men all good this doctrine was not to be taught, but because they are wicked and not likely to be punctual with you, you are not obliged to any such strictness with them; nor was there ever any prince that

wanted lawful pretence to justify his breach of promise. I might instance in many modern examples, and show how many confederations, and peaces, and promises have been broken by the infidelity of princes, and how he that best personated the fox had the better success. Nevertheless, it is of great consequence to disguise your inclination, and to play the hypocrite well; and men are so simple in their temper and so submissive to their present necessities, that he that is neat and cleanly in his collusions shall never want people to practise them upon. I cannot forbear one example which is still fresh in our memory. Alexander VI never did, nor thought of, anything but cheating, and never wanted matter to work upon; and though no man promised a thing with greater asseveration, nor confirmed it with more oaths and imprecations, and observed them less, yet understanding the world well he never miscarried.

A prince, therefore, is not obliged to have all the fore-mentioned good qualities in reality, but it is necessary he have them in appearance; nay, I will be bold to affirm that, having them actually, and employing them upon all occasions, they are extremely prejudicial, whereas, having them only in appearance, they turn to better account; it is honourable to seem mild, and merciful, and courteous, and religious, and sincere, and indeed to be so, provided your mind be so rectified and prepared that you can act quite contrary upon occasion. And this must be premised, that a prince, especially if come but lately to the throne, cannot observe all those things exactly which make men be esteemed virtuous, being oftentimes necessitated, for the preservation of his State, to do things inhuman, uncharitable, and irreligious; and, therefore, it is convenient his mind be at his command, and flexible to all the puffs and variations of fortune; not forbearing to be good whilst it is in his choice, but knowing how to be evil when there is a necessity. A prince, then, is to have particular care that nothing falls from his mouth but what is full of the five qualities aforesaid, and that to see and to hear him he appears all goodness, integrity, humanity, and religion, which last he ought to pretend to more than ordinarily, because more men do judge by the eye than by the

touch; for everybody sees but few understand; everybody sees how you appear, but few know what in reality you are, and those few dare not oppose the opinion of the multitude, who have the majesty of their prince to defend them; and in the actions of all men, especially princes, where no man has power to judge, everyone looks to the end. Let a prince, therefore, do what he can to preserve his life, and continue his supremacy, the means which he uses shall be thought honourable, and be commended by everybody; because the people are always taken with the appearance and event of things and the greatest part of the world consists of the people; those few who are wise taking place when the multitude has nothing else to rely upon. There is a prince at this time in being (but his name I shall conceal) who has nothing in his mouth but fidelity and peace; and yet had he exercised either the one or the other, they had robbed him before this both of his power and reputation. — (*The Prince*, ch. xviii.)

2. Excerpts from Hugo Grotius, 1583–1645

THE REALITY OF INTERNATIONAL LAW

The Civil Law, both that of Rome, and that of each nation in particular, has been treated of, with a view either to illustrate it or to present it in a compendious form, by many. But International Law, that which regards the mutual relations of several Peoples, or Rulers of Peoples, whether it proceed from nature, or be instituted by divine command, or introduced by custom and tacit compact, has been touched on by few, and has been by no one treated as a whole in an orderly manner. And yet that this be done, concerns the human race. . . .

And such a work is the more necessary on this account; that there are not wanting persons in our own time, and there have been also in former times persons, who have despised what has been done in this province of jurisprudence, so far as to hold that no such thing existed, except as a mere name. Every one can quote the saying of Euphemius in Thucydides;—that for a king or a city which has an empire to maintain, nothing is

unjust which is useful: and to the same effect is the saying, that for those who have supreme power, the equity is where the strength is: and that other, that state affairs cannot be carried on without doing some wrong. — (*De Jure Belli ac Pacis*, Prolegomena.)

THE NEED OF INTERNATIONAL LAW

I, for the reasons which I have stated, holding it to be most certain that there is among nations a common law of Rights which is of force with regard to war, and in war, saw many and grave causes why I should write a work on that subject. For I saw prevailing throughout the Christian world a license in making war of which even barbarous nations would have been ashamed; recourse being had to arms for slight reasons or no reason; and when arms were once taken up, all reverence for divine and human law was thrown away, just as if men were thenceforth authorized to commit all crimes without restraint. — (*De Jure Belli ac Pacis*, Prolegomena.)

AN ATTEMPT TO SET UP A LAW OF NATURE OR NATURAL LAW

It remains now that I briefly explain with what aids, and with what care, I undertook this work. In the first place, it was my object to refer the truth of the things which belong to Natural Law to some notions, so certain, that no one can deny them, without doing violence to his own nature. For the principles of such Natural Law, if you attend to them rightly, are of themselves patent and evident, almost in the same way as things which are perceived by the external senses; which do not deceive us, if the organs are rightly disposed, and if other things necessary are not wanting. Therefore Euripides in his *Phæniissæ* makes Polynices, whose cause he would have to be represented manifestly just, express himself thus: —

I speak not things hard to be understood,
But such as, founded on the rules of good
And just, are known alike to learn'd and rude.

And he immediately adds the judgment of the chorus, (which consisted of women, and these too barbarians,) approving what he said.

In order to give proofs on questions respecting this Natural Law, I have made use of the testimonies of philosophers, historians, poets, and finally orators. Not that I regard these as judges from whose decision there is no appeal: for they are warped by their party, their argument, their cause: but I quote them as witnesses whose conspiring testimony, proceeding from innumerable different times and places, must be referred to some universal cause; which, in the questions with which we are here concerned, can be no other than a right deduction proceeding from the principles of reason, or some common consent. The former cause of agreement points to the Law of Nature; the latter, to the Law of Nations: though the difference of these two is not to be collected from the testimonies themselves, (for writers everywhere confound the Law of Nature and the Law of Nations,) but from the quality of the matter. For what cannot be deduced from certain principles by solid reasoning, and yet is seen and observed everywhere, must have its origin from the will and consent of all. — (*De Jure Belli ac Pacis*, Prolegomena.)

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AN ACCOUNT OF THE SO-CALLED NATURAL LAW

Natural Law is the Dictate of Right Reason, indicating that any act, from its agreement or disagreement with the rational nature has in it a moral turpitude or a moral necessity; and consequently that such act is forbidden or commanded by God, the author of nature.

Acts concerning which there is such a Dictate, are obligatory, or are unlawful, in themselves, and are therefore understood as necessarily commanded or forbidden by God; and in this character, Natural Law differs, not only from Human Law, but from Positive Divine Law, which does not forbid or command acts which, in themselves and by their own nature, are either obligatory or unlawful; but, by forbidding