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Frontmatter

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INTERNATIONAL LAW

VOLUME 2

THE LAW OF PEACE

PART I

INTERNATIONAL LAW IN GENERAL

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INTERNATIONAL LAW

BEING THE COLLECTED PAPERS OF
HERSCH LAUTERPACHT

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

SYSTEMATICALLY ARRANGED AND
EDITED BY
E. LAUTERPACHT, Q.C.

VOLUME 2

THE LAW OF PEACE

PART I

INTERNATIONAL LAW IN GENERAL



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Frontmatter

[More information](#)

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978-0-521-10741-9 - International Law: Being the Collected Papers of Hersch Lauterpacht,

Volume 2 - The Law of Peace

Edited by E. Lauterpacht

Frontmatter

[More information](#)

CONTENTS

<i>Preface</i>	vii
<i>Table of Cases</i>	ix
<i>Abbreviations</i>	xv

PART I INTERNATIONAL LAW IN GENERAL

I	INTERNATIONAL LAW AS LAW	
1	The nature of international law and general jurisprudence	3
2	The reality of the Law of Nations	22
3	On realism, especially in international relations	52
4	Professor Carr on international morality	67
II	HISTORY OF INTERNATIONAL LAW	
5	International law and colonial questions, 1870–1914	95
6	International law after the Covenant	145
7	International law after the Second World War	159
III	SOURCES OF INTERNATIONAL LAW	
8	Private law sources and analogies of international law	173
9	Some observations on the prohibition of ‘ <i>non liquet</i> ’ and the completeness of the law	213
10	Decisions of municipal courts as a source of international law	238
11	Codification and development of international law	269
IV	THE WRITERS AND DOCTRINE OF INTERNATIONAL LAW	
12	The Grotian tradition in international law	307
13	Spinoza and international law	366
14	Westlake and present day international law	385
15	Kelsen’s pure science of law	404

Cambridge University Press

978-0-521-10741-9 - International Law: Being the Collected Papers of Hersch Lauterpacht,
Volume 2 - The Law of Peace

Edited by E. Lauterpacht

Frontmatter

[More information](#)

CONTENTS

16	Brierly's contribution to international law	43 ^I
17	The so-called Anglo-American and Continental schools of thought in international law	45 ²
V	THE SUBJECTS OF INTERNATIONAL LAW	
18	The subjects of the Law of Nations	48 ⁷
VI	THE RELATION OF INTERNATIONAL LAW TO MUNICIPAL LAW	
19	Is international law part of the law of England?	53 ⁷
	<i>Index</i>	57 ^I

Cambridge University Press

978-0-521-10741-9 - International Law: Being the Collected Papers of Hersch Lauterpacht,
Volume 2 - The Law of Peace

Edited by E. Lauterpacht

Frontmatter

[More information](#)

PREFACE

As Hersch Lauterpacht never wrote a comprehensive treatise reflecting the full range of his wide knowledge of international law, I have thought it appropriate in these *Collected Papers* to attempt to weave his many writings into some systematic form. However, it has been necessary to devote volume 1 of these papers to three general works which could not conveniently fit into such a scheme. Thus it is only in this volume that the systematic presentation of the separate writings can begin, in rough accord with a series of headings which Lauterpacht at one time prepared when contemplating the possibility of his own textbook.

The whole volume is devoted to a single Part which, as it contains the miscellaneous chapters normally forming the introductory portion of a textbook, has been called 'International Law in General'. But the titles of three of the sections refer to areas within which Lauterpacht wrote major monographic studies. Thus much of the subject matter of *The Function of Law in the International Community* falls within section I on 'International Law as Law'; the content of *Private Law Sources and Analogies of Public International Law* enters the area of section III on 'Sources'; while the material which appeared in *International Law and Human Rights* touches upon both section V, 'Subjects of International Law', and the section which will be included in a later volume on 'The Individual in International Law'.

