INTERNATIONAL A STATE OF PEACE LAWOF PEACE

SECOND EDITION

N. A. MARYAN GREEN

International Law

LAW OF PEACE

N.A. MARYAN GREEN M.A., LL.B. (Cantab.)

Of the Middle Temple, Barrister Avocat, Paris Court of Appeal Former Lecturer in Law, Sheffield University Former Member of the Secretariat, Council of Europe Diploma of the Hague Academy of International Law



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Foreword

From fifty to thirty years ago one would have concluded that there had been reached some grand climacteric in the Anglo-American literature of international law: some watershed's edge comparable to that which the completion of Viner's work marked in the history of the literature of the common law. One would have said, that is, that the whole subject had become too vast to be comprehended any more by single-handed authors. For no comprehensive textbook seemed to have appeared in America since Hyde's work (1922) and none in England since Westlake (1908), excepting always, but still excepting Brierly's brilliant essay on the Law of Nations (1928) as no more than an essay. In future, one would have said, the law would be written about in its several departments — treaties, claims, protection and so forth — in books more comparable to Lewin on Trusts and Williston on Contract than to either the old abridgments or even the institutes which succeeded them.

It has been a striking feature of the last few years, however, that the single-handed textbook has reappeared. Mr Starke, Professor O'Connell, Dr Brownlie, Professor Gregg, Mr Fawcett and Mr Brown have each in turn presented us with their individual, and be it said all most valuable, individual accounts of the whole law — or at least the whole law of peace. All these gentlemen, it is to be remarked, are primarily teachers (at least if Mr Fawcett will accept that title also among the many to which he is entitled). Now Mr Maryan Green, who is primarily an international civil servant, joins this courageous and competent company.

These epithets are used advisedly and with a due deference. For it takes a deal of courage to attempt the exposition of the whole law, and a kind of competence which is distinctive. Sweeping glances are possibly only from an elevated viewpoint selected and attained — and here Mr Maryan Green's confession of a European bias is to be noted. Sweeping glances, too, must be to a degree indifferent to detail. The new abridgments, however, if in consequence they are not devoid of statements with which one can disagree, have by

virtue of their panoramic character a refreshing quality, and a value all of their own, and another is to be greatly welcomed. Mr Maryan Green promises a further volume on the use of force and war. His attention is respectfully directed to his own exposition of the maxim pacta sunt servanda.

Clive Parry, LL.D., Professor of International Law at the University of Cambridge

Preface to the First Edition

This volume contains a short exposition of the main rules of the contemporary law of peace. It is hoped, in due course, to produce a second volume which will deal with the use of force short of war, armed conflicts (war) and neutrality.

In a work having the title Law of Peace, and particularly one laying claim to contemporaneity, it would not be unreasonable to expect to find sections dealing with international criminal law, international economic law, and perhaps disarmament law. However, their omission is partly a question of arrangement of materials and partly a question of selection. I have preferred a more traditional presentation. The table of contents is taken from the Model Plan for the Classification of Documents in the field of Public International Law, which is appended to Resolution (68) 17 of the Committee of Ministers of the Council of Europe (a copy of which may be obtained on request from the Directorate of Information, Council of Europe, Strasbourg). This Model Plan is the work of a committee of experts from the member states of the Council of Europe which included some very distinguished international lawyers. It may be said to represent a commonly agreed European view of the content of public international law today.

The statement of the law with regard to treaties, diplomats and consuls, and the sea, is based on the multilateral conventions on these topics, since I believe that the rules set out in these conventions represent a more accurate expression of contemporary international law than any other. The judgment of the majority of the court in the North Sea Continental Shelf Case (I.C.J., 1969) does certainly indicate that this view cannot be pressed too far, but a combination of special factors was in evidence in that case.

A special word must be said about the section on international organisations. I consider that the time has come when the treatment of this topic must be something other than an exposition of the law of the United Nations, together with occasional references to other organisations. An attempt has therefore been made to set out a

series of rules which may be taken to apply to all international organisations of which there are now more than 200 - unless their constituent instrument provides otherwise. This development will bear some parallel with the early attempts to formulate a company law or law of corporations. As such, it is of course experimental and is offered more in the hope of provoking discussion than as a definitive statement. An adequate presentation of the law of particular organisations, and principally that of the United Nations, would require a separate book; so this part of the Model Plan has been omitted. Nor is there any systematic treatment of the specialised agencies and of their complicated interlocking structure with the United Nations (called occasionally "the legal organisation of the international community" or, more accurately, "institutionalised co-operation in economic, social and cultural fields"), although descriptions are given of the International Telecommunications Union and the International Civil Aviation Organisation in the section on the law of the air. The reader is referred to the Appendix to Volume 1 of Oppenheim's International Law, seventh edition by Sir Hersch Lauterpacht, for information about specialised and other agencies of the United Nations as they existed in 1957, and to the Carnegie Manual of International Law edited by Max Sørensen, Chapter 10, for a more up-to-date account.

