Ways and Means of Making the Evidence of Customary International Law more Readily Available: Preparatory work within the purview of article 24 of the Statute of the International Law Commission - Memorandum submitted by the Secretary-General

Topic:
Ways and means for making the evidence of customary international law more readily available

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(1949), Not in Ybk

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WAYS AND MEANS OF MAKING
THE EVIDENCE OF CUSTOMARY
INTERNATIONAL LAW
MORE READILY AVAILABLE

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(Memorandum submitted by the Secretary-General)

United Nations — General Assembly
International Law Commission
Lake Success, New York
1949
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CORRIGENDUM

Page 9, paragraph A, fifth and sixth lines, should read:
United States; (3) United Kingdom; (4) France; (5) Russia and the Union of Soviet Socialist Republics; (6) Germany; (7) other countries.

instead of:
United States; (3) United Kingdom; (4) France; (5) Germany; (6) Russia; (7) other countries.

Page 63, last paragraph, second line, should read:
"national law are contained in Moore's Digest, in Hackworth's Digest,"

instead of:
"national law". Similarly, the General Index for 1943-1944 lists only"
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PART ONE

The problem of making the evidence of customary international law more readily available
THE PROBLEM OF MAKING THE EVIDENCE OF CUSTOMARY INTERNATIONAL LAW MORE READILY AVAILABLE

The memorandum on "Methods for Encouraging the Progressive Development of International Law and its Eventual Codification",1 submitted by the Secretariat to the Committee on the Progressive Development of International Law and its Codification, which met at Lake Success from 12 May to 17 June 1947, suggested that the General Assembly might recommend to Governments the preparation of digests of materials illustrating their point of view in questions of international law. The memorandum stated:

"Such a recommendation might be implemented through the creation of a small committee which would consult with the Governments concerned on the manner in which the preparation of the digests could most effectively be undertaken. This body, with the consent of the respective Governments, might, for instance, nominate in each country a certain number of experts who would undertake the preliminary work of research with regard to the practice of [any] State."2

The same memorandum further suggested:

"That the collection and publication of decisions of national courts dealing with international law problems, possibly in connexion with the preparation of digests of State practice . . . will provide a useful indication of the opinio juris of States . . . As far as collections of international law cases are concerned, a useful method would be to encourage the continuation of the collection of cases undertaken in the Annual Digest and Reports of Public International Law Cases, 1919–1942, as well as the continuation, in respect to the International Court of Justice, of the publications of the Permanent Court of International Justice."3

The matters dealt with in the memorandum referred to were discussed at various meetings of the Committee. Thus at the second meeting, held on 13 May 1947, the United States delegate advocated the stimulation by the United Nations of the publication by Governments and private initiative of digests or other compilations reveal-

1 A/AC.10/7, 6 May 1947.
2 Ibid., p. 6.
3 Ibid., pp. 6-7.
ing . . . the customary practice of States", the continuation by the International Court of Justice of the model system of documenting cases developed by the Permanent Court of International Justice, and the making more accessible of the decisions of other tribunals. And, at a subsequent meeting, the Yugoslav delegate spoke of the need for an international collection comprising not merely treaties, as is envisaged in the United Nations Treaty Series, but also "municipal instruments connected with international law".

Following the discussion in the Committee, the Rapporteur, Professor J. L. Brierly, submitted a report on item 3 (a) of the agenda (Study of the methods by which the General Assembly shall encourage the progressive development of international law and its eventual codification), paragraph 18 of which reads:

"In connexion with the development of customary international law, as well as with the development of the law through the judicial process, the Committee desired to recommend that the International Law Commission consider ways and means for making the evidences of customary international law more readily available by the compilation of digests of State practice, and by the collection and publication of the decisions of national or international courts of international law questions." 7

This paragraph, which was stated by the Chairman not to mean "that there were no other sources of international law, but only that the evidence of customary international law was not easily available in contradistinction to evidence of scientific international law which was always laid down in books", 8 was incorporated in the report of the Committee presented to the General Assembly. The paragraph in question was amended slightly with a view to greater clarity in Sub-Committee 2 of the Sixth Committee, to which the report was ultimately referred, and became without further change article 24 of the statute of the International Law Commission. The English and French texts of that article are as follows: 9

"The Commission shall consider ways and means for making the evidence of customary international law more readily available."

"La Commission examine les moyens susceptibles de rendre plus accessible la documentation relative au droit international"

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6 "of" became "on" in the draft adopted by the Committee.
9 Resolution 174 (III), A/519, 8 January 1948, p. 109.
available, such as the collection and publication of documents concerning State practice and of the decisions of national and international courts on questions of international law, and shall make a report to the General Assembly on this matter.”

It is clear from the text of article 24 and from the preparatory work that the function assigned to the International Law Commission under that article is distinct from the other functions of the Commission, namely, the progressive development and the codification of international law. As part of the process of codification the Commission is indeed, through the Secretary-General, to “address to Governments a detailed request to furnish the texts of laws, decrees, judicial decisions, treaties, diplomatic correspondence, and other documents relevant to the topic being studied and which the Commission deems necessary” (article 19 (2) of the statute). But its task under article 24 is on the one hand much broader, and, on the other, more restricted. It relates exclusively to evidence of customary international law, yet it is concerned not merely with any particular topic but with the whole range of customary international law. The task, specifically stated, is to explore ways and means of remedying the present unsatisfactory state of documentation. This is made clearer by the French text, which speaks of “documentation”, than by the English text, which employs the word “evidence”. The French text, again, makes it clearer than does the English that the collection and publication of documents concerning the practice of States, and of decisions of national and international courts¹⁰ in questions of international law are not necessarily the only methods for the discharge of the task which may be examined. Any other category of material relating to customary international law and any other method of making it more readily available may therefore be considered by the Commission. In singling out for mention two sources of customary international law article 24 merely gives prominence to those which during the past two decades have perhaps received more attention than others.

¹⁰The use in the French text of the more general term “juridiction”, in contradistinction to the word “courts” in the English text, is also to be noted.
PART TWO

The existing state of the evidence of customary international law and suggestions hitherto made for its improvement
I.

GENERAL SURVEY OF COMPILATIONS AND DIGESTS OF EVIDENCE OF CUSTOMARY INTERNATIONAL LAW

Numerous collections of evidence of the practice of States already exist; of earlier works, it is sufficient to mention Leibnitz' *Codex Juris Gentium Diplomaticus* (1693), Dumont's *Corps Universel Diplomatique du Droit des Gens* (eight volumes covering the period from 800 to 1718, published 1726-1731), and G. F. von Martens' *Erzählungen merkwürdiger Rechtsfälle des neueren europäischen Völkerrechts* (1800-1802). Ch. de Martens' *Causes célèbres de droit des nations* (two volumes, 1827) and his *Nouvelles causes célèbres* (two volumes, 1843) were sufficiently successful to warrant a second edition in 1858-1861. G. F. von Martens began in 1791 the *Recueil des Traités*, which has continued to appear ever since. All these works, it will be noted, were the result of individual initiative. Governments began to contribute to digests only in more recent times, although some of them already published material of international legal import. Thus the British practice of issuing Blue Books began in the eighteenth century, though it assumed first importance only in the century following, when it was imitated by other States. The first official digest of State practice, however, was compiled and published by the United States Department of State in 1877, incidentally, primarily for the Department's own convenience.

This part of this paper is designed to offer a brief summary of the principal collections and digests, of use to the international lawyer, which are now in existence.

A. COLLECTIONS OF DOCUMENTS RELATING TO THE STATE PRACTICE OF PARTICULAR COUNTRIES

At the present time a large number of Governments publishes, either in series or less regularly, State papers containing material of interest to the student and practitioner of international law. This brief survey is arranged by countries as follows: (1) Latin America; (2) United States; (3) United Kingdom; (4) France; (5) Germany; (6) Russia; (7) other countries.

1. LATIN-AMERICAN COUNTRIES

Official publications

Nearly all the Latin-American Republics have, almost from the time of their establishment, published through their Ministries of
Foreign Affairs annual reports or other compilations containing diplomatic correspondence and other materials on international law. These countries for the most part also publish so-called Colour Books as occasion warrants. There can be no doubt but that this mass of material, of which a by no means exhaustive list is given here, is very rich. It has unfortunately been little used hitherto, perhaps because it is not always easy to come by, and because it is largely unindexed.

ARGENTINA. There are several serial publications of the Ministerio de Relaciones Exteriores y Culto; the most important is the Memoria, which has appeared fairly regularly (though with some intervals, e.g., between 1905 and 1910), and which contains the texts of treaties and diplomatic correspondence. The Ministry also issues collections of documents from time to time in a special Libro Azul.

BOLIVIA. The Ministry of Foreign Affairs publishes, in addition to the Memoria, which has appeared fairly regularly since 1825, a treaty series, reports of national delegates to conferences, and since 1920 has published several volumes of diplomatic documents on special topics, e.g., the Chaco and the Tacna-Arica disputes.

BRAZIL. The Ministerio das Relagoes Exteriores has published regularly since 1922 the Archivo Diplomatico da Independencia, in addition to various bulletins and to the Relatorio, publication of which seems to have started in the first half of the nineteenth century.

CHILE. The Memoria, published since 1829 and appearing annually since 1927, contains documents on the foreign relations of Chile, international conferences and negotiations, and also presidential messages, laws, decrees, and regulations of international import. The Ministry of Foreign Affairs also publishes from time to time special volumes of diplomatic documents on particular problems.

COLOMBIA. Reports on foreign relations presented to the Congress have been published under various titles since 1823. The present title is Memoria de Relaciones Exteriores Presentada al Congreso. The Ministry of Foreign Affairs also publishes from time to time volumes of documents supplementary to the Memoria, and a bulletin entitled Revista Colombiana de Derecho Internacional. The Anales Diplomaticos y Consulares Colombia edited by Antonio José Uribe (six volumes, 1900 to 1920) are also of interest.

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12 Ibid., II, Bolivia, pp. 48-50.
13 Ibid., IV, Chile, pp. 36-38.
14 Ibid., V, Colombia, pp. 69-71.
COSTA RICA. The Secretaría de Relaciones Exteriores, Justicia, Gracia y Culto, has published a large number of volumes on boundary questions and other international legal problems, and since 1844 (apparently with some gaps) a series of Memorias.15

CUBA. Since 1904 the Ministerio de Estado has published an official bulletin of information on international affairs and on particular questions has issued Grey Books. The Ministry does not publish regular reports but its work is reviewed in presidential messages to the Congress.16

DOMINICAN REPUBLIC. The Ministry of Foreign Affairs has published Memorias irregularly since 1877, and also an official bulletin, besides several volumes on special questions.17

ECUADOR. The Memorias cover, with some gaps, the period from 1837 to the present day. There are other official publications, devoted to arbitration, disputes, etc.18

EL SALVADOR. Memorias have appeared since 1827, regularly since 1849. Some are published separately and some in the Diario Oficial as part of annual presidential message to the Congress. The Ministry of Foreign Affairs has also published the texts of some laws, e.g., on claims of foreigners, and some volumes of diplomatic documents on special questions.19

GUATEMALA. Memorias have appeared since 1849, regularly since 1879. Some volumes contain documents on boundary disputes and arbitrations. The Ministry of Foreign Affairs issued a White Book on the Belize question in 1938 and an Addendum thereto in 1940.20

HAITI. The Ministry of Foreign Affairs has published various volumes of diplomatic documents.21 The report of the Ministry is generally contained in the President's annual message to the National Assembly.22

HONDURAS. Documents relating to State practice have been published in the Memoria since 1897, and in several volumes separately published by the Ministry of Foreign Affairs.23

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16 Ibid., VII, Cuba, pp. 21-22; cf. also Childs, op. cit., p. 67.
17 Ibid., VIII, Dominican Republic, Childs, op. cit., p. 67.
18 Ibid., IX, Ecuador, pp. 54-37.
19 Ibid., X, El Salvador, pp. 55-58; Childs, op. cit., p. 166.
20 Ibid., XI, Guatemala, pp. 75-81.
21 Ibid., XII, Haiti, pp. 17-18.
22 Childs, op. cit., pp. 47 ff.
MEXICO. The Memoria has appeared since 1821 under slightly differing titles, though with important gaps. The Ministry of External Relations has issued thirty-odd volumes of the Archivo Historico Diplomatico Mexicano since 1923, as well as six volumes of diplomatic correspondence relating to the years 1878 to 1892, and three volumes covering the years 1910 to 1913.

NICARAGUA. The Memoria has appeared since 1869-1870. The volume for 1885, entitled Derecho de Gentes Positivo de la Republica de Nicaragua, is principally a collection of treaties.24

PANAMA. The Memoria has appeared biannually since 1904-1906.25

PARAGUAY. The Memoria is available for the period since 1877, with some gaps. There have been published several volumes of documents on special questions, including the White Books of 1928 and 1933-1934.26

PERU. The Memorias seem to have begun in 1832. A series entitled Archivo Diplomatico Peruviano began in 1930 with a volume on the Panama Congress of 1826.

URUGUAY. Memorias are currently published.

VENEZUELA. Under such titles as Memoria, Informe, Exposicion and El Libro Amarillo (apparently the current title), official papers have been published since 1835.

Unofficial publications


25Ibid., XV, Panama, pp. 19-21; Childs, op. cit., p. 151.
26Ibid., XVI, Paraguay, pp. 50-52.
27For a list of periodicals published in Latin-American countries see H. C. Gutteridge, Comparative Law (1946), pp. 202 f.
2. United States

Official publications

A substantially complete record of the foreign relations of the United States since 1861 has been published by the Department of State under the title, *Papers Relating to the Foreign Relations of the United States*. The latest volume (for the year 1932) appeared in 1948 as *Foreign Relations of the United States—Diplomatic Documents*. The Department has published several volumes on the War of 1914-1918, two volumes on relations with Japan from 1931-1941, two volumes entitled *The Lansing Papers, 1914-1920*, and thirteen volumes on the Paris Peace Conference, etc., as supplements to the *Foreign Relations*. The procedure for the compilation of the *Foreign Relations* is dictated by the Secretary of State. The Departmental Order of Secretary of State Frank B. Kellogg, dated 26 March 1925, recommended that the Chief of the Division of Publications should, with the aid of the Solicitor, "give special attention to the publication of all important decisions made by the Department relating to international law, with a view to making available for general study and use the annual contributions of the Department to this important branch of jurisprudence". The same directive suggested that a record of treaty negotiations be included in the series. The *Foreign Relations* consists simply in State papers, without editorial comment or official interpretation. The volumes are, however, elaborately indexed. They appear about fifteen years after the events with which they deal. This gap arose by accident, the War of 1914-1918 having delayed the publication programme, and the Department hopes ultimately to diminish it. But to close the gap altogether is less easy. The series prints no paper originating with a foreign Government without its consent. Some Governments being reluctant to allow recent papers to be published, it has proved impossible to make the series more topical without sacrificing its claim to completeness. But under a Departmental Order of 27 October 1947, it is provided that Governments are to be asked for their permission to include documents it is desired to print, so that some further progress in closing the gap is to be hoped for.

Since 1929 the Department has, in order to make available material on current diplomatic affairs, published *Press Releases* and a *Treaty Information Bulletin*. These were combined, as from 1 July 1939, into the *Department of State Bulletin*, which appears weekly and is indexed semi-annually. In April 1948, the Department began to publish a new series, entitled *Documents and State Papers*, which

29 Ibid.
30 Department of State Regulation, 297.1, of 27 October 1947; *Foreign Relations of the United States—Diplomatic Papers, 1932*, vol. 1 (1948), pp. iii to iv.
constitutes a monthly complement to the Bulletin. Other important publications of the Department of State are the International Organization and Conference Series, which began on 1 January 1948, and which absorbed the Conference Series, the United States and United Nations Report Series and the United States and United Nations Information Series; the European, the Near Eastern, and the Commercial Policy Series (all begun 1 October 1929); the Economic Cooperation, the General Foreign Policy, and the International Information and Cultural Series (begun 1 January 1948). It is also necessary to note that the series Treaties and other International Acts of the United States of America (ed. Hunter Miller, 1931-1938), of which eight volumes, covering the period 1776 to 1863, have so far appeared, contains numerous notes illustrating the practice of the United States and other States. 31

Unofficial publications

Unofficial compilations on United States diplomatic practice are numerous. Worthy of special mention, if only because they fill a gap in the official documentation, are the Diplomatic Correspondence of the United States Concerning the Independence of the Latin-American Nations, 1810-1830 (three vols., 1925) and the Diplomatic Correspondence of the United States: Inter-American Affairs, 1831-1860 (twelve vols., 1932-1939), both edited by Professor W. R. Manning, which contains some 7,000 documents not published elsewhere. Professor Manning has also selected and arranged four volumes of Diplomatic Correspondence of the United States—Canadian Relations, 1784-1860 (1940-1945).

The following review of the first three volumes of the Canadian series is of interest:

"These three volumes show, perhaps even more clearly than the other volumes of the Diplomatic Correspondence of the United States, the full significance and usefulness of Dr. Manning's monumental undertaking. Most of the documents reproduced in these volumes are printed for the first time. Together with those previously available, they throw new light on many a question. This applies in particular to the Caroline incident (in volume III) and to the interesting story of the rejection of the award of the King of the Netherlands in the matter of the northeastern boundary. There is also in these volumes a wealth of material on the subjects of discovery and occupation of territory and river navigation.

"The various volumes of the entire series edited by Dr. Manning cover most subjects of international law. It is not certain that under the present arrangement of the index they are as useful to the student as their contents warrant. At present the indices contain references mainly to names. They are not analytical guides to subjects from the point of view of their legal interest to the international lawyer. It is only by way of exception that the index, as at present arranged, contains references of this nature as is the case, for instance, with regard to 'piracy' in volume III. In connexion with the Nyon Agreements of 1937 for the suppression of attacks, there described as piratical, by submarines of unknown nationality, the question was discussed whether that designation can properly be applied to acts other than that of piracy committed *animō furandi*. In connexion with the Caroline incident the British Government spoke repeatedly of 'British Rebels and American Pirates' and insisted repeatedly that the use of the latter expression was proper in the circumstances. But the index contains only one reference to the matter, and even this is exceptional. It may perhaps be a subject for consideration whether the time has not come for a cumulative and analytical index of the volumes published so far under the scholarly and painstaking editorship of Dr. Manning."32

Another important, but very different, unofficial collection, is the series *Documents on American Foreign Relations*, issued under the auspices of the World Peace Foundation, of which eight volumes, covering the years 1938 to 1946, appeared between 1939 and 1948. The purpose of this series is to present in a convenient form selected material, primarily on the contemporary foreign policy of the United States.

3. **UNITED KINGDOM**

*Official publications*

The practice of the British Government to make diplomatic documents available to the public is probably older and more sustained than that of any other Government. The well known series, *British and Foreign State Papers*, comprising 139 volumes covering the period from 1812 to 1936, began to appear in 1852. The first volume published, volume 16 of the series, covering the years 1828 to 1829, contained an "advertisement" which is still of interest:

"This Publication is intended to comprise the principal documents which have been made public, relating to the Political and Commercial Affairs of Nations, and to their Relations with each other

32 H. L. in *British Yearbook of International Law*, vol. 21 (1944), pp. 254-256.
from the termination of war in 1814 to the latest Period. The Work has hitherto been printed exclusively for the use of the Government and of its Diplomatic Agents abroad. But the general interest attached to these Collections has led to its Publication.”

The Series has always been compiled in the Foreign Office. Hertlets' Commercial Series was incorporated with it in 1925, with the issue of volume 116 (for 1922). The scope of the series is very wide. It prints the texts of treaties, both bi-partite and multi-partite, the proceedings of international conferences, diplomatic correspondence with various Governments, official pronouncements on foreign affairs, emanating from different capitals, and the constitutions and important laws of many countries. Whilst in general the material included is selected from papers already published, from time to time other documents have been printed. In contrast to the United States Foreign Relations, which usually lags fifteen years behind, the British State Papers Series has on the whole been kept fairly up to date. But the two series are not, of course, comparable. The British State Papers are not intended to be a complete record of British diplomacy, nor a record of British State practice exclusively. However, the importance of the contribution the series makes to knowledge of the practice of many States in matters of foreign policy and international law cannot be over-estimated.

British State practice itself is perhaps reflected more fully and with greater accuracy in the Parliamentary Papers, one of the most important collections of State papers in the world, though not comprising a complete record of the correspondence of the Foreign Office. Many guides to the papers issued since 1800 exist. The Foreign Office List and Diplomatic and Consular Yearbook, published annually since 1859, gives each year a list of “Papers Relating to Foreign Affairs Laid before Parliament.” Such papers have also been recently listed in an invaluable publication entitled “A Century of Diplomatic Blue Books, 1814-1914”, by H. W. V. Temperly and L. M. Penson.

In addition to the documents periodically published as White Papers or Blue Books the British Government has issued an important collection entitled British Documents on the Origin of the War, 1898-1914 (Ed. G. P. Gooch and H. W. V. Temperly, 10 vols., 1926-1933) and has recently undertaken a new series, Documents on British Foreign Policy, 1919-1939, of which five volumes have so far appeared, under the editorship of E. L. Woodward and R. Butler.

Unofficial publications

Amongst the most important unofficial collections devoted to the practice of the United Kingdom is the series of Documents on International Affairs published under the auspices of the Royal Institute of International Affairs. Volumes covering the years from 1928 to 1938 have so far appeared, and also a special volume entitled Norway and the War, September 1939 to December 1940. The series is not designed especially for international lawyers, but it is of assistance to, and has come to be widely used by, them.

4. FRANCE

Official publications

The earlier period of French State practice is portrayed and documented in the important series: Recueil des Instructions Données aux Ambassadeurs et Ministres de France depuis les Traités de Westphalie jusqu'à la révolution française, published under the auspices of the Commission des Archives Diplomatiques at the Ministry of Foreign Affairs. Between 1884 and 1929 there appeared in this series twenty-five volumes covering the relations of France with most European countries. The French Government has frequently published more recent documents in so-called Colour Books. Several lists of the Colour Books issued since 1861 exist, but there is no digest of the international legal material contained in them. The collection Documents Diplomatiques Français published by the Commission de Publication des Documents relatifs aux Origines de la Guerre de 1914-1918, is divided into three series, 1871 to 1901, 1901 to 1911, and 1914. Although thirty-one volumes in all have been published only series three is complete as yet. The French Government has also published an official edition of the Proceedings of the Paris Peace Conference of 1919. This, however, is confidential, and has been made available only to the participating Governments.

Unofficial publications

One of the prime sources of State practice of the period is the Archives Diplomatiques, Recueil de Diplomatie, d'Histoire et de Droit International, of which 193 volumes were issued between 1861 and 1914. There is no index, analytical or otherwise, to this collection.

Printed documents on Russian diplomatic relations are very numerous. The Imperial Government published, in Russian and French, an *Annuaire diplomatique de l'Empire de Russie* (Ezhegodnik) from 1861 to 1917. A two-volume history of Russian relations with the Western Powers from 1814-1822 (*Dokumenty dlia istorii diplomatskich snochennii Rossii s zapadnymi derzhavami evropeiskimi ot zakliucheniiia vseobschago mira v 1814, do Kongresa v Verona v 1822 g.*) was published, as were also the well-known *Orange Books* (1914) of documents respecting negotiations preceding the War of 1914-1918; and the *Material pertaining to the History of French-Russian Relations during 1910-1914* (*Materialy po istorii franco-russkikh otnoshenii za 1910-1914 gg. Sbornik sekretnykh diplomaticheskikh dokumentov byush. Imperatorskogo Rossiskogo Ministerstva inostrannykh diel*). Special volumes were issued on events in Armenia 1912-1914 (*Sbornik diplomatskich dokumentov kasaiushchikhsia sobytii v Armenii*); Persia 1911-1913 (*Sbornik diplomaticheskikh dokumentov kasaiushchikhsia sobytii v Persii*). Furthermore, the *Recueil des traités et documents diplomatiques concernant l'Extrême Orient* (1895-1905) (*Sbornik dogovorov i diplomaticheskikh dokumentov po dielam Dal'niego Vostoka*); and a collection of consular reports for the period 1898 to 1910 (*Sbornik konsulskikh donesenii*) also appeared. A list of State papers and treaties kept in the State Board of Foreign Affairs covering the period 1265-1696 (*Sobranie gosudarstvennykh gramot i dogovorov khraniashchikhsia v Gosudarstvennoi kollegii inostrannykh diel*) was completed in five volumes in 1895.

