

**OUTLINES
OF
INTERNATIONAL LAW**

by
Charles H. Stockton

**William S. Hein & Co., Inc.
Buffalo, New York
2005**

Library of Congress Cataloging-in-Publication Data

Stockton, Charles H., 1845-1924.

Outlines of international law / by Charles H. Stockton.

p. cm.

Originally published: New York : C. Scribner's Sons, 1914.

Includes index.

ISBN 1-57588-838-6 (alk. paper)

1. International relations. 2. Pacific settlement of international disputes. 3. International law. I. Title.

JZ1391.S76 2004

341—dc22

2004058360

This book has been digitally archived to maintain the quality of the original work for future generations of legal researchers by William S. Hein & Co., Inc.

This volume printed on acid-free paper
by William S. Hein & Co., Inc.



Printed in the United States of America.

**OUTLINES
OF
INTERNATIONAL LAW**

OUTLINES
OF
INTERNATIONAL LAW

BY

CHARLES H. STOCKTON

REAR-ADMIRAL U. S. N., RETIRED

PRESIDENT OF THE GEORGE WASHINGTON UNIVERSITY, DELEGATE PLENIPOTENTIARY TO
THE LONDON NAVAL CONFERENCE
AUTHOR OF "THE LAWS AND USAGES OF WAR AT SEA" AND OF A MANUAL OF
INTERNATIONAL LAW FOR THE USE OF NAVAL OFFICERS

LONDON: GEORGE ALLEN & UNWIN LTD.
RUSKIN HOUSE, MUSEUM STREET W.C.

Copyright, 1914, by Charles Scribner's Sons, for the
United States of America

Printed by the Scribner Press
New York, U. S. A.

PREFACE

THE deplorable war which is being carried on at the time of this writing, extending, as it does, to three of the great continents of the world, has created many complex problems and delicate situations in connection with international law. It has been said by good authority that there have arisen more vexed questions in international law during the first six weeks of this war than during the entire period of the Napoleonic contests. From this fact alone arises the importance not only of increased knowledge of the tenets of this subject but also the necessity for treatises that are abreast the times. A number of books upon the subject have become out of date, especially in the body of their text, by changes that have occurred, partly as the results of the recent tribunals and conferences of The Hague and of the London Naval Conference of 1909. These results have taken the form of important conventions and declarations, amounting, in fact, to a partial codification of the laws and usages of war ashore and afloat.

In addition to the changes referred to there have occurred new situations, international in character, brought into existence by the various negotiations and treaties incident to the construction of the Suez and Panama Canals. There are also changes in aspects and conditions arising from the development of maritime and aerial warfare in recent wars. We can add, also, to this statement of recent developments in international law, the mention of the increase in the range and number of treaties providing for arbitration and other methods for the pacific settlement of international disputes. Although these

instrumentalities have not, unhappily, eliminated warfare, they have effected settlements in various international disputes of serious moment, such as the Venezuelan boundary question, the Dogger Bank episode, and the long-continued and at times irritating questions of the fisheries of the Bering Sea and North Atlantic Ocean.

In addition to the need of a new text-book for study, there are certainly other reasons for the addition, even of a multiplication, of elementary books treating upon international law in this country. The continuous and remarkable growth of the United States in area, population, travel, and trade has not only created and extended many interests and important relations with other nations of the world, but it has also caused a closer and complicated interdependence. With this great and growing international intercourse in view it seems hardly necessary to say more as to the importance of a knowledge of the law of nations in war time and in peace. Information upon these subjects is not only valuable to our representatives at home and abroad, but to all intelligent citizens, especially as the general government is becoming closer in its relations with and dependence upon its citizen voters.

In a work upon international law, which should be above all things authoritative in its nature, frequent reference to recognized authorities becomes indispensable. This is the case, as a distinguished writer says, "not only as pointing to the source of particular statements, but also as directing to the stores of further information which might otherwise escape the notice of the student who would desire to extend his research into wider fields."