In deciding on the proper relationship between Lauterpacht's monographs and the contents of the present volume, I have been faced first by the question of what to do with articles which were subsequently incorporated into these monographs. I have on the whole felt it better to omit these – though with occasional exceptions. 'The nature of international law and general jurisprudence' and 'The subjects of the Law of Nations' have been included in this volume, notwithstanding their later appearance in *The Function of Law* and in *International Law and Human Rights* respectively, because they were of special importance in their time.

Another question has been occasioned by the existence of fragments of partial revisions of *Private Law Sources* and of *The Function of Law*. While the former represents only a very small part of *Private Law Sources*, its relatively advanced state of preparation has led me to

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978-0-521-10741-9 - International Law: Being the Collected Papers of Hersch Lauterpacht,
Volume 2 - The Law of Peace

Edited by E. Lauterpacht

Frontmatter

[More information](#)

PREFACE

include it. But the changes in *The Function of Law* are too scattered and too minor to justify any attempt to incorporate them here.

Chapters 3, 4 and 7 have not previously been published. Chapter 2 was only circulated in mimeographed form. Chapter 8, as stated, contains the revision of part of chapter 1 of *Private Law Sources*. As to the latter and other published works, I am glad to be able to acknowledge with gratitude the permission to reprint them given on behalf of the copyright owners of the chapters identified below: George Allen and Unwin Limited – chapter 6; the American Society of International Law – chapter 11; the British Institute of International and Comparative Law – chapter 19; Cambridge University Press – chapter 5; Professor A. L. Goodhart, K.B.E., Editor-in-Chief of the *Law Quarterly Review* – chapter 18; Longman Group Limited – chapter 8; N. V. Martinus Nijhoff's Boekhandel en Uitgeversmaatschappij – chapter 9; Oxford University Press – chapters 15 and 16; and the Royal Institute of International Affairs, London – chapters 2, 10, 12, 13 and 17.

The copy for this volume was the object of much painstaking attention by Mr D. J. Driscoll, of Edinburgh University, and by the staff of Cambridge University Press. Dr Gillian White and Mrs Charity Hopkins gave great help with the proofs and prepared, respectively, the Index and the Table of Cases. I tender my warmest thanks to them – as I do also to my secretary, Mrs S. Rainbow, and to the production staff of Cambridge University Press.

E. LAUTERPACHT

*Trinity College
Cambridge
October 1974*

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978-0-521-10741-9 - International Law: Being the Collected Papers of Hersch Lauterpacht,
Volume 2 - The Law of Peace

Edited by E. Lauterpacht

Frontmatter

[More information](#)

TABLE OF CASES

- Abu Dhabi Arbitration: *see under* Petroleum Development Ltd. *v.* Sheikh of Abu Dhabi
- Adams *v.* Akerlund, 461
- Administrative Decision No. I (Tripartite Claims Commission, U.S.–Austria–Hungary), 501
- Administrative Decision No. V (Mixed Claims Commission, U.S.–Germany), 501
- Administrator of German Property *v.* Knoop, 513, 558
- Alabama Arbitration, 98, 99, 119, 120, 121, 122, 123, 210, 256
- Alaskan Boundary Arbitration, 120, 124, 125, 211, 464, 465
- American–Mexican Claims Bureau, Inc. *v.* Morgenthau, 501
- Amalia, The*, 543
- Amazone, The*, 540
- Amedie, The*, 544
- Amiable Isabelle, The*, 461
- Amiral Hamelin, The*, 454
- Anglo–Iranian Oil Co. Case, 179
- Anglo–Norwegian Fisheries Case, 220, 221, 224, 276
- Anna, The*, 199
- Annapolis, The*, 543
- Antelope, The*, 101
- Arantzazu Mendi, The*, 568
- Aroa Mines Case, 465
- Arrow River and Tributaries Slide and Boom Co., Ltd., *Re*, 557
- Assurantie Compagnie Excelsior *v.* Smith, 552
- Asylum Case, 224
- Attorney-General for Canada *v.* Attorney General for Ontario, 557
- Austria (Emperor) *v.* Day and Kossuth, 541, 561
- Austrian Pensions (State Succession) Case, 242
- Austro–German Customs Union, 450
- Baden–Prussia–Württemberg (rights and duties of riparian States), 248, 267
- Bank of Ethiopia *v.* National Bank of Egypt and Ligouri, 568
- Barbuit's Case: *see under* Buvot *v.* Barbuit
- Barthez de Montfort *v.* Treuhänder Hauptverwaltung, 467
- Behring Sea Arbitration, 119, 125, 126, 210, 229, 256, 464
- Berizzi Brothers *v.* Steamship *Pesaro*, 455
- Betsey, The*, 239
- Boedes Lust, The*, 135
- Bremen–Prussia (termination of treaties), 248
- British Guiana Arbitration (Brazil–Great Britain), 128, 211
- British Guiana Arbitration (Great Britain–United States), 119, 123, 124
- British Guiana Boundary Arbitration (Great Britain–Venezuela), 210
- Brown (Robert E.) Case, 116
- Brunswick (Duke) *v.* King of Hanover, 540, 541
- Buron *v.* Denman, 559
- Buvot *v.* Barbuit, 539, 562
- Cadenhead Case, 230
- Campbell Case, 219
- Cape Law Society *v.* Van Aardt, 242
- Casablanca Case, 460
- Cayuga Indians Claim, 219, 230, 241
- Certain Claims by Portugal against Germany, 219
- Certain German Interests in Polish Upper Silesia, 481

