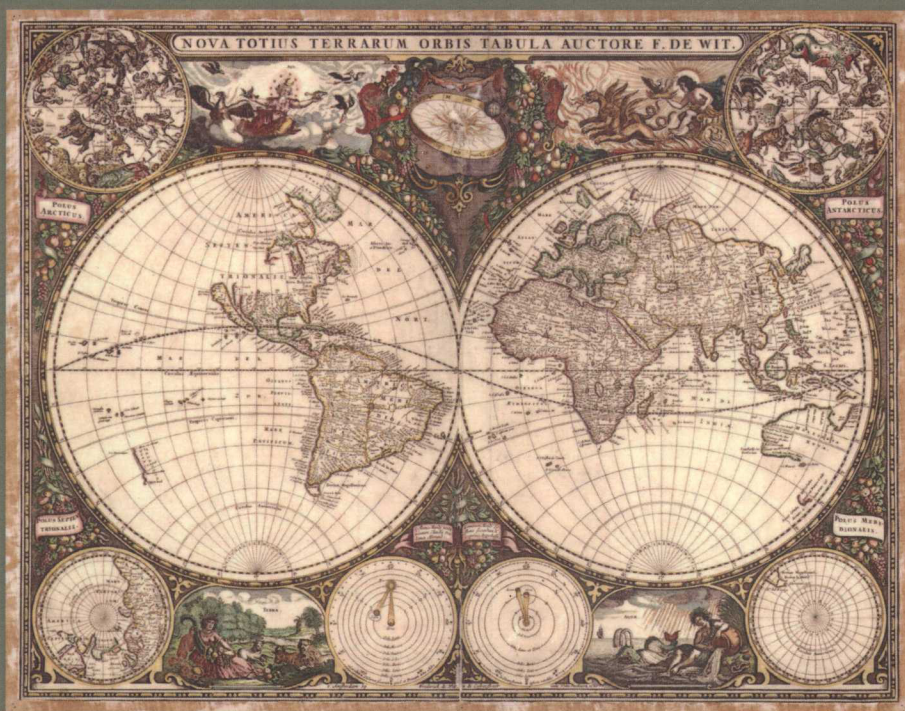


# The Development of International Law



Sir Geoffrey Butler  
Simon Maccoby

# THE DEVELOPMENT OF INTERNATIONAL LAW

BY

**SIR GEOFFREY BUTLER, K.B.E., M.A.**

**MEMBER OF PARLIAMENT FOR THE UNIVERSITY OF CAMBRIDGE  
AND FELLOW OF CORPUS CHRISTI COLLEGE**

AND

**SIMON MACCOBY, M.A.**

**SOMETIME SCHOLAR OF CORPUS CHRISTI COLLEGE  
AND WHEWELL SCHOLAR OF THE UNIVERSITY**



**THE LAWBOOK EXCHANGE, LTD.**

Clark, New Jersey

ISBN-13: 978-1-58477-215-6 (cloth)  
ISBN-13: 978-1-61619-055-2 (paperback)

Lawbook Exchange edition 2003, 2010

*Printed in the United States of America on acid-free paper*

**THE LAWBOOK EXCHANGE, LTD.**  
33 Terminal Avenue  
Clark, New Jersey 07066-1321

*Please see our website for a selection of our other publications  
and fine facsimile reprints of classic works of legal history:*  
[www.lawbookexchange.com](http://www.lawbookexchange.com)

### **Library of Congress Cataloging-in-Publication Data**

Butler, Geoffrey G. (Geoffrey Gilbert), Sir, 1887-1929.

The development of international law / by Sir Geoffrey Butler and Simon Maccoby.  
p. cm.

Originally published: London ; New York: Longmans, Green and Co., 1928.  
(Contributions to international law and diplomacy).

