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978-0-521-83068-3 - International Law: Being the Collected Papers of Hersch Lauterpacht,
Volume 5 - Disputes, War and Neutrality, Parts IX-XIV

Sir Elihu Lauterpacht

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INTERNATIONAL LAW

VOLUME 5

DISPUTES, WAR AND NEUTRALITY

PARTS IX–XIV

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INTERNATIONAL LAW

BEING THE COLLECTED PAPERS OF
HERSCH LAUTERPACHT

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

SYSTEMATICALLY ARRANGED AND
EDITED BY
SIR ELIHU LAUTERPACHT, C.B.E., Q.C.

VOLUME 5

DISPUTES, WAR AND NEUTRALITY

PARTS IX–XIV



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PREFACE

This is the fifth and final volume in the systematic presentation of the writings of Sir Hersch Lauterpacht that I began to prepare shortly after his death in 1960. It hardly needs saying that I deeply regret that the appearance of this volume should have been so long deferred. My only excuse is that the nature and degree of my own involvement in international law has prevented me from finding the time necessary to complete this volume. However, late though its appearance is, it still contains much that is of interest and value, both historically and currently.

It will be readily observed that the weight and significance of the chapters vary considerably. But in a collection which aspires to be as complete as possible a presentation of Lauterpacht's writings (other than his books), I have not felt it right to exclude the lesser or older items. Even in them there is always something to attract attention. Unavoidably, though, there is in some instances a measure of repetition of themes or ideas. However, I should add that I have omitted a few items which are evidently incomplete or not up to Lauterpacht's usual standard or are of a personal nature. In due course when, as I hope will be the case, a full account is written of his life, mention will no doubt be made of them.

As with the earlier volumes, the present volume contains a number of items that have already appeared in print, either as articles or as opinions in cases during the period when Lauterpacht was a Judge of the International Court. The Provisional Report on the Revision of the Statute of the International Court of Justice has only recently been published in the first issue of the journal on the *Law and Practice of International Court and Tribunals*, 1 (2002), 55.

The volume also contains some important and hitherto unpublished material on the law of war and neutrality. Because so much of what Lauterpacht wrote on the law of war is scattered in other publications, I have thought it appropriate to prepare a somewhat longer editorial note recalling the nature and location of such material (see pp. 635–44 below). In the preparation of this note and some others, I have been able to make use of some of the limited amount of Lauterpacht's correspondence that has been preserved. As regards neutrality, the memoranda that Lauterpacht prepared in 1941, in which he developed for the United States Attorney-General the doctrine of 'qualified neutrality', are particularly noteworthy.

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The texts printed below are mainly reproduced in their original form without any attempt being made to revise or adjust them in the light of subsequent developments which, had Lauterpacht had the opportunity of revisiting them, he would almost certainly have taken into account. The principal editorial changes have been to secure consistency in spelling, use of capital letters and italicisation of case names.

At various times during the past years when I have attempted to advance the preparation of the volume, I have had assistance from a number of hands. I am grateful to Professor Jon Bush and to Mr Tony Millett for having recently provided me with copies of some of Lauterpacht's letters found by them in the course of their research in archives in the United States and in the British Public Record Office. I mention with appreciation the help of Mr Jan Anne Vos and especially, Ms Penelope Nevill. I have over the years also had the benefit of consultations with Judge Sir Roberts Jennings, Judge Stephen M. Schwebel, Ambassador Shabtai Rosenne and the late Dr C.W. Jenks. My secretary, Mrs Jenny Byford, has provided invaluable support. The index has been compiled with her considerable skill by Miss M.E. MacGlashan, CMG, President of the Society of Indexers. The work of the staff of the Cambridge University Press, particularly of Miss Finola O'Sullivan, is also greatly appreciated.