Cambridge University Press

978-0-521-10741-9 - International Law: Being the Collected Papers of Hersch Lauterpacht,
Volume 2 - The Law of Peace

Edited by E. Lauterpacht

Frontmatter

[More information](#)

TABLE OF CASES

- Cession of Vessels and Tugs for Navigation on the Danube Arbitration, 235
- Chamizal Arbitration, 211
- Charkieh, The*, 242, 545
- Cherokee Nation *v.* State of Georgia 241
- Chorzów Factory Case (Jurisdiction), 481
- Chorzów Factory Case (Merits), 466, 481
- Chung Chi Cheung *v.* The King, 544, 560, 562
- Civilian War Claimants' Association Ltd. *v.* The King, 513, 558
- Commercial and Estates Co. of Egypt *v.* Ball, 564
- Commercial and Estates Co. of Egypt *v.* Board of Trade, 563, 564
- Competence of the International Labour Organisation (Regulation of Conditions of Work of Persons Employed in Agriculture), 465
- Cook *v.* Sprigg, 115, 559
- Cope *v.* Doherty, 543
- Costa Rica–Nicaragua–Salvador (Central American Court of Justice), 211
- Costa Rica Packet Arbitration, 478
- Crichton *v.* Samos Navigation Co. and Others, 258
- Cristina, The*, 540, 562
- Croft Case, 210
- Croft *v.* Dunphy, 543
- Czechoslovak Language of Minorities Case, 244
- Czechoslovak Spirit Duty (Plebiscite) Case, 242
- Daimler Co. Ltd. *v.* Continental Tyre & Rubber Co., 266
- David J. Adams, The*: *see under* Lewis (Jesse) (*The David J. Adams*) Case
- Dawes Plan Interpretation (Commissioner of Controlled Revenues) Case, 499
- de Bode (Baron) v. The Queen*, 558
- de Born (Baron Frédéric) v. Yugoslav State*, 466
- De Haber v. Queen of Portugal*, 541, 552
- de la Torre Case*, 227
- De Wutz v. Hendricks*, 540
- Delagoa Bay Railway Arbitration, 109, 128, 210
- Denunciation of the Treaty of November 2, 1865 between China and Belgium, 466
- Desgranges v. International Labour Organisation*, 214
- Diaz v. Guatemala*, 502
- District Governor, Jerusalem–Jaffa District and Another *v.* Suleiman Murra and Another, 242
- Diversion of the Waters of the Meuse, 219
- Drummond Wren, Re*, 516
- Eastern Extension, Australasia and China Telegraph Co. *v.* United States, 218, 220, 230
- Elphinstone v. Bedreechund*, 559
- Employment of Women during the Night, 219
- Engelke v. Musmann*, 542
- Exchange of Greek and Turkish Populations, 465
- Extradition (Germany and Italy) Case, 513
- Faber Case*, 464
- Fabiani Case*, 210, 460
- Factor v. Laubenheimer*, 514
- Federico, The*, 465
- Fisheries Case*: *see under* Anglo-Norwegian Fisheries Case
- Fox, The*, 238
- Franconia, The* (Reg. *v.* Keyn), 97, 241, 542, 543, 544, 545, 546, 549, 554
- Free Zones of Upper Savoy and the District of Gex, 228, 229, 233, 465
- French Guiana Boundary Case (France–Switzerland), 465

