

# INTERNATIONAL LAW

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VOLUME 1

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AS APPLIED BY

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## PREFACE

IN form and substance, the third edition of *International Law as Applied by International Courts and Tribunals* differs considerably from its predecessors. In substance, the change is one in emphasis from systematic exposition to critical evaluation of the judicial material.

This raises the question of the standards of criticism applied. Primarily, they are those basic rules of international law which are so well attested by inductively verifiable evidence as to be practically uncontroversial. Secondly, they are relevant working hypotheses which are gained from related academic disciplines. These have been used, but merely in an auxiliary way and for a limited purpose. In particular, historical and sociological working hypotheses can put us on guard against unduly venturesome enterprises in judicial law-making which appear out of tune with the rules governing the fundamental principles of international law and, therefore, are unlikely to be generally acceptable as "developments" of international law by judicial organs.<sup>1</sup> While these working hypotheses are inductively verifiable, at least some of them may be controversial. In each case, therefore, it has been made clear when they have been employed. In this way, the reader has been warned that he must judge for himself whether he wishes to make his own criticism of judicial material based on such non-legal standards.

In due course, it is hoped to include in a companion Volume on *International Law in Perspective* a synopsis of international law as a system of interrelated primary rules as well as the views of international law in its historical, sociological and ethical settings. Similarly, a chapter on the inductive approach to international law will find its home there. It has, therefore, become possible to lighten considerably the Introduction to this edition of Volume One. Until the publication of *International Law in Perspective*, references to preliminary studies in these

<sup>1</sup> See below, pp. 62 *et seq.*, and further Vol. II, Chap. 51.

fields will, perforce, have to suffice and will be found in the appropriate places.

This change in treatment alone would have made an expansion of Volume One inevitable. The need for analysis of the work of the International Court of Justice during almost a decade and fuller consideration of the awards of bilateral arbitral tribunals during the inter-war period—now conveniently accessible in the United Nations *Reports of International Arbitral Awards*—counselled a more drastic course: the presentation in two volumes of *International Law as Applied by International Courts and Tribunals*.

This decision was made easier by the fact that, meanwhile, it has become clearer who were the "classes of users" of this book. When it was first written, I knew only that, both as an essay in method and a contribution to the understanding of international law, this effort ought to be made. On the basis of information for which I am greatly indebted to the Publishers, it is fairly clear that Volume One has come to meet two separate, but apparently not incompatible, functions. Volume One seems to have found favour with "consumers" so disparate as practitioners and students. The latter, however, had a complaint. For purposes of prolonged reading, the type of the previous editions was too tiring to the eye. With the co-operation, so forthcoming from both the Publishers and Printers, this difficulty has, it is hoped, now been overcome. The choice of a larger type, however, made the division of the material into two volumes almost a necessity.

For some time to come, readers will have to be content to take these two volumes at their face value. As their title indicates, they are meant to provide a critical analysis of international law as applied by international courts and tribunals. To judge by the number of inquiries received by the Publishers during the last few years while Volume One has been out of print, a work of this kind fulfils a need among students and practitioners of international law. Yet, admittedly, these volumes are intended to form ultimately part of a more comprehensive treatise on international law.

As explained more fully elsewhere,<sup>2</sup> the chances of a *British Digest of International Law* being published in any foreseeable future were non-existent when this treatise was first conceived but, fortunately, in the last few years, they have considerably brightened. In this eventuality, it would be possible to rely to a considerable extent on such a British counterpart to Moore's and Hackworth's *Digests of International Law*. In any case, it is worth waiting to see whether this scheme will bear fruition. Be this as it may, my own—happily growing—digest of international law as applied in British practice makes it painfully obvious that, in any case, the presentation of *International Law as applied in British Practice* will require a minimum of another two volumes. Further studies in this field have, however, convinced me that it will not be necessary to insist on the separate treatment of British judicial and diplomatic practice in separate volumes. They will be analysed together in two further volumes.

It is a pleasurable duty to acknowledge the benefit which, in preparing this edition, I have derived again from painstaking reviews in many places, from encouraging comments and criticism by colleagues and postgraduate students in this country and abroad, and, in particular, my two closest colleagues, Mr. L. C. Green, LL.B., and Dr. B. Cheng, both Lecturers in International Law at University College, London. Both these friends have accompanied the prolonged work of revision with friendly and constructive criticism. Beyond this, Dr. Cheng has been kind enough to undertake the laborious task of seeing this Volume through the press, prepare the tables of cases and the index as well as to bring the selected bibliography up to date.

The touching devotion of these friends has been matched only by the rocklike faith and constancy of a publisher who is an author's dream, and by the standards of perfection which, for

<sup>2</sup> 9 *Current Legal Problems* (1956), pp. 244 *et seq.*

On the project of the *British Digest of International Law*, see further the Report published by the David Davies Memorial Institute on the *International Law Conference held at Nibley Hall*, 1956, pp. 13 *et seq.*

a long time, I have come to associate with The Eastern Press. If I appear to be unable to express articulately the debt owed to my life's companion, to whom these volumes are dedicated, the reason is that this dedication itself betrays more than she would wish me to say in public.

I am also greatly indebted to the Editor of *The American Journal of International Law* for his willingly granted permission to use in Chapter 17 material previously published in *The American Journal of International Law* in a paper on *Title to Territory: Response to a Challenge*, and to the Editor of *The Indian Year Book of World Affairs* for allowing me to incorporate in Chapter 43 the substance of an article on *Problems of International Criminal Law before the International Court of Justice*.

Finally, it remains to state that, in Volume One, international judgments and awards published prior to September, 1957, have been taken into account, and that it is hoped to publish Volume Two in the course of the coming year.

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UNIVERSITY COLLEGE, LONDON,  
September 20, 1957.

## FROM THE PREFACE TO THE FIRST EDITION

IN the pre-1939 period, international law lay under a shadow. Though it would go beyond the purposes of this Preface to give an analysis of the numerous factors responsible for this state of affairs, it is the writer's conviction that much could be done by those responsible for teaching this subject to make the reality of international law more evident. As will be explained in the Introduction in greater detail, this will require a change in emphasis from national attitudes and subjective views of writers to the certainty provided by the decisions of international courts and tribunals. It is true that their decisions do not form a system of precedents in the strict sense of English law. It may equally be conceded that international law is more than a system of case law, and, if the present volume should too much convey this impression, one of the purposes of the two volumes to follow will be to correct it. Yet when all this is said, the fact remains that the decisions of international courts and tribunals constitute evidence of international law of a very much more persuasive and authoritative character than any other available in this sphere.

If the writer had required to be convinced of this truth, his teaching experience in the University of London would have taught him this lesson. It, therefore, merely means giving due to whom it is due if, in the first place, he wishes to express his indebtedness to his past and present students who, by their active co-operation, have made it an exciting experiment to teach international law on the basis of the inductive method used in this book.

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