ISBN 1-58477-215-8 (cloth: acid-free paper)

1. International law—History. I. Maccoby, Simon. II. Title. III. Contributions to  
international law and diplomacy.

KZ3225 .B88 2001

341—dc21

2001050211

# THE DEVELOPMENT OF INTERNATIONAL LAW

BY

**SIR GEOFFREY BUTLER, K.B.E., M.A.**

**MEMBER OF PARLIAMENT FOR THE UNIVERSITY OF CAMBRIDGE  
AND FELLOW OF CORPUS CHRISTI COLLEGE**

AND

**SIMON MACCOBY, M.A.**

**SOMETIME SCHOLAR OF CORPUS CHRISTI COLLEGE  
AND WHEWELL SCHOLAR OF THE UNIVERSITY**

**LONGMANS, GREEN AND CO. LTD.**

**LONDON • NEW YORK • TORONTO**

**1928**

**LONGMANS, GREEN AND CO. LTD.**

**39 PATERNOSTER ROW, LONDON, E.C. 4**  
**6 OLD COURT HOUSE STREET, CALCUTTA**  
**53 NICOL ROAD, BOMBAY**  
**167 MOUNT ROAD, MADRAS**

**LONGMANS, GREEN AND CO.**

**55 FIFTH AVENUE, NEW YORK**  
**221 EAST 20TH STREET, CHICAGO**  
**TREMONT TEMPLE, BOSTON**  
**210 VICTORIA STREET, TORONTO**

*Made in Great Britain*

## P R E F A C E

IN 1911, or thereabouts, it was suggested to me almost simultaneously by the late Professor Oppenheim and the late Sir Erle Richards that it was desirable that some one should write anew the history of the Law of Nations. Wheaton's great book was out of print: Dr. Walker's admirable first volume, published in 1899, had not been followed by a second; on the other hand, there were to be found in many countries treatises and articles by authors of deep learning—I may mention in particular the works of Dr. Nys—which could furnish material for any writer who should undertake within the covers of a single volume the compilation of a general history. After some reflection I undertook to prepare such a work for Messrs. Longmans. The longer I worked at the task the more clearly did I perceive that it was not one either quickly or easily completed. The war came, and occupations after the war, which delayed the production of the manuscript. Then with the permission of the publisher I entered into partnership with my former pupil, Mr. Simon Maccoby.

I have insisted on writing a word in analysis of the nature of our joint effort, because I am anxious that, if the book be fortunate enough to meet with approbation, the part played by my collaborator should be fully appreciated. I had accumulated notes for my lectures, but we have jointly planned the work afresh in detail and have carefully discussed together every chapter, before and after it has been written. Lastly, it was I who reduced the material to its final form in writing. But the accumulation of matter, the quest for the last or the best authority, the reduction of the text to penultimate form, have been primarily the work of Mr. Maccoby.

We had not been long at work when we perceived that our main problem was one of method. To trace separately

and in due order each doctrine or practice of International Law from its appearance to the present day would have meant writing a text-book of the subject on conventional lines, which have, it may be remarked, altered very little since the days of the earliest writers. It may be presumed that a long line of authors would not have remained bound by rigidity of method if this had not been found desirable by their public. Consequently, nothing would have been gained, and some irritation might have been caused, by the production of a work in which the familiar outlines had been blurred by the mere insertion of great wads of history.

On the other hand, the solution of the problem was not to be found in writing chronologically such a history of diplomacy as would bring out in special relief the gradually expanding corpus of international jurisprudence. Even granting that an accurate picture had been obtained, the book would have been intolerable to read. As the author completed each section of his historical narrative it would have been necessary for him to retrace his steps to take up point by point, and at the stage at which he had dropped it in the preceding section, the record of the growing law. All continuity would have been lost.

We experimented, therefore, with a third alternative. Believing that changes in International Law have been ultimately an expression of changes in the state system of the world and in the practice of the nations, we have tried, as it were, to cut into the procession of history at fixed points, to select some central theme at each stage, and to treat it in the light of history and law. In this attempt we arrived at a division of history from our point of view into three major periods which we have termed respectively those of the Prince, of the Judge, and of the Concert. In the first period, the scholar is still in the age of the dissolving Holy Roman Empire: in the second, commercial and dynastic wars—above all, the long-drawn-out struggle between France and England—dominate the scene: in the third and last, it is the voice of some force other than that of pure nationalism which, whatever be the reason, reasserts itself. No division of this kind can be wholly satisfactory, but it is

our belief that under one or other of these headings almost every issue which has interest for the historian of the Law of Nations can be conveniently treated. Is it possible otherwise to reconcile the need of reducing to a minimum the interruption of the narrative and that of coping with the "spill over" of legal questions from one period of history to another? None the less, it has been the adoption of this selective method of treatment which has caused us in the title of the book to substitute for the word *History* the word *Development* of International Law.