Cambridge University Press

978-0-521-10741-9 - International Law: Being the Collected Papers of Hersch Lauterpacht,
Volume 2 - The Law of Peace

Edited by E. Lauterpacht

Frontmatter

[More information](#)

TABLE OF CASES

- Genocide Convention Case: *see* Interpretation of the Treaty of
under Reservations to the Con- Ghent, 464
vention on the Prevention and Interpretation of the Treaty of
Punishment of the Crime of Lausanne, Article 3, paragraph 2
Genocide ... 45, 465, 481
- German Railways (Most-Favoured Janes Case, 521
Treatment) Case, 512
- Goldenberg & Sons *v.* Germany, Japanese House Tax Case, 211, 461,
222 465
- Goodman *v.* Winterton, 500 *Jeanne, The*, 465
- Grisbadarna Case, 211 *Jeune Eugénie, The*, 332
- Guatamala–Honduras Boundary *Johanna Stoll, The*, 543
Arbitration, 220 *Johannes, The*, 543
- Guatamala and Salvador– Johnstone *v.* Pedlar, 559
Honduras (Central American Jolis, *Re*, 514
Court of Justice), 211
- Josef Inwald Actien Gesellschaft *v.* Guiana Boundary Arbitration Pfeiffer and Another, 461
(France–Netherlands), 220
- Hardman (William) Case, 232
- Heathfield *v.* Chilton, 539, 552, 554, Judgments of the Administrative
561 Tribunal of the International
Labour Organisation upon Com-
plaints made against UNESCO,
219
- High Treason (Treaty of Versailles *Jupiter, The*, no. 1, 267
in Germany) Case, 513, 526 *Jupiter, The*, no. 3, 267
- Home Frontier and Foreign Mis- Jurisdiction of the Courts of Danzig,
sionary Society of the United 511, 512
Brethren in Christ Case, 231
- Honduras–Guatemala Boundary Jurisdiction of the European Com-
Arbitration, 220 mission of the Danube, 465, 466,
481
- Honduras–Guatemala and Salva- Kummerow Case, 465
dor (Central American Court of Labrador Boundary Case, 247
Justice), 211
- Hopkins *v.* De Robeck, 540 Lasry Case, 464
- Ice King, The*, 455 *Le Louis, The*, 101, 544
- International Institute of Agri- Lebanon Expropriation Case, 242
culture *v.* Profili, 499
- International Military Tribunal Lebrete (Elise) Case, 290
Judgment, 336, 488, 517, 518, Lederer *v.* German State, 513
523
- International Status of South-West Lena Goldfields Arbitration, 179,
Africa, 227, 229 222, 499
- Interpretation of the Greco–Turk- *Leonora, The*, 137
ish Agreement of 1 December Lewis (Jesse) (*The David J. Adams*)
1926... 481 Case, 231
- Interpretation of the Tardieu– Lighthouses between France and
Jaspar Agreement of 12 January Greece, 219
1930... 222
- Lindo *v.* Rodney, 135
- Liquidation of German Property (Treaty of Versailles) Case, 513

Cambridge University Press

978-0-521-10741-9 - International Law: Being the Collected Papers of Hersch Lauterpacht,
Volume 2 - The Law of Peace

Edited by E. Lauterpacht

Frontmatter

[More information](#)