So far as the presentation of the material is concerned, I have tried as far as possible to divorce myself from any specifically national context (by reaction against some writers who seem too much influenced by the practice of their own state, their own courts, and writers of their own legal tradition). I admit, on the other hand, to an undoubted European bias. I have for example, in some cases, consciously set forth rules which may apply only as a European regional variant of international law. Nor can I be sure that in other places I have not done the same thing unconsciously.

Footnotes have been dispensed with, references to cases and treaties being set out in tables, the latter containing some additional information about treaties, such as if or when they have entered into force, how many states are party to them, where the text may be consulted and so forth. References to other legal writings have, in general, been omitted: in the few places where a work is cited, the name and author are given in the text. Examples taken from state practice illustrating rules set out in the body of the text have been reduced to a minimum. Where examples are given, they have been incorporated in the text. Finally, matters generally to be found in footnotes, subsidiary rules or comment on rules set out in the text, have been either eliminated or incorporated.

Over the four years during which this work has been in preparation,

I have received the constant support and encouragement of Professor Clive Parry, of Cambridge University. I wish to express here my deep sense of gratitude for this, as also for all the help and criticism I received from him during the preparation of the manuscript.

Not being a specialist in every branch of the law of peace, I have sought advice of acknowledged authorities on certain topics. My good fortune and their own generosity have enabled me to consult: Professor Iain MacGibbon, of Edinburgh University, for the parts on sources and the law of the sea; Professor Atle Grahl-Madsen, of the Norwegian School of Economics, Bergen, Norway, for the section on refugees; M. Karel Vasak, Secretary General of the International Institute of Human Rights, for the section on human rights; a friend in the Foreign and Commonwealth Office for the section on consuls; M. Alex-Charles Kiss, distinguished author of the Répertoire Français de Droit International for reading the sections on nationality and aliens (more particularly the French version, now under preparation); Mr Francis Jacobs and Mr Andreas Khol, of the Secretariat of the European Commission of Human Rights for much valuable comment on various matters, and the section on international organisations in particular. I am very grateful to each of these friends for the time and trouble they have taken in commenting on and suggesting revision of my drafts, and for their interest and support in the bringing to press of this work. As tradition requires, I am obliged to state that I nevertheless assume sole responsibility for the version now presented.

N.A.M G.

Strasbourg, France August 1972

Preface to the Second Edition

In the eight years since the Preface to the First Edition was written, the principal development in international law has been in respect to the Law of the Sea. This may be taken as a direct reflection of the fact that technological advances have made it possible to exploit the resources of the bed of the sea at considerable depths, chiefly, of course, for the extraction of petrol and gas. Indeed, in the North Sea is to be found the hub and centre of the single largest new industrial development in Europe, and similarly oil-drilling rigs and platforms and floating hotels for the work force are changing the

nature of all those parts of the seas and oceans having a continental shelf. For this reason the whole of the section on seas and waterways has been rewritten. The reader is, however, warned that the law of the sea is in a far from settled state.

The remainder of this edition contains far fewer amendments than the author feared would be necessary when he first presented the work to public appraisal. Account has been taken of a criticism in the British Yearbook of International Law, Vol. 47, concerning the treatment of the International Court of Justice and the question of jurisdiction before that Court. The remainder of the changes concern the bringing up to date of various statistical information, and considerable revision of presentation to make for more palatable reading. Due account has been taken also of the Vienna Convention on the Succession of States in respect of Treaties.

One area which does not seem to require much revision is the section on international organisations. The somewhat revolutionary treatment in the First Edition seems to have met with general approval. The parallel drawn with the "early attempts to formulate a company law" has been reinforced by the insertion of a new subsection on the "Merger of international organisations" to reflect the new practice in this area.

