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**INTERNATIONAL LAW**

**VOLUME 4**

**THE LAW OF PEACE**

**PARTS VII AND VIII**

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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 4

THE LAW OF PEACE

PARTS VII AND VIII



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## PREFACE

With the material on State Responsibility and Treaties the present volume concludes the presentation of Lauterpacht's writings on the Law of Peace. There remains for publication in the next volume only his significant contribution to the law governing disputes, including the jurisdiction of the International Court, and to the law of war and neutrality.

Two chapters in the present volume have never been published before: Lauterpacht's professional opinion in the *Nottebohm* case and his draft of the legal argument for the British Memorial in the *Anglo-Iranian Oil Company* case. And the chapter on 'Preparatory work in the interpretation of treaties', which is the original version of his Hague lectures of 1934, has not previously been printed in English – though much of it subsequently appeared in an article published in the *Harvard Law Review* (which, for the reasons given at p. 449 below, is not reprinted here).

As will be seen (and is more fully explained in the note at p. 95 below) Lauterpacht's important writing on the Law of Treaties has been set in a framework basically of his own making and identified from the scheme which he outlined, but did not complete, for his work as rapporteur of the International Law Commission on that subject. I have not wanted to disturb the flow of his approach to the subject by breaking up too much the reports which he prepared for the Commission; but it has seemed right to fuse the relevant parts of his two reports and, in addition, to reprint at appropriate points in that framework a few other items on the same subjects.

I express my gratitude to Dr E. Loewenfeld, LL.B. for his kindness in giving permission for the printing of chapter 1 of Part VII; to the British Petroleum Company Ltd. (formerly the Anglo-Iranian Oil Company Ltd.) for consenting to the publication of chapter 2 of Part VII; to the Editor of the *Law Quarterly Review* for permission to reprint 'Contracts to break a contract' in chapter 16 of Part VIII; to the Oxford University Press for permission to reprint part of chapter 16, as well as chapter 20, in Part VIII; and to the Hague Academy of International Law for permission to reproduce as chapter 21 of Part VIII the English text of lectures delivered at the Academy.

In preparing the volume for publication I have had invaluable aid from those who have helped me before and upon whom I have come

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so gratefully to rely: Professor Gillian White; Mrs C. A. Hopkins; Mr D. J. Driscoll and Mr W. M. Bush. I am also much indebted to Mrs Rainbow, my secretary in Cambridge, and to Miss P. Paton, my secretary in Canberra.

E. LAUTERPACHT

*Department of Foreign Affairs*

*Canberra*

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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).
<i>A. J.</i>	<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).

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- Br. and For. St. Papers* *British and Foreign State Papers* (Hertslet), vol. 1 (1841), continued up to date.
- Brierly *Brierly, The Law of Nations*, 5th ed. (1955).
- Bustamante *Bustamante, Derecho internacional público*, 3 vols. (1933–5).
- B.Y.* *British Year Book of International Law*.
- Calvo *Calvo, Le Droit international théorique et pratique*, 5th ed., 6 vols. (1896).
- Cavaglieri *Cavaglieri, Lezioni di diritto internazionale* (general part, 1925).
- Clunet* *Journal du droit international*.
- Cruchaga *Cruchaga-Tocornal, Nociones de Derecho internacional*, 3rd ed., 2 vols. (1923–5).
- Dicey *Dicey, Conflict of Laws*, 4th ed. (1927).
- Dickinson, *Cases* *Dickinson, Cases and Other Materials on International Law* (1950).
- Documents* *Documents on International Affairs*.
- Fauchille *Fauchille, Traité de droit international public*, 8th ed. of Bonfils' *Manuel de droit international public*, vol. 1, part 1 (1922), vol. 1, part 2 (1925), vol. 1, part 3 (1926), vol. II (1921).
- Fenwick *Fenwick, International Law*, 3rd ed. (1948).
- Fiore *Fiore, Nouveau droit international public*. French translation by Antoine from the 2nd Italian edition, 3 vols. (1885).
- Fiore, *Code* *Fiore, International Law Codified*. Translation by Borchard from the 5th Italian edition (1918).
- Fischer Williams, *Chapters* *Fischer Williams, Chapters on Current International Law and the League of Nations* (1929).
- Fontes Juris Gentium* *Fontes Juris Gentium*, edited by V. Bruns.
- Garner, *Developments* *Garner, Recent Developments in International Law* (1925).
- Gemma *Gemma, Appunti di diritto internazionale* (1923).
- Genet *Genet, Traité de diplomatie et de droit diplomatique*, 3 vols. (1931–2).
- Gidel *Gidel, Le droit international public de la mer, le temps de paix*: vol. I, *Introduction – La haute mer* (1932); vol. II, *Les eaux intérieures* (1932); vol. III, *La mer territoriale et la zone contiguë* (1934).
- Grotius *Grotius, De Jure Belli ac Pacis* (1625).
- Grotius Annuaire* *Grotius Annuaire International*.
- Grotius Society* *Transactions of the Grotius Society*.
- Guggenheim *Guggenheim, Lehrbuch des Völkerrechts*, Parts 1 and 2 (1947).

