

INTERNATIONAL LAW

HERSCH LAUTERPACHT

EDITED BY
E. LAUTERPACHT, Q.C.

VOLUME 3

THE LAW OF PEACE

PARTS II-VI

INTERNATIONAL LAW

BEING THE COLLECTED PAPERS OF
HERSCH LAUTERPACHT

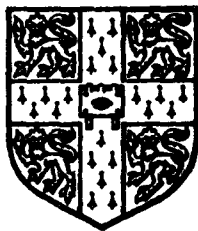
Q.C., LL.D., F.B.A.

SYSTEMATICALLY ARRANGED AND
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PREFACE

As a further step in the presentation of Hersch Lauterpacht's works in systematic form, this volume moves on from Part I, 'International Law in General', to cover a further five Parts falling within the Law of Peace : statehood ; territory and territorial jurisdiction ; the individual ; diplomatic intercourse ; and international organization. The fuller titles given to these Parts within the volume correspond with Lauterpacht's own outline.

The volume contains a greater number of Lauterpacht's previously unpublished writings than did the previous volume and will, for that reason, be of special value and interest. Attention may, in particular, be called to the remarkable study of the principles of international organization written, it would appear, some time in 1942-3, which is printed as chapter 1 of Part VI ; to the lectures on 'Sovereignty and federation in international law' (Part II, chapter 1), 'State sovereignty and human rights' (Part IV, chapter 4), and 'The League of Nations' (Part VI, chapter 5), all of which, though prepared thirty-five and forty-three years ago respectively, possess a striking degree of contemporary relevance ; to four professional opinions of considerable historical significance and, not least, to the dissertation on the Mandates system which Lauterpacht submitted to the University of Vienna in 1922.

It has proved necessary to depart from Lauterpacht's scheme in one respect. The original classification placed 'The Contractual Relations of States : Treaties' after 'State Territory' and before 'The Individual in International Law'. However, because the material on treaties is too great to fit as an undivided Part into its proper place within this volume, it seems better, in the interests of a clearer presentation of this material, to postpone it to the next volume and to advance certain topics which would otherwise have followed it.

This volume contains within the relevant sections one declaration and two separate opinions which Lauterpacht delivered as a judge of the International Court of Justice. His other separate opinions will appear, as appropriate, later. It has not always been easy to classify the separate opinions for, as hardly needs saying, each opinion touches upon a number of topics. The opinions have, therefore, been introduced at the points justified by their principal content. This decision was reached after correspondence with the late Lord McNair, the late Dr C. W. Jenks, Sir Gerald Fitzmaurice, Ambassador Shabtai Rosenne, Professor R. Y. Jennings, Professor R. R. Baxter and Professor S. M. Schwebel,

PREFACE

during which two other ways of presenting the judicial materials were considered and finally rejected: one being to publish all the judicial opinions together in a separate volume and the other to divide up each opinion and print its component parts at the appropriate places within the classification.

Those whose names I have just mentioned have given me counsel on many other points connected with these volumes. It is a source of great sorrow to me that I can no longer turn to Lord McNair or to Wilfred Jenks. They were two of my father's closest friends and both of them had shown me, for as long as I could recollect, warm understanding and generous help for which I shall ever remain grateful.

It is fitting, too, that I should recall with deep appreciation the name of the late Mrs Gladys Lyons, B.Sc. (Econ.), who devoted to many of the papers in this volume the same degree of conscientious skill which she showed for more than forty years in relation to so much of my father's other work.

I am most grateful to those who have given their consent to the publication of the various papers. As to hitherto unpublished texts, Part II, chapters 3 and 4, and Part VI, chapter 2 are printed with the permission of the Zionist Archives and Part V, chapter 1 with that of the Swiss Federal Political Department. Permission to reprint the other chapters has been given by the following: the American Society of International Law – Part III, chapter 7; the British Broadcasting Corporation – Part IV, chapter 3; the British Institute of International and Comparative Law – Part III, chapter 8; the Editor of the *Cambridge Law Journal* – Part III, chapters 4 and 6; the International Court of Justice – Part III, chapter 2 and Part VI, chapters 3 and 4; the Editor of the *Jewish Yearbook of International Law* – Part IV, chapter 1; Oxford University Press – Part III, chapters 1, 9 and 10 and Part VI, chapter 6; the Editor of *The Political Quarterly* – Part VI, chapter 7; the Times Publishing Company Ltd – Part II, chapter 5, Part III, chapters 3 and 5 and Part IV, chapter 2.