The Soviet Government was the first to publish diplomatic documents on the origins of the War of 1914-1918, the celebrated *Collection of Secret Documents from the Archives of the Former Ministry of Foreign Affairs* (*Sbornik sekretnykh dokumentov iz Arkhiva byushago Ministerstva inostrannykh diel*), appearing in 1917 and 1918. This collection was supplemented by special collections relating to Greece (*Evropeiskie derzhavy i Gretsiia v epokhu mirovoi voiny*), Turkey (*Evropeiskie derzhavy i Turtsiia vo vremia mirovoi voiny*), and Constantinople and the Straits (*Konstantinopol' i prolivy po sekretnym dokumentaum b. Ministerstva inostrannykh diel*). An official record of the peace negotiations at Brest-Litovsk (*Mirnye peregovory v Brest-Litovske s 22/9 dekabria 1917 g. po 3 marta (18 fevralia) 1918 g.*) was also printed. And the Soviet Government has published a collection entitled *Modern International Policy Presented in Treaties, Notes and Declarations* (*Mezhdunarodnaia politika noveishego vremeni v dogovorakh, notakh i deklaratsiakh*) covering the period from the French Revolution to the tenth anniversary of the October Revolution. The publication *International Relations during the*
Epoch of Imperialism (Mezhdunarodnye otnosheniia v epokhu imperializma. Dokumenty iz arkhivov tsarskogo i vremennogo pravitel'stva) is in three series covering the period 1878 to 1917; five volumes, relating to the year 1914 up to the outbreak of war, have so far appeared. The more recent period is covered by a Yearbook Series, begun in 1917, the successive reports of the Peoples' Commissariat for Foreign Affairs (Mezhdunarodnaia politika za . . . god) and the series International Life (Mezhdunarodnaia zhizn'). There is also the useful Ten Years of Soviet Diplomacy (Desiat' let sovetskoi diplomati).

The Royal Institute of International Affairs, London, issued in 1948 a compilation entitled A Calendar of Soviet Documents on Foreign Policy (prepared by J. Degras).

6. Germany

Official publications

The German Government never published any systematic series of diplomatic documents comparable to the United States Foreign Relations or the British and Foreign State Papers, although from time to time it issued White Books, to which there are some guides. But among collections dealing with specific phases of German foreign policy may be mentioned Die Diplomatischen Akten des Auswärtigen Amtes zu Bismarcks Norddeutschlandpolitik 1864-1879 (1925), issued on behalf of the German Foreign Office. There are several collections of German documents on the origins of the War of 1914-1918, the official series, entitled Die Grosse Politik der Europäischen Kabinette 1871-1914 (1922-1927), comprising forty volumes. An official account of the negotiation of the Armistice, entitled Amtliche Urkunden zur Vorgeschichte des Waffenstillstandes, 1918 (1924), was also published by the German Foreign Office.

It appears that the foreign departments of France, the United Kingdom, and the United States are contemplating the publication of a series of volumes dealing with the origins of the War of 1939-1945 on the basis of the large numbers of documents from the German official archives which fell into Allied hands.

Unofficial publications

The best known German serial publication is the semi-official Das Staatsarchiv. Sammlung der Offiziellen Aktenstücke zur Geschichte

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der Gegenwart, of which eighty-six volumes, covering the period from 1861 to 1919, were published. This series attempted a comprehensive survey of contemporary State practice. Some phases of diplomatic negotiations were made the subject of special supplementary volumes. The series contains several index volumes. There appears to be no complete index. An attempt to revive the Staatsarchiv failed after the publication of one further volume in 1928.

7. OTHER COUNTRIES

Collections of diplomatic documents published by the Governments of other countries are too numerous to be mentioned here. Those issued by the Governments of Austria, Belgium, Bulgaria, Czechoslovakia, Denmark and Finland are conveniently listed in Part I of Meyer's Official Publications of European Governments.37

In addition to published documents, there is, of course, an immense mass of manuscript material in the archives of different Governments. No attempt has been made to indicate here the quantity of this material, its availability, or its bearing upon questions of international law. Much useful information concerning it is to be found in the Guide International des Archives—Europe published in 1934 by the Institute of Intellectual Co-operation, and in other well-known books of reference.

B. DIGESTS OF STATE PRACTICE WITH REFERENCE TO PARTICULAR COUNTRIES

1. UNITED STATES

The term digest, properly used in this connexion, should probably be confined to publications of the United States Department of State, under the auspices of which no less than four such compilations relating to American State practice have appeared. The first in time, entitled A Digest of the Published Opinions of the Attorneys General and of the Leading Decisions of the Federal Court with Reference to International Law, Treaties and Kindred Subjects, was prepared by John L. Cadwalader, Assistant Secretary of State, and published in 1877. The purpose of this work was to supply the staff of the Department with a means of ready reference to precedents in matters of international legal concern.38 It was followed, and replaced, in 1886 by Francis Wharton's Digest of the International Law of the United

38 Cf. Preface.
States, published under an Act of Congress and arranged systematically instead of alphabetically, as was its forerunner. One noteworthy omission from the scheme of Wharton's work was the topic of international tribunals and commissions, this being explained by the circumstance that John Bassett Moore was simultaneously preparing a digest on this topic to be published "in a separate volume".

The "separate volume" proved, on publication in 1898, to be Moore's six-volume History and Digest of International Arbitrations to which the United States was a Party.\(^{39}\) And this work was itself followed in 1908 by Moore's Digest of International Law as embodied . . . especially in documents . . . of the United States. This eight-volume work completely superseded Wharton's Digest and set a standard in compilations of its kind which has yet to be surpassed. Moore drew upon a greater number of papers than did his predecessors and abandoned the practice of printing mere extracts from documents and decisions, aiming instead to give the complete history of any question considered and the fullest account of the opinion prevailing in relation to it. Further, again in contrast to his predecessors, Moore endeavoured in connexion with manuscript material "to avoid giving brief glosses which convey no intimation of the question under consideration but to follow and, whenever practicable, quote the text, and to give, besides, enough of the facts to render the application apparent" this being "of the essence of a digest".\(^{40}\)

A reviewer of Moore's work observed that the writer took care:

"de donner à ses citations diplomatiques, non plus le caractère d'une règle que celui d'une espèce, d'où l'on peut tirer un précédent, et, puisque le droit des gens est universel, de rapprocher les opinions des auteurs, même européens, de celles des diplomates ou des juges américains. Par là son œuvre prend un caractère scientifique plus large".\(^{41}\)

The work achieved a striking success and was much used at the Second Hague Peace Conference, as the records of the conference show. Even thirty years later it could be stated that Moore's Digest was "one of the most frequently quoted works in the field and has found its way into practically all the Foreign Offices of the world, leaving a permanent impress upon the development of international law".\(^{42}\)

\(^{39}\) See pp. 40-41.
\(^{40}\) Page iv.
Moore's *Digest* was not replaced, but rather brought up to date, by that published in eight volumes between 1940 and 1944 by Judge Green C. Hackworth. Hackworth's *Digest* is arranged in substantially the same fashion as Moore's in order to facilitate their consultation together. Neither work is concerned with any real or supposed "international law of the United States"—as the titles of the earlier digests might misleadingly suggest these to be—but is intended rather to outline the position taken in legal questions by the Government of the United States in so far as it is to be ascertained from the records of the Department of State and, in a lesser degree, from the decisions of the federal courts, the opinions of the Attorneys General and other similar sources. There are perhaps fewer references to the literature of international law in Hackworth’s *Digest* than in Moore's. And extracts from easily accessible documents, e.g., those published in the *Foreign Relations of the United States*, have been curtailed. On the other hand, there are many expositions of particular questions by the editor himself. The eighth volume contains an extensive index and list of cases.

The diplomatic archives of virtually every State are now so extensive that their examination and digesting is beyond the capacity of any one individual. Thus, whilst Moore was solely responsible for the work which bears his name and took nine years over its compilation, Judge Hackworth, who was at the time legal adviser to the Department of State, was aided in the preparation of his digest by a team of assistants. This circumstance is of considerable importance in so far as it shows that an eminently satisfactory work of this character can be prepared, as it inevitably must be, in collaboration under Governmental sponsorship.

2. United Kingdom

There is no official United Kingdom digest of international law comparable to the work of either Moore or Hackworth, though undoubtedly there exist materials from which it might be compiled, richer even than those which have been drawn upon in the United States, and including in particular some 200 manuscript volumes of Opinions of the Law Officers in international legal questions.  

Whilst no such official digest exists, the materials extant have been used in several individual works, inspired by American models. Amongst these may be mentioned Dr. H. A. Smith's *Great Britain and the Law of Nations* (vol. I, 1932, vol. II, 1935), a work similar in its general purpose to Moore's *Digest* in that it aims at explaining the official attitude of the United Kingdom towards contemporary prob-

lems of international law by reference to official documents. But the work is unofficial and makes no claims to completeness. It omits judicial decisions and, in the first volume at least, gives virtually as much prominence to the editorial commentary as to the documents which illustrate this. The second volume, however, sets out documents more fully and contains less by way of comment, but presents only selected documents on disputed points. Both volumes contain historical materials in addition to purely legal opinions. But no more than two volumes have appeared, confined to the topics of the nature, sources and scope of international law, the dependence, independence, recognition and territory of States, the high seas, and territorial waters. The work, though remarkable and undoubtedly valuable because of the vivid picture of a Foreign Department "in action" which it gives, thus serves mainly to show what a wealth of material concerning the State practice of the United Kingdom exists to be drawn upon.

The subjects dealt with in volume I are: nature, sources and scope of international law; dependence and independence of States; and recognition. The second volume contains documents on title to territory, high seas and territorial waters. In the second volume documents occupy nearly four-fifths of the space and nearly all of them were previously unpublished.

Neither volume I nor volume II is equipped with an index. Some writers, commenting upon the first volume of this work, felt that being "neither digest nor treatise, the volume's usefulness is limited," and that "the documents included are insufficient to provide a textual exposition of British views on international law".

Others, while appreciating that this series would endeavour to some extent to do for Great Britain what Moore did for the United States, observed that "the book is as much, if not more, a contribution to diplomatic history as to the history of international law, though, as is almost invariably the case, diplomacy and law are closely related. It may possibly be objected that the extracts are not sufficiently long to give the whole story, but it appears that Professor Smith has made a judicious selection and his own contributions by way of exposition are well done".

After the appearance of the second volume it was stated by one writer that "so valuable is it for a study of international law that

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most readers . . . will have been eagerly awaiting its appearance, as they are no doubt looking forward to its successor".  

A more specialized work which has been compiled from unpublished sources is Judge Sir Arnold McNair’s *Law of Treaties, British Practice and Opinions*. This book, which was published in 1938 under the auspices of the Columbia University Research in International Law, is designed to state the practice of the United Kingdom in relation to treaties and is intended “to reproduce or reflect views which have been expressed or would be likely to be expressed in British official quarters” and “is not a treatise, but a collection of opinions and practice”. It is compiled principally from the opinions of the Law Officers of the Crown and from decisions of British Courts. Whilst reference is occasionally made to international arbitrations and awards to which the United Kingdom has been a party, diplomatic correspondence is not drawn upon, and the part of the author is confined to introductory comments and remarks connecting the various documents printed.

Other recent specialized works which are based to a greater or less extent on the practice of the United Kingdom but which do not, however, purport to be collections of legal opinions or judicial decisions include: J. Mervyn Jones, *British Nationality, Law and Practice* (1947), and H. Lauterpacht, *Recognition in International Law* (1947).

3. Other countries

There appear to be no digests, official or unofficial, in any way comparable to the works of Moore or Hackworth, or of Smith, in countries other than the United States or the United Kingdom. To some extent, however, State practice is reported or digested in legal periodicals and in general international legal literature. Thus there are several international legal journals published in France, but these are more concerned to report judicial decisions than to publish diplomatic correspondence. And though some journals, such as the *Revue Générale de droit international public* (France) and the *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (Germany) from time to time published, or have published, such correspondence, they do not in any sense take the place of digests properly so called.

In Switzerland there has appeared since 1944 the *Annuaire* of the *Société suisse de droit international*, the second part of which contains documents illustrating the contemporary State practice of Switz-

49 Preface, pp. vii-viii.
erland, including opinions of the Federal Department of Justice and Police on questions of international law, extracts from reports and decisions of the Federal Council, judicial decisions and the like. In the Netherlands the latest (1948) issue of the *Grotius Annuaire International*, which publication has appeared since 1914, contains documents on Netherlands State practice during the years 1940 to 1946. There are also documentary sections in the *Revue Egyptienne de droit international* (founded 1945), and in the *Annuaire* of the Yugoslav Association for International Law (1931-1937). But, useful as these publications are, they are not digests of international law in any proper sense of the term.

C. DIGESTS OF STATE PRACTICE IN GENERAL

The nearest approach to a digest of the practice of States in general is the *Digest of the Diplomatic Correspondence of the European States* in the *Fontes Juris Gentium* series, edited by Viktor Bruns (two volumes, covering the period 1856-1878).

This *Digest*, of which only two volumes were published, covers the period from 1856-1871 and 1871-1878 respectively. It is limited as the title indicates to European States and provides a systematic treatment of official papers which have already been published. The official papers from which extracts were taken are, first, diplomatic notes exchanged between Governments and, secondly, instructions to diplomatic representatives and the reports of diplomatic representatives to their Governments.

The *Digest* offers extracts of varying lengths. The extent to which a passage is quoted is governed by the desire of the editor “to convey to the reader an approximate general impression of the meaning of the passage reproduced and of the manner and context in which the statement was made, in order that he may be spared superfluous research of all appropriate records”. The editor is at pains to point out, however, that the *Digest* “does not render it superfluous for a conscientious scientific worker to read and investigate the whole of the original text” for, in his view, “the meaning and scope of a sentence or paragraph can only be ascertained in connexion with the whole”. This is rendered all the more necessary for two reasons. First, the *Digest* does not distinguish between legal and political statements, and therefore it is necessary, by examining the original document in its entirety, to ascertain whether “the statements made in individual cases are of a legal nature or embody a political claim”. The second reason is that the *Digest* does not purport to present

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60 Series B, sectio I, tomi I and II (1932-1938).
passages "which in the opinion of the editors convey a rule or principle of active international law".\textsuperscript{51}

More specifically the material on which the \textit{Digest} is based includes: (1) notes submitted by diplomatic representatives to the Government to which they are accredited; (2) Foreign Office instructions to diplomatic representatives; (3) reports of diplomatic representatives to their Foreign Offices; (4) letters written by one Sovereign to another; (5) minutes of international congresses and conferences; and (6) documents attached as annexes to the notes proper.

The material covered concerns only European States, but notes dispatched from American Ministries to their representatives in Europe and \textit{vice versa} are included.

The \textit{Digest} starts with the Peace of Paris, signed 30 March 1856. The chief reason for choosing 1856 as the initial date was that it "is only since the middle of the nineteenth century that [published] material is available which shows the diplomatic practice of a number of States". While the British practice of presenting Blue Books to Parliament goes back to the beginning of the eighteenth century, corresponding practice "does not, on the European continent, reach further back than the sixties of the nineteenth century".\textsuperscript{52} The same is true of unofficial collections such as the \textit{Archives Diplomatiques} and the \textit{Staatsarchiv} which were inaugurated in the sixties of the last century.

The published source material was used in the following order: (1) "Colour Books"; (2) official publications of diplomatic documents other than "Colour Books" such as \textit{Les origines diplomatiques de la guerre 1870-1871}; (3) private collections such as the \textit{Archives Diplomatiques}, the \textit{Staatsarchiv}, collections of important statesmen and, finally, (4) collections on particular questions.\textsuperscript{63}

Regarding languages the editor states that the extracts were always reproduced in the original language. Where the original text was in German, French or English no translation was provided. On the other hand, "the original texts in other languages are provided in the footnotes with translation into one of the three languages just mentioned, in so far as such translations were to be found in the source collections utilized".\textsuperscript{54}

Each abstract is preceded by annotations containing the names of the sender and recipient, etc. However, no detailed editorial or

\begin{footnotes}
\item[51] This and other quotations are from the preface to tomos I of series B, sectio I.
\item[52] Preface, \textit{loc. cit.}, p. xxxiv.
\item[54] \textit{Op. cit.}, p. xxxv.
\end{footnotes}
explanatory notes are attached to the extracts "because this work is not intended to replace the original texts of diplomatic correspond-
ence, but only to serve as signpost to these texts".55

A remarkable tribute was paid to the series *Fontes Juris Gentium*, at that time comprising several volumes, by the Fifth Conference of Teachers of International Law and Related Subjects, which after a thorough discussion went "on record as expressing its appreciation of the preparation of the volumes . . . which have already appeared, and its earnest hope that this very valuable and important work will be continued with all practicable speed".56

D. GENERAL COLLECTIONS OR REPORTS OF DECISIONS OF INTERNATIONAL TRIBUNALS

*Official publications*

The series entitled the *United Nations Reports of International Arbitration Awards* is prepared by the Registry of the International Court of Justice. Its preparation was undertaken in connexion with the function of progressive development of international law conferred on the General Assembly by Article 13 of the Charter of the United Nations. The series is to be confined strictly to awards between States and will not include either the judgments and advisory opinions of the Permanent Court of International Justice or the decisions of the Mixed Arbitral Tribunals, which are published elsewhere. The starting-point of the series is, however, the end of the war of 1914-1918 and the first volume, which has already been published, contains thirteen decisions, arranged in chronological order, dating from the years 1920-1925. Certain awards falling within this period and listed in A. M. Stuyt, *Survey of International Arbitrations, 1794-1938*,67 do not appear in this volume.

The *Reports* generally supply the following information and in this order: title or name of case; parties; date of *compromis* or agreement to arbitrate; the arbitrator or arbitrators; the date of the decision; summary of the case; text of *compromis* or relevant treaty provisions; text of decision. There are generally no indications concerning the source or sources from which the texts of the decisions were taken. However, for bibliography, index and tables the reader is referred to volume III.

55 Ibid.
57 See pp. 37-38.
Unofficial publications

Moore's *International Adjudications, Ancient and Modern* is the most recent and most comprehensive collection in its intended scope. It has for its object "to furnish an intelligible and fully documented report of all judicial decisions of international questions not recorded in the ordinary law reports" and thus "to bring together all discoverable records of international judicial action, ancient and modern, into one comprehensive publication, in which there shall be given, in appropriate historical setting, the full text of every international judicial decision, or opinion, and in addition certain affinitive matter lying, as the case might be, within the sphere or border of judicial action".

The reason for including in the series mediatorial reports or recommendations on questions of international law, as stated by Moore, was "not because they are supposed to result from the exercise of judicial power, or to have the binding force of judicial decisions, but by reason of their tenor and the character and learning of the persons by whom they were made, they have brought an end to controversy, or contributed to its eventual solution, on legal grounds". A further reason may be sought in that Moore was "less concerned with nice classifications and exclusive categories" than "with adding as much as possible to the materials with which the international structure may, especially on its legal side, be enlarged and strengthened and made more convenient and useful".

A further factor in determining the choice of materials for inclusion in the *International Adjudications* was Moore's conviction that "judicial judgments, in order to be intelligible and of constructive value, must be read in the light of the circumstances which gave rise to them". Judgments frequently give only a meagre indication

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of the origins of the dispute and of the reasons underlying the judgment. "In such cases", affirmed Dr. Moore, "the meaning of the document, if only the text were read, might be practically lost, while, in reality, the decision may have been the culmination of a transaction of the first order. It is only in their historical and circumstantial setting that the individual significance and relative importance of judicial judgments can be correctly estimated". 62

For the sake of convenience Moore divided International Adjudications into an ancient and a modern series. The latter begins with the three cases decided by the mixed commissions set up by Great Britain and the United States under the so-called Jay Treaty of 19 November 1794 which "marks the revival in modern times of the practice of international arbitration". The ancient series was intended to begin with a volume on arbitration among the Greeks.

The material in Modern Series, in which six volumes were published, is organized according to a pattern which consists of: the agreement to arbitrate; the nature of the dispute; the organization of the mixed commission and the claims of the parties; the evidence; the arguments on behalf of the parties; the award; and, finally, bibliographical notes. One of the distinctive features of this series is that the arguments of the agents are printed in full with the exception of the Arbitration of the Title to Islands in Passamaquoddy Bay where the arguments are summarized. 63

This series, as indicated above, was planned on a broad basis so as to include not merely arbitrations properly so-called but also "to embrace various processes or forms of process, all judicial in their nature, some of which do not strictly fall within the scope of the word 'arbitration' ". 64

The appearance of the first volumes of International Adjudications, which constituted the achievement of a design conceived by Dr. Moore some forty years ago, was deemed to mark a date in the literature of international law. Thus one international lawyer expressed himself as follows: 65

"Les premiers volumes de cette collection viennent de paraître et ils méritent de figurer dans ces livres d'or que sont, pour les internationalistes, les grands recueils de textes conventionnels ou de sen-

62 Ibid.
63 See Modern Series, vol. VI, p. x.
tences arbitrales. La nouvelle collection entreprise par le professeur Moore se situe d'emblée au premier rang des ouvrages fondamentaux du droit des gens...

"La haute portée scientifique de cette publication n'a pas à être soulignée. Par la richesse de la documentation et la rigueur de la méthode, elle forme à coup sûr une des plus belles collections de jurisprudence internationale dont puisse s'enorgueillir la littérature juridique contemporaine."

The distinctive feature of *International Adjudications* was not only that it "set a standard of meticulous scholarship which has probably never been excelled" but that it aimed at completeness, something that, it is probably safe to say, has never been attempted by any collection of international decisions either before or after the appearance of the *Modern Series*, the publications of the Permanent Court of International Justice apart. The volumes of the *Modern Series* were regarded as definitive works; there was no need to go beyond the material presented in the text and footnotes.66

The degree of completeness achieved in the *Modern Series* will appear from one or two comparisons with the *History and Digest of International Arbitrations* published by Moore in 1898. The Saint Croix River Arbitration occupied 43 pages in the *History and Digest*, in the *Modern Series* it occupies two volumes. The Arbitration of Claims for Compensation for Losses and Damages resulting from Lawful Impediments to the Recovery of Pre-war Debts, which occupies the entire third volume in the *Modern Series* comprising 564 pages, was presented on 27 pages in the *History and Digest*.67 The Compensation Claims which cover all of the fourth volume in the *Modern Series*, covered only 50 pages in the *History and Digest*.68 The various cases dealt with in volume V of the *Modern Series* are based largely on newly discovered material.69 Finally, the Passamaquoddy Bay Arbitration in volume VI of the *Modern Series* covered only 20 pages in the *History and Digest*.70

It was reported when the first volumes of *International Adjudications* appeared, that there was enough edited material in a forward state of preparation to comprise from 30-40 volumes.71 However, as noted before only six volumes of the *Modern Series* and only one volume of the *Ancient Series*, which will be discussed presently, were published.