E. LAUTERPACHT

September 2002

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| 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. I, 3rd ed. (1928), French translation by Gidel (1929); vol. III, part I (1915). |
| Archive | Archive of Lauterpacht, papers held at the Lauterpacht Research Centre for International Law, Cambridge. |
| <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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LIST OF ABBREVIATIONS

- Br. and For. St. Papers* *British and Foreign State Papers* (Hertslet), vol. I (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. I, part 1 (1922), vol. I, part 2 (1925), vol. I, 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 Borchart from the 5th Italian edition (1918).
- Fischer Williams, Fischer Williams, *Chapters on Current International Law and the League of Nations* (1929).
- Chapters*
- 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).
- Guggenheim, *Traité* Guggenheim, *Traité de Droit International Publique*, vol. I (1953); vol. II (1954).

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| Hackworth
<i>Hague Recueil</i> | Hackworth, <i>Digest of International Law</i> , 7 vols. (1940–3).
<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. 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. (1855–9). |
| 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> , 1st ed., 3 vols. (1922), 2nd ed., 3 vols. (1945). |
| <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> . |

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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.A.S.</i>	<i>League of Nations, Arbitration and Security</i> , Systematic Survey of the Arbitration Conventions and Treaties of Mutual Security.
<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> .
Martens, N. R.	
Martens, N. S.	
Martens, N. R. G.	
Martens, N. R. G., 2nd ser.	
Martens, N. R. G., 3rd ser.	

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- Martens, *Causes célèbres* Martens, *Causes célèbres du droit des gens*, 2nd ed., 5 vols. (1858–61).
- Mérignhac Mérignhac, *Traité de droit public international*, vol. I (1905), vol. II (1907), vol. III (1912).
- Möller Möller, *International Law in Peace and War*, English translation from the Danish, vol. I (1931), vol. II (1935).
- Moore Moore, *A Digest of International Law*, 8 vols. (1906).
- Moore, *International Arbitrations* Moore, *History and Digest of the International Arbitrations to which the United States has been a Party*, 6 vols. (1898).
- Nordisk T.A.* *Nordisk Tidsskrift for International Ret. Acta Scandinavica juris gentium.*
- Nys Nys, *Le droit international*, 2nd ed., 3 vols. (1912).
- Oppenheim, I, II Oppenheim, *International Law*, 4th ed. (1926), by Sir Arnold McNair; vol. I, 8th ed. (1955), by H. Lauterpacht; vol. II, 7th ed. (1952), by H. Lauterpacht.
- O.Ž.ö.R.* *Österreichische Zeitschrift für öffentliches Recht.*
- P.C.I.J.* *Publications of the Permanent Court of International Justice:*
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, *Das internationale öffentliche Seerecht der Gegenwart*, 2nd ed. (1903).
- Phillimore Phillimore, *Commentaries upon International Law*, 3rd ed., 4 vols. (1879–88).
- Praag Praag, *Jurisdiction et droit international public* (1915).
- Praag, *Supplement* Supplement to the above (1935).
- Pradier-Fodéré Pradier-Fodéré, *Traité de droit international public*, 8 vols. (1885–1906).
- Pufendorf Pufendorf, *De Jure Naturae et Gentium* (1672).
- Ralston Ralston, *The Law and Procedure of International Tribunals*, revised ed. (1926). Supplement (1936).
- Ray, *Commentaire* Ray, *Commentaire du Pacte* (1930).
- Recueil T.A.M.* *Recueil des décisions des tribunaux arbitraux mixtes.*
- Reddie, *Researches* Reddie, *Researches, Historical and Critical, in Maritime International Law*, 2 vols. (1844).
- Répertoire* Lapradelle et Niboyet, *Répertoire de droit international.* Founded by Darras in 1929.
- R.G.* *Revue générale de droit international public.*

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<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 Saizung 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).
Suarez	Suarez, <i>Tratado de Derecho internacional publico</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).

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<i>U.N.C.I.O.</i>	<i>United Nations Conference on International Organization Documents.</i>
<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>