For these reasons I have consulted many writers and freely quoted those whose statements and authority justify such quotations when they are pertinent to the subjects discussed. Of the writings of our own countrymen, I have drawn freely from the exhaustive digest of international law of Professor John Bassett Moore, from Dana's edition of Wheaton, and

from other works by American writers, to whom due credit has been given. Of recent English writers consulted I will mention Doctor Thomas J. Lawrence, Professor A. Pearce Higgins, and especially the works of Doctors Westlake and Oppenheim. The recent work in French by Professor Ernest Nys, of the University of Brussels, I have found both interesting and valuable.

In closing these prefatory remarks, it may be wise to call attention to the policy and position which the United States has assumed in regard to the tenets of international law. International law is a part of the law of our land as shown by the Constitution of the United States and also by the decisions of our jurists. In addition, Sir Henry Maine makes a wise and sound interpretation of our position when he says that:

“The statesmen and jurists of the United States do not regard international law as having become binding on their country through the intervention of any legislature. They do not believe it to be of the nature of immemorial usage, ‘of which the memory of man runneth not to the contrary.’ They look upon its rules as a main part of the conditions on which a state is originally received into the family of civilized nations. This view, though not quite explicitly set forth, does not really differ from that entertained by the founders of international law, and it is practically that submitted to and assumed to be a sufficiently solid basis for further inferences by governments and lawyers of the civilized sovereign communities of our day. If they put it in another way it would probably be that the state which disclaims the authority of international law places herself outside the circle of civilized nations.”

In conclusion, I can only add the words of Daniel Webster when, as Secretary of State, he wrote to our representative to Mexico that:

“Every nation, on being received, at her own request, into the circle of civilized governments, must understand that she not only attains rights of sovereignty and the dignity of national

character, but that she binds herself also to the strict and faithful observance of all those principles, laws, and usages which have obtained currency among civilized states, and which have for their object the mitigation of the miseries of war.”

CHARLES H. STOCKTON.

WASHINGTON, D. C., October 1, 1914.

CONTENTS

PART I—INTRODUCTORY

CHAPTER I

THE NATURE, SCOPE, AND OBSERVANCE OF INTERNATIONAL LAW

	PAGE
1. The nature of international law	1
2. The term "international law"	3
3. International law to be distinguished from other named subjects	4
4. The conflict of laws, or international private law	4
5. International comity, or the comity of nations	4
6. International state policy, or diplomacy	5
7. International ethics	6
8. International law compared with municipal law	7
9. International law as part of municipal law	8
10. Codification of international law	10
11. Observance of international law	11

CHAPTER II

THE SOURCES OF INTERNATIONAL LAW. THE EARLY INTERCOURSE OF PEOPLES

12. The original motives and causes of international law	14
13. The sources of international law	15
14. The early history of the intercourse of nations	20
15. Code of Manu	22
16. The Hebrews	22
17. Other intercourse of the ancients	24
18. International laws and usages of the Greeks	24
19. International intercourse and laws of the Romans	25
20. The Dark and Middle Ages	27
21. The predecessors of Grotius	30
22. Grotius, the founder of the science of modern international law	32

CHAPTER III

THE DEVELOPMENT OF MODERN INTERNATIONAL LAW

23. The peace of Westphalia and the Thirty Years' War	37
24. The successors of Grotius	38

	PAGE
25. From the peace of Westphalia until the peace of Utrecht	39
26. From the peace of Utrecht to the French Revolution	41
27. From the outbreak of the French Revolution to the congress of Vienna	43
28. From the congress of Vienna to the declaration of Paris	44
29. The enunciation of the Monroe Doctrine	46
30. The declaration of Paris	47
31. From the declaration of Paris to the treaty of Washington, 1871	49
32. From the treaty of Washington of 1871 to the first Hague con- ference	50
33. The first Hague conference	52
34. The second Hague conference	53
35. The declaration of London	57
36. Events since 1909 bearing upon international law	59