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67 Jessup, *ibid*.
69 Kuhn in *American Journal of International Law*, vol. 27 (1933), p. 802.
The Carnegie Endowment for International Peace under whose auspices this series was inaugurated and published decided several years ago to discontinue this project and, therefore, no further volumes will be published. The historical papers and materials collected by Judge Moore in connexion with the project were turned over by him to the Library of Columbia University.\footnote{72 From a communication from the Carnegie Endowment for International Peace.}

The Ancient Series was intended to begin with "the earliest known arbitrations, and it is expected that the first volume will be devoted to the arbitrations among the Greeks".\footnote{73 Cf. Dr. Moore's Preface, Modern Series, vol. I, p. x.} This volume, however, having been unavoidably delayed, the first and only volume published in this series is devoted to a medieval arbitration, the Bienne-Beppet Arbitration 1491-1504,\footnote{74 For full title see p. 28, footnote 58.} which "furnished ample material for a close study of the medieval Swiss methods of dealing with controversies which were submitted to an arbitral tribunal for settlement".\footnote{75 Cf. Dr. Moore's Foreword, Ancient Series, vol. I, p. ix.}

As pointed out by Dr. Moore, in this case "the use of the procedures employed for the purpose of avoiding a decision on strictly legal grounds is happily exemplified. . . . In the proceedings before the Council of Fribourg the arbitrators at first tried to effect a direct settlement by means of good offices, and, this effort having failed, they succeeded in persuading the parties to consent to a decision \textit{ex aequo et bono}".\footnote{76 \textit{Ibid}, p. x.}

While ordinarily all documents were to be given in the original text, together with an English translation, in this case they were reproduced in the original only as an English translation proved impracticable. However, the essence of the proceedings is included in a Commentary by Dr. Emil Usteri which precedes the documentary part. The latter comprises numerous hitherto unpublished documents.\footnote{77 Dr. Usteri's Preface, \textit{ibid.}, p. xiii.}

The Bienne-Beppet Arbitration was not one between two States. One party was an individual and the other a semi-independent community under the sovereignty of the prince-bishop of Basle. Nevertheless, it was included in the Ancient Series as it was deemed "much more interesting and more significant than many a conflict between the most powerful city-states or rural cantons of the Swiss Confederation".\footnote{78 Dr. Usteri's Preface, \textit{ibid.}, p. xiii.}
The next work which must be mentioned is the de La Pradelle and Politis Collection of International Arbitrations.\textsuperscript{78}

The objective of this collection was essentially to present the documentation relative to "all instances of international arbitration since the end of the eighteenth century which it is possible to trace and to analyse".\textsuperscript{79}

The collection was to serve as source for a new droit des gens judiciaire, and, therefore, the editors decided to concentrate on cases of arbitration properly so-called. Arbitration was taken to mean the procedure to solve international disputes by the application of the rule of law (la règle du droit).

The editors excluded cases of mediation, diplomatic mixed commissions and also the work of domestic claims commissions. On the other hand they decided to include in the collection some cases of diplomatic commissions which preceded or followed an arbitration proceeding.

The collection, however, is not strictly limited to arbitrations between States as the editors included some affairs concerning individuals, or States and individuals, which involve points of international law and are outside any national jurisdiction.

Although the editors excluded cases where the compromis was not followed by arbitration, they included cases where there has been a beginning of arbitral procedure.

The editors encountered considerable difficulties in assembling official documentation on the known cases of arbitration. They were led to limit their collection to those arbitral proceedings with reference to which it was possible "de reconstituer les dossiers d'une manière suffisamment complète".\textsuperscript{80}

The total number of cases reported in volume I is 22 and in volume II it is 30. Six instances of arbitration during the period covered by the first volume and 12 instances during the period covered by the second volume were not included in the collection for one of the following reasons: (1) compromis not followed up; (2) lack of documentation; and (3) final settlement occurred at a later time.

\textsuperscript{79} Ibid., vol. I, p. xix.
\textsuperscript{80} Ibid., p. xxiii.
The cases are presented in the chronological order of their final settlement and not, as in La Fontaine's *Pas crisie Internationale* in the chronological order of the *compromis*.

Great emphasis is placed upon maintaining the unity of the case without separating the awards from the arguments of the parties or the special agreements from the facts which had led to their conclusion. Emphasis is also placed upon uniformity of presentation and all the material is given in French. In reconstructing a case the editors have drawn upon published and unpublished documentation which they have endeavoured to make more accessible by means of résumés, analyses, and extracts.

Accordingly each case is presented as follows: (1) statement of facts; (2) text of special agreement and procedure along with an analysis of the claims and counterclaims (*mémoires*); (3) the award and its execution, which in case of a mixed commission is given separately for each of the several claims under this head; (4) in case of the more important affairs a critical evaluation after the manner of the great collections of internal jurisprudence. These commentaries, written in some cases by the editors and in others by well-known international lawyers in the different countries, form one of the distinctive features of the de La Pradelle and Politis collection.

While it was perhaps intended to bring this collection up to date and publish international arbitral awards currently, there is no information available with regard to the possible continuation of this collection which does not even cover the last and probably most important third of the nineteenth century.

The qualities of the collection which ranks as an *ouvrage fondamental* were recognized immediately. Renault, in his Preface to the *Recueil*, declared that de La Pradelle and Politis "ont rendu un service éminent à la pratique et à la science du droit international". This collection, he said

"*donne ce qui manquait pour les grands procès entre les Etats qui attirent de plus en plus l'attention publique. Il permettra à ceux qu'intéresse le droit international de compléter les exposés dogmatiques par la jurisprudence des tribunaux d'arbitrage présentée avec tous les éclaircissements désirables. Les diplomates et les praticiens aux prises avec une difficulté verront s'il y a un précédent. Des tables détaillées, faites avec grand soin, permettront de trouver facilement la renseignement dont on a besoin*".

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82 *Recueil*, vol. I, p. xi.  

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An American authority on the subject of international arbitrations, agreeing with Renault's judgment, declared that this publication was "one of the most valuable yet issued covering questions of international law as administered upon reference either to mixed commissions, or to special persons". Comparing the de La Pradelle and Politis Recueil with Moore's earlier History and Digest of International Arbitrations, the same authority found that

"the plan of the Recueil differs markedly from that adopted by Professor Moore in that... all questions arising under a given commission are grouped together, falling as well under the common head. It also differs in the greater fullness naturally given to the arbitrations of Continental Europe and in that the doctrinal and footnotes bring the general subject up to a later date, many of the doctrinal notes being so extensive as almost to constitute treatises upon the matters to which they relate".

In spite of these differences in method or scope, or perhaps because of them, these two collections are really complementary.

La Fontaine's Pasicrisie Internationale, which appeared four years after Moore's History and Digest of International Arbitrations was intended as "le premier et modeste recueil d'une jurisprudence internationale sans cesse grandissante et pacificatrice". Its objective

"a été de mettre à la disposition des Etats et de leurs représentants officiels, ainsi que des juristes et des arbitres éventuels, des renseignements absolument précis et indiscutables, à la réunion desquels ils auraient à consacrer un temps considérable. Il est évident, en effet, que les décisions arbitrales, intervenues dans les conflits du passé, constituent une jurisprudence précieuse au point de vue du droit public international, au même titre que les arrêts et les jugements des cours et des tribunaux dans les procès civils entre des personnes privées".

A total of 369 documents were collected by the author. With reference to each arbitration the author endeavoured to reproduce the text of the compromis, of the award and, in some cases, of the rules of procedure.

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The documents are mostly printed in the original language, but some are printed in a translation if the original text was not available. The author endeavoured to follow a chronological order. The difficulties encountered in assembling the necessary data were such, however, that the project had to be abandoned. Therefore the order adopted was that of the date of the compromis.

Altogether during the period from 1794 to 1900 the author was able to trace 177 instances arbitrales.\(^88\)

The *Pasicrisie* was considered as useful but suffering from certain defects. Thus it was pointed out that the *Pasicrisie* which\(^89\)

\["s'attache à l'ordre des traités d'arbitrage, tient beaucoup plus compte des compromis que des jugements; toute procédure en est absente; par d'exposé de faits; pas d'analyse de mémoires; pas de renseignements sur les suites de la sentence".\]

Similarly it was noted that it “n'est pas seulement limitée dans le temps, elle est défectueuse également à divers points de vue”.\(^90\)

The absence of translations and commentaries was also considered as detracting from the value of the compilation.\(^91\)

In spite of imperfections it is probably correct to say that quite apart from its historical importance the *Pasicrisie* continues to render service.

*The Annual Digest and Reports of Public International Law Cases* was originally conceived as a Digest, and only with the volume for 1933-1934 (1940) were full reports of cases included. For this reason and also because this series is equally devoted to decisions of national courts on questions of international law, it has been thought better to discuss it in its entirety in connexion with digests of municipal courts.

Moore's *History and Digest of International Arbitrations to Which the United States has been Party*, the first and one of the principal standard works on international jurisprudence, will be discussed in connexion with collections and digests of arbitrations with reference to specific countries, as its principal concern, indicated in the title, was with the arbitrations “to which the United States has

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been a party". It merits reference in this context because, as indicated in its sub-title, it contains "Historical and Legal Notes on Arbitrations Ancient and Modern".

De La Pradelle's *Recueil Général Périodique et Critique des Décisions, Conventions et Lois Relatives au Droit International Public et Privé*, founded by Albert de La Pradelle and edited with the collaboration of French and foreign jurists, was published during the years 1934 to 1938 and comprises altogether five volumes. It reported currently decisions of the Permanent Court of Arbitration, of the Permanent Court of International Justice, of individual tribunals, of mixed commissions, and of the Mixed Arbitral Tribunals established after World War I. The reports include head-notes summarizing briefly the main points of the decision. There is also in some cases a commentary on the decision. Dissenting or separate opinions are sometimes reported in full but in some cases only extracts are given. All the texts are in French or in French translations.

This *Recueil* was said to "respond to a real need, but perhaps it is too ambitious, it is difficult to obtain, and one wonders whether it presents a secure prospect for permanence". The outbreak of World War II has interrupted the publication of the *Recueil* and no information is available as to whether it will be resumed.

The Descamps and Renault *Recueil International des Traités du XIXe Siècle* was intended to supplement the *Recueil International des Traités du XXe Siècle* edited by the same authors. The purpose of this collection was to furnish a complete and systematic presentation of conventional international law and of international jurisprudence in its entirety.

With reference to arbitral decisions Descamps and Renault declared that "elles prendront place à côté des traités et seront reproduites in extenso, de manière à offrir le tableau intégral de la jurisprudence arbitrale internationale pendant le siècle qui vient de s'écouler".

However, only one volume appears to have been published in this series. The material is arranged in chronological order and includes some compromis and some arbitral decisions. There is no table

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of contents and no analytical index, these being intended to be included in the final volume.

The Descamps and Renault *Recueil International des Traités du XXe Siècle* was inaugurated by Descamps and Renault in order to provide, in addition to national collections "un Recueil de haute et incontestable utilité internationale". It was intended that each volume would contain the treaties concluded in that year. Arbitral awards would also be included in chronological order "comme faisant suite aux Conventions qui organisent les juridictions d'arbitres". The Recueil would thus embrace "non seulement le développement d'ensemble du droit conventionnel entre les États, mais encore la marche de la jurisprudence internationale et, en première ligne, les décisions de la Cour permanente d'arbitrage de La Haye".

Each volume contains a chronological table, an alphabetical table of States and an analytical table. There is no separate list of arbitral decisions.

**E. GENERAL REGISTERS OF DECISIONS OF INTERNATIONAL TRIBUNALS**

As appears from the foregoing there is no complete collection of arbitral decisions neither in the broad sense employed by Moore in his *International Adjudications* or in his *History and Digest* nor in the narrower sense adopted by de La Pradelle and Politis in their *Recueil*. However, the *Survey of International Arbitrations 1791-1938* published in 1939 by A. M. Stuyt endeavours to provide in a simplified form an index or register of international jurisprudence more complete and more up-to-date than any compiled so far.

The *Survey* comprises 408 arbitrations; twenty-four international postal arbitrations based on the Conventions of the Universal Postal Union since 1874; four cases of international commissions of inquiry; one case before the Central American Court of Justice 1907-1918, and briefer references to nine other cases before that Court; one report of the Committee of Jurists appointed by the Council of the League of Nations on 12 July 1920 to report on some legal aspects of the dispute between Finland and Sweden regarding the Åland Islands; and, finally, six cases of international conciliation commissions.

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97 These were said to have been published for the first time. See Denys P. Myers, in *American Journal of International Law*, vol. 24 (1940), p. 554.
Dr. Stuyt did not include in his Survey decisions and advisory opinions of the Permanent Court of International Justice, decisions of Prize Courts or of the Mixed Arbitral Tribunals as all these had been published and are easily accessible.

As far as the material included in the Survey is concerned no claim to completeness is made, as during the period from 1794 to 1938 there may have been international arbitrations which have not been published.

As a criterion for determining what constitutes international arbitration, Dr. Stuyt adopted the definition given in article 27 of the Hague Convention for the Pacific Settlement of International Disputes. It may be noted, however, that among the 408 cases of arbitration Mr. Stuyt included some (18) cases in which one of the parties was not a State. He also included several cases where it may be doubtful whether one or both parties were States within the meaning of international law, such as disputes between Swiss cantons and between German states, etc.

The analysis of the cases follows a standard pattern which provides information on the following points: (1) parties; (2) dispute; (3) arbitrator or arbitral tribunal; (4) arbitral treaty or special agreement: (a) date, (b) law to be applied, (c) text (e.g. source of treaty or special agreement); (5) award or other disposition of the case: (a) date, (b) in favour of, (c) execution, (d) text (source of award), (e) bibliography.

As regards point (2) the author supplies the information that "the matter of difference is described in the terms set down in the treaty or special agreement" in the original language and without translation.

This Survey which has been found "entirely accurate" though it may not be a definitive list of arbitrations may well be found to furnish a satisfactory basis for a comprehensive collection of arbitral decisions. As a guide to international jurisprudence it has great usefulness.

The well-known collection, Darby's International Tribunals, developed out of a resolution of the International Law Association

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99 Full title: *International Arbitration. International Tribunals, A Collection of the Various Schemes which have been Propounded; and of Instances in the 19th Century*. By W. Evans Darby. 4th edition (1904). The first edition was presumably published in 1897.
adopted at Brussels on 1 October 1895 to study the question of an international court of arbitration. Its broad purpose was to present materials on "the literary, political, and diplomatic work done in connexion with international arbitration during the past 300 years".  
In this context the list of "Instances of International Settlements involving the Application of the Principle of International Arbitration" is of special interest. The arbitrations, in this list, are divided into three groups: the eighteenth, the nineteenth and twentieth century arbitrations. Beginning with the Jay Treaty of 1794, six arbitration cases are listed for the eighteenth century. The list of nineteenth century arbitrations contains 471 cases which are classified as follows: (1) formal arbitrations: 222 cases; (2) arbitral boards and commissions: 97 cases; (3) delimitation commissions: 119 cases; (4) national commissions: 33 cases. The group of twentieth century arbitrations consists of 63 cases of which 21 cases are classified as formal arbitrations, 19 cases of arbitral boards and commissions, 20 cases of boundary commissions, and 3 cases of national arbitrations and commissions.

The author gives in a few lines a survey of each case, followed by bibliographical references. It may be noted, however, that among the "instances of international arbitrations" there are included not merely awards of international tribunals but also agreements to arbitrate without regard to subsequent developments. It is thus not clear from this list whether such agreements have actually led to an international arbitration.

F. REPORTS AND DIGESTS OF DECISIONS OF INTERNATIONAL TRIBUNALS WITH REFERENCE TO SPECIFIC COUNTRIES

I. United States

Official publications

The Department of State of the United States of America undertook in 1929 the publication of the Arbitration Series. This series comprises international arbitrations to which the United States was a party and contains the following cases:

(1) Arbitration of the claims of Charles J. Harrah. 1929.
(2) "I'm Alone" case. 1931-1935. 7v.
(3) Shufeldt Claim. 1932.

100 Ibid., p. vii.
(4) Salem Claim. 1932-1935. 7v.

(5) Arbitration between the United States and Sweden under Special Agreement of 17 December 1930. 1932-1934.

(6) American and Panamanian General Claims Arbitration. 1934.

(7) Special Mexican Claims Commission. Report to the Secretary of State. 1940.


(9) American Mexican Claims Commission. Report to the Secretary of State. 1948.

It appears that the material included in this series is not of uniform completeness in all cases. Thus the Harrah Case comprises only the Memorial of the United States before the Tribunal selected under the Protocol of 1 October 1929 between the United States of America and Cuba. The relevant documentation in the “I’m Alone” Case, the Shufeldt Claim, the Salem Claim and in the Arbitration between the United States and Sweden runs to several volumes, while the Report to the Secretary of State relating to the American Mexican Claims Commission consists of decisions showing the reasons for the allowance or disallowance of claims.

It may be of interest to refer here to a suggestion of the Fifth Conference of Teachers of International Law and Related Subjects to the effect that the Arbitration Series “be continued to include the awards in all arbitrations in which the United States participates, in a separate indexed series, and the supplementary documentation, including compromis, diplomatic correspondence, cases, counter-cases, and oral arguments, in another series adequately indexed”.101

The Arbitration Series has so far, however, published, as in the Salem Case or in the Arbitration between the United States and Sweden, the award along with cases, counter-cases, replies and oral arguments in one series, though spread over a number of volumes.

Unofficial publications

Moore’s History and Digest of the International Arbitrations to which the United States has been a Party102 began to take shape

102 Full title: History and Digest of the International Arbitrations to which the United States has been a Party, together with Appendices containing the Treaties relating to such Arbitrations, and Historical and Legal Notes on Other Arbitrations Ancient and Modern, and on the Domestic Commissions of the United States for the Adjustment of International Claims. By John Bassett Moore. 6 vols. (1898).
at the time when Moore was engaged on assisting in the compilation of Wharton's *Digest of the International Law of the United States*.\(^{103}\) It was planned as a one-volume supplement to the *Digest* containing opinions of international commissions between the United States and other Governments, but it grew to six volumes as Dr. Moore discovered the vast body of materials accumulated in the Department of State of the United States.

The first two volumes cover arbitrations from the St. Croix River Commission under article V of the Jay Treaty to the Behring Sea Damage Commission in 1897; volumes III and IV contain material illustrating various special problems such as procedure, intervention, nationality, domicile, denial of justice, etc.; volume V has three appendices as follows: appendix I, Domestic Commissions for the Adjustment of International Claims; appendix II, Treaties Relating to Arbitrations to which the United States has been a Party; appendix III, Historical Note including Notes on Arbitrations in the nineteenth century between various Powers. There is also a detailed index in volume V, while volume VI is made up of maps.

The method adopted by Moore in presenting the arbitrations is somewhat difficult to summarize. Broadly speaking the general course followed comprised a brief history of the dispute, the steps leading to an agreement to arbitrate or to refer the dispute to commissioners, the agreement itself, the constitution of the tribunal or commission, the summaries of the arguments presented by both sides, the decision, and, finally, the execution of the decision and incidental information.

There was some criticism of the method and of the scope of Moore's *History and Digest*. The form of a digest, in the view of one writer, was responsible for the fact that "l'unité de la procédure, quand elle renferme plusieurs affaires, l'unité d'une même affaire, quand elle offre plusieurs aspects, se trouvent profondément rompues".\(^{104}\)

2. THE NETHERLANDS

*Unofficial publications*

E. O. van Boetzelaar's *Les arbitrages néerlandais de 1581 à 1794* (1930), is a survey of international arbitrations, including some instances of mediation and conciliation, only in the sense that it lists arbitration and conciliation agreements. The author does not often indicate whether such agreements were implemented and, in fact,\(^{103}\) See pp. 20-21 *supra.*

\(^{104}\) *De La Pradelle and Politis*, loc. cit., p. xix.

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gives only seven instances of actual arbitrations culminating in an award. But the work is complemented by G. A. van Hamel's *Les arbitrages internationaux néerlandais de 1813 à nos jours* (1939), which contains analyses in the Dutch language of some ten arbitrations to which the Netherlands has been a party. Decisions of tribunals of the Permanent Court of Arbitration are not included. The work is based partly on unpublished archives of the Dutch Government.

G. REPORTS OR COLLECTIONS OF DECISIONS OF SPECIFIC INTERNATIONAL COURTS OR TRIBUNALS

1. THE INTERNATIONAL COURT OF JUSTICE

The official publications of the Court consist at present of:


For a complete list of the publications which the Court intends to issue, see Yearbook, 1947-1948, pp. 69-70.

It is doubtful, however, if the Yearbook should be regarded as a publication of the Court in view of the statement in the Preface by the Registrar of the Court: "It is to be understood that the Yearbook of the International Court of Justice is prepared and published by the Registrar and in no way involves the responsibility of the Court."

The Reports 1947 and 1948 are paginated consecutively and include, in addition to several Orders of the Court, the Corfu Channel Case, Judgment on Preliminary Objection, Judgment of 25 March 1948 and the Advisory Opinion of 28 May 1948 relating to the Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter).

2. THE PERMANENT COURT OF INTERNATIONAL JUSTICE

*Official publications*

The work of the Permanent Court of International Justice was officially reported in several serial publications in French and English issued by the Registry.
Series A: comprising in nos. 1 to 24 the judgments of the Court and some of its orders, was issued from 1922-1930;

Series B: comprising in nos. 1-18 (1922-1930) the advisory opinions;

Series A/B: since 1931 the former A and B Series were combined into this new Series which comprises in nos. 40 to 80 (1931-1940) the judgments of the Court, its advisory opinions and such orders as were directed by the Court to be printed in it;

Series C: contains in nos. 1 to 19 (1922-1930) and nos. 52 to 88 (1931-1942) acts and documents relating to the judgments and advisory opinions given by the Court;

Series D: contains the acts and documents concerning the organization of the Court in nos. 1 to 6 (1926-1932);

Series E: is a series of annual reports on the activities of the Court and comprises nos. 1-16 (1925-1945).

Series F: this series, nos. 1 to 4 (1927-1937) contains general indexes to the publications of the Court and no. 4 is an index to the Statutes and Rules of the Court.

It is important to note that Series C includes, among the acts and documents relating to the judgments and advisory opinions of the Court, the written proceedings, orders not published in Series A/B, texts of diplomatic correspondence relating to the cases, and of relevant treaties, and also the records of oral proceedings. Thus there exists a virtually complete and official record of each case before the Court.

Indeed, the Court's publication programme was considered so satisfactory that it has been said "that no public institution in the world is better documented; certainly it is doubtful whether any other judicial institution publishes such a complete record of its activities".\textsuperscript{105}

Unofficial publications

(1) In German. "With the authorization of the Registrar of the Court and subject to his supervision" the Institut für Internationales Recht at Kiel, published the series Entscheidungen des Ständigen

\textsuperscript{105}Manley O. Hudson, \textit{The Permanent Court of International Justice, 1920-1942} (1943), p. 308.
This series reached 12 volumes, published between 1929-30 and 1937, and covered the Court's judgments, advisory opinions and orders rendered between 1922 and 1935.

(2) In Spanish. The Instituto Ibero-Americano de Derecho Comparado, at Madrid, published the Colección de decisiones del Tribunal Permanente de Justicia Internacional. However, only two volumes, covering the period from 1922 to 1926 were issued (in 1924 and 1927).

(3) In English. The World Court Reports edited by Manley O. Hudson and published by the Carnegie Endowment for International Peace cover the activities of the Court during the twenty-year period from 1922 to 1942. This series contains judgments, advisory opinions and orders of the Court. Information and instruments relative to the Court, such as its Statute, etc. are also included. All material is reproduced from official publications. The judgments and orders do not always follow the chronological order. Where there are several judgments or orders relating to the same case, e.g. the Mavrommatis Palestine Concessions Case, they are printed as a group.

Each entry begins with an editor's note which summarizes the history of the case "before, during, and after action by the Court, where information is available". Then follows a bibliography of official publications and unofficial legal analyses in comments relating to the case. Next are reproduced from Series C of the Court's publications, the instruments relating to the submission of the dispute. Then follows the text of the decisions or advisory opinions including dissenting or separate opinions.

Numerous tables, lists and indices add to the usefulness of these Reports.

3. The Permanent Court of Arbitration

Official publications

The International Bureau of the Permanent Court of Arbitration published:

(1) The Recueils comprising the compromis, the protocols of the sittings and the decisions of the Court in the following cases: I. The Pious Fund Case, 1902; II. The Venezuelan Preferential Claims Case, 1904; III. The Japanese House Tax Case, 1905; IV. The Mascat Dhows

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106 See Series E, no. 4, p. 325.
Case, 1905; VII. The North Atlantic Coast Fisheries Case, 1910; VIII. The Orinoco Steamship Company Case, 1910; IX. The Savarkar Case, 1911; X. The Canevaro Case, 1912; XVI. The Expropriated Religious Properties in Portugal Case, 1920; XVII. The French Claims against Peru, 1921; XVIII. The Norwegian Claims Case, 1922; and:

(2) The Awards in the following cases: V. The Casablanca Case, 1909; VI. The Grisbadarna Case, 1909; XI. The Russian Indemnity Case, 1912; XII. The Manouba Case, 1913; XIII. The Carthage Case, 1913; XV. The Island of Timor Case, 1914; XIX. The Island of Palmas Case, 1928; XX. The Chevreau Case, 1931.