TABLE OF CASES

- Liquidation de la Société des Transports Internationaux *v.* Séquestre de la Société des Transports Internationaux, 266
- Lockwood *v.* Coysgarne, 539
- Lopez, *Ex p.*, 514
- Lopez *v.* Burslem, 544
- Lotus*, Case of the S.S., 97, 224, 241, 243, 253, 439, 449, 455, 465, 542, 546
- Lübeck *v.* Mecklenburg-Schwerin, 248
- Lucia, The*, 465
- Lurie *v.* Steinmann, 454
- McIlvaine *v.* Coxe's Lessee, 241
- Magdalena Steam Navigation Co. *v.* Martin, 541, 552
- Marches, Case of, 553
- Maria, The*, 199, 238, 239
- Martini Case, 513
- Mavrommatis Palestine Concessions Case, 218, 465, 481, 512
- Maziua and Naulilaa Cases, 222
- Mendizabel *v.* Machado, 558
- Michigan-Wisconsin Boundary Case, 247
- Minera Ygnacio Rodriguez Ramos, Cía *v.* Bartlesville, 242
- Minority Schools Case: *see under* Right of Minorities in Upper Silesia (Minority Schools)
- Missouri *v.* Holland, 557
- Montellano (Duke) *v.* Christin, 541
- Mortensen *v.* Peters, 543, 562
- Mosul Boundary Case: *see under* Interpretation of the Treaty of Lausanne, Article 3, paragraph 2
- Muscat Dhows Arbitration, 103
- Naulilaa Case: *see under* Maziua and Naulilaa Cases
- New York, The*, 544
- Nicaragua-Costa Rica-Salvador (Central American Court of Justice), 211
- Nielsen *v.* Johnson, 465
- North America Dredging Co. of Texas Case, 502
- North Atlantic Fisheries Arbitration, 120, 126, 127, 211, 229, 464
- North Eastern Boundary Arbitration, 214, 215, 219, 222
- Noujaim Case, 512
- Novello *v.* Toogood, 540
- Nuremberg Tribunal Judgment: *see under* International Military Tribunal Judgment
- Orinoco Steamship Co. Arbitration, 211
- Palmas Island Arbitration, 109, 463
- Papadopoulos Case, 512
- Parker (William A.) Case, 463, 502
- Parlement Belge, The*, 541, 556
- Payment of Various Serbian Loans Contracted in France, 228, 229, 459, 460, 462
- Pecuniary Claims of Danzig Railway Officials Transferred to the Polish Service: *see under* Jurisdiction of the Courts of Danzig
- Pelletier Case, 464
- Pesaro, The*: *see under* Berizzi Brothers *v.* Steamship *Pesaro*
- Peter Pázmány University *v.* The State of Czechoslovakia, 510
- Petroleum Development Ltd. *v.* Sheikh of Abu Dhabi, 179
- Pinson (Georges) Case, 460, 464
- Pious Fund of the Californias Case, 210, 478
- Piracy *jure gentium*, *In re*, 544
- Poitier *v.* Croza, 553
- Porter *v.* Freudenberg, 465, 558
- Prussia-Baden-Württemberg (rights and duties of riparian States), 248, 267
- Prussia-Bremen (termination of treaties), 248
- Radio Corporation of America *v.* National Government of China, 499

Cambridge University Press

978-0-521-10741-9 - International Law: Being the Collected Papers of Hersch Lauterpacht,

Volume 2 - The Law of Peace

Edited by E. Lauterpacht

Frontmatter

[More information](#)