It has been an inestimable benefit to us that we have both been members of the Cambridge Schools of History and Law. The practice of those bodies has been that men of deep, if unostentatious, learning have always been ready to share their erudition with their humbler brethren. We have taken advantage of this tradition and have with great profit to ourselves submitted different portions of this book to the criticism of Dr. Arnold McNair, Dr. J. H. Clapham, Dr. J. R. Tanner, and Mr. C. W. Previt -Orton. Two other former pupils of my own have laid me under obligation to them. Captain B. H. Liddell Hart has read the chapter which concerns the growth of military forces: to Mr. Charles Smyth I owe at least one helpful suggestion. My colleague Mr. Arthur Goodhart, Fellow of Corpus, most generously found time to read the page proofs. To all of these we are grateful, although the responsibility for error must rest with us alone. I should like to conclude with a word of gratitude to Mr. R. Vere Laurence, Fellow of Trinity, who from the day that he first encouraged me to lecture on this subject has watched my attempt to teach it with friendly interest, and has never failed to proclaim his belief in the merit for educational purposes of the history of the Law of Nations.

The section in Chapter IV. on "Reprisals as a measure of redress short of war" was written by Mr. Maccoby for the *Cambridge Law Journal* in 1924, and is reproduced by the kind permission of the editors.

GEOFFREY BUTLER.

Christmas Day 1927,  
NUWARA ELIYA.



# SYNOPSIS

[The notes appropriate to each chapter are printed at its conclusion.]

## PART I

### THE AGE OF THE PRINCE

#### CHAPTER I.: THE WORLD BY LAND

*Introduction*: Predominant interest in the *Jus Belli*. *The right to wage war*: Public and private war, necessary authority, the independent *respublica*. The Papal and Imperial claims. *State sovereignty*: Bodin's definition. Its application. Importance of the attribute of sovereignty, Prince of Orange. Situation in Germany and in Italy. *The family of nations*: List of precedence (1504), that of the Council of Trent (1559-1560). Sully's estimate. *New Cyneas* of Crucé. William Penn. Abbé de St. Pierre. *Communities in revolt*: Difficulty in defining their position. The Netherlands and Spain. Action and theory. The Swiss and the Grisons. *Expelled and heretical rulers*: A problem in sovereignty. Elizabeth and Mary Queen of Scots. *The position of infidels*: Division of Joseph Acosta. The Turks, Franco-Turkish alliance of King Francis I., the principle of collective bargaining (capitulations). American Indians. Sepulveda, Suarez, Victoria, Las Casas. *The Hanseatic League*: Its strength and weakness. Wallenstein, French Treaty of 1716, the Holy Alliance. *Elective monarchies*: The Bohemian monarchy, the Empire, Poland, and the Papacy. *Questions of precedence and dignity*: Franco-Spanish rivalry, the *pacte de famille*. Portugal, Bavaria, Venice, Swiss confederation. Anglo-Spanish War. The Treaty of Westphalia. The *alternat* system. Utrecht. *Titles*: Ceremonial titles. The royal title. The British and Russian imperial titles. Napoleon. *Language*: Position of French. Appearance of English. Disappearance of Latin. The League of Nations. pp. 3-35.