PART II—STATES IN INTERNATIONAL LAW

CHAPTER IV

STATES: THE PRIMARY SUBJECTS OF INTERNATIONAL LAW; THEIR CHARACTERISTICS AND CLASSIFICATION

37. Sovereign states the subjects of international law	61
38. Definition of a sovereign state	61
39. Characteristics and conditions of sovereign states	61
40. Equality of sovereign states in a legal sense	62
X 41. States, communities, corporations, and institutions that are not primarily subjects of international law	63
42. Neutralized states	65
43. Part-sovereign states and protectorates	67
44. The North American Indians and the native princes of British India	68

CHAPTER V

FORMATION, RECOGNITION, AND CONTINUITY OF STATES. CHANGES OF GOVERNMENTS. DE FACTO GOVERNMENTS. EXTINCTION OF STATES

45. The formation of states	72
46. The formation of a state by occupation or colonization in a ter- ritory without civilized population	73
47. The formation of a state by the attainment, after previous existence, of sufficiently full civilization and standing	74
48. Formation of states by the division of a state into two or more nationalities	75
X 49. The attainment of independence by relief from the subjection of another state	75
50. The combination of a number of minor states into a union or confederation	76
51. The attainment of independence by an insurgent community	76

CONTENTS

xi

	PAGE
52. The state of insurgency	77
53. The state of belligerency and its recognition	81
✓ 54. The recognition of a new state	85
55. Continuity of states	88
✓ 56. <i>De facto</i> governments	90
57. Extinction of states	91

CHAPTER VI

THE SUCCESSION OF STATES. FUNDAMENTAL RIGHTS AND DUTIES OF STATES. INDEPENDENCE AND EQUALITY OF STATES. SELF-PRESERVATION. RESPECT FOR THE DIGNITY AND HONOR OF THE STATE

58. The succession of states and sovereignty	94
59. Fundamental rights and duties of sovereign states	97
60. The right of independence and legal equality	98
61. Intervention	100
62. The right of self-preservation	103
63. Respect for the dignity and honor of the state	109

CHAPTER VII

TERRITORIAL JURISDICTION OF A STATE

64. Exclusive jurisdiction over its own territory	112
65. The right to hold and acquire property	113
66. Boundaries of states	119
67. State servitudes	123
68. Territorial waters	125
69. The marine league	126
70. Straits	131
71. Rivers	134
72. Interoceanic canals	136
73. The Panama Canal	139
74. Hay-Bunau-Varilla treaty	143

CHAPTER VIII

THE HIGH SEAS. IMMUNITIES OF FOREIGN VESSELS IN PORTS AND WATERS

75. What is meant by the high seas	147
76. The freedom of the high seas	148
77. Jurisdiction over vessels upon the high seas and other waters	152
78. Piracy	154
79. Right of approach	155
80. Papers carried by merchant vessels	156
81. Immunities of foreign vessels of war in ports and waters	158
82. Immunity from arrest when asylum is sought on board vessels of war	162
83. Status of merchant vessels in foreign ports	167

CHAPTER IX

NATIONALITY. ALIENS. EXTRADITION

	PAGE
84. Nationality	175
85. Citizenship by birth	178
86. Naturalization	181
87. Corporations as citizens	185
88. Aliens	185
89. Domicile	187
90. Extradition	189
91. Extradition of deserters	192

PART III—INTERCOURSE OF STATES IN TIME OF PEACE

CHAPTER X

THE HEAD OF THE STATE. DIPLOMATIC INTERCOURSE. THE RIGHT OF ASYLUM IN LEGATIONS AND EMBASSIES

92. The head of the state	195
93. Immunities of the head of a state	196
94. Diplomatic intercourse	197
95. The appointment and reception of embassies or diplomatic agents	199
96. Rank and classification of diplomatic officials	202
97. The duties of diplomatic officials	204
98. The rights and privileges of diplomatic officials	206
99. Right of asylum in legations and embassies	210
100. Termination of diplomatic mission	212
101. Agents of the state without diplomatic or consular character	213