Ambassador Rosenne, in addition to his advice regarding the judicial materials, assisted me greatly in tracing the opinions which were given to the Jewish Agency. For two major pieces of translation, I must thank Dr K. Skubiszewski and Miss Maureen MacGlashan. Other, no less essential, help has been given to me at various stages in the preparation of this volume by Dr Gillian White, now Professor of International Law at the University of Manchester; Mrs C. A. Hopkins; Mr D. J. Driscoll, Lecturer in Law at the University of Edinburgh; Dr Lyndel Prott, Senior Lecturer in Law at the University of Sydney Law School; and Mr W. M. Bush, of the Department of Foreign Affairs, Canberra.

PREFACE

Mrs S. Rainbow, my secretary in Cambridge – where I began the work on this volume, and Miss J. Koch, my secretary in Canberra – where I have completed the work, have both been pillars of strength.

E. LAUTERPACHT

*Department of Foreign Affairs
Canberra
August 1975*

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ABBREVIATIONS

OF TITLES OF BOOKS, ETC., QUOTED IN THIS VOLUME

The books referred to in the bibliographies and notes are, as a rule, quoted with their full titles and the date of their publication. But certain books and periodicals which are often referred to in this volume are quoted in an abbreviated form, as follows :

Accioly	Accioly, <i>Tratado de Direito internacional publico</i> , 3 vols. (1933-5).
A.J.	<i>American Journal of International Law</i> .
Annuaire	<i>Annuaire de l'Institut de Droit International</i> .
Annual Digest	<i>Annual Digest and Reports of Public International Law Cases</i> : 1919-22, edited by Sir John Fischer Williams and H. Lauterpacht (1932); 1923-4, edited by the same (1933); 1925-6, edited by A. D. McNair and H. Lauterpacht (1929); 1927-8, edited by the same (1931); 1929-30 (1935); 1931-2 (1938); 1933-4 (1940); 1935-7 (1941); 1938-40 (1942); 1941-2 (1945); 1919-42 (supplementary volume) (1947); 1943-5 (1949); 1946 (1951); 1947 (1951); 1948 (1953); 1949 (1955)—all edited by H. Lauterpacht.
Anzilotti	Anzilotti, <i>Corso di diritto internazionale</i> , vol. I, 3rd ed. (1928), French translation by Gidel (1929); vol. III, part I (1915).
A.S. Proceedings	<i>Proceedings of the American Society of International Law</i> .
Balladore Pallieri	Balladore Pallieri, <i>Diritto internazionale pubblico</i> (1937).
Baty	Baty, <i>The Canons of International Law</i> (1930).
Bibliotheca Visseriana	<i>Bibliotheca Visseriana Dissertationum Jus Internationale Illustrantium</i> .
Bittner	Bittner, <i>Die Lehre von völkerrechtlichen Urkunden</i> (1924).
Bluntschli	Bluntschli, <i>Das moderne Völkerrecht der zivilisierten Staaten als Rechtsbuch dargestellt</i> , 3rd ed. (1878).
Borchard	Borchard, <i>The Diplomatic Protection of Citizens Abroad</i> (1915).
Br. and For. St. Papers	<i>British and Foreign State Papers</i> (Hertslet), vol. I (1841), continued up to date.
Brierly	Brierly, <i>The Law of Nations</i> , 5th ed. (1955).