## CHAPTER II.: THE WORLD BY SEA

The *Mare Liberum* of Grotius. His concessions to actual conditions. The claims of Venice, of Genoa. Bynkershoek. The British claims, Selden's *Mare Clausum*. The Dutch wars. Elizabeth and the Stuarts. Assertion by the British of their right, Sully's voyage in 1603, the incident of the MERLIN, Louis XIV. and Charles II. Anglo-Dutch Treaty of 1784. Cornwallis and the Peace of Amiens (1802). French claims in the Mediterranean. Scandinavian kingdoms and the Baltic. Danes, the Swedes, Wallenstein, Gustavus Adolphus. Alliance of France, England, Holland, and Denmark against the Swedes. Prussia and Russia in the eighteenth century. The Armed Neutralities. The Danish rights bought out in 1857. The Black Sea, ambition of Peter the Great. Treaty of Kutchuk-Kainardji. British support of "that ancient rule of the Ottoman Empire." The colonial seas. The navigators of Portugal. The papal confirmation, Victoria and his *De Indis*. The Spanish adventurers. Castiliano-Portuguese agreement. Columbus' discovery of Hispaniola. The attitude of the King of Portugal. The Papal Bull. The line of Tordesillas. Magellan and the Philippines. Spanish and Portuguese partition of the New World. Hawkins, Drake, Leicester, and Hatton. French and British establishments in North America. Jamaica. The *Asiento*, Philip V.'s grant to French Guinea Company, British South Sea Company at Utrecht. Spanish claim to a right of search, the war of Jenkins' ear. The Eastern seas, the rights of Portugal. Dutch inroads, 1595-1601. Dutch United East India Company formed in 1602. English East India Company in 1600. Spanish-Portuguese offers to the Dutch and the submission in Westphalia in 1648. English negotiation with Spain-Portugal. The massacre of Amboyna. Cromwell and the Portuguese. Charles II. wins Bombay. Monopolistic pretensions become anachronistic. *The limit of territorial waters*: Bartolus and one hundred Italian miles. Baldus, Bodin, Gentilis. James I. and the Tsar Alexander. The theory of *portée de vue*, King Philip II. of Spain, Scottish and Scandinavian fishing practice. *Portée de canon*, Bynkershoek following Grotius. Varying definitions. Identification of lowest unit of maritime measurement with largest controllable area. First done by Galiani. Adoption by Washington, 1793. Lord Stowell in the TWEE GEBROEDERS and the ANNA. Old conception of the King's Chambers. Territorial Waters Jurisdiction Act, 1878. Anglo-American Treaty of 1818. Principle not unchallenged, four maritime Powers have never accepted it. Anglo-American Convention, 1924. pp. 40-58.

## CHAPTER III.: INTERCOURSE: IN PEACE

*Equilibrium*: Ancient examples. Cinquecento Italy, Machiavelli. The balance of power, Henry VIII., Henry IV. of France, Richelieu. Louis XIV. and the alliances. The Mutiny Act and a standing army. The Peace of Utrecht. Fénelon's teaching. The partition of Poland. Napoleon III.'s doctrine of compensation. Lord Haldane's dictum. Italian irredentism. Weakness of the doctrine. *Intervention*: (a) for maintaining equilibrium, (b) religious, (c) humanitarian, (d) sanctional. The legal doctrine, Grotius, Pufendorff, Wolf, Vattel, de Martens. Gradual development of modern opinion on the subject. De Martens and the Holy Alliance. The doctrine of non-intervention. *Diplomatic intercourse*: Greek and Roman practice. Byzantine practice and the Pope. Development of a residential system. Venice and Florence. France and Spain, the Hapsburgs and England. Robert Wingfield. Elizabethan diplomacy, Sir Thomas Edmondes, the secret service, the Foreign Office. Unorthodox activities of seventeenth and eighteenth century diplomats. Immunity. *Classes of diplomatic agents*: Variety of practice up to the Congress of Vienna. *Consuls* a mediaeval office, the modern consular system. *Spread of the practice of legation, particularly in the Far East*: Grotius. Universality of practice. Western experience in China, in Japan, in Siam. Korea. *Diplomatic privileges*: *Droit de chapelle, droit de quartier, droit de l'hôtel*. Personal immunity of diplomats. *International negotiation*: Negotiation and ratification. Multiple alliances. Personal intercourse of rulers. Peace congresses. Münster and Osnabrück. Satow on the great congresses. The Congress of Vienna. The Conference of Paris in 1919. pp. 61-105.