CHAPTER XI

CONSULS. EXEQUATUR. RIGHTS, IMMUNITIES, AND DUTIES OF CONSULAR OFFICERS

102. Historical sketch of consulates	218
103. Definition of a consul and his general functions	220
104. Classification and precedence of consuls	223
105. Exequatur—installation of the consul	225
106. Duties of consular officers	230
107. Foreign consular systems	232
108. Termination of consular functions	233
109. Extraterritoriality—consuls with judicial functions	234

CHAPTER XII

INTERNATIONAL AGREEMENTS. NEGOTIATIONS. CONGRESSES AND CONFERENCES

110. International agreements	237
111. Negotiations	237
112. Congresses and conferences	238

CONTENTS

xiii

CHAPTER XIII
INTERNATIONAL TREATIES

	PAGE
X 113. Definition of a treaty. Early existence of treaties	242
114. Nature and classification of treaties	243
115. The parties to a treaty	244
116. Matters necessary to the validity of treaties	245
117. Form and ratification of treaties	246
118. Enforcement of treaties	250
119. The operation of treaties	253

CHAPTER XIV

INTERPRETATION OF TREATIES. TERMINATION OF TREATIES

120. Interpretation of treaties	257
121. The most-favored-nation clause	260
122. Termination of treaties	263
123. Effect of war upon treaties	264
124. Abrogation or modification of treaties	268

CHAPTER XV

MEDIATION. ARBITRATION. ARBITRAL TRIBUNALS AND CONFERENCES

125. Mediation	271
126. Arbitration	274
127. International commissions of inquiry	277
128. Obligatory arbitration	278
129. The judicial settlement of international disputes	279

CHAPTER XVI

MEASURES OF CONSTRAINT SHORT OF WAR

130. The suspension of diplomatic relations	283
131. Retorsions	285
132. Reprisals	286
133. Pacific blockade	289

PART IV—WAR-RELATIONS OF BELLIGERENTS

CHAPTER XVII

GENERAL QUESTIONS AS TO WAR. OUTBREAK OF WAR. ARMED FORCES
OF THE STATE

134. General questions as to war	293
135. Outbreak of war	294
136. Armed forces of the state	298

CHAPTER XVIII

EFFECT OF WAR UPON INDIVIDUALS. EFFECT OF WAR AS TO PROPERTY

	PAGE
137. Effect of war upon combatants and non-combatants	300
138. Effect of war as to property	305

CHAPTER XIX

LAWS OF WAR. LAWS OF LAND WARFARE

139. Laws of war in general	309
140. Modern development of the laws of war	310
141. Laws of war and the private citizen	312
142. The laws of war on land. Belligerents	315
143. Prisoners of war	317
144. Hostilities	324
145. Spies	326
146. Flags of truce	327
147. Capitulations	328
148. Armistices	328
149. Reprisals or retaliation	329

CHAPTER XX

MARITIME WARFARE

150. Maritime war in general	332
151. Laws and usages of war at sea	333
152. Attack and capture of public vessels of the enemy	334
153. The use of torpedoes and submarine mines	337
154. Conversion of merchantmen into vessels of war	337
155. Capture of enemy's merchantmen	340
156. Exemptions and restrictions in capture in maritime warfare	343
157. Enemy character in maritime warfare	346
158. The procedure of the capture and sending in of a merchantman	347
159. Destruction of enemy vessels as prizes	348
160. Resistance to search, recapture, ransom, and safe conduct	349
161. Bombardments by naval forces in time of war	350
162. Submarine cables in time of war	351