TABLE OF CASES

- Recovery, The*, 238, 266
Reg. v. Dudley, 543
Reg. v. Keyn: see under Franconia, The
Reg. v. Morris, 543
Reparation Commission v. German Government, 499
Reparation for Injuries Suffered in the Service of the United Nations, 164
Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, 221, 224, 275, 276, 285
Respublica v. De Longchamps, 519, 520
Rex v. Antonelli and Barberi, 101
Rex v. Christian, 242
Rex v. Crewe, 115
Reznokov v. Ships Arcos, 454
Rhineland Ordinances Case, 242
Rights of Minorities in Upper Silesia (Minority Schools), 481
Rights of Nationals of the United States of America in Morocco, 224
Roselius and Co. v. Karsten, 242
Russian Indemnity Case, 211, 397
Rustomjee v. The Queen, 558
Saar Territory (Prussian Officials) Case, 242
Salvador–Costa Rica–Nicaragua (Central American Court of Justice), 211
Salvador and Guatemala–Honduras (Central American Court of Justice), 211
Savarkar Arbitration, 127, 128
Schooner Exchange v. M’Faddon, 560
Scotia, The, 544
Secretary of State for India v. Kamachee Boye Sahaba, 559
Serbian Loans Case: see under Payment of Various Serbian Loans Contracted in France
Service v. Castaneda, 540
Sobhuza II v. Miller, 559
Social Insurance (Upper Silesia) Case, 499
Société Commerciale de Belgique Case, 228, 229
Société des Quais de Smyrna v. Greek Government, 499
Somerset v. Steward, 102
Sopron Köszeg Local Railway Co. Case, 499
South-West Africa Case: see under International Status of South-West Africa
Spanish–German Extradition Treaty Case, 241
Standard Oil Co. Tankers, Case, 499
State Succession (Windhuk in South West Africa) Case, 266
Steiner and Gross v. Polish State, 502
Stigstad, The, 137
Stoeck, v. Public Trustee, 559
Studer (Adolf G.) Case, 231
Suarez, Re, 542
Thirty Hogsheads of Sugar v. Boyle, 241
Triquet v. Bath, 241, 539, 561
UNESCO Officials Appeal Case: see under Judgments of the Administrative Tribunal of the International Labour Organisation upon Complaints made against UNESCO
United States v. Arjona, 520
United States v. Insull, 513
United States v. P. W. Smith, 242
V. v. D., 243
Valentine v. United States, 514
Venezuelan Preferential Claim Case, 210, 465
Viveash v. Becker, 539, 540
Wadsworth v. Queen of Spain, 541
Walfisch Bay Territory Arbitration, 128, 211

Cambridge University Press

978-0-521-10741-9 - International Law: Being the Collected Papers of Hersch Lauterpacht,
Volume 2 - The Law of Peace

Edited by E. Lauterpacht

Frontmatter

[More information](#)

TABLE OF CASES

- | | |
|--|--|
| Walker <i>v.</i> Baird, 556 | Wirbelauer Case, 512 |
| West Rand Central Gold Mining
Co. <i>v.</i> The King, 116, 241, 542,
548, 550, 554, 564 | Wolff <i>v.</i> Oxholm, 541 |
| Weymberg <i>v.</i> Touch, 559 | Württemberg–Baden–Prussia
(rights and duties of riparian
States), 248, 267 |
| Whaling and Sealing Claims Arbitration, 210 | Z. & F. Assets Realization Corporation at Al. <i>v.</i> Hull, 501 |
| Wilkins <i>v.</i> Lagarde et Procureur de
la République près le Tribunal de
Papeete, 266 | <i>Zamora, The</i> , 564, 567 |
| Williams Case, 210 | <i>Zollverein, The</i> , 543 |
| | Zoppot Street-Crossing Case, 512 |

Cambridge University Press

978-0-521-10741-9 - International Law: Being the Collected Papers of Hersch Lauterpacht,

Volume 2 - The Law of Peace

Edited by E. Lauterpacht

Frontmatter

[More information](#)

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 público</i> , 3 vols. (1933-5). |
| A.J. | <i>American Journal of International Law</i> . |
| <i>Annuaire</i> | <i>Annuaire de l'Institut de Droit International</i> . |
| <i>Annual Digest</i> | <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. 1, 3rd ed. (1928), French translation by Gidel (1929); vol. III, part I (1915). |
| <i>A.S. Proceedings</i> | <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). |
| <i>Bibliotheca Visseriana</i> | <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). |
| <i>Br. and For. St. Papers</i> | <i>British and Foreign State Papers</i> (Hertslet), vol. 1 (1841), continued up to date. |
| Brierly | Brierly, <i>The Law of Nations</i> , 5th ed. (1955). |

