

**STUDENTS LEADING
CASES AND STATUTES ON
INTERNATIONAL LAW**

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Students leading cases and statutes on international law by Norman Bentwich

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NORMAN BENTWICH

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**STUDENTS LEADING CASES
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ON
INTERNATIONAL LAW**

ARRANGED AND EDITED WITH
NOTES BY

NORMAN BENTWICH

OF LINCOLN'S INN BARRISTER-AT-LAW
AUTHOR OF "THE DECLARATION OF LONDON" "THE LAW OF
DOMICILE AND SUCCESSION"

WITH AN INTRODUCTORY NOTE BY

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CALIFORNIA

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PREFACE

THIS book is primarily designed for students who are starting on the study of international law ; and it is meant to be used as a companion to the principal English text-books. No attempt has been made to render it sufficient in itself, or to link up the leading cases with such an amount of commentary as would render the use of a text-book unnecessary. In this respect the collection of cases differs from that made by Mr. Pitt-Cobbett, and it differs also in that it gives the *ipsissima verba* of the judges, in place of a digest or summary of their judgments. Many of the decisions are indeed abridged, but it is hoped that the material parts which deal with points of international law have always been given. It is very desirable that the student should become acquainted as early as possible with the way in which questions of international law are dealt with by the Courts, and that he should study not only the results of the cases but the methods by which the results are reached. There exists already a well-known selection of international law cases in English, based on this principle. It is that originally made by Professor Snow and subsequently edited and enlarged by Professor J. B. Scott of the George Washington University. For two reasons, however, the book is not altogether suitable for English students ; it is somewhat large, and the selection is primarily made from American decisions. Although the judgments of international law by the nature of their subject should not differ fundamentally in different national jurisdictions, there is an obvious advantage to the student in studying the subject as it has been expounded by the Courts of his own country. I have, therefore, made my selection as far as possible from the English cases, and I have used American cases only to

supplement the English or to fill a gap in the chain of English authority. I have also thought it best to exclude statements and opinions on international law which have not the form or the force of judicial decisions. Such sources of the law are amply dealt with in the text-books, and they have not the same educational value as a judgment arrived at after litigation in a particular case. I have included, on the other hand, citations from the awards in several international arbitrations to which England has been a party, because the decisions of international tribunals are in a very complete sense leading cases in international law. Similarly I have included the material parts of several English statutes declaratory of international law as applied in England, because it is not always easy for the students to find these statutes, and they are too, in a full sense, binding authorities. The law of war has been treated less fully than the law of peace, because only a division of it is the subject of judicial decision. Moreover that division is now in large part codified, and many judicial decisions given before the codification are therefore of doubtful importance.

I have endeavoured to classify the cases in groups of three or more which illustrate different aspects of the same subject, and in the notes I have given references to decisions which bear upon the same question or suggest a different view. Save in one or two cases, where it did not seem necessary, I have prefixed to the judgment a headnote and a summary statement of the facts. And at the head of each division of the subject I have given the references to the sections or pages of the principal English text-books on international law which are used by students.

Lastly I desire to thank very sincerely my friend Professor Oppenheim, Whewell Professor of International Law at Cambridge University, who has had the kindness to look through this book in proof, to make many helpful suggestions, and to write an introductory note which imparts to it more authority than the editor could have given.

CAIRO, *Feb.* 28th, 1913.

INTRODUCTORY NOTE

My friend Mr. Norman Bentwich, the author of this excellent Case Book on International Law, was anxious that a teacher should look through the proofs in order to ascertain whether the book could be used with profit by young students. Although I consider that Mr. Bentwich, who has enriched the literature on International Law by several excellent contributions, possesses sufficient authority to judge for himself the value of his book, I have complied with his wish, and it gives me much pleasure to say that this Case Book is admirable from every point of view and may be specially recommended to be used by young students in conjunction with their lectures and their reading of text-books. The number of hours which are available in English Universities and Law Schools for a course of lectures on International Law are not sufficient to discuss cases in detail, and for this reason the study of cases is almost invariably left to private reading. Of course, the ideal is that the cases should be read in the Reports, but young students frequently have neither the Reports at hand nor sufficient time to go from Report to Report and pick out the cases of interest to them. Hence it is of the greatest importance that students should possess a selection of cases within a small compass which would enable them to read the leading cases along with their lectures on International Law.

In this connection some remarks concerning the value of municipal cases for the study of International Law may not be superfluous. International Law being a law between States, Municipal Courts by their decisions can neither directly call a rule of International Law into existence, nor take the life out of a recognized rule of International Law. It is the Governments of

the civilized States which, either expressly by a law-making treaty or customarily in their intercourse with one another, create rules of International Law. Furthermore, in their administration of justice Municipal Courts cannot apply a rule of International Law unless, and in so far as, such rule has been adopted into their Municipal Law either by a special Act of the legislature, or by custom, or implicitly. If Municipal Courts find that a certain rule of International Law has not been so adopted, they cannot apply it; and if they find that their Municipal Law contains a rule which is in indubitable conflict with a rule of International Law, they must ignore the latter and apply the former. But it is obvious that the several States, in order to fulfil their international obligations, are on the one hand compelled to adopt certain rules of International Law into their Municipal Law, and on the other hand are prevented from having such rules in their Municipal Law as are in conflict with the recognized rules of International Law. And here is the point where the importance of Municipal case law for students of International Law becomes apparent.

International Law is still to a great extent a book law, a law the rules of which are abstracted by the writers of treatises from the practice of the States in their intercourse with one another. Since the character of the Family of Nations as a body of sovereign States excludes the existence of a central political authority above the sovereign States which could enforce the application of the rules of International Law, this law naturally lacks that particular sanction which Municipal Law possesses, and for this reason it is frequently maintained that International Law is not law at all. Now the practice of the Courts of his country shows to a student that International Law is real law, and that it finds application in every-day life. Thus by reading British cases concerning rules of International Law the student's attention is continuously drawn to the fact that innumerable rules of International Law are applied by British Courts, and the necessity and value of the study of International Law is thereby placed beyond all doubt.

On the other hand, the study of practical cases enlivens the