## CHAPTER IV.: INTERCOURSE: IN WAR

*The bellum justum*: The pagan and Christian position according to Suarez. St. Augustine. Thomas Aquinas. Conditions prerequisite to a declaration of war. Divided culpability. Invincible ignorance, excusable ignorance, probability. Vasquez. Victoria transitional to modern theory. Molina carries it further. Grotius. The war of rights succeeded by the war of trade and the war of might. The doctrine of nationality and of self-determination. The League of Nations and impediments to making war. The conscience of mankind. *The rights of a just belligerent*: Canonist doctrine. Cajetan's theory of execution. Victoria and the treatment of defeated princes. *Methods of war*: (a) booty, Lateran Council of 1179, Victoria, the practice during the "hundred" and "thirty" years' wars; (b) pillage, Cajetan and Victoria; (c) ransom, ancient and mediaeval practice, royal

prisoners; (d) hostages; (e) stratagems of war. Aquinas. MILITARY SERVICES, I.—*Armies*: Declaration of Paris of 1856 marked final transition to official forces. Passing of the feudal host. Edward III.'s mercenaries, his expedition of 1346. *Compagnies d'ordonnance* in fifteenth-century France. Expeditions of Charles VIII. and Louis XII. Professional armies of Spain, the *tercios*, Gonsalvo de Cordova, Duke of Alba's march. Thirty Years' War, Mansfeld, Christian of Halberstadt, Bernard of Weimar, Tilly, Wallenstein. Their attitude to plunder and quarter. The organised army of Louis XIV. Mercenaries. Growth in the humanity of war. Goethe's observations. Relapse to more cruel practice by revolutionary armies of France. Commissions of requisition. Augereau and Wellington in Spain. Modern technical development of war. *Contributions and requisitions*: The Thirty Years' War. Practice of Gustavus Adolphus. Theory of Molloy. Louis XIV. Vattel. Frederick the Great. J. J. Moser. Requisitions in Poland, 1773-1774. French revolutionary practice. Napoleon. U.S.A. Crimean and Franco-Prussian Wars. S. African War. German practice, 1914-1918. *Armies and forced work by civilians*: Former and present practice. *Treatment of the wounded*: Developments of the seventeenth century. Eighteenth-century practice. Percy in the revolutionary wars. The war of liberation. Franco-Italian War of 1859. Chamousset, Péryrlhe, Dunant. Geneva Conventions of 1864 and 1906. Extension of principles to warfare at sea. MILITARY SERVICES, II.—*Navies*: Battle of Lepanto dividing line between the old and new régimes. Norman and Angevin kings of England. Richard I.'s preparations for the Crusade, 1190. The fleets of Edward III. Decline of the fleet. Queen Elizabeth. The Spanish fleet. The Stuarts' services to the navy. The war of the Rebellion at sea. The Dutch wars. Growth of a professional spirit. Organisation perfected. *Levies and subsidies from neutral to belligerent Powers*: Development towards a conception of neutrality. Foreign enlistment. Treaties to provide for foreign enlistment. The Swiss, Vattel's theory and distinction between land and sea warfare. The French *ordonnance* of 1681. French treaty with U.S.A. Mexican practice, 1839 and 1846. Danish practice in 1788. Loans. Anglo-Dutch Pragmatic Guarantee of 1732. MILITARY SERVICES, III.—*Air Forces*: The pioneers of flight. 1914 and the development of new functions by the aeroplane. International Law and air combat. Suggestions for an international code of air combat. The bureaucratic organisation of air forces. *Reprisals as a measure of redress short of war*: Reprisals under letters of marque. Obsolescence of reprisals under letters of marque and beginnings of reprisals undertaken by the State. Modern reprisals. Position of reprisals taken against members of the League of Nations.