Cambridge University Press

978-0-521-10741-9 - International Law: Being the Collected Papers of Hersch Lauterpacht,
Volume 2 - The Law of Peace

Edited by E. Lauterpacht

Frontmatter

[More information](#)

ABBREVIATIONS OF TITLES OF BOOKS

Bustamante	Bustamante, <i>Derecho internacional público</i> , 3 vols. (1933–5).
<i>B.Y.</i>	<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 internazional</i> (general part, 1925).
<i>Clunet</i>	<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 Publique</i> , vol. I (1953); vol. II (1954).
Hackworth	Hackworth, <i>Digest of International Law</i> , 7 vols. (1940–3).

Cambridge University Press

978-0-521-10741-9 - International Law: Being the Collected Papers of Hersch Lauterpacht,
Volume 2 - The Law of Peace

Edited by E. Lauterpacht

Frontmatter

[More information](#)

ABBREVIATIONS OF TITLES OF BOOKS

<i>Hague Recueil</i>	<i>Recueil des Cours, Académie de Droit International de La Haye.</i>
Hall	Hall, <i>A Treatise on International Law</i> , 8th ed. (1924), by A. Pearce Higgins.
<i>Harvard Research</i>	<i>Research in International Law</i> . Under the Auspices of the Harvard Law School. Draft Convention 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 <i>H.L.R.</i>	Higgins and Colombos, <i>The International Law of the Sea</i> , 2nd ed. (1951). <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.

Cambridge University Press

978-0-521-10741-9 - International Law: Being the Collected Papers of Hersch Lauterpacht,
Volume 2 - The Law of Peace

Edited by E. Lauterpacht

Frontmatter

[More information](#)

ABBREVIATIONS OF TITLES OF BOOKS

<i>J.C.L.</i>	<i>Journal of Comparative Legislation and International Law.</i>
Keith's Wheaton	<i>Wheaton's Elements of International Law</i> , 6th English edition by A. Berriedale Keith, vol. I (1929); vol. II (7th ed., 1944).
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).
<i>L.N.O.J.</i>	<i>League of Nations, Official Journal.</i>
<i>L.N.T.S.</i>	<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).
<i>L.Q.R.</i>	<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>Causes célèbres</i>	Martens, <i>Causes célèbres du droit des gens</i> , 2nd ed., 5 vols. (1858-61).

Cambridge University Press

978-0-521-10741-9 - International Law: Being the Collected Papers of Hersch Lauterpacht,
Volume 2 - The Law of Peace

Edited by E. Lauterpacht

Frontmatter

[More information](#)

ABBREVIATIONS OF TITLES OF BOOKS

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).
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	Nys, <i>Le droit international</i> , 2nd ed., 3 vols. (1912).
<i>Off. J.</i>	<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>Jurisdiction 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 Recueil T.A.M.</i>	Ray, <i>Commentaire du Pacte</i> (1930). <i>Recueil des décisions des tribunaux arbitraux mixtes.</i>
Reddie, <i>Researches</i>	Reddie, <i>Researches, Historical and Critical, in Maritime International Law</i> , 2 vols. (1844).
<i>Répertoire</i>	Lapradelle et Niboyet, <i>Répertoire de droit international</i> . Founded by Darras in 1929.

Cambridge University Press

978-0-521-10741-9 - International Law: Being the Collected Papers of Hersch Lauterpacht,
Volume 2 - The Law of Peace

Edited by E. Lauterpacht

Frontmatter

[More information](#)