ABBREVIATIONS OF TITLES OF BOOKS

Bustamante	Bustamante, <i>Derecho internacional público</i> , 3 vols. (1933-5).
B.Y.	<i>British Year Book of International Law</i> .
Calvo	Calvo, <i>Le Droit international théorique et pratique</i> , 5th ed., 6 vols. (1896).
Cavaglieri	Cavaglieri, <i>Lezioni di diritto internazionale</i> (general part, 1925).
Clunet	<i>Journal du droit international</i> .
Cruchaga	Cruchaga-Tocornal, <i>Nociones de Derecho internacional</i> , 3rd ed., 2 vols. (1923-5).
Dicey	Dicey, <i>Conflict of Laws</i> , 4th ed. (1927).
Dickinson, <i>Cases</i>	Dickinson, <i>Cases and Other Materials on International Law</i> (1950).
<i>Documents</i>	<i>Documents on International Affairs</i> .
Fauchille	Fauchille, <i>Traité de droit international public</i> , 8th ed. of Bonfils' <i>Manuel de droit international public</i> , vol. I, part I (1922), vol. I, part 2 (1925), vol. I, part 3 (1926), vol. II (1921).
Fenwick	Fenwick, <i>International Law</i> , 3rd ed. (1948).
Fiore	Fiore, <i>Nouveau droit international public</i> . French translation by Antoine from the 2nd Italian edition, 3 vols. (1885).
Fiore, <i>Code</i>	Fiore, <i>International Law Codified</i> . Translation by Borchard from the 5th Italian edition (1918).
Fischer Williams, <i>Chapters</i>	Fischer Williams, <i>Chapters on Current International Law and the League of Nations</i> (1929).
<i>Fontes Juris Gentium</i>	<i>Fontes Juris Gentium</i> , edited by V. Bruns.
Garner, <i>Developments</i>	Garner, <i>Recent Developments in International Law</i> (1925).
Gemma	Gemma, <i>Appunti di diritto internazionale</i> (1923).
Genet	Genet, <i>Traité de diplomatie et de droit diplomatique</i> , 3 vols. (1931-2).
Gidel	Gidel, <i>Le droit international public de la mer, le temps de paix</i> : vol. I, <i>Introduction—La haute mer</i> (1932); vol. II, <i>Les eaux intérieures</i> (1932); vol. III, <i>La mer territoriale et la zone contiguë</i> (1934).
Grotius	Grotius, <i>De Jure Belli ac Pacis</i> (1625).
<i>Grotius Annuaire</i>	<i>Grotius Annuaire International</i> .
<i>Grotius Society</i>	<i>Transactions of the Grotius Society</i> .
Guggenheim	Guggenheim, <i>Lehrbuch des Völkerrechts</i> , Parts I and 2 (1947).
Guggenheim, <i>Traité</i>	Guggenheim, <i>Traité de Droit International Public</i> , vol. I (1953); vol. II (1954).
Hackworth	Hackworth, <i>Digest of International Law</i> , 7 vols. (1940-3).
<i>Hague Recueil</i>	<i>Recueil des Cours, Académie de Droit International de La Haye</i> .