## PART II

## THE AGE OF THE JUDGE

## CHAPTER V.: TEMPERAMENTA

*Introduction*: Influence of the humanitarian spirit. *Declaration of war*: Different conditions by land and sea: common absence of a declaration in maritime war in the seventeenth century, the Dutch wars. The Anglo-French wars of the eighteenth century. Growth of contrary practice in nineteenth century. The Hague Convention (1907). *Enemy individuals and their property at the outbreak of war*: Perilous position of the alien before the eighteenth century. Opinion of the international lawyers. Treaties for relief, France and Savoy (1713), Russia and Naples (1787), Prussia and U.S.A. (1785), England and France (1786), England and U.S.A. (1795). Milder practice of nineteenth century. Exceptions, Danish ordinance (1807), Confederate States decree (1861). *Enemy custodian in England* (1914). *Enemy persons*: Practice severer, Napoleon, France (1870), Boer republics (1899), Russia (1904), Turkey (1897), belligerent practice (1914-1918). *Droit d'Aubaine*: Mediaeval position of the alien, subordination to seigneur. Grotius' condemnation of the practice. Abolition as between Holland and France at Nymwegen and Ryswick. Treaties of Louis xv. and xvi. Treaty between Russia and Naples (1787). Montesquieu and Necker and French revolutionary governments. A palpable anachronism in nineteenth century. *Right of individuals to emigrate*: Acknowledged in seventeenth century; common practice of eighteenth and nineteenth; drawbacks; *gabella emigrationis*. Modern emigration difficulties. *Freedom of coast fisheries*: French *ordonnances* (1543, 1584, 1681, 1692), challenge of British Admiralty. Stowell, YOUNG JACOB and JOHANNA. English ordinances of 1806 and 1810. Nineteenth century increasingly favourable. U.S. Supreme Court, *PAQUETE HABANA*, *LOLA* (1898). Deep-sea fishing. *Treatment of prisoners of war*: Systematisation under Louis xiv. Exchange cartels of Dutch, French, and English. Ransom in the eighteenth century, under Napoleon. Parole. Catharine of Russia. Prusso-American Treaty (1785). American prisoners in England. Napoleonic prisoners. German practice in 1870 contrasted with that in 1914. pp. 193-209.

## CHAPTER VI.: THE WORLD OF COMMERCE

Mediaeval privileges to alien traders, and customs regulation of sea-borne commerce. Ordinance of the Staple (1353). Hansa merchants. Reprisal under state authority. Government negotiation on behalf of merchants. Growing organisation of mercantile community. Commercial clauses in general treaties, and finally commercial treaties. Louis XI. Anglo-Burgundian Treaty (1407). England and Castile (1403). *Intercursus Magnus* (1496). Its terms. *Intercursus Malus* (1506). Anglo-Spanish Treaty (1499). Little analogy with modern treaties of trade. Disputes over home industries, dyed cloth, rivalry between Dutch and English. Anglo-Dutch shipping controversy. The Navigation Act. Colbert's policy of protection leads to controversy with the Dutch. D'Avaux' report. Free ships free goods as between France and Holland in Ryswick (1697). Dutch policy the liberation of innocent intercourse. Anglo-Dutch Treaty of 1674 defines contraband and stipulates for free ships free goods in war. Prussian treaty with U.S.A., immunity from attack for merchant shipping. The Methuen Treaty (1703), political subinfeudation. *The old commercial systems*: Features of the British Navigation Acts in home and colonial trade. Comparison with Spanish practice, *Casa de Contratacion* at Seville, the *flota*. Portuguese practice. Dutch East India Company, massacre of Amboyna. English, French, and Imperial East India Companies. West Indian trade. British-American trade, imports and exports, "enumeration." Walpole's concessions. Colbert's Company of the West. Danish West Indies. British-African Company. A managed system. Progress towards greater liberality of concessions. English treaty with Portugal (1642). Agreements on exclusion. Treaty of Utrecht. Anglo-Spanish War of 1739. Slight progress towards opening of trade in seventeenth and eighteenth centuries. Mutual jealousy. French decision of 1756. Revolt in San Domingo (1791). Outbreak of twenty-one years of war (1793). Revolt of British colonies, United States forces British ports. Huskisson's repeal of Navigation Acts. Opening of Spanish-American and Brazilian ports. King Ferdinand VII. pp. 211-226.