ABBREVIATIONS OF TITLES OF BOOKS

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 français du droit des gens.</i>
Rivier	Rivier, <i>Principes du droit des gens</i> , 2 vols. (1896).
Rivista	<i>Rivista di diritto internazionale.</i>
Rousseau	Rousseau, <i>Principes généraux du droit international public</i> , vol. I (1944).
Satow	Satow, <i>A Guide to Diplomatic Practice</i> , 3rd ed. by Ritchie (1932).
Scelle	Scelle, <i>Précis de droit des gens</i> , vol. I (1932), vol. II (1934).
Schücking und Wehberg	Schücking und Wehberg, <i>Die Satzung des Völkerbundes</i> , 2nd ed. (1924).
Schwarzenberger	Schwarzenberger, <i>International Law as Applied by International Courts and Tribunals</i> , vol. I (1945).
Scott, <i>Hague Reports</i>	Scott, <i>Hague Court Reports</i> (1916).
Scott, <i>Hague Reports</i> (2nd)	Scott, <i>Hague Court Reports (Second Series)</i> (1932).
Sibert	Sibert, <i>Traité de droit international public</i> , 2 vols. (1951).
Sirey	<i>Recueil général des lois et des arrêts</i> (founded by Sirey).
Smith	Smith, <i>Great Britain and the Law of Nations, a Selection of Documents</i> , vol. I (1932), vol. II (1935).
Spiropoulos	Spiropoulos, <i>Traité théorique et pratique du droit international public</i> (1933).
Stowell	Stowell, <i>International Law. A Restatement of Principles in Conformity with Actual Practice</i> (1931).
Strupp, <i>Éléments</i>	Strupp, <i>Éléments du droit international public, universel, européen et américain</i> , 2nd ed., 3 vols. (1930).
Strupp, <i>Wört.</i>	<i>Wörterbuch des Völkerrechts und der Diplomatie</i> , ed. by Strupp (begun by Hatschek), 3 vols. (1924–9).
Suarez	Suarez, <i>Tratado de Derecho internacional público</i> , 2 vols. (1916).
Temperley	Temperley, <i>History of the Peace Conference of Paris</i> , 6 vols. (1920–4).
Testa	Testa, <i>Le droit public international maritime</i> , translation from the Portuguese by Boutiron (1886).
Toynbee, <i>Survey</i>	Toynbee, <i>Survey of International Affairs</i> .
Travers	Travers, <i>Le droit pénal international</i> , 5 vols. (1920–2).
Treaty Series	United Kingdom Treaty Series, vol. I, 1892, and a volume every year.

Cambridge University Press

978-0-521-10741-9 - International Law: Being the Collected Papers of Hersch Lauterpacht,
Volume 2 - The Law of Peace

Edited by E. Lauterpacht

Frontmatter

[More information](#)

ABBREVIATIONS OF TITLES OF BOOKS

Twiss	Twiss, <i>The Law of Nations</i> , etc., 2 vols., 2nd ed., vol. I (Peace, 1884), vol. II (War, 1875).
<i>U.N.R.I.A.A.</i>	United Nations, <i>Reports of International Arbitral Awards</i> .
<i>U.N.T.S.</i>	<i>United Nations Treaty Series</i> .
Vattel	Vattel, <i>Le droit des gens</i> , 4 books in 2 vols., new edition (1773).
Verdross	Verdross, <i>Die Verfassung der Völkerrechtsgemeinschaft</i> (1926).
Walker	Walker, <i>A Manual of Public International Law</i> (1895).
Walker, <i>History</i>	Walker, <i>A History of the Law of Nations</i> , vol. I (1899).
Walker, <i>Science</i>	Walker, <i>The Science of International Law</i> (1893).
Westlake	Westlake, <i>International Law</i> , 2 vols., 2nd ed. (1910–13).
Westlake, <i>Chapters</i>	Westlake, <i>Chapters on the Principles of International Law</i> (1894).
Westlake, <i>Papers</i>	<i>The Collected Papers of John Westlake on Public International Law</i> , ed. by L. Oppenheim (1914).
Wharton	Wharton, <i>A Digest of the International Law of the United States</i> , 3 vols. (1886).
Wheaton	Wheaton, <i>Elements of International Law</i> , 8th American edition by Dana (1866).
<i>Z.I.</i>	<i>Zeitschrift für internationales Recht</i> .
<i>Z.ö.R.</i>	<i>Zeitschrift für öffentliches Recht</i> .
<i>Z.ö.V.</i>	<i>Zeitschrift für ausländisches öffentliches Recht und Völkerrecht</i> .
<i>Z.V.</i>	<i>Zeitschrift für Völkerrecht</i> .