CHAPTER XXI

AERIAL WARFARE. WIRELESS TELEGRAPH

163. Aerial warfare in general	355
164. The sovereignty of the air	357
165. Aerial warfare as affected by the laws of war	359
166. Wireless telegraphy	360

CHAPTER XXII

MILITARY OCCUPATION. TERMINATION OF WAR. CONQUEST AND CESSION

	PAGE
167. The meaning of military occupation	364
168. The authority of the military occupant	366
169. Limitations to the military authority of the occupant	367
170. Termination of war	372
171. Treaty of peace	374
172. Effects of treaties of peace	376
173. Conquest and cession	377

PART V—RELATIONS BETWEEN BELLIGERENTS
AND NEUTRALS

CHAPTER XXIII

NEUTRALITY AND ITS DEVELOPMENT. RIGHTS AND DUTIES OF NEUTRALS
IN LAND WARFARE

174. The creation of neutral states by commencement of war	380
175. The status and principles of neutrality	381
176. The development of the law of neutrality	383
177. Neutral rights and duties in land warfare	389
178. Proclamations and declarations of neutrality	396

CHAPTER XXIV

RIGHTS AND OBLIGATIONS OF NEUTRALS AND BELLIGERENTS IN MARI-
TIME WARFARE

179. The inviolability of neutral territory and waters	398
180. The use of neutral waters as a base of naval operations	401
181. Obligations of neutrals as to their waters	402
182. The rights of visit and search	409
183. Convoy	411
184. Spoliation of papers	412
185. Hostile expeditions	413
186. Right of angary	415

CHAPTER XXV

BLOCKADE

187. Blockade—its extent and effectiveness	418
188. Declaration and notification of blockade	421
189. Liability to capture for breach of blockade	423

CHAPTER XXVI

CONTRABAND OF WAR. CARRIAGE OF CONTRABAND

	PAGE
190. Definition and general principles of contraband	427
191. Enumeration of contraband and non-contraband articles	428
192. Destination of contraband and consequent judgment	433
193. The penalty of contraband trade	436
194. Pre-emption	440

CHAPTER XXVII

UNNEUTRAL SERVICE

195. The carriage of persons and despatches for the enemy	442
196. The case of the <i>Trent</i>	447
197. The opening to neutrals of a trade closed in peace	449
198. Rescue of shipwrecked belligerents by neutral vessels	451
199. Destruction of neutral prizes	453

CHAPTER XXVIII

TRANSFER OF FLAG. ENEMY CHARACTER. PRIZE-COURTS

200. Transfer to a neutral flag	458
201. Enemy character	461
202. The sending in of prizes for their adjudication	462
203. Jurisdiction of national prize tribunals	463
204. International prize-court	466
205. Compensation for capture when found void	468

CHAPTER XXIX

OPEN AND UNSETTLED QUESTIONS IN MARITIME WARFARE

206. A general discussion of unsettled questions in maritime warfare	471
207. Days of grace at the outbreak of war	473
208. The question of domicile or nationality as the determining factor in maritime capture	474
209. The conversion of merchantmen into vessels of war upon the high seas or in neutral waters	475
210. The use of floating mines on the high seas	477

LIST OF AUTHORITIES CONSULTED	481
---	-----

CONTENTS

xvii

APPENDIX I

	PAGE
THE RECOGNITION OF BELLIGERENCY AND OF INDEPENDENCE . . .	487

APPENDIX II

CONVENTION FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES	500
--	-----

APPENDIX III

INTERNATIONAL PRIZE-COURT CONVENTION SIGNED AT THE HAGUE, OCTOBER 18, 1907	520
---	-----

APPENDIX IV

INTERNATIONAL NAVAL CONFERENCE SIGNED AT LONDON, FEB- RUARY 26, 1909	535
---	-----

APPENDIX V

NEUTRALITY—GERMANY AND GREAT BRITAIN	598
--	-----

INDEX	603
-----------------	-----