## CHAPTER VII.: NEUTRALITY

*The maritime position*: A doctrine of neutrality postulates a state system and general discard of obligation to discriminate between just and unjust war. *Consolato del Mare*: Severer codes. *Robe d'ennemy confisque celle d'amy*. French *ordonnances* (1543, 1584). Dano-Scottish agreement (1463). Letters of neutrality. No basis for a theory till eighteenth century. Even then practice

unfavourable to its development. Gustavus Adolphus, Frederick of Prussia (1756), "Rule of 1756," Napoleon's continental system. Evolution of a theory, contribution of Bynkershoek, of Vattel. Leagues to defend neutrality, Suedo-Danish (1693), Choiseul's proposal (1756), Catharine II. and the First Armed Neutrality (1780), the Second Armed Neutrality (1800). Century ends with extreme assertion of belligerent position. *The right of passage*: Grotius finds an implied reservation of it at the original institution of private property. Treaty of Westphalia and roads of the Empire. Scattered dominions of seventeenth-century princes demanded it. Spanish treaty with Navarre in 1512. Simultaneous bargaining with France. Hapsburgs particularly affected. Generals in the field. Napoleon's high-handed action in Venetia (1796), Switzerland (1798). Gradual change of public and expert opinion shown in Vattel. Influence of the United States: and of geographical changes in Europe. Modern practice. *Ports, harbours, and territorial waters*: Scant respect for rights of neutrals in the seventeenth century. The scandal of the Downs (1639). The incident at Bergen (1666). Boscawen (1759) and Suffren (1781) in Portuguese waters. Increasing precaution among neutrals, Italian proclamations of neutrality during American War of Independence. The Tuscan regulations. Rules as to reception of prizes, United States (1778), England (1861), Hague Convention (1907). Prize-court proceedings overseas. English officials at Port Mahon and Leghorn. Tsaritsa's instructions to Orloff. The French *règlement* (1799). M. Genêt in U.S.A. (1793). Lord Stowell and the *FLAD OYEN*. U.S. Foreign Enlistment Act (1818), British Act (1819). The *ALABAMA*. Hague Conventions. The *APPAM*.  
pp. 229-247.

## CHAPTER VIII.: THE EQUALITY OF STATES

Little pretence of equality in the sixteenth century. Theory of equality traceable to Hobbes. His analogy between men and states. Pufendorff's interpretation of equality of right, to independence, not of all rights or capacities. Question in fact feudal, not debatable *a priori*. Barbeyrac's naturalistic position. Realists not interested, J. J. Moser, Mably, de Martens. Eighteenth century, however, generally held equality existed. The Philosophes, Vattel. Wars of late eighteenth century diverted interest from controversy. England's practical attitude. The Congress Period and Concert of the Powers. The Four Powers. France admitted. Protest of Württemberg. Metternich and Italy. Successful protest of Greece. Neutralisation of Switzerland (1815), Belgium (1839), Luxemburg (1867). Status of Greece, Rumania from 1856 to 1878, Congress of Berlin, and Serbia and Montenegro, Turkey and Bulgaria. Hague Conference membership. Conference of London. The League of

Nations. Minority provisions in peace treaties (1918). Latin America. The Drago doctrine. Control imposed on Turkey (1878), Egypt (1880), Greece (1897). Naturalists in nineteenth century, Carnazza-Amari, Ruy Barbosa. Court of International Justice and of Arbitral Justice. International Prize Court. The International Unions, postal, telegraph, railways. Apportionment of expenses. Dominion status. *Assertion of equality of right between neutral and belligerent*: Increasing materialism in the objects of war led to stiffening in the neutral attitude. Neutrals demanded that their ships should go unhampered unless they trafficked in arms or attempted to enter with cargo places besieged from the sea. In return they conceded right of search. Precision of *règlement* of Tsaritsa Catharine (1778). Some international lawyers put neutral rights higher, Hübner, Galiani, Prussian lawyers in question of the Silesian Loan. Orthodox position of Albericus Gentilis and Lampredi. The right of convoy, Queen Christina's articles (1653), the Dutch negotiation with English Commonwealth (1657). Dutch and Swedes during French revolutionary wars. Lord Stowell, the *MARIA* (1799). Various treaties granting the right of convoy, Dutch-American (1782), Prusso-American (1785), Anglo-Danish dispute (1800). Count Bernstorff, the *FREYA*. Second Armed Neutrality. Anglo-Russian Convention (1801). British Crimean practice never recognised convoy. Declaration of London. English practice in the war 1914-1918. pp. 248-267.

