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978-0-521-10949-9 - International Law: Being the Collected Papers of Hersch Lauterpacht,
Volume I - The General Works
Edited by E. Lauterpacht
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VOLUME I
THE GENERAL WORKS

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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 I
THE GENERAL WORKS



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EDITOR'S PREFACE

Sir Hersch Lauterpacht's academic writings include five major monographs, of which two later appeared in much expanded revisions; four courses of lectures at the Hague Academy of International Law; over sixty articles; and two Reports on the Law of Treaties prepared for the International Law Commission. He prepared four editions of volume I, and three editions of volume II, of Oppenheim's *International Law*. He also edited Part III of the *Manual of Military Law*, containing 'The Law of War on Land'. This list leaves aside book reviews and notes, many of which it is difficult or impossible to trace. In addition, he wrote numerous unpublished memoranda and opinions. Finally, as a Judge of the International Court of Justice, he produced four Separate Opinions, two Dissenting Opinions, and a Declaration.

Although Lauterpacht's writing covered the full range of public international law, he never published a comprehensive treatise of his own. On looking at his work as a whole—and being anxious, in presenting his collected papers, to construct from them something which would serve both as a memorial to their author and as a work of lasting value to other international lawyers—it seemed to me that if the writings were assembled in a systematic form they might well stand as a substitute for the treatise that was never written. Each item has therefore been printed as if it were a chapter or a section of a comprehensive work covering the traditional divisions of international law—peace, disputes, war and neutrality. My hope is that, presented in this way, the whole will be greater than the sum of its parts.

The scheme which I have followed is based upon drafts (found amongst Lauterpacht's papers) of an outline of the textbook which he intended writing—though it has been necessary, of course, to make some adjustments to accommodate the available material. The contents of these volumes are, therefore, now divided into the following principal parts: 'International Law in General', covering the nature, history, sources and subjects of international law, as well as the relationship of international law and municipal law; 'States as Subjects of International Law', comprising recognition, State succession and jurisdiction; 'State Territory'; 'The Individual in International Law'; 'The Law of Treaties'; 'Organs of International Government'; 'The International Court of Justice'; 'Renunciation of Force'; and 'War and Neutrality'.

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EDITOR'S PREFACE

However, the collection begins, in this first volume, not with the material falling within the classification just described, but with three more general works—the newly written ‘General Part’ prepared for a ninth edition of Oppenheim that Lauterpacht never completed, an English text of the ‘general’ course of lectures delivered in French at the Hague Academy in 1937 and the *Survey of International Law in relation to the Work of Codification of the International Law Commission*, written for the United Nations in 1948. Their publication as the introductory volume of this collection requires no justification. A more detailed editorial note is printed before each of these items.

The contents of these volumes are limited to Lauterpacht's articles, published courses of lectures, reports and judgments. Within these categories, the collection is as complete as I can make it—save for various articles which were subsequently reprinted, almost unchanged in content, in some of his monographs. The subject principally affected is ‘Recognition’. Between 1939 and 1945, Lauterpacht published a number of articles on various topics of Recognition which were then incorporated in his book on *Recognition in International Law* published in 1947. The same is true of some, though not all, of his works on human rights. The essential substance of the lectures given at the Hague Academy in 1947 and the Report on the subject presented to the International Law Association in 1948 reappear in the volume entitled *International Law and Human Rights* published in 1950. On the other hand, some of his earlier articles and lectures, for example on the doctrine of non-justiciable disputes, are included, though their content is largely reflected in his work on *The Function of Law in the International Community* (1933).

It has not been easy to reach the decision to exclude the articles mentioned above. The argument in favour of the complete presentation of all Lauterpacht's articles within these volumes is a cogent one. At the same time, the bulk of these Collected Papers already runs large without these articles; and the total size of the publication must be kept within reasonable limits. Moreover, *Recognition in International Law* is likely to be reprinted in the not too distant future with notes and comments bringing it up to date; and *International Law and Human Rights* has already been reprinted.

Also omitted from these volumes are book reviews—principally because, as comments upon the work of others, they do not properly belong in a work which is presented essentially as an exposition of the law. Nor have I been able to include all his occasional papers. Where

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[More information](#)*EDITOR'S PREFACE*

there exists a reasonably polished text, I have used it; but where there exist only rough notes or unrevised drafts, I have felt it best to omit these. Opinions written in a professional capacity have, with rare exceptions, also been excluded, largely because it has not been possible to secure the consent necessary for their publication.

Edited by anyone else than his son, these papers should no doubt have been introduced by some account of Lauterpacht's life and some over-all consideration of his work. But I am not the person to comment upon his work nor yet to write about his life. In any case, both tasks have already been carried out by the most qualified hands. To mention but some, Dr Jenks has written about Lauterpacht's contribution to international law in volumes xxxvi, xxxvii and xxxviii of the *British Year Book of International Law*, as have Dr Rosenne, Judge Jessup and Professor Baxter in volume lv of the *American Journal of International Law*; while Lord McNair and Sir Gerald Fitzmaurice have written about his life in the *Proceedings of the British Academy*, volume xlvi, p. 371, and in *Graya*, the journal of Gray's Inn.

In planning this collection, I have had the great advantage of being able to turn for general guidance and help to a number of Hersch Lauterpacht's close friends: Lord McNair, Sir Gerald Fitzmaurice, Dr C. W. Jenks and Professor R. Y. Jennings. They are, of course, not responsible for what I have done; nor would they necessarily agree in every detail with my selection of items. But they have approved of the general scheme and have provided me with stimulus and encouragement, for which I am deeply grateful. In the actual execution of the work I have had important assistance from Dr Gillian White, Miss M. MacGlashan, Mrs A. B. Lyons, Mrs C. J. French, Miss A. Munkman, Miss E. Gawler, Mrs E. E. Jansen and Mrs S. Rainbow—to whom I express my warmest thanks. The personnel of the Cambridge University Press have tolerated the numerous delays which have beset the delivery of copy and the return of proofs with a tolerance and patience for which I remain much beholden. And last, but by no means least, I must say a word to acknowledge the loving concern which Hersch Lauterpacht's widow, my mother, Rachel Lauterpacht, has shown at every stage of the evolution of this work.

E. LAUTERPACHT

*Trinity College
Cambridge
November 1969*

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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 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. I, 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. 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).
<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 internazionale</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 Internatinoal 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).

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 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. 1 (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.

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).

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.

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 française du droit des gens.</i>
Rivier	<i>Rivier, 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.

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> .