In the Tavignano, Camouna and Gaulois Cases (case No. XIV) no decision was rendered by the Tribunal, the matter being settled out of court by Agreement of 2 May 1904 between France and Italy.\(^{109}\)

The Bureau of the Court was not authorized to compile *Recueils* relating to Cases V, VI, XI-XIII and XX mentioned above. No *Recueil* was published concerning cases XV and XX mentioned above as the proceedings in these two cases were exclusively in writing.\(^{110}\)

No information is available concerning the official publication by the International Bureau of *Recueils* or *Awards* in the Nordsjernan Case, 1932, the China v. Radio Corporation of America Case, 1935, and the Radio Orient Case, 1940, listed in the *Affaires d’arbitrages jugées à la Cour permanente d’arbitrage ou avec la coopération de son Bureau International*.\(^{111}\)

The Bureau had become increasingly aware that there was a need for a “vue d’ensemble des sentences de la Cour ainsi que des matières de droit qui y sont traitées”. With a view to satisfying this demand the Bureau decided to publish “un recueil contenant des analyses de toutes les sentences rendues depuis la création de la Cour, par les tribunaux d’arbitrage constitués conformément aux stipulations des Conventions de La Haye de 1899 et 1907 pour le règlement pacifique des conflits internationaux, ainsi que par les juridictions spéciales d’arbitrage qui ont fonctionné, sous son égide, en application de l’article 47, alinéa 1, de la Convention de 1907”.\(^{112}\)

\(^{109}\) *Bureau International de la Cour Permanente d’Arbitrage, Analyses des Sentences rendues par les Tribunaux d’Arbitrage, constitués conformément aux stipulations des Conventions de La Haye de 1899 et 1907 pour le règlement pacifique des conflits internationaux, ainsi que par les juridictions spéciales d’arbitrage qui ont fonctionné en application de l’article 47 de la Convention de 1907*, 1899-1934 (1934), p. 65.


This volume, the *Analyses des Sentences, 1899-1934*, comprises the analysis of twenty awards. For each case the following information is supplied: parties to the dispute; date of the *compromis*; the name or names of the arbitrator or of members of the tribunal; date of the award. Then follows: a brief history of the dispute and the points of law involved; a statement of the facts; the questions submitted for arbitration by the *compromis*; a summary of the award. The legal grounds on which the awards are based are indicated in italics. An analytical index and a bibliography are included.

**Unofficial publications**

Scott's *Hague Court Reports*¹¹³ is a collection of awards made during the period from 1902 to 1928. The award in the Chevreau Case of 9 June 1931 is not included, nor any award rendered after that date. The texts of the awards, of the *compromis* and of other essential documents "have been obtained in translated form from the most reliable sources available. . . . Where translations have been obtained from official sources, they have been reproduced in their official forms". In some instances unofficial translations were used. However, the original official texts of all translated documents are printed in an appendix.

The presentation of each case includes: a short title of the dispute; the parties; date of the award; a syllabus giving a brief history of the dispute; the composition of the tribunal and the material part of the award; the text of the award; the text of the *compromis*; and in some cases certain additional documents deemed useful for the understanding of the dispute and of its settlement.

As Wilson's *Hague Arbitration Cases*,¹¹⁴ the first collection to be made, covers less ground than Scott's *Hague Court Reports* and has been substantially superseded by it, there is no need for further discussion of its scope and method.

4. **THE INTERNATIONAL MILITARY TRIBUNAL, NÜRNBERG**

**Official publications**

In accordance with the direction of the International Military Tribunal, a series of volumes covering the judgments and proceedings

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¹¹³ Full title: The Hague Court Reports, comprising the awards, accompanied by syllabi, the agreements for arbitration, and other documents in each case submitted to the Permanent Court of Arbitration and to Commissions of Inquiry under the provisions of the Conventions of 1899 and 1907 for the Pacific Settlement of International Disputes. Edited with an introduction by James Brown Scott. (1916). A second series was published in 1932.

of this Tribunal is in process of publication by the secretariat of the Tribunal, under the jurisdiction of the Allied Control Authority for Germany.

As is stated in the preface to volume I:

"Recognizing the importance of establishing for history an authentic text of the trial of major German war criminals, the International Military Tribunal directed the publication of the record of the trial. The proceedings are published in English, French, Russian and German, the four languages used throughout the hearings. The documents admitted in evidence are printed only in their original language.

"The first volume contains basic, official, pre-trial documents together with the Tribunal's judgment and sentence of the defendants. In subsequent volumes the trial proceedings are published in full from the preliminary session of 14 November 1945 to the closing session of 1 October 1946. They are followed by an index volume. Documents admitted in evidence conclude the publication".115

The complete record is to be 37 volumes, consisting of one volume of pre-trial documents as indicated above, 22 volumes of testimony, 12 volumes of exhibits and 2 volumes of index. Approximately one half of the whole has appeared so far.

In the United Kingdom there is in process of publication under the authority of H.M. Attorney-General, by H.M. Stationery Office, a series entitled The Trial of German Major War Criminals. Proceedings of the International Military Tribunal Sitting at Nürnberg, Germany.

A brief description is given in the foreword to part I as follows:

"This is the first of a series of publications which will, in due course, cover the whole trial of major war criminals now in progress at Nürnberg. The publication will be issued in fortnightly parts.

"A copy of the official text of the transcript has been made available to the Attorney-General for this purpose by the International Military Tribunal, who, however, accept no responsibility for this publication."

Part I of this series was issued in London in 1946. So far 17 parts have been published.

In the same manner but not as part of the series, one volume was published in 1946 containing the speeches of the Chief Prosecutors for the United States of America, the French Republic, the United Kingdom and the USSR, at the close of the case against individual defendants.

5. THE CENTRAL AMERICAN COURT OF JUSTICE

The decisions of this Court "were not published in any uniform style". During the initial period of the Court's functioning its decisions or resolutions were printed individually at San José. Thus the decision in the case of Honduras v. Guatemala and El Salvador rendered in 1908, and the resolution in Diaz v. Guatemala of 6 March 1909 were published at San José in 1908 and 1909 respectively. Subsequent decisions and resolutions, beginning with the resolution of 14 October 1911, Cerdá v. Costa Rica, were published in the seven volumes of the Anales de la Corte de Justicia Centro Americana, of which the Secretary of the Court was the director. The Anales were published from 1911 to 1917. They were, however, not confined to reporting exclusively the resolutions and decisions of the Court but contained also other matters. Certain documents pertaining to the organization of the Court were printed in the Anales as were, in some cases, documents relating to matters of which the Court was seized.

6. THE MIXED ARBITRAL TRIBUNALS

The decisions of these Tribunals, created in 1919 and 1920, were published in an unofficial collection entitled Recueil des Décisions des Tribunaux Arbitraux Mixtes institués par les Traités de Paix, publié sous les auspices de l'Office Français des Biens et Intérêts Prives. The series comprises ten volumes issued between 1922 and 1930.

The Director of the series declared in the preface to volume I that "le Recueil des Décisions des T.A.M. nous paraît répondre à un véritable besoin, non seulement en raison de l'intérêt qu'il présentera pour les juristes curieux des manifestations du Droit International,

118 Hudson, op. cit., pp. 769 ff.
mais aussi pour les plaideurs qui trouveront dans cette publication les éléments de jurisprudence dans cette matière absolument nouvelle". He also believed that "à juste titre, la jurisprudence de la haute jurisdiction formera un monument important de Droit International nouveau, qui, créé à la suite d'une conflagration sans précédent dans l'histoire, ne sera pas sans avoir des répercussions sur l'état de paix qui va suivre".

The *Recueil* makes no claim to completeness and gives no clue as to how the cases were selected.

The report of a case generally indicates the title of the tribunal, the name of the president, the title of the claim and its number. The headnotes are in English, French, Italian or German depending upon the language of the tribunal. Catchwords are in these four languages. In some cases there is a brief summary of the facts and of the decision. The text of the decision is in the official language of the tribunal concerned.

The *Recueil* contains also the rules of procedure of the different tribunals, national legislation on the questions involved, as well as pertinent decisions of domestic courts, bibliographical notes and tables.

7. THE ARBITRAL TRIBUNAL FOR UPPER SILESIA

This tribunal was established pursuant to the Geneva Convention of 15 May 1922 between Poland and Germany to decide all conflicts concerning the interpretation or application of the provisions of that Convention.\(^1\) Article 592, paragraph 1 provided for the official publication of its decisions, "lorsqu'elles sont d'un réel intérêt jurisprudentiel".

The Tribunal between 1922 and 1937 decided 3,726 cases\(^2\) of which 127 leading cases were published in Polish and German. The official collection in German and Polish comprises seven volumes published from 1929 to 1937.\(^3\)

8. CLAIMS COMMISSIONS AND *ad hoc* ARBITRAL TRIBUNALS

Decisions of claims commissions instituted by agreement between two or more States to dispose of a more or less substantial number

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\(^{1}\) *League of Nations Treaty Series*, vol. 9.


\(^{3}\) The official collection is entitled: *Amtliche Sammlung von Entscheidungen des Schiedsgerichts für Oberschlesien—Zbior Urzędowy Orzeczeń Trybunalu Rozjemieszego dla Górneego Slaska*. 

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of accumulated claims have frequently been published officially and unofficially, as were the awards of arbitral tribunals created for the settlement of a particular dispute. It is probably safe to say that all of the decisions and awards have not been made available in print. And one of the characteristics of the present situation with regard to this material is that there is no serial publication in existence which would provide a complete collection of such awards and decisions.

There are several volumes of decisions rendered by particular claims commissions, and many of the decisions were also published by periodicals in the field of private and public international law. As mentioned above, one or two projects were started, but not consummated, to provide a complete collection not merely of the awards or decisions ever rendered, but also of other pertinent documentation such as compromis, cases and counter-cases, oral proceedings, etc.

The situation for the past twenty or thirty years is somewhat less unsatisfactory than for the preceding period, partly because the Governments themselves have published more material, and partly because of the existence of the Annual Digest and Reports of Public International Law Cases. The greater attention and space devoted to international case materials in leading journals must not be overlooked as an important factor in the picture. In spite of all these improvements, certain recent awards are extremely hard to find.122

The compilation of a complete list of available published reports containing the texts of awards and decisions handed down by mixed commissions and ad hoc arbitral tribunals cannot be attempted here. There are, however, numerous references in Stuyt's Survey of International Arbitrations,123 in Sandifer's Evidence before International Tribunals (1939) and of course, in Ralston's The Law and Procedure of International Tribunals.124

H. DIGESTS OF DECISIONS OF INTERNATIONAL TRIBUNALS

1. General Digests

The only general digest of decisions of international tribunals which appears to exist is The Annual Digest and Reports of Public

123 See pp. 37-38 supra.
124 See also Ralston, Supplement to 1926 revised edition of The Law and Procedure of International Tribunals.
International Law Cases, 1919-1942. The title of this publication was originally The Annual Digest of Public International Law Cases but was changed in 1940 in conformity with the change in editorial policy which has resulted in a partial transformation of the series into law reports proper. The work was originally undertaken by Sir Arnold McNair and Professor Lauterpacht, with the assistance of an advisory committee and some twenty-five contributors from different countries. Since 1935 Professor Lauterpacht has been the sole editor.

The ten volumes of the series which have so far appeared contain reports or digests of nearly 3,000 decisions of the years 1914-1942, including not only decisions of international tribunals, but also those of national tribunals upon points of international law. The original method by which the work was compiled was this: the contributors collected the decisions of the tribunals or countries for which they were individually responsible and these were then, when necessary, translated into English; the editors then selected the cases to be published and cast them into a common form consisting of a heading, a statement of facts and a condensed and paraphrased “Held” which gave the substance of the decision. Where a decision dealt with more than one point of law, it was dissected and printed in different entries. With the volume for 1929-1930 the dissection of decisions was, however, abandoned in order to give a trial to the policy, recommended by readers, of reporting each case as a whole and inserting cross references indicating the various points of law covered by it. And with the volume for 1931-1932 a further change of method was introduced, decisions being printed partly or wholly verbatim instead of being merely summarized. The original method of providing digests was thereafter retained only with respect to unimportant decisions and to certain bulky and easily accessible decisions such as those of the Permanent Court of International Justice and “the verbatim, although often abridged, report [ultimately became] the rule” rather than the exception. Thus in the preface to the ninth volume the editor could say that “little remains to be done” to transform the Digest into “international law reports proper” and the tenth volume is “predominantly—though not exclusively—a volume of, in most cases,

125 Digest of Public International Law Cases. Being a selection from the decisions of international and national courts and tribunals given during the years 1925 and 1926. Editors: Arnold D. McNair and H. Lauterpacht (1929); volume II, years 1927 and 1928. Edited by McNair and Lauterpacht (1931); volume III, years 1919 and 1922 (1932) and volume VI, 1923 and 1924 (1933), edited by Sir John Fisher Williams and H. Lauterpacht; volume V, 1929 and 1930 (1935) edited by H. Lauterpacht as were the following volumes: volume VI, 1931 and 1932 (1936), volume VII, 1933 and 1934 (1940), volume VIII, 1935 and 1937 (1941), volume IX, 1938-1940 (1942), volume X, 1941 and 1942 (1945), volume XI, 1919-1942 (supplementary volume, 1947). Beginning with volume VII the work appeared under the title Annual Digest and Reports of Public International Law Cases.
127 Annual Digest 1938-1940, p. ix.
complete law reports reproduced verbatim (in the case of reports in the English language) or in a translation". Another important change in editorial policy at present in process of being achieved is the transformation of the series into one appearing at annual intervals and providing an almost contemporaneous report of decisions of international legal interest.

Two other features of the *Annual Digest and Reports* are noteworthy. The first is that the series contains a profusion of notes by either editor or contributors, appended to individual cases reported or digested. The second is that with the volume for the years 1933-1934 there was begun the practice of reporting cases previously omitted because of oversight, inaccessibility or other similar reason, but subsequently considered of sufficient importance, to warrant inclusion. The culmination of this practice was the publication in 1947 of a supplementary volume covering the entire period of the *Digest* and containing, in addition to numerous cases not previously published, comprehensive tables of all cases reported or cited and a consolidated index to the first ten volumes of the series.

The arrangement of the *Annual Digest and Reports* is systematic. Cases are arranged under numerous sub-headings falling under the following main headings: I. International law in general; II. States as international persons; III. State territory; IV. Jurisdiction; V. State responsibility; VI. The individual and international law; VII. Diplomatic and consular intercourse and privileges; VIII. Treaties; IX. International organization; X. Disputes; XI. War and neutrality. The decisions included thus cover the whole field of international law. One exception, however, may be noted: the original editorial policy was not, as a rule, to print decisions of prize courts arising out of the war of 1914-1918; but some important decisions of prize courts during the war of 1939-1945 appear in the volume for the years 1941-1942.

The value of the *Annual Digest and Reports* is very generally acknowledged. It has, of course, been criticized, but successive changes in editorial policy have very largely met criticisms. Thus, the point that the work endeavoured to do two things, to be an index of decisions on the one hand and to be a primary source on the other, and that it really did neither, has ceased to have validity since the virtually complete transformation of the series from a digest into reports. The view has also been expressed that "bulk is no substitute for new principles" and that it is "merely a waste of the reader's time to report cases which do not appear to embody any new principle or even a modification of an established principle". This raises the
fundamental question whether the selection of cases according to their weight and novelty should be done by the editor, or by readers. Clearly any system whatsoever of editorial selection is open to criticism. The policy of Professor Lauterpacht and his collaborators has been to include "even cases of minor importance in a note or footnote", on the ground "that even a seemingly insignificant or purely domestic decision may on occasion become of importance to the specialist and that, unless the case is recorded in the Digest in some form, it may easily become lost for the purposes of international law".\textsuperscript{130} The reputation and utility of the work, in any event, are now beyond question. But it is to be noted that unsold stocks of the earlier volumes were unfortunately destroyed in the bombing of London and are now virtually unobtainable; and further, that the editor depends for the expenses of publication upon grants from various sources. In this connexion, it may be remarked that it has been suggested that official support might be given to the undertaking through the United Nations, with a view to its development "into a genuine international law reporter".\textsuperscript{131}

2. DIGESTS OF DECISIONS OF SPECIFIC INTERNATIONAL TRIBUNALS

(i) THE INTERNATIONAL COURT OF JUSTICE

With the second issue of the Yearbook of the International Court of Justice there was inaugurated a digest of the decisions and advisory opinions of the Court upon the same lines as the digest which appeared in the annual reports of the Permanent Court of International Justice.\textsuperscript{132}

(ii) THE PERMANENT COURT OF INTERNATIONAL JUSTICE

Official publications

In conformity with the request of the Council of the League of Nations, dated 23 December 1924, the Registry of the Permanent Court of International Justice began to publish, as Series E of the publications of the Court, annual reports in which were included summaries of judgments and advisory opinions. The section of the report devoted to decisions was transformed into a digest with its third issue and this feature was retained so long as the Court continued to exist.

\textsuperscript{130} \textit{Annual Digest 1933-1934}, p. x.
\textsuperscript{132} See infra.
It was pointed out by the Registrar, that “this summary of judgments and advisory opinions, the object of which is to present a general view of the Court’s work, may not be cited in argument against the actual text of the judgments and opinions and does not constitute an interpretation of them”.\textsuperscript{133}

The method of a digest was adopted because it was thought that it would “afford a firm foundation for the codification of the Court’s decisions—both past and future—and . . . lend itself more readily to consultation: under each article of the Statute are grouped the provisions for the Rules connected therewith and the practice adopted by the Court in the application of the terms of its Statute and Rules”.\textsuperscript{134} The chapter containing the digest was originally followed by an analytical index. Subsequently the number of indexes was increased.\textsuperscript{135} The sixteenth annual report for the period from 15 June 1939 to 31 December 1945, embodies in chapter VI all the decisions taken by the Court during the years from 15 June 1933 to 31 December 1945. The Digest of Decisions “is followed by three indexes: (1) an analytical index; (2) an index of articles of the Statute; (3) an index of the Rules to which the decisions relate. The three indices cover all decisions since 1922”.\textsuperscript{136}

\textit{Unofficial publications}

The decisions and advisory opinions of the Permanent Court of International Justice during the period 1922-1934 are digested in \textit{Fontes Juris Gentium: Digest of the Decisions of the Permanent Court of International Justice}, 1922-1930 and 1931-1934.\textsuperscript{137} Decisions and Opinions of the Court issued in the Series A/B Nos. 63-80 have not been digested in this series.

This \textit{Digest} of decisions, advisory opinions and separate and dissenting opinions, is divided into two parts. The first part deals with

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\textsuperscript{133} Series E, No. 1, p. 162.
\textsuperscript{134} Series E, No. 3, p. 173.
\textsuperscript{135} Series E, No. 12, p. 186.
\textsuperscript{136} Series E, No. 16, p. 159. Chapter VI of the Tenth Annual Report, Series E, No. 10, contains at p. 151 the following note: "It should be noted that, since the publication of the ninth annual report, a work entitled \textit{Statut et Règlement de la Cour permanente de Justice internationale (éléments d'interprétation)} has been published by the \textit{Institut für Ausländisches öffentliches Recht und Völkerrecht of Berlin}. This work includes, inter alia, a digest of decisions taken by the Court in application of the Statute and Rules up to and including those recorded in the ninth addendum (Series E, No. 9). Accordingly, for those who are able to consult the work above mentioned, the present chapter may be regarded as the first addendum thereto."

\textsuperscript{137} \textit{Fontes Juris Gentium}, Series A, sectio I, \textit{tomus 1} and \textit{tomus 3} published in 1931 and 1935 respectively.
substantive international law and the second with adjective international law, more specifically with questions of the jurisdiction and procedure of the Court. Within each part the material is arranged in accordance with a simple classification. All extracts are printed in French and English. The classification is printed in French, English and German. All tables and indexes are also in these three languages.

In these two volumes "the basic principles and special rules on which the Court has relied in the arguments underlying its decisions and opinions have been collected and systematically classified". In the opinion of the editor of this series "even a cursory survey of these extracts shows a small system of international law complete in itself, a system of rules which are in great part neither treaty rules nor rules of customary law".\textsuperscript{138}

The broad objective of the editors of the \textit{Digest} was to furnish a source book and for this reason they have endeavoured to select statements "of more general import" and they have not attempted to formulate themselves "a single rule of law corresponding to a legal conception of the Court derived from the combination of several passages".\textsuperscript{139} To enable the user of the \textit{Digest} to assess properly the import of certain passages, the context in which it appears has frequently been reproduced. However, the editors insist that "the study of the decisions themselves remains indispensable for all more profound research".\textsuperscript{140}

It is characteristic for the methodological conception underlying the \textit{Digest} that the decisions "of international tribunals have not been included . . . as decisions of individual cases, but simply and solely as material, in so far as they contain the legal views of international decisional bodies. For this reason no distinction could be drawn in these volumes between the \textit{rationes decidendi} and \textit{obiter dicta}. In the opinion of the editor it is inadmissible to apply to the field of international law the distinction between different kinds of reasons for a decision which is shown by the Anglo-American jurisprudence, as the condition on which such a distinction is made, viz. the general binding force of the decision, is not found in the same way in international law. A collection of material must be made with the greatest possible impartiality".\textsuperscript{141}

It naturally follows from this conception that any attempt to distinguish between different parts of the decision would have intro-

\textsuperscript{138} \textit{Fontes Juris Gentium}, Series A, sectio I, tomus I, p. xxv.
\textsuperscript{139} Ibid., p. xxxiii.
\textsuperscript{140} Ibid.
\textsuperscript{141} \textit{Fontes Juris Gentium}, Series B, sectio I, tomus I, p. xx.
duced individual or even subjective judgments which the *Fontes Juris Gentium* series was at pains to avoid. It also follows that "the selection was not restricted to those utterances which served to direct the decision of the questions before the Court, but included also such passages which possess no decisive significance for the case at bar, but which are nevertheless characteristic of the legal viewpoint of the Court".

The publication of this *Digest* was on the whole well received by international lawyers. The view of one writer was that: "II y a là un effort scientifique de la plus haute importance et dont l'utilité juridique est inappréciable" and that "la valeur scientifique de l'œuvre est au-dessus de tout éloge". Another writer recognized that the Digest was "the first product of a monumental undertaking which should be greeted with gratitude and approval by the legal profession throughout the world", but cautioned that "while such a work must be used with the reservation that a paragraph in a judgment or opinion is always qualified by its setting, it should prove to be of inestimable value and convenience to students of current international law. The amount of the Court's output has grown very large, and such a digest fills a real need. The execution of the plan is admirable down to the last detail. The reproduction of the several languages ensures the wide use of the digest".

Another writer, appreciating the objective of the *Digest" to facilitate a greater measure of objectivity in practice and in research" raised the question: "May it not be that something rather less than the editors have provided, something more in the nature of a full and reasoned index to the decisions, might have been equally useful? At present there may be a danger that the considerable length of many of the citations, divorced though they are from the full context in which they occur, may encourage the habit of relying on the authority of the digest alone."

Several critical voices were raised at the Fifth Conference of Teachers of International Law and Related Subjects. It was reported that, according to one view, the extracts "may be a legal conclusion, a parenthetical observation, a mere *obiter*; it is served up either as law, or having the appearance of law—one cannot know which".