## CHAPTER IX.: MARITIME THEORY AND PRACTICE

Originally enemy property at sea capturable wherever situated. Friction produced formal agreements, Anglo-Burgundian treaties (1406-1495), Anglo-Genoan treaty (1460). Latter reminiscent of *Consolato del Mare* in tolerating neutral carriage of enemy goods but in expecting their removal by belligerents. Severe French edicts (1543-1584) probably held good prize neutral property on enemy ships, possibly neutral ships carrying enemy property, i.e. *la robe d'ennemy confisque celle d'amy*. Dutch ambassador in Paris (1653) suggests latter interpretation in announcing, as French concession to Dutch, condemnation of enemy cargo alone. From seventeenth century attempts similarly to free neutral ships carrying enemy goods, i.e. "free ships free goods." Temporary concession of this principle by France to Holland (1648), permanent concession (1662). Other treaties incorporate principle, Hispano-Dutch (1650), Anglo-Portuguese (1654), Franco-Spanish (1659), Portugal and Holland (1661). As if in compensation, nations adopt principle that all goods on enemy ships are capturable, Anglo-Dutch treaties (1667, 1674, 1689), Franco-Swedish treaty (1672), Suedo-Dutch treaties (1667, 1675), Franco-British treaty (1677), Franco-Dutch treaties (1678,



1697). Tendency not permanent, and, in absence of international legislative organ, law only discoverable from specific treaties merely binding contracting parties as between themselves. England's contrary practice, Anglo-Swedish treaties (1661, 1666, 1670), Anglo-Danish treaty (1670), following *Consolato*. French inconsistency shown in Hansa treaties (1655, 1716), *ordonnances* (1681, 1704, 1744). Certain countries outside all treaties. French rigidity produced by Dutch and British practice. Utrecht treaties, "free ships free goods," but only for contracting parties. General offer by France of this principle on condition of reciprocity (1778). First Armed Neutrality resisted by England. English practice in war of 1793, surprising treaty with U.S.A. (1794). Russian retreat in convention of 1801. Treaty of Amiens, start of England determination to free itself from all restraining agreements on this point. Canning and Brazil (1827). Anglo-Portuguese treaty (1842). Reversal of English policy in Crimean War, Declaration of Paris, general concession that neutral flag covers goods of enemy except contraband, Lord Colchester in the Lords, Gibson Bowles, Mr. Malkin. U.S.A. and immunity of all private property. Horsfall Commission, Cobden, Bright, and Palmerston. Position of crew on board ships visited. The war of 1812. Hague Convention. *Treatment of prize*: Conditions in the *Consolato*. French *ordonnance* (1681) and Royal decree (1756). British practice in American War. U.S. practice of destruction in war of 1812. French practice in war of 1870. Russian practice in Far East (1904). Declaration of London. German submarine warfare, effect on U.S.A. *Safe-conduct in special cases*: Voyages on scientific, exploratory, religious, or philanthropic errands.

*Contraband of war*: Censure by Church Councils of the export of arms to infidels (1179, 1214, 1245). Natural belligerent objection to supplying of enemy with goods likely to prolong war, i.e. contraband of war. Queen Elizabeth's dispute with Hansa towns. No agreement on list of obnoxious goods, *munitions de guerre* and *munitions de bouche*. Practice of pre-emption. As belligerents relinquished right of capture they desired to stop or at least pre-empt contraband. Lord Stowell's decisions in HAABET and in SARAH CHRISTINA. Naval Prize Act (1864). Criterion to distinguish contraband due first place to Grotius, whose definition foreshadows blockade. Succession of treaties progressively produce certainty, Anglo-Spanish (1604), Anglo-Dutch treaty of Southampton (1625), Franco-Hanseatic (1655), Franco-Spanish (1654), Franco-Dutch (1662), treaties of Utrecht (1713). Treaties only bound participants as between themselves. Elsewhere situation governed by proclamation of sovereign, e.g. decision of H.M. Commissioners of Prize (1665), Official Prize List (1744). Dutch tendency to severer practice. Nations' policy capricious and