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- Guggenheim, *Traité* Guggenheim, *Traité de Droit International Publique*, vol. I (1953); vol. II (1954).
- Hackworth Hackworth, *Digest of International Law*, 7 vols. (1940–3).
- Hague Recueil* *Recueil des Cours, Académie de Droit International de La Haye*.
- Hall Hall, *A Treatise on International Law*, 8th ed. (1924), by A. Pearce Higgins.
- Harvard Research* *Research in International Law*. Under the Auspices of the Harvard Law School. Draft Conventions Prepared for the Codification of International Law. Directed by M. O. Hudson: (1929) I. *Nationality* (Reporter: Flournoy); II. *Responsibility of States* (Borchard); III. *Territorial Waters* (G. G. Wilson); (1932) I. *Diplomatic Privileges and Immunities* (Reeves); II. *Legal Position and Functions of Consuls* (Quincy Wright); III. *Competence of Courts in regard to Foreign States* (Jessup); IV. *Piracy* (Bingham); V. *A Collection of Piracy Laws of Various Countries* (Morrison); (1935) I. *Extradition* (Burdick); II. *Jurisdiction with respect to Crime* (Dickinson); III. *Treaties* (Garner).
- Heffter Heffter, *Das europäische Völkerrecht der Gegenwart*, 8th ed. by Geffcken (1888).
- Heilborn, *System* Heilborn, *Das System des Völkerrechts entwickelt aus den völkerrechtlichen Begriffen* (1896).
- Hertslet's *Commercial Treaties* Hertslet, *Collection of Treaties and Conventions between Great Britain and Other Powers, so far as they relate to Commerce and Navigation*, vol. I (1820), continued to date.
- Higgins and Colombos Higgins and Colombos, *The International Law of the Sea*, 2nd ed. (1951).
- H.L.R.* *Harvard Law Review*.
- Holland, *Lectures* Holland, *Lectures on International Law*, edited by T. A. and W. L. Walker (1933).
- Holland, *Studies* Holland, *Studies in International Law* (1898).
- Holtzendorff Holtzendorff, *Handbuch des Völkerrechts*, 4 vols. (1855–9).
- Hudson, *Cases* Hudson, *Cases and Other Materials on International Law*, 3rd ed. (1951).
- Hudson, *Legislation* Hudson, *International Legislation*: vols. I–XI (1931–50).
- Hyde Hyde, *International Law, chiefly as interpreted and applied by the United States*, 2nd ed., 3 vols. (1945).

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<i>I.C.J. Reports</i>	<i>International Court of Justice Reports.</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 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).

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- |  |   |
|--|---|
| 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).   |
| 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 Tidsskrift for International Ret. Acta Scandinavica juris gentium.</i>   |
| Nys                                      | Nys, <i>Le droit international</i> , 2nd ed., 3 vols. (1912).   |
| 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.Ž.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><br>Series A: Judgments.<br>B: Advisory Opinions.<br>A/B: Cumulative Collection of Judgments and Advisory Opinions given since 1931.<br>C: Acts and Documents relating to Judgments and Advisory Opinions.<br>D: Collection of Texts governing the Jurisdiction of the Court.<br>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).  |

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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).
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.
<i>R.G.</i>	<i>Revue générale de droit international public</i> .
<i>R.I.</i>	<i>Revue de droit international et de législation comparée</i> .
<i>R.I. (Geneva)</i>	<i>Revue de droit international, de sciences diplomatiques, politiques et sociales</i> .
<i>R.I. (Paris)</i>	<i>Revue de droit international</i> .
<i>R.I.F.</i>	<i>Revue internationale française du droit des gens</i> .
Rivier	Rivier, <i>Principes du droit des gens</i> , 2 vols. (1896).
<i>Rivista</i>	<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 du 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).

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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.
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).
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