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147 *Proceedings*, 1933, p. 168.
One of the editors of the Digest made this statement, however: "Ever since the Digest of the Decisions of the Permanent Court of International Justice was issued, practically every member of the Permanent Court has been urging us continually to get out a supplement. I might add that those volumes which are in the possession of the members of the Permanent Court have been practically destroyed through constant use".\(^{148}\)

It may be noted as indicative of the recognition with which the Digest was received, that half of the first edition was sold in the course of the first year after publication.\(^ {149}\)

(iii) THE PERMANENT COURT OF ARBITRATION

The decisions of tribunals of this Court are digested in Fontes Juris Gentium: Digest of the Decisions of the Permanent Court of Arbitration, 1902-1928.\(^ {150}\)

This Digest was prepared in the conviction that the decisions of the tribunals of the Permanent Court of Arbitration "are of lasting value for the study of international law" and "of great importance as sources of legal rules".\(^ {151}\) The method applied was, as far as possible, the same as that employed in the Digest of the Decisions of the Permanent Court of International Justice. The editors found it necessary to stress again that "the catchwords placed above the passages reproduced are not intended as systematic subdivisions of the chapter headings, but as aids to the reader" and that the Digest "is intended merely as a guide and that the study of the decisions themselves remains indispensable for all more profound research".\(^ {152}\)

Altogether 19 decisions are digested. The texts of the compromis relating to these arbitrations are reproduced in extenso in an annex. The abstracts are classified under 16 main headings and a larger number of sub-headings or "catchwords".

The extracts reproduced in the Digest are taken from the official publications of the International Bureau of the Permanent Court of Arbitration and are marked as such. However, all extracts are given in French, English and German, the necessary translations being made by the editors.

\(^ {148}\) Ibid., p. 174.
\(^ {149}\) Fontes Juris Gentium, Series B, sectio I, tomus I, p. xxi.
\(^ {150}\) Fontes Juris Gentium, Series A, sectio I, tomus 2 (1931).
\(^ {151}\) Ibid., p. xi.
\(^ {152}\) Ibid., pp. xi and xii.

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The abstracts themselves are reproduced without reference to the decision from which they were taken. In order to facilitate their identification there are printed on the margin numbers referring to the Index of passages reproduced from the decisions which concludes the volume.

I. REPORTS OR COLLECTIONS OF DECISIONS OF MUNICIPAL COURTS ON QUESTIONS OF INTERNATIONAL LAW

1. General Collections

No attempt has yet been made to prepare a systematic and comprehensive collection of decisions on questions of international law rendered by the courts in the different countries over a period of time. It is possible, however, to point to the Annual Digest and Reports of Public International Law Cases which since 1940 began to report cases in extenso, and which "has served to reveal the wealth of material which may lie buried". The number of countries, however, whose decisions are reported in this work, although substantial, is limited and therefore, as has been pointed out, "a general, global collection of cases on international law" would be still more valuable.

In addition to the Annual Digest, several legal periodicals in different countries published regularly a selection of decisions of municipal courts, in their own country and abroad, on questions of international law. A fairly representative cross-section of such decisions was offered in the Bulletin of the Institut Intermédiaire International at The Hague 1919-1940. Some of the decisions are reported in extenso and others in the form of a very brief digest or extract. More complete summaries or the full text could be obtained on request from the Institute. The Institute, however, informed the reader that the decisions printed in the Bulletin under the heading. Jurisprudence en Matière de Droit International represented only a fraction of the jurisprudence which it had collected and which

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153 See pp. 50-53.
155 The Institute was established at The Hague on 18 January 1918 as un office de virements documentaires, un 'clearinghouse' pour renseignements internationaux. Its name was subsequently changed to Institut Juridique International. In addition to publishing treaties, decisions of prize courts, and various diplomatic documents, it was the purpose of the Institute to prepare un aperçu de décisions judiciaires présentant un caractère international, soit que ces décisions soient rendues par des juges internationaux, soit qu'elles émanent de juges nationaux, pour autant que ces dernières touchent à des questions d'un caractère international. Bulletin, vol. 1 (1919), pp. 20-22. The Bulletin comprises 42 volumes, the forty-second appeared in January 1940.

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was available in its archives. Also of interest is the collection *Comparative Judicial Decisions on Commercial or Maritime Law, the Law of the Air, International Law and the Law of Copyright*, the first volume of which was issued by the *Istituto di Studi Legislativi* at Rome in 1938.

### 2. Collections with Reference to Particular Countries

There is likewise a scarcity of comprehensive collections of decisions upon points of international law of the courts of particular countries. Official or unofficial reports exist, of course, in most countries, but very rarely are such decisions as are of interest to international lawyers extracted from the mass and published separately. There are, however, several such collections, some of which may be briefly mentioned here:

**(i) Germany**

There was issued in the *Fontes Juris Gentium* collection a series consisting of the decisions of the German Supreme Court in questions of international law, covering the period from 1879 to 1929. As, however, this series partakes more of the nature of a digest than of a law report, it is more appropriate to list it elsewhere in this survey. Parallel collections of the decisions of the highest courts of other countries were planned by the editors of this series, but they failed to materialize.

**(ii) United States**

Decisions of the Supreme Court and of other courts in the United States have been reproduced in the *American Journal of International Law* and other periodicals. The important cases are also conveniently represented in the different casebooks of international law. The first casebook was Freeman Snow's *Cases and Opinions*, published in 1893, upon which was based Scott's *Cases on International Law* (1902). Stowe and Munroe's casebook followed in 1916, that of Evans in 1917, those of Dickinson and Hudson in 1929, that of Fenwick in 1935, and that of Briggs in 1938. Though primarily intended for students, these publications have been of much assistance to practitioners as well. The method of presentation employed in them varies somewhat. Thus some approximate to digests, whilst others resemble law reports proper. The majority of them include not only American cases but

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157 See pp. 64-66.
decisions of international tribunals and of the courts of the United Kingdom and other countries.

(iii) UNITED KINGDOM

Decisions of the courts of the United Kingdom on questions of international law are reproduced in the legal journals and notably in the *British Yearbook of International Law*. Pitt Cobbett's *Leading Cases and Opinions on International Law* (1885), the first casebook on international law to be published anywhere, now in its sixth edition, contains a selection of decisions. But this work is less of a law report than a collection of paraphrased decisions. American casebooks, as has been already noted, also contain decisions of the courts of the United Kingdom.

(iv) FRANCE

There is no general collection of French case law of international legal import nor yet any French casebook on French international law. But the numerous French decisions are extensively reported in legal journals, in particular in the *Revue de droit international* (1927-1940, edited by de La Pradelle), the *Journal de droit international* (founded by Clunet in 1874) and the *Revue générale de droit international public*. The different *Recueils Dalloz* and the *Répertoires Dalloz* also contain international law cases. There exists, with respect to French cases, the important *Recueil général périodique et critique des décisions, conventions et lois relatives au droit international public et privé*, founded by Albert de La Pradelle in 1934, but unfortunately discontinued in 1938, part III of which is devoted to *Jurisprudence interne française et étrangère*. Finally there must be mentioned Darras' *Répertoire de droit international* (edited by de La Pradelle and Niboyet, 1929-1931), which is further discussed in this survey in connexion with digests of municipal decisions on questions of international law.\(^{158}\)

(v) CANADA

A collection of Canadian cases\(^{159}\) on international law was published by Mackenzie and Laing in 1938.

(xii) OTHER COUNTRIES

Decisions of the courts of other countries on questions of international law are reported in the periodical literature of many such

\(^{158}\) See p. 64.
\(^{159}\) *Canada and the Law of Nations.*

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countries. Thus, Egyptian decisions are to be found in the *Revue égyptienne de droit international* and Yugoslav cases in the *Annuaire* of the Yugoslav Association for International Law.

3. **COLLECTIONS OF MUNICIPAL DECISIONS ON SPECIAL TOPICS**

Several collections of the decisions of municipal courts on particular questions of international law exist. The following would appear to be the most important categories of these:

(i) **PRIZE CASES**

The decisions of prize courts of different countries have at various times been collected. Thus, there exist the three volumes of the *Prize Cases in the United States Supreme Court, 1789-1918*, published under the auspices of the Carnegie Endowment for International Peace in 1923, and Roscoe's *English Prize Cases* (two volumes, 1905, covering the years 1745 to 1859). Reports of the principal Russian and Japanese Prize Cases decided in 1904-1905 were published by Judge Sir Cecil Hurst and F. E. Bray in 1912 and 1913. Further, various collections of prize cases decided during the war of 1914-1918 were published, of which it is sufficient to mention Lloyd's *Reports of [British] Prize Cases* (ten volumes, 1915-1924, new series, one volume, 1940-1947); *British and Colonial Prize Cases* (three volumes, 1916-1922); Fauchille and Basdevant's *La guerre de 1914, Jurisprudence Britannique en Matière de Prises Maritimes* (two volumes, 1922 and 1927); *Décisions du Conseil des Prises et Décrets Rendus en Conseil d'État en Matière de Prises Maritimes* (two volumes, 1916, 1923; Fauchille, *La Guerre de 1914, Jurisprudence Française en Matière de Prises Maritimes* (two volumes, 1916, 1919); *Sentenze della Commissione delle Prede, Guerra Europea, 1915-1918* (1927); Fauchille and Basdevant's *La Guerre de 1915, Jurisprudence Italienne en Matière de Prises Maritimes* (1921); *Entscheidungen des Oberprisengerichts in Berlin* (two volumes, 1918, 1921); Fauchille and Visscher's *La Guerre de 1914, Jurisprudence Allemande en Matière de Prises Maritimes* (two volumes, 1922, 1924); J. H. W. Verzyl, *Le Droit des Prises de la Grande Guerre, Jurisprudence de 1914 et des années suivantes en matière de prises maritimes*; published under the auspices of the *Institut Intermédiaire International* (Leyden 1924).

(ii) **LABOUR CASES**

The International Labour Office published an *International Survey on Legal Disputes on Labour Laws* covering the years 1925 to 1938 which, though only partially concerned with international
law, possesses certain features of interest in connexion with the general problem of collecting and publishing municipal decisions. The Survey was at first confined to the four most important European legal systems and, although United States decisions were added to it in 1927, Italian decisions had to be omitted in later years. Decisions were grouped by countries and then subdivided in accordance with an elaborate system. A standard method of presentation of cases was adopted, but the actual selection of cases was in the hands of individual experts from the countries concerned. In respect of each country there was printed a note on jurisdiction to enable the reader to assess the importance of decisions of courts with which he might not be familiar. This information is normally lacking in casebooks and digests on international law but would be very valuable.

(iii) CIVIL AVIATION

The secretary of the Legal Committee of the International Civil Aviation Organization reported at its second session that the secretariat had collected certain judicial, administrative and arbitral decisions on questions affecting civil aviation and the Legal Committee recommended to the council of the Organization the publication of this material.160

(iv) WAR CRIMES

The United Kingdom Stationery Office is in process of publishing 20 volumes comprising a total of 122 cases of war crimes tried by municipal tribunals, military and civil, on behalf of the United Nations War Crimes Commission. Eight volumes have so far appeared, entitled Law Reports of Trials of War Criminals Selected and Prepared by the United Nations War Crimes Commission.

J. DIGESTS OF DECISIONS OF MUNICIPAL COURTS ON QUESTIONS OF INTERNATIONAL LAW

1. GENERAL DIGESTS

It is believed that the Annual Digest and Reports of Public International Law Cases is the only work which systematically reports and digests decisions of courts of a plurality of countries on questions of international law. As has been already seen, this work incorporates also decisions of international tribunals. Its general characteristics

have been discussed, therefore, under the heading of Digests of Decisions of International Tribunals.\textsuperscript{161} To the observations already made concerning it, however, it may be added that the number of countries covered by the Annual Digest varies somewhat from volume to volume, relevant materials for all countries not being always discoverable or accessible. The volume for 1919-1922 contained a varying number of digests for the following countries: Argentina, Austria, Belgium, Bolivia, Brazil, Canada, Chile, Costa Rica, Cuba, Czechoslovakia, Egypt, England, France, Germany, Greece, Holland, Hungary, Italy, Japan, Latvia, Mexico, Nicaragua, Norway, Panama, Peru, Poland, Scotland, Union of South Africa, Sweden, Switzerland, the USSR, and Venezuela. The last pre-war volume (for the years 1935-1937) contained digests for the following countries: Argentina, Australia, Austria, Belgium, Brazil, British Empire, Canada, Danzig, Egypt, England, Estonia, France, Guatemala, Germany, Greece, Holland, Hungary, Italy, Luxembourg, Mexico, Norway, Palestine, Panama, Poland, South Africa, Sweden, Switzerland, and the United States. There may also be noted a criticism of the work for its lack of background material on the ground that “decisions of national courts cannot—any more than diplomatic material—be properly understood in isolation. They have to be analysed against the background of the legal systems to which they belong and seen in their place in the hierarchy of courts”.\textsuperscript{162}

Though the Annual Digest is thus the only general digest of decisions of municipal courts, various periodicals publish such decisions, notably the Bulletin of the Institut Intermédiaire International, the Revue générale de droit international public, and the Journal de droit international. The American Journal of International Law and the American casebooks also contain such decisions.

2. Digests of Decisions of Courts of Specific Countries

(i) United States

Summaries of decisions of American courts on questions of international law”.\textsuperscript{164} Similarly, the General Index for 1943-1944 lists only in some of the casebooks, and in legal periodicals. In connexion with the last-mentioned source, the recent decision of the board of editors of the American Journal of International Law to extend greatly the reporting of decisions in that Journal is to be noted. This decision was prompted by the fact that “the digest system, used by American

\textsuperscript{161} See p. 50 f.
lawyers as a guide through the multitude of American cases in the
court reports, does not furnish a very satisfactory means for finding
even the decisions in this country on international law points".\textsuperscript{163}
Thus, it was reported, "the General Digest for the years 1941-1942,
listed only 42 decisions under the section 'International Law'.
By making his own index and by diligent effort, the writer was able to
discover a total of 124 cases decided by United States courts during
that period in which the decision turned upon some question of inter-
national law".\textsuperscript{164} Similarly, the General Index for 1943-1944 lists only
40 cases, but further research yielded 74 cases.\textsuperscript{164*}

As a further aid to finding American cases on international law
questions perhaps the Annual Survey of American Law, published
since 1942 by the New York University School of Law should be men-
tioned. This Annual Survey contains regularly a chapter on inter-
national law in which current American cases on international law
are discussed and American legislation on questions of international
law and organization reviewed.

(ii) UNITED KINGDOM

Legal journals, notably the British Yearbook of International
Law, periodically report decisions upon questions of international
law. The English and Empire Digest comprises decisions of English,
Scottish, Irish, Canadian, Indian, Australian, Newfoundland, and
South African Courts, but contains no general heading International
Law, so that relevant cases must be sought under such headings as
Aliens, the Crown in Foreign Relations, etc. Also of assistance in trac-
ing relevant British decisions is the Annual Survey of English Law,
published since 1928 by the London School of Economics and Politi-
cal Science, and containing chapters on international law and rela-
tions. British decisions are further to be found in Pitt Cobbett's Cases
and Opinions on International Law,\textsuperscript{165} in Moore's and Hackworth's
Digests, in the American casebooks and in some French journals.

(iii) FRANCE

Perhaps the most valuable guide to French decisions on inter-
national legal questions is, apart from periodicals, de La Pradelle and
Niboyet's Répertoire de droit international, consisting of ten volumes
and one supplement (1929-1934). This work, which is systematically
arranged, is not confined exclusively to French cases; thus the title

\textsuperscript{163} William W. Bishop, Jr., "Recent American Judicial Decisions involving
\textsuperscript{164} Herbert W. Briggs, "Finding International Law", American Journal of Inter-
\textsuperscript{164*} Ibidem.
\textsuperscript{165} See p. 60 supra.
on Nationality therein refers to the legislation and decisions of sixty-three different countries.

(iv) GERMANY

The decisions of the German Supreme Court relating to international law, from 1879 to 1929, are published in the *Fontes Juris Gentium* series\(^{106}\) both as a collection of decisions and also in the form of a systematic digest. Decisions of lower courts were omitted on the ground that although this omission would result in the exclusion of some cases of interest from the viewpoint of international law, these decisions were not of equal authority with those of the Supreme Court.

The digest is based on 412 decisions of which 76 had not been previously published. The majority of the decisions were taken from official reports, but some were taken from legal periodicals.

Not all of the 412 decisions deal with questions of international law. The editors also took into consideration "such cases as show the effect of international legal relationships on domestic affairs and others which pronounce on facts, domestic in themselves, but which are capable of being considered from the point of view of international law. It was indeed inevitable that material of this kind—extradition, for example—should occupy a comparatively large space in this collection. In accordance with the purpose of the work, the relevant utterances have been classified under the appropriate headings of international law".\(^{107}\)

As indicated above, this volume consists of two parts. The first part "contains, in the form of a systematic digest, the most important rules taken from the decisions, either literally reproduced, or else closely moulded on the actual words of the report". This digest is divided into a general and special part. "The special part deals with particular questions with which the Reichsgericht had to deal after the war in consequence of Germany's position under the Versailles Treaty. Cross-references preserve the connexion between the general and the special part".\(^{108}\)

The material in the general part is classified as follows: I. General principles; II. International law and municipal law; III. Subjects of international law; IV. Nationality; V. Territory of States; VI. Jurisdiction of States; VII. Legal position of aliens; VIII. Extradition; IX. Succession of States; X. Organs of international intercourse; XI. Consular jurisdiction; XII. Treaties; XIII. International offences; XIV. International organs and commissions; XV. War.

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\(^{106}\) *Series A, sectio 2, tomos 1* (1931).
The special part consists of the following main headings: Armistice Agreement; Treaties of Peace; Occupation of the Rhineland; Saar Basin; Upper Silesia; Occupation of the Ruhr.

All extracts in the first part are reproduced in the German language, followed by translations into the French and English languages.

The second part contains the text of the 412 decisions on which the digest is based, "showing the rules in their proper content". In general, "only the facts of the case and the passages relevant from the point of view of international law are printed. Part two is thus a necessary supplement, furnishing the reader of part one with the possibility of immediate control without the inconvenience of searching for the individual decisions in the various collections".169

The decisions are printed in chronological order and each decision is numbered consecutively. The numbers are repeated above each of the rules printed in part one, so as to facilitate as far as possible the finding of any particular decision. Reference to the source from which the text of the decision is taken is also provided. All decisions are reproduced exclusively in German.

This volume of the Fontes Juris Gentium was favourably received. As one international lawyer observed: "Le droit interne, en effet, est des plus importants à connaître de nos jours et entre pour une part non négligeable dans l'élaboration des grandes règles internationales. Le droit allemand est donc assuré de gagner, par le canal de ces publications, une notoriété qui facilitera au juge international certaines interprétations ou applications".170 In the opinion of another, the editor of the series "pointed the way toward a new equipment for the legal profession to deal with problems of international law. Similar digests are needed of the decisions of the highest courts in other countries, and it is to be hoped that the Institut171 will be able to publish a digest of the decisions of the Supreme Court of the United States".172

K. NATIONAL LEGISLATION RELATING TO INTERNATIONAL LAW

The great scarcity of publications setting out national legislation dealing with or affecting questions of international law makes it perhaps useful to mention in this survey such works of this type as do exist.

169 Ibid., p. xiii.
171 Reference is made to the Institut für ausländisches öffentliches Recht und Völkerrecht which was responsible for the compilation of the Fontes Juris Gentium.
1. General Publications

There is no comprehensive publication on national legislation relating to international law. The international lawyer is forced to look for information to a variety of legal periodicals of different countries, and notably to the *Annuaire de Législation Étrangère*, published since 1872 by the *Société de législation comparée*. There exists also the *Recueil Universel de Lois et Décrets* (four volumes, 1938) published by the International Legislative Information Center; the *Legislazione Internazionale* and the *Repertorio della Legislazione Internazionale*, both published by the *Istituto di Studi Legislativi* from 1932 onwards. De La Pradelle's *Recueil Général Périodique et Critique des Décisions, Conventions et Lois relatives au Droit International Public et Privé* represented an ambitious attempt to provide legislative texts periodically. Altogether five volumes appeared between 1934 and 1938, part VI in each volume being devoted to *Lois et Règlements internes d'ordre international*.

2. Publications on Specific Topics

Official publications

(i) League of Nations

The Library of the League of Nations published annually from 1930 to 1939 a *Chronology of International Treaties and Legislative Measures* derived from treaty and legislative texts printed in the *Official Gazettes* of nearly all countries and having reference to matters within the sphere of activity of the League. The material so published is classified under the following headings: I. Foreign affairs and public administration; II. Military questions; III. Educational, social and health questions; IV. Economics and finance; V. Finance; VI. Communications and transit and VII. Commerce and clearing.

(ii) Labour Law

The *Legislative Series*, published since 1920 by the International Labour Office, contains reprints or translations of the texts of the most important laws and regulations affecting labour adopted in the different countries, issued in leaflet form and distributed every two months. The series has so far appeared in French and English, but a Spanish edition is contemplated.

The International Labour Office also published in 1944 a volume entitled *Constitutional Provisions Concerning Social and Economic Policy*. This work is not confined to labour matters but includes, for instance, constitutional provisions whereby international law is declared to be part of internal law on the ground that, with the growth
of the customary law of nations and the increase of its social and economic content, such provisions may have significance in relation to social and economic policy.

(iii) HUMAN RIGHTS

At its second session the United Nations Economic and Social Council, on the recommendation of the Nuclear Commission on Human Rights, adopted on 21 June 1946, a resolution requesting the Secretary-General to make arrangements for:

(a) The compilation and publication of a year book on law and usage relating to human rights, the first edition of which should include all declarations and bills on human rights now in force in the various countries;

(b) The collection and publication of information on the activities concerning human rights of all organs of the United Nations;

(c) The collection and publication of information concerning human rights arising from trials of war criminals, quislings, and traitors, and in particular from the Nürnberg and Tokio trials;

(d) The preparation and publication of a survey of the development of human rights; and

(e) The collection and publication of plans and declarations on human rights by specialized agencies and non-governmental national and international organizations.

The Yearbook on Human Rights, was prepared pursuant to that resolution and contains constitutional and some legislative provisions, in force on 31 December 1946. All countries were considered and “all constitutional provisions relating to human rights have been included”.173

The reason for including legislative enactments was stated to be: “Even where the constitution contains specific provisions relating to human rights and fundamental freedoms it is sometimes useful to supplement the study of these provisions by examination of the machinery established for their application and enforcement (ordinary laws, sometimes supplemented by decrees, by-laws, edicts, etc.). Thus the exercise of freedom of the Press or freedom of association is often governed by elaborate rules. The decisions of courts also contribute to the development of the law.

“The laws and regulations relating to human rights were found to be so numerous that only a selection could be included in the

Yearbook. Since each issue relates to a single year, only those laws and regulations which came into force in 1946 would normally appear in this volume. However, some ordinary legislation adopted before 1946 has been added in the case of countries liberated in 1944 and 1945 in order to give a clear picture of the recent development of human rights in those countries".174

In addition to constitutional and legislative texts the Yearbook "contains statements and studies describing and commenting on the law relating to human rights in 16 countries, and indicating any recent changes in the law. The statements are in lieu of written constitutional texts where none exist or where the constitution does not mention human rights. The studies, on the other hand, deal with certain countries where there are constitutional provisions relating to human rights. In addition to five statements, there are eight studies which deal with the principles of human rights in general, and five studies which deal with specific questions in this field or describe the recent evolution of the law governing human rights".175

The five statements referred to above relate to Great Britain, Australia, Canada, New Zealand, and China. Studies relate to the following countries: Czechoslovakia, Poland, Sweden, USSR, Belgium, Cuba, France, Italy, Lebanon, Mexico and Australia. There are two studies concerning human rights in the United States of America.

Concerning the authorship of these statements and studies, the Yearbook says: "The statements or studies relating to Australia, China, Czechoslovakia, New Zealand, Poland, Sweden, Union of Soviet Socialist Republics and United Kingdom were written by experts designated by these Governments, or by delegates or officials of the Government concerned. Those concerning Belgium, Canada, Cuba, France, Italy, Lebanon, Mexico, and the United States of America were prepared by experts selected by the Secretariat. These statements and studies, however, are to be considered as representing the personal views of their authors".176 Moreover, a large number of persons assisted in the preparation of the Yearbook by supplying information and suggestions.