ABBREVIATIONS OF TITLES OF BOOKS

Hall	Hall, <i>A Treatise on International Law</i> , 8th ed. (1924), by A. Pearce Higgins.
Harvard Research	<i>Research in International Law</i> . Under the Auspices of the Harvard Law School. Draft Conventions Prepared for the Codification of International Law. Directed by M. O. Hudson : (1929) i. <i>Nationality</i> (Reporter : Flournoy) ; ii. <i>Responsibility of States</i> (Borchard) ; iii. <i>Territorial Waters</i> (G. G. Wilson) ; (1932) i. <i>Diplomatic Privileges and Immunities</i> (Reeves) ; ii. <i>Legal Position and Functions of Consuls</i> (Quincy Wright) ; iii. <i>Competence of Courts in regard to Foreign States</i> (Jessup) ; iv. <i>Piracy</i> (Bingham) ; v. <i>A Collection of Piracy Laws of Various Countries</i> (Morrison) ; (1935) i. <i>Extradition</i> (Burdick) ; ii. <i>Jurisdiction with respect to Crime</i> (Dickinson) ; iii. <i>Treaties</i> (Garner).
Heffter	Heffter, <i>Das europäische Völkerrecht der Gegenwart</i> , 8th ed. by Geffcken (1888).
Heilborn, <i>System</i>	Heilborn, <i>Das System des Völkerrechts entwickelt aus den völkerrechtlichen Begriffen</i> (1896).
Hertslet's <i>Commercial Treaties</i>	Hertslet, <i>Collection of Treaties and Conventions between Great Britain and Other Powers, so far as they relate to Commerce and Navigation</i> , vol. i (1820), continued to date.
Higgins and Colombos	Higgins and Colombos, <i>The International Law of the Sea</i> , 2nd ed. (1951).
<i>H.L.R.</i>	<i>Harvard Law Review</i> .
Holland, <i>Lectures</i>	Holland, <i>Lectures on International Law</i> , edited by T. A. and W. L. Walker (1933).
Holland, <i>Studies</i>	Holland, <i>Studies in International Law</i> (1898).
Holtzendorff	Holtzendorff, <i>Handbuch des Völkerrechts</i> , 4 vols. (1885-9).
Hudson, <i>Cases</i>	Hudson, <i>Cases and Other Materials on International Law</i> , 3rd ed. (1951).
Hudson, <i>Legislation</i>	Hudson, <i>International Legislation</i> : vols. i-xi (1931-50).
Hyde	Hyde, <i>International Law, chiefly as interpreted and applied by the United States</i> , 2nd ed., 3 vols. (1945).
<i>I.C.J.</i>	<i>International Court of Justice</i> .
<i>I.C.L.Q.</i>	<i>International and Comparative Law Quarterly</i> .
<i>I.L.R.</i>	<i>International Law Reports</i> , being the continuation of <i>Annual Digest</i> , edited by H. Lauterpacht until volume 24 and thereafter by E. Lauterpacht.
<i>J.C.L.</i>	<i>Journal of Comparative Legislation and International Law</i>
Keith's <i>Wheaton</i>	<i>Wheaton's Elements of International Law</i> , 6th English edition by A. Berriedale Keith, vol. i (1929) ; vol. ii (7th ed., 1944).

ABBREVIATIONS OF TITLES OF BOOKS

Klüber	Klüber, <i>Europäisches Völkerrecht</i> , 2nd ed. by Morstadt (1851).
Lapradelle-Politis	Lapradelle-Politis, <i>Recueil des arbitrages internationaux</i> , vol. I (1905), vol. II (1924), vol. III (1954).
Lauterpacht, <i>Analogies</i>	Lauterpacht, <i>Private Law Sources and Analogies of International Law</i> (1927).
Lauterpacht, <i>The Function of Law</i>	Lauterpacht, <i>The Function of Law in the International Community</i> (1933).
Lawrence	Lawrence, <i>The Principles of International Law</i> , 7th ed., revised by P. H. Winfield (1923).
Lindley	Lindley, <i>The Acquisition and Government of Backward Territory in International Law</i> (1926).
Liszt	Liszt, <i>Das Völkerrecht</i> , 12th ed. by Fleischmann (1925).
L.N.O.J.	<i>League of Nations, Official Journal.</i>
L.N.T.S.	<i>League of Nations Treaty Series.</i> Publication of Treaties and International Engagements registered with the Secretariat of the League of Nations.
Lorimer	Lorimer, <i>The Institutes of International Law</i> , 2 vols. (1883-4).
De Louter	De Louter, <i>Le droit international public positif</i> , French translation from the Dutch original, 2 vols. (1920).
L.Q.R.	<i>Law Quarterly Review.</i>
McNair	McNair, <i>The Law of Treaties: British Practice and Opinions</i> (1938).
McNair, <i>Opinions</i>	McNair, <i>International Law Opinions</i> (1956).
Maine	Maine, <i>International Law</i> , 2nd ed. (1894).
Martens	Martens, <i>Völkerrecht</i> , German translation from the Russian original, 2 vols. (1883-6).
Martens, G. F.	G. F. Martens, <i>Précis du droit des gens moderne de l'Europe</i> , new edition by Vergé, 2 vols. (1858).
Martens, R.	These are the abbreviated quotations of the different parts of Martens, <i>Recueil de Traités</i>, which are in common use.
Martens, N. R.	
Martens, N. S.	
Martens, N. R. G.	
Martens, N. R. G., 2nd ser.	
Martens, N. R. G., 3rd ser.	Martens, <i>Causés célèbres du droit des gens</i>, 2nd ed., 5 vols. (1858-61).
Martens, <i>Causés célèbres</i>	
Mérignhac	Mérignhac, <i>Traité de droit public international</i> , vol. I (1905), vol. II (1907), vol. III (1912).
Möller	Möller, <i>International Law in Peace and War</i> , English translation from the Danish, vol. I (1931), vol. II (1935).
Moore	Moore, <i>A Digest of International Law</i> , 8 vols. (1906).