The author must beg forgiveness that the companion volume on the "Law of War" is not yet ready; and also, rather sadly, that the translation of this volume into French has not yet been achieved. With patience, professional life and work permitting, these omissions will be put right in the coming years.

N.A.M G.

Paris, 1982

Abbreviations

A.C. Appeal Cases (United Kingdom)

A/CONF. Series for United Nations documents concern-

ing conferences organised by the General

Assembly

A.D. Annual Digest of Public International Law

Cases, 1919-49

A.J.I.L. American Journal of International Law, 1907-All E.R. All England Law Reports, 1936- (United

Kingdom)

Annuaire Français Annuaire Français de Droit International, 1955-

B.F.S.P. British and Foreign State Papers, 1806-

B.I.L.C. British International Law Cases

B.Y.I.L. British Yearbook of International Law

Clunet Chancery Reports from the Chancery Division

of the High Court of Justice (United Kingdom); see "Q.B." for companion set of cases.

Cmnd. Papers presented to Parliament by command

of His/Her Majesty (United Kingdom)

Cranch United States Supreme Court Reports, 1805-15

Doc. Document

ECOSOC Economic and Social Council of the United

Nations

ELDO European Space-Vehicle Launcher Develop-

ment Organisation.

ESA European Space Agency

ESRO European Space Research Organisation

E.T.S. European Treaty Series, Council of Europe

publications

xxxii

F. Supp. Federal Supplement, containing decisions of

United States District Courts

General Assembly of the United Nations G.A.

G.B. Great Britain

H.M.S.O. His/Her Majesty's Stationery Office, London Hudson, Cases Hudson, Cases and other Materials on Inter-

national Law, third edition (1951)

Hudson, Legislation Hudson, International Legislation. A collection

> of texts of multipartite international instruments of general interest, 9 vols. covering the

period 1919-45.

I.C.A.O. International Civil Aviation Organisation

I.C.J. International Court of Justice

International Court of Justice, Reports of I.C.J. Reports Judgments, Advisory Opinions and Orders

International Law Commission of the United I.L.C.

Nations

International Legal Materials I.L.M. International Labour Organisation I.L.O. International Law Reports, 1950-I.L.R.

International Organisation and Integration, I.O.I. Ed. Van Panhuys, Brinkhorst and Maas, 1968

International Telecommunications Union I.T.U.

Iournal Officiel of the French Republic J.O.

L.N.T.S.League of Nations Treaty Series

Malloy's Treaties Malloy's Treaties, Conventions, etc., between

the United States of America and other Powers.

Manual of Military The Law of War on Land, being Part III of the Law. Pt III Manual of Military Law, United Kingdom War

Office, H.M.S.O. 1958

Martens Martens, Recueil des Traités Martens, Nouveau Recueil Martens, N.R. Martens, Nouveau Recueil Général Martens, N.R.G.

Martens, Causes Célebres du Droit de Gens, Martens, Causes

Célebres second edition, 5 vols. (1858-61)

Malayan Law Reports

Moore, International Moore, History and Digest of the International Arbitrations Arbitrations to which the United States has

been a Party, 6 vols. (1898)

xxxiv	ABBREVIATIONS
NATO	North Atlantic Treaty Organisation
O.A.S. Off. J.	Organisation of American States Official Journal
Peaselee	Peaselee, Constitutions of Nations, 3 vols. (1950)
P.C.A. P.C.I.J.	Permanent Court of Arbitration Permanent Court of International Justice, or, according to the context, Publications of the Permanent Court of International Justice Ser. A — Judgments Ser. B — Advisory Opinions Ser. A/B — Cumulative collections of judgments and Advisory Opinions given since
	1931 Ser. C — Acts and documents relating to judgments and Advisory Opinions
Q.B.	Queen's Bench Reports from the Queen's Bench Division of the High Court of Justice (United Kingdom)
Res. R.I.A.A.	Resolution Reports of International Arbitral Awards, United Nations Publication
S.A.L.R. S.C. S.L.R. Stat. at L.	South African Law Reports Security Council of the United Nations Scottish Law Reports United States Statutes at Large
T.I.A.S.	United States Treaties and Other International Acts Series
U.K.T.S. U.N.T.S. U.P.U. U.S. U.S.T. U.S.S.R.	United Kingdom Treaty Series, 1892- United Nations Treaty Series Universal Postal Union United States Supreme Court Reports Unites States Treaties in Force Union of Soviet Socialist Republics

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