(iv) INTERNATIONAL CIVIL AVIATION

At the eleventh meeting of the second session of the Legal Committee of ICAO, the Secretary recalled "that at its first session the Legal Committee had charged the Secretariat first of all with a permanent task, that was to keep up-to-date and as complete as possible the documentation on all questions referred to the Committee". The

174 Ibid., p. x.
175 Ibid.
176 Ibid.
Secretariat had accordingly “compiled a list of all the national laws and regulations on civil aviation. That covered about 1,500 documents which could be published and used by national Governments and airlines. The Secretariat was prepared to publish all these documents if the Committee considered it as useful and if the Council decided to give the appropriate funds for that purpose”.\textsuperscript{177}

It may be of interest to quote here the following observations on the “Collection of National Aviation Laws and Regulations” from the “Report submitted by the Secretariat on questions referred to it by the Legal Committee”:\textsuperscript{178}

“To date, twenty-six Contracting States\textsuperscript{179} have responded to the request made in November 1945 that they forward to the Organization copies of their national aviation laws and regulations. Some have provided very complete sets of their national laws and regulations as well as additional documents such as executive decisions concerning permits to airlines, approval of tariffs, etc., and some have also supplied texts relating to their colonies, protectorates and mandated territories. Extensive research by the Secretariat in official publications and aviation periodicals issued by the States which have not replied has resulted in the collection of a large number of references which have enabled requests to be addressed to them for specific texts. With a view to keeping in touch with the latest developments and trends in aviation laws and regulations, the Secretariat has also procured, whenever possible, the texts of draft laws or codes, among them the draft Air Code of Chile received during the past year.

“During the year 1947 the number of national laws and regulations in the files of the Organization has increased by nearly 500. Among these are laws concerning the ratification of the Chicago Convention, the ratification of the Warsaw Convention and the establishment of national air authorities, and regulations relating to air navigation, air insurance, quarantine, customs, accident investigations, etc.

“The list of national laws and regulations issued during the First Assembly is being reviewed for the purpose of eliminating references to laws which are no longer in force or which have been amended. A revised list will be ready for distribution in the near future.”

\textsuperscript{178} Ibid., pp. 155-156.
\textsuperscript{179} Argentina, Australia, Belgium, Bolivia, Brazil, Canada, Chile, China, Colombia, Czechoslovakia, Denmark, Egypt, Greece, India, Ireland, Mexico, New Zealand, Nicaragua, Peru, the Philippines, Portugal, Sweden, Switzerland, Union of South Africa, United Kingdom and its colonies, protectorates, etc., Venezuela.
The Legal Committee, acting upon the report submitted by the Secretariat, adopted on 18 June 1948 the following resolution:

"The Legal Committee, considering the importance of the legal documentation collected by the Secretariat, both for the Committee and for Governments, decrees that this documentation be published as soon as possible: instructs the Secretariat to prepare, in particular, a plan for the publication of national laws, and requests the Council that in the budget for publications, appropriation be made for the aforesaid publications."

Unofficial publications

(i) NATIONALITY

_A Collection of Nationality Laws of Various Countries_181 was prepared in connexion with the Research in International Law under the auspices of Harvard Law School and its work on a draft convention on nationality intended to assist the First Conference for the Codification of International Law.

Part I of the volume contains nationality legislation of some 87 States, dominions, colonies, and mandates. Part II contains 12 multipartite and 54 bipartite conventions and agreements on nationality.

The material for the _Collection_ was largely obtained from official sources and where necessary, translated into English. Regulations and instructions were included. As the editors point out "it might have been a more desirable course that the laws of the various countries should have been collected and published by an international authority, in the original language as well as translation", but this proved not practicable.

Under each political division there is provided a brief editorial summary of the history of the legislation in the country concerned. Bibliographies under each heading with comments from technical journals and an exhaustive analytical index are valuable features of this _Collection_.

In the judgment of an international lawyer, "the International Law Division of the Carnegie Endowment for International Law have made all international lawyers their debtors by this publication,

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180 Ibid., p. 101.
and the editors will receive from them a unanimous vote of thanks for their arduous labours".\textsuperscript{182}

It was also pointed out that "this collection will be of indispensable value to jurists, legislators and administrative officers of the Governments throughout the world, and to practitioners in this field. It should also be of great service to future international conferences which may be called for the purpose of eliminating the inconveniences resulting from nationality conflicts".\textsuperscript{183} Another collection giving the texts of laws, decrees, etc., in force at the time of publication is that of E. Bourbousson, \textit{Traité général de la nationalité dans les cinq parties du monde. Du statut de la femme mariée, de la naturalisation, de la perte de la nationalité} (Paris 1931), with Supplement A (1938).


\textbf{(ii) DIPLOMATIC AND CONSULAR LAWS}

\textit{A Collection of the Diplomatic and Consular Laws and Regulations of Various Countries} edited by A. H. Feller and M. O. Hudson, was published by the Carnegie Endowment for International Peace in 1933 in 2 volumes. No collection of such laws and regulations had ever been published before and this was made available "in the hope that an up-to-date collection might fill a need not only in connexion with any attempted codification, but also in connexion with the current activities of the diplomats and consuls and in connexion with the work of jurists and publicists". The collection was undertaken to facilitate "the preparation of draft conventions with a view to the codification of the law as to Diplomatic Privileges and Immunities and the Legal Status and Functions of Consuls" by the Research in International Law.\textsuperscript{184}

This \textit{Collection} includes selected material of varying degrees of completeness for over 70 countries, dominions, colonies, protectorates and territories under mandate, etc. As the editors point out "two general divisions have been made with respect to each State: (1) the organization of its own diplomatic and consular services, (2) the laws relating to diplomats and consuls sent by other States. Under (1), an attempt has been made to set forth the outlines of the organization

\textsuperscript{182} A. P. H., in \textit{British Year Book of International Law}, vol. 12 (1931), p. 216.
\textsuperscript{183} Henry B. Hazard, in \textit{American Journal of International Law}, vol. 25 (1931), p. 177.
of the services, particularly as regards recruitment and classification; details in regard to salaries, leaves of absence, consular fees, office management, and similar matters have been reduced to a minimum; provisions in regard to functions, on the other hand, have generally been given in extenso. Under (2), provisions relating to the status of foreign diplomatic officers and consuls have been reproduced in full, except for the omission of some details of ceremonial. In some cases, official memoranda which contain résumés of administration and application of the laws have been included".185

The Department of State of the United States “co-operated with the editors very generously” in procuring the necessary texts. The Department of State also permitted the compilers “to reproduce portions of the Instructions to Diplomatic Officers which have not heretofore been published”.186

The Collection contains, besides a detailed analytical index and bibliographical notes, a “List of Treaties dealing with Consuls”, running to over 50 pages.

As one international lawyer pointed out, “les deux volumes . . . rendront les plus appréciables services aux juristes et aux praticiens du droit international . . . L’utilité d’un pareil recueil est certaine: si l’on excepte le livre déjà ancien du baron de Cusson (1851), cette œuvre n’avait guère tenté les juristes. Le soin avec lequel a été menée une entreprise aussi délicate, l’ampleur et la rigueur de la documentation, la clarté de la présentation font de ces deux volumes un précieux instrument de travail”.187

In the opinion of another “obviously this collection is of the greatest possible utility as a work of reference, and international lawyers of all countries may be grateful to the publishers for placing it at their disposal. . . . The completeness of the collection in regard to individual countries depends upon a factor which is beyond the editor’s control, namely, the extent to which, in the case of each country, the matter is dealt with by special laws and regulations, as opposed to being dealt with either as part of the general law (as, for instance in the United Kingdom where diplomatic privilege is largely a matter of common law) or by merely executive action in the form of consular instructions”.188

185 Ibid.
186 Ibid., p. viii.
The materials for the *Collection of Neutrality Laws*\(^{180}\) were assembled in connexion with the preparation of a draft Convention on Rights and Duties of Neutral States in Naval and Aerial War for the Research in International Law under the auspices of the Faculty of the Harvard Law School, and published in the hope that they might also prove "of general value to Government officials and to students of the subject of neutrality".

The *Collection* comprises the laws, regulations and treaties of every State whose laws were accessible—altogether over seventy countries, dominions, protectorates, territories, colonies, etc.—for the period from 1800 to 1 October 1938. However, "believing that the United States has, more than any other nation, furnished the pattern for the development of some aspects of the international law of neutrality, the editors felt justified in departing from the temporal limitation in this case by including laws, regulations and treaties of the United States in the last two decades of the eighteenth century".\(^{190}\) As the object of the *Collection* was to show the trend of evolution and not merely to state the law prevailing at any given moment, "the collection is not limited to laws, regulations or treaties which are at present in force in or among various States; all such material enacted, issued or concluded during the period under consideration is included".\(^{191}\)

In addition to neutrality laws proper, the *Collection* contains relevant provisions of penal codes, such as those regarding enlistment in foreign armies, laws and regulations enacted pursuant to the Non-Intervention Agreement of 1937 concerning the Spanish Civil War, and also "laws and regulations enacted or issued by members of the League of Nations for the imposition and enforcement of economic and financial sanctions during the Italo-Ethiopian War".\(^{192}\) On the other hand, purely belligerent measures, provisions of private law and diplomatic correspondence are excluded in principle. Diplomatic correspondence is included where it is of special value or where it constitutes the only source of information.

The material is classified in two parts. Part I comprises laws and regulations and part II provisions from 151 treaties relating to neutral rights and duties. In part I the material for each country is generally divided into two categories: measures of a permanent and measures

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of a temporary character. "The measures of a temporary character have been usually grouped in three sub-categories: first, neutrality proclamations and declarations; second, laws, decrees and ordinances; third, orders, regulations and instructions of executive or administrative agencies". Both parts I and II include editorial notes on sources, etc.

"A Chronological List of all Treaties covering Neutral Rights and Duties, 1778-1938" gives references to 272 treaties comprising: date, parties, type of treaty, source and number of articles relating to neutrality. There is also an ample analytical index (75 pp).

Although the Collection appeared at an unpropitious moment, it was found to be a "monument of painstaking effort and of scholarly discretion", and "indispensable to any serious student of international law and relations". It was also recognized that the documentation "supporting the hotly contested draft convention on the Rights and Duties of Neutral States in Naval and Aerial War is colossal, not to say overwhelming" and that it "must greatly lighten the task of Foreign Offices, shipping boards and the practitioners of maritime law in countries which are still asserting the rights and observing the duties of neutrals". The view was expressed that while "this monumental collection will answer many questions that confront the lawyers of some countries, its most enduring portion may be the remarkably full documentation on the attempt made to enforce collective sanctions against Italy. For if war is ever to be made illegal, these are the precedents that will shine in use".

(iv) PIRACY

The Collection of Piracy Laws, prepared in connexion with the work on piracy undertaken by the Harvard Research in International Law, includes "so far as possible, all laws dealing with the suppression and punishment of piracy and robbery on the seas" but "laws incidentally referring to piracy" were omitted. On the other hand, material of a border-line nature was "reprinted where it appeared to be of value for illustrative purposes, although some of it

192 Ibid., p. xv.
195 Ibid., p. 754.
196 Ibid., p. 754.
197 A Collection of Piracy Laws of Various Countries. Ed. by Stanley Morrisson. This collection, unlike the other works discussed above, was not published in a separate volume but forms part V of the volume of the Research in International Law published in 1932 and containing the Draft Conventions on Diplomatic Privileges and Immunities . . . and Piracy.
perhaps cannot properly be regarded as a part of the laws of piracy". The Collection does not contain legal provisions of a general nature which may be applicable to piracy "although they contain no specific references to the subject in question". 108

The collection covers some 60 countries, dominions, colonies, etc. Where pertinent legislation is in force, the Collection includes it; otherwise a statement is made that no pertinent legislation appears to have been enacted.

In the preparation of this Collection, the editor enjoyed "the assistance of the Department of State of the United States, which through its missions aided in procuring the texts of the laws of many countries". 109

(v) LEGISLATION FOR THE DEFENCE OF AMERICAN REPUBLICS

On 5 November 1943, the Emergency Consultative Committee for Political Defence (Comité Consultivo de Emergencia para la Defensa Política) resolved to publish a series of comparative studies of the emergency legislation enacted or in force in the different American Republics. These appeared in 1947 in two volumes under the title Legislación para la Defensa Política en las Repúblicas Americanas. Although not a collection of legislative texts but rather a series of studies in the field of comparative law, it is believed that this work should be mentioned here on account of its intrinsic importance. Moreover, any student of the problem will find in it numerous references to the laws in force in the different countries. The subjects treated by individual scholars include: control of aliens, prevention of abuse of nationality, entry and exit of aliens including their expulsion, control of media of communications, control of associations, protection of essential installations against sabotage, and repression of acts against the security of other American States.

L. COLLECTIONS OF DECISIONS AND OPINIONS OF INTERNATIONAL ORGANIZATIONS ON QUESTIONS OF INTERNATIONAL LAW

Opinions and decisions of international organs, other than international tribunals on questions of general international law, have frequently been regarded as evidence of international law. A comprehen-

108 All references ibid., p. 891.
109 Ibid.
sive collection of such opinions, particularly with reference to the Assembly and Council of the League of Nations, was planned as part of the series *Fontes Juris Gentium* but failed to materialize. However, one work of an unofficial character on the League of Nations is available and another, official, relating to the United Nations is in process of compilation.

1. **League of Nations**

A *Répertoire of Questions of General International Law before the League of Nations, 1920-1940* was prepared by Walter Schiffer and published in 1942 "to facilitate access to the important legal material scattered throughout the volumes of the Official Journal of the League of Nations and thereby to enrich the study of international law and of its applications".202

Attention was focused on those passages in the Official Journal of the League which deal with questions of general international law as distinguished from the particular international law of the Covenant of the League. The term general international law "includes custom; conventions or draft treaty stipulations have, however, also been taken into consideration when they were found interesting from the point of view of international law or its evolution, and dealt with its fundamental institutions and problems. Efforts made toward unification of the law dealing with certain essential problems have also been included".203

For this purpose all documents in the Official Journal and its supplements were analysed and the material classified under six main headings: I. General questions; II. Persons in international law; III. Objects of international law; IV. Legal relations between States; V. International disputes; VI. War and neutrality. Under each main heading there are several sub-headings.

The method of presenting the material was as follows: "All references or groups of references referring to a special legal problem are preceded by a short summary of the contents of the texts referred to. This summary is given in the form of a general title or of a sentence. An interrogative sentence indicates that contradictory opinions were expressed while the legal problem was being discussed. The

200 See supra, p. 25.
interrogative form is also used when summing up in a sentence a legal opinion referred to in the document which the author of the document does not approve. The words Questions de . . . indicate that a legal problem has only been mentioned without a solution having been offered". 204

References to texts were frequently supplemented by footnotes which "were intended to give the reader information which, though not directly concerned with the legal case involved, is however necessary in order to judge the value of the texts referred to. They show the evolution of the case in which the legal problem was raised. They give information, for instance, on the circumstances which led to the discussion of a problem, on some text referred to during the discussion, on phases of procedure linking up various texts referring to the same question, or to the outcome of some proposal". 205

The Répertoire is in French but the table of contents, the headings and sub-headings, and index are in both French and English. Moreover, all references are to League documents which are available in both languages. The hope was expressed, nevertheless, "that as soon as circumstances permit an English translation may be available". 206 It does not appear, however, that such a translation has yet been published.

The Répertoire was recognized as "a book of reference which certainly will become indispensable to any person or institution working in the field of international law". 207 It was stressed that "it is not a mere index. To a large extent it is a digest which enables the reader to form an idea of the nature of the legal rule propounded or accepted. The work covers not only the proceedings of the Assembly and of the Council and of their committees, but also of the special and technical commissions. The classification is altogether admirable and the references are easy to follow. . . . The Répertoire is the product of prodigious and conscientious effort and both Dr. Schiffer and the Geneva Research Centre deserve the thanks of the students and of the practitioner for this indispensable instrument of work". 208

2. United Nations

The Secretary-General, in his Annual Report on the Work of the Organization, 1 July 1947–30 June 1948, stated that the Secretariat

204 Ibid., p. 21.
205 Ibid., p. 25.
206 See British Year Book of International Law, vol. 21 (1944), p. 261.
had begun to make a systematic collection of opinions and precedents on questions of international law. The relevant portion of the Report is as follows:209

"Particular importance attaches to the development of those rules of international law which have found expression in the Charter and to the legal precedents which are constantly being built up in the practice of the various organs of the United Nations. Hardly any problem comes before the United Nations which does not raise questions of a legal character and does not require a study of the previous application and interpretation of the Articles of the Charter and of the practice and precedents in the various organs. With the increasing activities of the United Nations, a strong need has thus been felt for a systematic collection of practices and precedents with respect to the application of the provisions of the Charter. To meet this need, the Secretariat has engaged in the preparation of a systematic annotation of the Articles of the Charter as they have been interpreted or applied by the various organs of the United Nations.

"In addition, apart from the Charter, rules of international law are constantly being applied and interpreted in the organs of the United Nations and by the Secretariat. The widespread activities of the Organization are a fertile source of questions which require legal analysis and opinions, and the legal precedents thus established in the day-to-day work of the Organization are an important part of the process of developing international law under the auspices of the United Nations. At present these precedents are scattered through various records of meetings and Secretariat memoranda, but the Legal Department of the Secretariat has begun a systematic collection and arrangement of the legal opinions so as to make more readily available the principles of international law followed in the Organization."

M. THE HARVARD RESEARCH IN INTERNATIONAL LAW

The Research in International Law or the Harvard Research, as it is commonly called, was organized in anticipation but independently of the League of Nations preparatory work for the First Conference on the Codification of International Law. It owes its inception to the initiative of the Faculty of the Harvard Law School which in November 1927 "undertook to organize a Research in International Law for the purpose of preparing a draft of an international convention on each of the three subjects selected by the Eighth Assembly

to be dealt with at the First Conference on the Codification of International Law".\textsuperscript{210}

The organization of the Research included a director, Judge Manley O. Hudson, an advisory committee, an executive committee, a reporter and, in some instances, assistant reporters for each of the subjects dealt with successively by the Research. The reporters were assisted by committees of advisers. All the committees were composed of lawyers actively engaged in the field of international law.

The method adopted for the Research was that "followed by the American Law Institute, which is very similar to that of the Institut de droit International".\textsuperscript{211} A draft would first be drawn up by the reporter and submitted to the members of the advisory committees; then meetings of the reporters and advisers were held at which "drafts were discussed and modified".\textsuperscript{212}

The work of the first phase of the Research was "undertaken with the object of placing before the representatives of the various Governments at the First Conference on Codification of International Law the collective views of a group of Americans specially interested in the development of international law".\textsuperscript{213} In the general introduction to the volume containing the fruits of the second phase, after noting that "the publications of the Research were frequently referred to at the Conference at The Hague in 1930", reference was made to a recommendation of the Conference that with a view to placing at the disposal of subsequent conferences for the codification of international law fresh scientific work, "international and national institutions should undertake at a sufficiently early date the study of the fundamental questions of international law, particularly the principles and rules and their application, with special reference to the points which were placed on the agenda of such conferences".\textsuperscript{214} As a consequence the drafts resulting from the second, third and fourth phases of work of the Research were "made with the object of stating the collective views of a group of Americans specially interested in the development of international law concerning subjects which may be considered in connexion with the codification of international law. The drafts represent the result of the work of American jurists and scholars after thorough consultation, and as such it is hoped that they

\textsuperscript{211} Ibid.
\textsuperscript{212} Ibid., p. 9.
\textsuperscript{213} Ibid.
\textsuperscript{214} Research in International Law, Harvard Law School, 1. Diplomatic privileges and immunities . . . (1932), p. 10.
may merit the attention of persons interested in the development of international law".\textsuperscript{215}

As appears from the foregoing, the Research was continued after the First Conference on the Codification of International Law held at The Hague in 1930, and new subjects were added to the three selected in contemplation of that Conference. Altogether the work of the Research comprised four phases and thirteen subjects covering "the principal aspects of the international law of Peace (and of Neutrality) with the exception of those relating to Recognition and to State Territory and the High Seas".\textsuperscript{216}

In more detail the phases and subjects dealt with were as follows:

The first phase, from 1927 to 1929, devoted to three subjects:

(1) Nationality, with Richard W. Flournoy, Jr., as reporter;
(2) Responsibility of States for injuries to foreigners, with Edwin M. Borchard as reporter; and
(3) Territorial waters, with George Grafton Wilson as reporter.

The second phase, from 1929 to 1932, devoted to four subjects:

(1) Diplomatic privileges and immunities, with Jesse S. Reeves as reporter;
(2) Legal position and functions of consuls, with Quincy Wright as reporter;
(3) Competence of courts in regard to foreign States, with Philip C. Jessup as reporter; and
(4) Piracy, with Joseph W. Bingham as reporter.

The third phase, from 1932 to 1935, devoted to three subjects:

(1) Extradition, with Charles K. Burdick as reporter;
(2) Jurisdiction with respect to crime, with Edwin D. Dickinson as reporter; and
(3) Law of treaties, with James W. Garner as reporter.\textsuperscript{217}

\textsuperscript{215} Research in International Law Under the Auspices of the Faculty of the Harvard Law School. I. Judicial assistance . . . (1939), p. 10.


\textsuperscript{217} Research in International Law Under the Auspices of the Faculty of the Harvard Law School, I. Judicial assistance; II. Rights and duties of neutral States in naval and aerial war; III. Rights and duties of States in case of aggression. American Journal of International Law, vol. 33 (1939), supplement, p. 102.
The fourth phase, from 1935 to 1939, devoted to three subjects:

(1) Judicial assistance, with James A. Rogers as reporter;
(2) Rights and duties of neutral States in naval and aerial war, with Philip C. Jessup as reporter; and
(3) Rights and duties of States in case of aggression, with Philip C. Jessup as reporter.\(^{218}\)

The executive committee of the Research decided to include in the fourth phase the subject of Recognition of States. Work on this subject, however, has not been completed.\(^ {219}\)

The result of the work of the Research was published by the Harvard Law School in separate volumes and republished, with the same pagination, as supplements to the American Journal of International Law. The results of the first phase thus appeared in 1929, both independently and in a special supplement to volume 23 of the Journal; those of the second phase in 1932 and republished as the supplement to volume 26 of the Journal; those of the third phase in 1935 and republished as the supplement to volume 29 of the Journal; and the result of the fourth phase was published in 1939 and republished as the supplement to volume 33 of the Journal.

The presentation of the results of the work of the Research was uniformly in the form of draft conventions on each of the subjects "the articles of which were accompanied by extensive comment consisting of notations from and discussions of opinions of writers, of decisions of courts, of national legislation, and of governmental practice. Practically all drafts include appendices giving extracts from and an analysis of municipal laws, treaties, official documents, and the like".\(^ {220}\) The Research also supplied exhaustive bibliographies on each of the subjects.