ABBREVIATIONS OF TITLES OF BOOKS

Moore, <i>International Arbitrations</i>	Moore, <i>History and Digest of the International Arbitrations to which the United States has been a Party</i> , 6 vols. (1898).
<i>Nordisk T.A.</i>	<i>Nordisk Tidskrift for International Ret. Acta Scandinavica juris gentium.</i>
Nys <i>Off. J.</i>	Nys, <i>Le droit international</i> , 2nd ed., 3 vols. (1912). <i>Official Journal of the League of Nations.</i>
Oppenheim, I, II	Oppenheim, <i>International Law</i> , vol. I, 8th ed. (1955), by H. Lauterpacht; vol. II, 7th ed. (1952), by H. Lauterpacht.
<i>O.Z.ö.R.</i>	<i>Österreichische Zeitschrift für öffentliches Recht.</i>
<i>P.C.I.J.</i>	<i>Publications of the Permanent Court of International Justice:</i> Series A: Judgments. B: Advisory Opinions. A/B: Cumulative Collection of Judgments and Advisory Opinions given since 1931. C: Acts and Documents relating to Judgments and Advisory Opinions. D: Collection of Texts governing the Jurisdiction of the Court. E: Annual Reports.
Perels	Perels, <i>Das internationale öffentliche Seerecht der Gegenwart</i> , 2nd ed. (1903).
Phillimore	Phillimore, <i>Commentaries upon International Law</i> , 3rd ed., 4 vols. (1879-88).
Praag	Praag, <i>Juridiction et droit international public</i> (1915).
Praag, <i>Supplément</i>	Supplement to the above (1935).
Pradier-Fodéré	Pradier-Fodéré, <i>Traité de droit international public</i> , 8 vols. (1885-1906).
Pufendorf	Pufendorf, <i>De Jure Naturae et Gentium</i> (1672).
Ralston	Ralston, <i>The Law and Procedure of International Tribunals</i> , revised ed. (1926). Supplement (1936).
Ray, <i>Commentaire</i>	Ray, <i>Commentaire du Pacte</i> (1930).
<i>Recueil T.A.M.</i>	<i>Recueil des décisions des tribunaux arbitraux mixtes.</i>
Reddie, <i>Researches</i>	Reddie, <i>Researches, Historical and Critical</i> , in <i>Maritime International Law</i> , 2 vols. (1844).
<i>Répertoire</i>	Laprédelle et Niboyet, <i>Répertoire de droit international</i> . Founded by Darras in 1929.
R.G.	<i>Revue générale de droit international public.</i>
R.I.	<i>Revue de droit international et de législation comparée.</i>
R.I. (Geneva)	<i>Revue de droit international, de sciences diplomatiques, politiques et sociales.</i>
R.I. (Paris)	<i>Revue de droit international.</i>
R.I.F.	<i>Revue internationale française du droit des gens.</i>
Rivier	Rivier, <i>Principes du droit des gens</i> , 2 vols. (1896).
Rivista	<i>Rivista di diritto internazionale.</i>