The "wholly unofficial" character of the Research was emphasized and the readers were warned that "the drafts must not be taken as in any way representing the views of the Government of the United States".\(^ {221}\)

The great volume of pertinent documentation assembled by the Research in the course of its work includes, as noted above, not merely statutory, conventional and jurisprudential elements but also doc-

\(^{218}\) Ibid., pp. 2-9.
\(^{219}\) Ibid., p. 9.
\(^{221}\) This statement is to be found in the general introduction to each of the volumes of the Research.
trine and State practice. Its value has been generally recognized. Thus the Judicial Committee of the Privy Council, in a judgement delivered in 1934, referred to the "most valuable treatise on the subject of piracy contained in the Research into International Law by the Harvard Law School" and declared: "In it nearly all the cases, nearly all the statutes, and nearly all the opinions are set out . . ." 222

Discussing the results of the first phase of the work of the Research a French international lawyer noted that this volume "témoigne d'une méthode originale et à ce titre il mérite l'intérêt le plus vif" and pointed out that each article of the draft conventions was the subject "d'un commentaire approfondi. On trouvera également dans ce recueil une analyse des législations étrangères, le texte des résolutions élaborées par diverses associations doctrinales, ainsi que la reproduction des projets de convention élaborés par le Comité de codification de la S. D. N. Au point de vue documentaire et bibliographique, le travail publié par la Research in international law d'Harvard est d'une valeur de tout premier ordre". 223

A judge of the Permanent Court of International Justice expressing his admiration "for diligent labour of research" with which the work of the second phase was executed, declared: "The desire expressed by the first Codification Conference at The Hague in the spring of 1930 for further scientific preparation could not be better fulfilled than through labours such as those which have been given permanent form in the present work. Its use has again and again demonstrated that doctrinal writings and all other materials have been gone over with a completeness which astounds the student of the subject". He expressed the hope "that the work will receive the widest possible distribution in professional circles". 224

Similarly, it was stressed that there can be no difference of opinion regarding the "value of the contribution to international law" made by the Research 225 not only from the point of view of students, but also of "those who have to do with the working and the shaping of the international law and procedure". 226

It may be of interest to recall here that after a careful review of the whole work of the Research and after noting that the various

drafts "are a production of distinguished scientific merit from both the point of view of analysis and of the material which has been made available", the Report of the Committee on the Development and Formulation of International Law (International Law Association), expressed the opinion "that the groups of reporters and advisers whose formation we are about to recommend for the purpose of formulating rules on the various branches of international law should take as a basis of their study the work already produced by the Harvard Research".227

The method adopted by the Research met with some criticism. Thus one writer, having gratefully acknowledged "the wealth of material which has been unearthed by these teams of research workers" declared "the method of comparative national studies recommends itself as compared with the methods adopted by the Harvard Research drafts".228

N. PREPARATORY WORK FOR THE FIRST CONFERENCE ON THE CODIFICATION OF INTERNATIONAL LAW

It remains to refer, among the existing evidences of customary international law, to the preparatory work for the First Conference on the Codification of International Law which resulted from the efforts of the Preparatory Committee appointed by the Council of the League of Nations on 28 September 1927. Pursuant to its terms of reference laid down in the Assembly Resolution of 27 September 1927, the Preparatory Committee requested Governments to supply the necessary information on nationality, territorial waters, and responsibility of States, under these heads:

(a) The state of their positive law, national and international, with, as far as possible, full details as to bibliography and jurisprudence;

(b) Information derived from the practice at home and abroad;

(c) Their views as regards possible additions to the rules in force and the manner of making good existing deficiencies in international law.229

In response to this report thirty Governments submitted replies, but as the Preparatory Committee noted, some of the replies did not deal with all the questions on which information was requested. Taking into account the information thus made available on the state of positive international law, the Committee drew up "Bases of Discussion" on Nationality, Territorial Waters and Responsibility of States. These Bases of Discussion are accompanied by the "Complete text of the replies made by the Governments on the schedule of points submitted by the Preparatory Committee".

These Bases of Discussion as well as the replies of the Governments constitute, in the view of one writer, "an authoritative and invaluable source of information on the subjects concerned". In the view of another, the replies of the Governments are "valuable statements . . . as to their practice and as to their views of the concrete rule of international law". It was pointed out, however, that "while the replies . . . constitute a valuable source of information . . . many Governments, being aware that their answers were to be given in connexion with a proposed code on the subject, submitted disputations on what they would like to see adopted, rather than what had actually been the practice of their countries".

O. WRITERS

The role of writers in connexion with the question of the evidence of international law has been stated in Article 38, paragraph 1 (d) of the Statute of the International Court of Justice which directs the Court to apply "subject to the provision of Article 59 . . . the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law".

The creative contribution of writers of different nations and different schools to the development of international law and to its systematization is too well known to require further discussion here. Illustrative lists of important works on international law have been

230 Respectively Documents C.73. M.38. 1929 V; C.74. M.39. 1939 V; and C.75. M.69. 1929 V.
The works of the early writers have been reproduced and translated into English in the series, *Classics of International Law*, edited by James Brown Scott and published by the Carnegie Endowment for International Peace. This series includes works by Ayala, Bynkershoek, Gentili, Grotius, Legnano, Pufendorf, Rachel, Suarez, Textor, Vattel, Victoria, Wolff, and Zouche.

A comprehensive and classified bibliography of the literature on international law remains to be produced. Perhaps, in this connexion, the *Bibliographie du Droit des Gens et des Relations Internationales* by Karl Strupp, should be mentioned. The first—and so far the only—volume covering the years 1933 to 1936 inclusive appeared in 1938. It lists altogether about 2,800 publications, mostly in the field of international law. As it was intended as a *bibliographie raisonnée* the first part of the volume contains reviews of sixty-one books which were regarded by the editor as most important for the period. The second part contains, for many countries, lists of treaties, monographic studies, articles and, in some instances, of doctoral dissertations. The third part consists of a systematic list of publications. In the compilation of this, the first and experimental volume, Professor Strupp had the assistance of some fifty contributors from different countries.

The *Bibliographie* was said to fill an "unquestionable" need but it was felt that there "was room for progress in the direction of coming still nearer to what may be considered an ideal bibliography". At the same time, the hope was expressed that this bibliography would become "a regular annual publication covering the literature of the immediately previous year".

There is little doubt that a comprehensive, systematic and objective bibliography on international law published at regular intervals, possibly annually, would contribute greatly to the study and practice of international law. On similar grounds, it has been suggested that

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leading treatises and monographs should be made available in one or more translations.\textsuperscript{237}

\textbf{II.}

\textbf{SUGGESTIONS OF ORGANIZATIONS AND PUBLICISTS FOR THE IMPROVEMENT OF DOCUMENTATION OF CUSTOMARY INTERNATIONAL LAW}

It is thought useful to end this survey with a brief review of suggestions made from time to time by unofficial organizations and publicists for the improvement of the documentation of customary international law.

\textbf{A. THE INSTITUT DE DROIT INTERNATIONAL}

At its first session held after the war of 1939-1945, at Lausanne in 1947, the Institut de Droit International adopted a resolution on the Codification of International Law in which it is declared that "the most important contribution to the work of codification would consist in carrying out, on the national and international planes, research activities of a scientific character with a view to arriving at an exact statement of the actual condition of international law. This inventory would serve as a basis at once for a scientific effort and also for official action undertaken according to methods deemed best suited to filling the gaps of international law and remedying its imperfections".\textsuperscript{238}

In the discussion preceding the adoption of the above resolution, Judge Jules Basdevant, Vice-President of the International Court of Justice, emphasized the importance of adequate documentation as a basis of the "restatement" (exposé) of international law, as a scientific activity. He said:\textsuperscript{239}

"\textit{Par sa nature, l'établissement d'un tel exposé est un travail scientifique. Pour le mener à bien, des recherches nationales devraient être entreprises, recherches comme celles qui ont conduit à la publication du Digest de Moore et du Digest de Hackworth, ainsi qu'à la publication de Law of Treaties de McNair. Ces recherches nationales devraient être coordonnées dans leur objet, leurs méthodes et leurs...}

\textsuperscript{237} For a suggestion along this line cf. \textit{Proceedings of the Fifth Conference of Teachers of International Law and Related Subjects} (1933), p. 172, remarks by Professor Charles G. Fenwick.

\textsuperscript{238} \textit{American Journal of International Law}, vol. 42 (1948), Supplement p. 169; \textit{Annuaire de l'Institut de Droit International}, vol. 41 (1947), p. 262.

\textsuperscript{239} \textit{Annuaire}, vol. 41 (1947), p. 239.
résultats. Cette coordination ferait passer \[l'exposé\] du plan national sur le plan international. L'Institut de Droit international pourrait rechercher quelles sont les méthodes les mieux appropriées pour effectuer et coordonner de telles recherches."

Referring to Judge Basdevant's statement Dr. Max Huber, formerly President of the Permanent Court of International Justice, said: \[240\]

"Il faut faire d'abord le statement du droit international tel qu'il est conçu dans chaque pays. Cela a toujours été négligé à cause du désir d'arriver vite à un résultat."

B. THE CONFERENCE OF [AMERICAN] TEACHERS OF INTERNATIONAL LAW AND RELATED SUBJECTS

The first Conference of this organization, meeting at Washington, D.C., in April 1914, considered various plans for increasing the facilities for the study of international law and adopted a resolution calling for a detailed bibliography of international law and the publication of all documents, both foreign and domestic, bearing upon international law, including treaties and documents relating to arbitration and diplomatic correspondence. Specifically the resolution called for the publication of a law reporter of international cases. \[241\]

Noting the inaccessibility of judicial decisions and of the legislation of various countries relating to international law, the second Conference, held in 1925, expressed the hope "that some means may be found for compiling such decisions and legislation and making the compilations generally available". \[242\]

The third Conference in 1928 urged in particular the publication of a continuing series of decisions of municipal courts on questions of international law. For this purpose the Conference envisaged the creation of an organization having correspondents throughout the world, an editorial board and sufficient funds. The Conference also went on record as favouring the publication of diplomatic correspondence, of official reports of American delegates to international conferences and of the proceedings of such conferences. The Conference further advocated the publication by the Department of State of the "cases and counter-cases and the oral arguments of all arbitrations

to which the United States is or has been a party since the Fisheries
Arbitration, 1910, and that this practice be adopted in the future".243

At a later meeting, the Conference urged a "comprehensive digest
of the awards, and arguments and a bibliography of the cases, coun-
ter-cases, and arguments, and perhaps of the critical literature con-
cerning the subject".244

Considering the inadequacy of source materials, the Conference
suggested that more materials be collected and published in the dif-
ferent countries "according to a preconceived plan". This task "should
be done co-operatively, the scholars of each country, or at least of
each group of countries or continent, assuming some responsibility
for the digesting of their own country or regional material under a
plan or system of subheadings agreed upon in advance".245

A report on "Research in International Law and Relations in
the United States and in Europe" presented at the Fourth Confer-
ence concluded:

"The investigation of source material is one of the elementary
functions of science, but the inadequacy of the tools and apparatus
in our field has greatly hampered its development. . . . It is proposed
that in each country there be established scientific organizations, pref-
erably connected with universities, which shall make it their func-
tion to deal with the source material of their own country . . . and
shall co-operate in their efforts with similar organizations in other
countries. By such co-operation and exchange of views, the best ideas
and plans are likely to be adopted, systematization will be achieved,
and duplication of effort avoided".246

The Conference also discussed ways and means of making the
source material more readily available at its meetings held in 1933,
1938, 1941 and 1946.247

243 Proceedings of the Third Conference of Teachers of International Law,
It may be noted that in 1929 the Department of State inaugurated its Arbitration
Series.
244 Proceedings of the Fourth Conference of Teachers of International Law and
245 Loc. cit., p. 183.
246 Proceedings, 1929, p. 186.
247 Cf. Proceedings of the Fifth Conference of Teachers of International Law
and Related Subjects, 26-27 April 1933, pp. 8, 197; Proceedings of the Sixth Con-
ference . . . 27-30 April 1938, pp. 5, 311; Proceedings of the Seventh Conference . . .
23-25 April 1941, pp. 8, 168; Proceedings of the Eighth Conference . . . 24-25 April
1946, pp. 118 f.
C. AMERICAN SOCIETY OF INTERNATIONAL LAW

This Society has given attention to the general problem of documentation of international law and made some concrete proposals of interest.

Thus in a resolution adopted at its twenty-first annual meeting in 1927, the Society recognized that "there is great need for an authoritative repository of the decisions of municipal courts of the various countries in matters affecting public international law" and registered "its approval of the publication of the decisions of municipal courts in matters of public international law".248 The Society, on this occasion, authorized the appointment of a committee to explore the practical aspects involved in constituting and publishing such an "authoritative repository".

The question of collecting and publishing decisions of international tribunals was discussed at some length at the twenty-third annual meeting of the Society. The Society adopted a report of its Committee on the enlargement of the scope of the publications of the Department of State in which it expressed the desire for a "regular series of international arbitral decisions in which the United States is concerned either as a party or through the participation of an American official as arbitrator—a series comparable to the reports of the United States Supreme Court".249 This proposed series was to include awards as well as abstracts of the arguments of the parties and, according to a suggestion, was not to be confined to those arbitrations to which only the United States was a party. It was to include all arbitrations.250

D. COLUMBIA UNIVERSITY RESEARCH IN INTERNATIONAL LAW

The Department of Public Law and Jurisprudence of Columbia University, in a Memorandum circulated in the thirties251 advocated a realistic approach to the problem of international relations and proposed to seek the solution of such problems "through the aid of unimpeachable evidence", e.g. evidence from governmental archives.

249 Proceedings of the American Society of International Law at its Twenty-third Annual Meeting, 24-27 April 1929, pp. 68, 204.
The Columbia Research plan, drafted with two principal objectives in mind: first to elicit conclusions of Foreign Offices on questions of international law, and second to safeguard the inviolability of confidential matter, contained three main points:

(1) “To formulate a fairly comprehensive and detailed inquiry (not to be likened to a questionnaire) as to the views of particular Governments or Foreign Offices on a group of legal questions within a single category (such as Treaties);

(2) “To secure an expert in international law of highest reputation in his own country and enjoying the confidence of its Foreign Office, to make, under its full permission and guidance, an investigation of the evidence of its views which it is prepared to disclose; and

(3) “To publish in the United States under the direction of the Department the fruits of investigation.”

The Department of Public Law was aware of the fact “that Foreign Offices may be expected to remain uninterested in a project such as is now contemplated, unless convinced that they will gain more than they will sacrifice through the giving of publicity to their conclusions”. On the other hand, the Department fully realized that the ends sought cannot be achieved unless the work is undertaken by investigators who will enjoy the confidence of the Foreign Offices concerned and who, in addition, will be endowed with the necessary skill and tact. In the view of the Department: “By every reasonable means the investigator should aspire to obtain recognition of the research as an unofficial yet easy and responsible channel through which governmental conclusions on the law might find accurate expression and exact reflection.” For this purpose the Department suggested that the Foreign Offices involved might assign a competent official to furnish the necessary aid to the investigator.

The Columbia Research plan aimed essentially at the gradual and progressive investigation of Foreign Office materials, at present largely inaccessible, with reference to topics where research is most needed. It was also envisaged that such investigations might be carried out simultaneously in a small number of countries which may be disposed to co-operate.

Materials collected by the investigators would be published by the Department. On this point the Memorandum contains the following considerations:
“The primary purpose of the Department would be to reproduce accurately and fully the Governmental views disclosed in whatever form they might be revealed by the investigators. Such views might, in some cases, express themselves in documents which there was a willingness to have published; in others, they might take the form of memoranda indicative of authoritative conclusions. The danger of distortion of views or of critical commentaries distasteful to a contributing Government would be carefully avoided. Each contributing State or Government would, of course, be made the recipient of everything that was printed by the Department.”

This Memorandum was discussed by representatives of the Department of Public Law with international lawyers and the Foreign Offices of several countries. One of the results of such discussions was the volume *The Law of Treaties: British Practice and Opinions* by Arnold D. McNair. 251

E. INSTITUTE OF FOREIGN PUBLIC AND INTERNATIONAL LAW

In the preface to the first volume252 published in the *Fontes Juris Gentium* series the Director of the Berlin Institute of Foreign Public and International Law (*Institut für ausländisches öffentliches Recht und Völkerrecht*), Viktor Bruns, referred to the vast growth of documentation of international law and observed:

“It is far beyond the powers of an individual to gather even so much as a general notion of all the most essential documents and events. The choice of material, therefore, on which a work of international law is based must necessarily be more or less arbitrary or casual. This is also the reason why in international law, more than in any other subject, a dangerous subjectivity has arisen.

“If a greater degree of objectivity is to be gained for research and practice in international law, it is necessary that, first of all, vast, difficult and unselfish preliminary work should be done; the enormous bulk of material must be collected, sifted and systematically arranged, in order that every student of questions of international law should be placed in a position enabling him to make a rapid survey of the documents relating to the particular subject of his study . . .

251 See p. 23.
252 Series A, sectio 1, tomos 1, *Digest of the Decisions of the Permanent Court of International Justice*, 1922-1930.
“This programme of work can only be carried out by a larger number of scientifically trained and capable jurists working together according to a uniform method and a uniform system. It, therefore, seemed to the Director of [this] Institute that this undertaking should be one of its principal tasks.”

The Institute, whose contribution to the supply of the lack of a survey of documentation alluded to in the statement quoted is embodied in the *Fontes Juris Gentium* series, neither advocated nor followed any particular theory "in regard to the doctrine of juristic sources". It held that "the answer to the doubtful questions . . . as to what documents are to be utilized in ascertaining the rules of international law and what is their importance for this purpose . . . will be different according to the point of view taken by the responsible worker in regard to the basic problems of international law . . ." and confined itself to the making of "a comprehensive survey of international practice" in all its aspects. The scope and content of this work are discussed elsewhere in this paper.

F. PUBLICISTS

The views of publicists may be summarized conveniently under four or five separate heads. First, general appraisals regarding the availability and sufficiency of documentation on customary international law in the broad sense; secondly, proposals for the collection and publication of documentation illustrating State practice on questions of international law; thirdly, proposals for the collection and publication of awards and decisions of international tribunals and courts; and fourthly, proposals for the collection and publication of decisions of municipal courts on questions of international law.

1. GENERAL

The late Judge John Bassett Moore whose immense contribution to the study of international law is well known became so impressed with the need for greater availability of the evidences of international law that, in 1911, he urged, in addition to a collection of all treaties, ancient and modern, (1) the preparation and publica-

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253 Ibid., pp. xv-xxvi.
254 Ibid., pp. xxi-xxii.
256 Cf. e.g. his *History and Digest of the International Arbitrations to which the United States has been a Party*, 6 vols., 1898; *A Digest of International Law*, 8 vols., 1906; and *International Adjudications, Ancient and Modern*, 1929 ff. These three works are discussed supra.

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tion of all State papers, both American and foreign, relating to foreign affairs, somewhat after the manner of the British and Foreign State Papers, but on a broader basis; and (2) the collection and publication of international judicial decisions designed "to constitute a permanent and continuing source of authority for all international proceedings of a judicial or even of a mediatorial nature". These collections, in his judgment, would "place at the disposal of tribunals, national as well as international, of administrative officials and of writers and students, the sources of international law in an amplitude and completeness never before essayed".

To turn to more recent writers, one or two statements may be sufficient to illustrate the persisting desire to make the evidence of customary international law more readily available.

One author states that "one of the most important tasks in the field of international law at the present time is to make the source materials of international law more widely and more readily accessible".

Another, writing of the importance of customary international law, declares: "It hardly requires mention that, apart from exceptions . . . the immense material from which international custom, as evidence of a general practice accepted as law', may be gathered has hardly yet been touched by international lawyers . . . It is suggested, therefore, that the most that can be done at this stage is a systematic analysis, country by country, of the attitudes of the subjects of international law to the rules of international customary international law".

Emphasizing the potential role of the United Nations, another writer recently observed: "The materials with which the international lawyer must work are manifold. They exist, and they should be made more accessible. The United Nations can perform an important service and encourage the progressive development of international law by promoting the collection and publication of these materials".

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258 Ibid., p. x.
2. STATE PRACTICE

Discussing various sources of international law, Judge Sir Cecil Hurst declared there was general agreement "that the source of international law which is of paramount importance is the practice of States, manifested by the treaties they conclude or by their conduct. It is true that far more material is published by Governments today than was general in the nineteenth century. It is therefore easier for a student nowadays to be well informed as to the practice of States". He warned, however, that "before the importance from the point of view of building up the science of international law of a Government's conduct on some particular occasion can be appreciated, that conduct has to be viewed and studied in the light of all the surrounding circumstances—why the Government acted as it did; what was the reaction of other Governments and so forth".262

The importance of background material for any attempt to deduce rules of international law from official utterances, has of course been fully realized by Judge John Bassett Moore in preparing his Digest of International Law.263

Another writer pointed out that "to prove the existence of a principle of international law by means of State practice" was by no means an easy matter. For it was necessary "to prove consistent practice on the part of all Governments in any one field of international law and it is only from such consistent practice that the existence of a generally recognized principle of international law may be concluded". The difficulty, an important one, in proving a consistent practice of several, let alone of all, Governments, stems, it was argued, from the fact "that the spade-work urgently needed for ascertaining international practice is still almost entirely lacking. The example of John Bassett Moore, who, in his Digest of International Law, was the first to undertake the task of recording the practice of the United States, has been copied in no other country. In most cases it is not the scientific research workers who are at fault, but the appropriate Government authorities, who refuse to allow the material to be sifted and published".264

In a similar vein, having pointed out with regret that no record of the practice of other countries exists comparable to that of the "United States Foreign Relations" and the Digests of Moore and

Hackworth,265 another writer described the resulting situation as follows:266

"As it is, the treatment of various questions of international law in monographs and otherwise, tends to be one-sided inasmuch as it is based largely on the practice of the United States. Until the Foreign Offices of Great Britain and France—and also of some of the smaller countries such as Belgium, Holland and Sweden—have followed the lead of the State Department in this matter we cannot hope for a more comprehensive and accurate treatment by writers of questions of international law than is the case at present. It is also clear that from the point of view of the requirements of the staffs of the Foreign Offices and of the diplomatic and consular representatives of the countries concerned, the encouragement of publications of this kind is desirable and, in the long run, highly economical. It would make unnecessary the compilation, amidst some haste, of special memoranda bearing on situations as they arise in particular cases; and there is no doubt that other Government departments would greatly benefit from the existence of a semi-official publication of this nature."

Adverting to the view that the publication of official correspondence—which in any event must be largely the result of official initiative and effort—might adversely affect the interest of the country or Government concerned, the same writer noted that the United States authorities have apparently discarded the idea "that publication of international correspondence may be used against them as a precedent and that, in consequence, it ought to be kept secret as far as possible". He was of opinion that "the benefits accruing from the publication of the records outweigh decisively any such remote disadvantages".267

3. INTERNATIONAL LAW REPORTS

The situation prevailing in the matter of reporting decisions and awards of international tribunals has been graphically summed up as follows:268

"Few international tribunals in the past have arranged for a systematic publication of texts of their decisions to make them avail-

265 Reference is made to the Digest of International Law by Green H. Hackworth, 8 vols. (1940-1944).
267 Ibid.
268 Manley O. Hudson, International Tribunals—Past and Future (1944), pp. 119-120.
able for the professional public. The fact presents an awkward handicap to a jurist or a scholar seriously pursuing a study of international jurisprudence. He is forced to delve in a mass of heterogeneous documentation, some of it highly fugitive in character, to discover the materials he needs; and after the discovery he may lack assurance as to their authenticity. Often he must rely on wholly secondary aids. Temporary tribunals frequently become functus officio once their decisions are rendered, and the form in which the decisions are published by the parties is sometimes far from satisfactory. The awards given by tribunals of the Permanent Court of Arbitration were published by its International Bureau, but the publications were not given systematic distribution except to Governments.

"Decisions of the Central American Court of Justice were published unsystematically in a periodical which was not entirely official. Some of the numerous decisions of the Mixed Arbitral Tribunals created in 1919 and 1920 were published in an unofficial collection, but so many of them are unavailable for general purposes that it is still difficult to appraise the work of those tribunals. It remained for the Permanent Court of International Justice to set a satisfactory standard for the publications relating to its work, and its success in doing so was due to the genius of its first Registrar. The various series of the Court's publications give, usually in two languages, an almost complete history of each case and they are on sale throughout the world. Still needed, however, is an international council on the reporting of the decisions of international tribunals generally, similar to the Incorporated Council of Law Reporting for England and Wales, and it might in time make for international law a contribution second in importance only to that achieved by the publication of treaty texts in the League of Nations Treaty Series. The provision in the Hague Conventions of 1899 and 1907 that all arbitral awards in which the parties to the Conventions were interested should be communicated to the International Bureau might have led to such a development, but unfortunately the opportunity was neglected."

While the need for more ready access to what has been described as "a growing source of law, not only as evidence of custom, but as precedents for the decision of cases"\textsuperscript{269} has been acutely felt for a long time, it appears to be a fact that "a complete collection of international arbitrations, even limited to the nineteenth century and the first quarter of the twentieth, still remains to be undertaken".\textsuperscript{270} Indeed, the suggestion has even been made that we do not as yet

possess a definitive list of arbitrations.\(^{271}\)

It may be apposite to quote here also the author of a recent book on international arbitration who, stressing the needs particularly of the practitioner for a readily accessible and reasonably complete collection of international arbitral decisions, said:\(^{272}\)

"If we are to have a fully developed system of international jurisprudence for application by international tribunals, we must establish a means for a uniform publication of their decisions. Cases still lie buried in the unpublished archives of Governments, limited and sporadic printings of others are made, with the result that the few repositories of precedents gathered together by scholars such as John Bassett Moore and de La Pradelle become the handbooks of advocates. . . . How can there be a common international law in the full sense of that term when parties labour in ignorance of all its applicable precedents? Under the present system we must look to chance and the industry and learning of counsel and the members of the court as our only surety that the court will be well advised. This is not to deny, but rather to emphasize, the value of the individual efforts that have been made in this direction. The task is, however, more than an individual one."

It will be recalled that it was Judge Moore's intention to furnish in his *International Adjudications* an "intelligible and fully documented report of all judicial decisions of international questions not recorded in the ordinary law reports".\(^{273}\) However, this monumental enterprise, like the *Recueil* by de La Pradelle and Politis, was discontinued after the publication of six volumes in the Modern Series and of one volume in the Ancient Series.\(^{274}\) Reference may also be made to the series *Fontes Juris Gentium* which has met with a similar fate.\(^{275}\)

Private initiative and effort, it appears, has thus far not been able to fill the gap. It may be pertinent, then, to mention here the proposal that the United Nations should take steps to correct this situation:\(^{276}\)

"Means should be provided whereby Governments may register copies of arbitral decisions with some international body under the


\(^{273}\) J. B. Moore (ed.), *International Adjudications, Ancient and Modern*, 1929.

\(^{274}\) Discussed more fully above, pp. 28-31.

\(^{275}\) The *Fontes Juris Gentium* are more fully discussed above, pp. 25-27.

\(^{276}\) Carlston, *op. cit.*, p. 263.
United Nations as they have in the past registered their treaties with the League of Nations.”

4. COLLECTIONS AND DIGESTS OF NATIONAL DECISIONS ON QUESTIONS OF INTERNATIONAL LAW

Parallel with the need for a comprehensive and systematic collection and publication of international arbitral awards runs the desire for a similar collection and publication of national decisions on questions of international law. Thus it has been observed that “international law reports on the same or similar lines as the regular reports of national courts published in the various countries have for a long time been considered by many to be a desirable piece of apparatus” both in the academic study as well as in the practice of international law.277

The prediction has been made that the study of international law would be revolutionized if a general and global collection of cases, both national and international, were produced.278 The reason for the persistent demand for making every decision bearing upon international law, whether emanating from a national or international court, promptly available to students and practitioners279 may be attributed to the belief that municipal court decisions show on certain question of international law a substantial degree of uniformity. To the extent that such uniformity has come about, it has been said, the decisions of municipal courts, which are organs of the State, “may be regarded as evidence of customary international law”.280

Obviously, in order to ascertain the frequency of decisions of municipal courts on points of international law and, at the same time, the degree of concordance or divergence achieved by courts in the different parts of the world, it is necessary to possess as complete a collection of such decisions as possible. While concordant decisions, it is said, may be regarded as “evidence of practice that has become customary law”,281 decisions which indicate a substantial degree of divergence are “of considerable usefulness as an indication of prob-

277 H. Lauterpacht in preface to Annual Digest and Reports of Public International Law Cases, 1933-1934 (1940), p. ix.
lems awaiting solution". Hence, it may be said, knowledge of the decisions of municipal courts on questions of international law is likely to encourage the progressive development of customary international law in any case, be it through pointing up matters of substantial agreement between the different jurisdictions, or be it through bringing out points of difference between the courts in the various countries. The view has been expressed that digests and reports of judicial decisions were tools necessary not merely for the "scholarly endeavours" but "perhaps some day for eventual codification". 

PART THREE

Ways and Means
I.

THE PRESENT STATE OF THE EVIDENCE OF CUSTOMARY INTERNATIONAL LAW: NEED FOR IMPROVEMENT

The foregoing survey reveals that a substantial body of evidence of customary international law is available. But it is no less clear from it that the existing state of documentation needs to be improved. The practice of some States is documented less adequately than that of others.284 Whilst there are very detailed publications dealing with the work of the Permanent Court of International Justice and the International Court of Justice, the decisions of other international tribunals are less adequately treated.285 Though decisions of municipal courts are to some extent available, and though the position as regards the period since the end of the War of 1914-1918 is infinitely better than that for any earlier period so far as concerns such decisions, there is clearly room for some improvement in their treatment.286 Some effort has indeed been made to collect and publish national legislation bearing on international law,287 and the decisions and opinions of international organizations on questions of general international law.288 But, again, much remains to be done.

Amongst the main shortcomings of existing collections is the incompleteness in documentation which results from their compilation on too rigidly selective lines, e.g., from the restriction of a particular collection to "treaties", or to "decisions", or to "diplomatic documents". The overlapping and duplication between different collections is another obvious defect, as is the frequent omission of so-called "background materials", without which documents very often are of imperfect value. The absence of continuity, too, is a serious defect. The tale of undertakings which have not been completed is very long: Moore's *International Adjudications* ceased to appear after only seven volumes had been published;289 de La Pradelle's *Recueil général periodique* survived only five years;290 de La Pradelle and

284 See p. 9 f.
286 See p. 58 f.
287 See pp. 66-76.
288 See pp. 76-79.
289 See p. 30.
290 See p. 36.
Politis's *Recueil des arbitrages internationaux* was carried up to only 1872;\(^{291}\) the *Fontes Juris Gentium* also collapsed;\(^{292}\) and Smith's *Great Britain and the Laws of Nations* did not go beyond the second volume.\(^{293}\) This is particularly regrettable so far as concerns those works which set out to provide periodical reports of decisions, both international and national, since the lack of up-to-date international law reports is perhaps the most serious which is to be remarked. The *Annual Digest and Reports of Public International Law Cases*, it is true, has continued to appear despite the difficulties which have been occasioned by the war of 1939-1945, but, as has been seen, new copies of the earlier volumes in that series are not at present available.\(^{294}\)

Upon a consideration of this situation it would seem to follow that in connexion with any project for its improvement by a programme of publication, especial attention should be paid to (1) the need for the systematic planning of publications, especially with a view to the avoidance of duplication and overlapping; (2) the desirability of completeness of presentation, with special regard to the inclusion of so-called "background material"; and (3) the desirability of regularity and continuity in publication, and of publication upon such a scale as to insure general availability.

It would also seem to follow that the problem of current publications ought to be distinguished from plans for the collection or digesting of materials relating to the recent or more recent past.

**II. POSSIBLE METHODS OF PREPARATION OF COLLECTIONS OR DIGESTS**

It is apprehended that there are four possible alternative methods whereby evidence of customary international law may be assembled with a view to its being made more readily available. These may be designated respectively, the topical approach, the chronological approach, the approach by countries, and the approach by the category of evidence.

The topical approach involves collecting evidence of international law with reference to particular topics, such as diplomatic privileges and immunities, treaties, etc., from every available source, be it treaty, the practice of States, or the opinion of publicists. This was the approach adopted by the Harvard Research in International

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\(^{291}\) See pp. 52-53.
\(^{292}\) See pp. 25-27, 54-57, 64-66.
\(^{293}\) See pp. 22-24.
\(^{294}\) See pp. 50-53.
Law and it is the method indicated to the International Law Commission as appropriate to its task of codifying international law. For, in virtue of article 18 of its Statute, the Commission is to "survey the whole field of international law with a view to selecting topics for codification", and, in pursuance of article 20, the Commission is to "prepare its drafts in the form of articles and [to] submit them to the General Assembly together with a commentary containing: (a) adequate presentation of precedents and other relevant data, including treaties, judicial decisions and doctrine; (b) conclusions relevant to: (i) the extent of agreement on each point in the practice of States and in doctrine; (ii) divergencies and disagreements which exist, as well as arguments invoked in favour of one or another solution". In view of the latter provision, it would appear that the topical approach is to some extent inherent in the Commission's work, not only in connexion with codification but also in connexion with the progressive development of international law. It may, therefore, be taken that it is unnecessary to examine this approach in any detail in relation to the Commission's responsibilities under article 24 of its Statute.

The chronological approach, involving the collection of evidence of customary international law in respect of certain periods rather than certain topics, is one which has been frequently used in connexion with the collection of judicial decisions and of national legislation and with the compilation of digests or collections of State practice. It would appear that any attempt to implement article 24 of the Statute must involve some use of this method which, however, is not likely by itself to yield entirely satisfactory results.

The method of approach by countries has been employed in such important works as the *Digests* of Moore and Hackworth, in Hyde's *International Law Chiefly as Applied and Interpreted in the United States* (2nd ed., 1947), and in McNair's *Law of Treaties*. Its application is contemplated by article 19 (2) of the Statute of the International Law Commission in reference to the Commission's function of codifying international law. A rigorous application of this procedure would involve the collection of all relevant data from every country, or from a substantial number of countries, and would presumably lead to the separate publication of materials relating to each country treated. But it is open to question whether the method

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295 See pp. 79-84.
296 See pp. 21-22.
297 See p. 23.
298 This paragraph reads: "The Commission shall, through the Secretary-General, address to Governments a detailed request to furnish the texts of laws, decrees, judicial decisions, treaties, diplomatic correspondence and other documents related to the topic being studied and which the Commission deems necessary."
need be strictly applied in all respects. For instance, it is doubtful whether the method is of great utility in connexion with the publication of international awards. Moore's *History and Digest* was indeed limited to "International Arbitrations to which the United States was a Party", but his later work, *International Adjudications*, was not so limited and was intended to embrace all arbitrations, as was also de La Pradelle and Politis's *Recueil des arbitrages internationaux*. On the other hand, the approach by countries may be considered to be more appropriate as respects decisions of municipal courts and was indeed adopted by the editors of the *Fontes Juris Gentium*, though not followed by compilers of the *Annual Digest and Reports of Public International Law Cases*. The same method, it is conceived, is equally appropriate to the national legislation on matters relating to international law. Such collections as have appeared in recent years have, it is true, followed rather the topical approach, but the approach by country, and, in some instances, also the chronological approach, have been adopted as subsidiary principles of classification. However, it is in reference to State practice that the approach by countries has been recommended most strongly, and the frequently expressed desire for more digests of the type of those of Moore and Hackworth, illustrating the application and interpretation of international law by particular States, of course implies an endorsement of this method. At the same time it is to be observed that at least one digest of State practice, the *Digest of the Diplomatic Correspondence of the European States* in the *Fontes Juris Gentium* series, did not follow this method. And it would appear that the choice of method in the preparation of digests of State practice is likely to be largely influenced by the choice of the organ or organs responsible for their preparation. If Governments are to assume responsibility for the compilation of such digests, as possibly they will do in view of the necessity for access to official archives, the method of approach by countries is likely to be that chosen.

There would appear to be ample precedents for the method of approach by categories of evidence. Moore's *International Adjudications*, de La Pradelle and Politis's *Recueil des Arbitrages internationaux*, the *Annual Digest and Reports of Public International Law Cases* and the digests of the *Decisions of the German Supreme

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299 See p. 21.
300 See p. 28.
301 See pp. 32-34.
302 See pp. 59, 64-66.
303 See pp. 52, 58, 62-63.
304 See pp. 66-76.
305 See p. 25.
306 See p. 28 f.
307 See pp. 32-34.
Court, and of the Diplomatic Correspondence of the European States in the Fontes Juris Gentium series, besides the collections of national law on specific subjects issued under the auspices of the Harvard Research in International Law all exemplify this approach. So also do the United Nations Reports of International Arbitral Awards and the Yearbook of Human Rights. The existence of these works would indicate that this approach has been found both adequate and feasible and that it is one likely to suggest itself to the International Law Commission as a basis for the further implementation of article 24 of its Statute.

But the existence of the various methods of approach outlined does not involve the choice of one to the exclusion of the other. It may be advisable to give some consideration to different combinations of the various approaches in connexion with the several categories of evidence of customary international law. Thus, in the preparation of collections of decisions of municipal courts or of digests of State practice the approach by countries might well be combined with the approach according to the category of evidence, whilst the latter, combined with the chronological approach, would be appropriate to the compilation of a collection of international judicial decisions.

III.

POSSIBLE METHODS OF PROCURING THE PUBLICATION OF MORE COMPLETE COLLECTIONS OF EVIDENCE OF CUSTOMARY INTERNATIONAL LAW

The International Law Commission has, under its Statute, considerable latitude as regards both methods and objections to be recommended for the making of evidence of customary international law more readily available. Conceivably it could confine its deliberations to the question of making available current State practice and of collecting current judicial decisions and legislation. In this connexion it is to be noted that the United Nations Treaty Series comprehends only current treaties. It may be a matter for consideration whether efforts should not be made to collect in the first instance the evidence of State practice and other relevant material for the period beginning with the end of the War of 1914-1918, the point of departure chosen for the United Nations Reports of International Arbitral Awards. A still broader approach might involve going

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309 See pp. 64-66.
310 See pp. 25-27.
311 See pp. 81-82.
312 See p. 27.
313 See pp. 68-69.
314 See p. 27.
back still further—perhaps to the beginning of the century, or to 1800, or to 1794. This comprehensive approach would also involve consideration as to whether or not projected collections should be planned in more than one stage. For instance, in view of the urgent need for easier access to current materials, it might be considered desirable to issue two series of a compilation covering a considerable period of time, as were issued the Modern and Ancient Series of Moore’s *International Adjudications*. Alternatively, it might be thought best to put in hand as soon as possible the collection of contemporary materials in several series which would move not only forward but also backward, until ultimately the whole period contemplated was covered.

One possible method within the scope of article 24 of the Statute which the Commission might wish to consider is the continuation, and perhaps the expansion, of an existing publication, such as the *Annual Digest and Reports of Public International Law Cases*, which might be developed, in accordance with the declared policy of its editorial committee, into “international law reports appearing at annual intervals”, or even, as its editor hopes, extended backwards so as to cover the whole period from the time of the Jay Treaty of 1794 to the present days. The revival of some of the collections which have been discontinued, such as Moore’s *International Adjudications* or the *Fontes Juris Gentium* series, might also be considered. Similarly, the possibility of expanding *United Nations Reports of International Arbitral Awards* so as to make these the standard source of international arbitral awards, both past and contemporaneous, might be examined.

In the alternative, the Commission might consider it best to recommend the undertaking of a completely new *Corpus Juris Gentium*, derived from all the different categories of evidence of customary international law. The paragraphs next following indicate briefly some possible ways of approaching such a task.

**IV.**

**THE ORGANIZATION OF THE PREPARATION OF A SYSTEMATIC AND COMPREHENSIVE COMPILATION OF EVIDENCE OF CUSTOMARY INTERNATIONAL LAW**

If, under the auspices of the International Law Commission, the
preparation of what has been termed a *Corpus Juris Gentium* is to be undertaken, it would seem that the following alternatives would present themselves:

(a) All or part of the work might be undertaken and carried out by the Secretariat of the United Nations under the direction of the International Law Commission; or

(b) All or part of the work might be undertaken and carried out by Governments; or

(c) All or part of the work might be undertaken and carried out in the existing unofficial scientific institutions in different countries; or

(d) All or part of the work might be undertaken and carried out by individual experts, pursuant to a plan laid down by the International Law Commission and under the direction of the Secretariat of the United Nations.

Each of these methods would obviously possess both advantages and disadvantages and very probably a combination of more than one of them would be desirable. Thus, whilst the first method may be regarded as quite acceptable for the compilation of collections or digests of decisions of national and international tribunals, and possibly of legislative materials on questions of international law, it would be neither appropriate nor satisfactory for the preparation of digests of State practice. Governments are in a peculiarly favourable position as respects the publication of digests of State practice and the works of Moore and Hackworth indicate that Governments are not only in a position to undertake so complex a task, but that they are capable of doing so in conformity with the highest standards of scholarship. It remains, of course, still to be explored how far Governments, assuming their willingness for the task, could be induced to accept such a uniform method of compilation and classification as would be desirable, and perhaps essential, in order to ensure that such digests might be of the greatest possible use.

Whilst methods (c) and (d), taken by themselves, might appear to be less serviceable than the others outlined, they might be of more utility when adopted in combination with methods (a) and (b). Thus, individual experts might be of considerable assistance to the Secretariat. For instance, they might be attached temporarily to the Secretariat in order to facilitate the collections of decisions of municipal courts and of national legislation on questions of international law. Again, scientific institutions might assist not only the Secretariat
but also Governments. Thus, Governments willing to have digests of their practices prepared, but unable to undertake the work themselves, might be willing to grant access to their archives to national bodies or national specialists selected by themselves. And national bodies, already existing or created ad hoc, might assist the Secretariat by furnishing materials needed for such compilations as may be entrusted to it. Some possible combinations of the alternatives outlined are discussed below.

A. THE SECRETARIAT AS CENTRAL ORGAN

A strong case, it is believed, can be made out in favour of constituting the Secretariat of the United Nations, acting under the direction of the International Law Commission, the central organ for discharging the task contemplated by article 24 of the Statute. Some degree of centralization is clearly needed in order to secure uniformity and completeness. And the Secretariat is equipped to provide the translations necessary for producing texts in the three working, and five official, languages of the United Nations.

So far as concerns digests of State practice, Governments could furnish the Secretariat with relevant materials—abstracts of diplomatic correspondence, Foreign Office minutes, diplomatic and consular instructions, and opinions of law officers, etc.—and the Secretariat could then, in accordance with instructions of the International Law Commission, assume responsibility for editing, translating and publication. In regard to decisions of international tribunals, it might be desirable for Governments to assume responsibility for furnishing the Secretariat with copies of all past arbitral decisions to which they may have been parties, and also to undertake for the future to file with the Secretariat copies of such awards in much the same manner as they register treaties in accordance with article 102 of the Charter. Alternatively such awards might be deposited with the Registry of the International Court of Justice, which is responsible for the editing of the United Nations Reports of International Arbitral Awards.

Decisions of municipal tribunals could perhaps be more easily collected by the Secretariat in collaboration with individual experts or national scientific organizations than by the agency of Governments; though in respect of such countries as do not possess published reports the assistance of Governments might have to be sought.

The somewhat more difficult task of collecting legislative materials on matters of international law would be much assisted by Governmental co-operation, though it is perhaps not indispensable.
Legislative enactments are commonly published and the Secretariat could well undertake the task of collecting pertinent acts and decrees if it had access to complete sets of official publications of Governments. Failing this, the assistance of individual experts or national bodies might be enlisted, or Governments might be prevailed upon to undertake the regular communication to the Secretariat of relevant texts. And it may finally be noted that the Legislative Series of the International Labour Office321 might well serve as a model for any projected publication by the Secretariat.

B. INDIVIDUAL UNDERTAKINGS BY GOVERNMENTS

The co-operation of Governments, it has been indicated already, would be essential to the proper functioning of the Secretariat of the United Nations as a central organ for the production of compilations of customary international law, and particularly for the preparation of digests of State practice. As an alternative to this scheme, the main responsibility might be placed on the shoulders of Governments, the part of the Secretariat being limited to such auxiliary services as translation and publication. Whilst such a system might have many advantages, it would not be free from drawbacks unless steps were taken to ensure a minimum of uniformity, for instance by means of detailed instructions, perhaps dealing separately with each category of material, for the guidance of compilers.

C. DIVISION OF LABOUR BETWEEN GOVERNMENTS AND THE SECRETARIAT

A via media between the two methods already discussed might lie in entrusting to Governments the compilation of State practice and in assigning to the Secretariat the function of preparing other compilations. If this plan were adopted, it would clearly be desirable to place at the disposal of Governments an outline of suggestions regarding classification and annotation of material etc.; and it might also be desirable to have translations of texts completed by Governments prepared and published by the Secretariat. In this connexion some thought might be given to the question as to whether or not some assistance from a central source, be it technical or otherwise, could not be furnished to those Governments with comparatively limited resources.

D. UTILIZATION OF NATIONAL INSTITUTIONS OR COMMITTEES

Governments favourable to the idea of preparation of digests, but not willing to assume responsibility for work of this nature imme-

321 See p. 67.
diately, might be disposed to entrust the task to national institutions or committees. Whether such bodies should be official or unofficial in character would clearly depend on national practice and traditions. In some cases a suitably qualified institution might be found already to exist. In others it might be expedient to create *ad hoc* an official research body. There are many precedents for the latter course. Thus, in 1897 the Netherlands Government set up a Royal Commission for the Codification of Private International Law in connexion with the Hague Conferences for the Unification of Private International Law. The Seventh International Conference of American States called for the creation of national committees of jurists specially qualified in international law with a view to preparing for the codification of international law, which bodies have been transformed into standing committees by article 71 of the charter of the Organization of American States adopted at the Conference of Bogota on 30 April 1948. In connexion with the plan under consideration here, such committees would be concerned not so much with matters of codification as with the preparation of digests of international law. This would involve their furnishing the research workers required. Possibly the necessary funds could be provided by Governments, or by private foundations. In some cases these funds might cover also the cost of publication.

The question of co-ordination between the different national committees would be a serious one. It would seem that it might be solved in one of two ways. Either the International Law Commission might work out an outline to be submitted to the national bodies for their guidance or the committees themselves might form an international co-ordinating committee.

**E. ENLISTMENT OF THE SERVICES OF INDIVIDUAL EXPERTS**

So far as concerns the compilation of digests of international law, it is the virtually unanimous opinion of writers that the work is now beyond the powers or resources of any one individual. Whilst the need for the initiative and supervision of a competent scholar is conceded, experience goes to show that the co-operation of a substantial number of assistants is indispensable. But it is clearly open to Governments who are willing to prepare such digests to make individual scholars rather than officials generally responsible for them. This presupposes resort to the methods outlined under paragraphs (b) and (c) above and is not therefore an alternative solution. In other words, there being a widespread belief that Governments alone are fitted to undertake the task of preparing comprehensive digests of international law, individual experts cannot be expected to assume this important task of their own initiative.
As respects compilations or digests of international arbitral awards, a distinction should perhaps be made between the publication of past awards and the official publication of contemporary decisions. The suggestion has been made above that Governments should undertake to communicate to the Secretariat or the Registry of the International Court of Justice documents relating to current arbitral proceedings to which they may be parties.\textsuperscript{322} But in so far as concerns past arbitral awards there would appear to be ample scope for individual initiative and effort. In fact, as is well known, several existing collections of such awards are owed to such initiative and effort, e.g., Moore's \textit{International Adjudications} and de La Pradelle and Politis's \textit{Recueil des arbitrages internationaux}.\textsuperscript{323} On the other hand, Moore's \textit{History and Digest of International Arbitrations}, whilst very largely an individual production, was compiled and published under Governmental auspices.\textsuperscript{324}

But though the contribution of individual students may be very large, it may well be that other methods are more suitable for the execution of a comprehensive programme in a reasonably short space of time. If such a programme is inaugurated, it might be necessary to consider the organization of teams of experts working in collaboration with each other under the direction of the Secretary-General.

The same considerations apply equally to the compilation of collections or digests of decisions of national courts involving issues of international law, a task for which individual scholars are well suited provided their efforts are guided by a common plan. But the task is perhaps one which is insufficiently attractive to any large number of qualified international lawyers to permit the expectation that it will be undertaken privately within any reasonable time without encouragement and support from some central source such as either the Secretariat or national committees or institutions might provide.

Individual experts are likewise qualified to compile collections of national legislation bearing on international law and might perform this function even with respect to current material, if the Secretariat does not assume this task with the co-operation of Governments. But here again some central co-ordination of methods of selection and editing would be highly desirable.

The question would obviously arise as to the most appropriate method for the recruitment of individuals for the tasks outlined. Two

\textsuperscript{322} See p. 110.  
\textsuperscript{323} See pp. 28, 32.  
\textsuperscript{324} See p. 21.
ways would appear open: appointment by Governments or by the Secretary-General. There is perhaps no particularly persuasive reason for burdening Governments with the function unless they are prepared to provide assistance, financial or otherwise, for the projects to be undertaken, in which case they would probably wish to exercise some measure of control. It would probably simplify co-ordination of appointments if these were to be made by the Secretary-General.

V.

SOME SECONDARY SUGGESTIONS

One or two other points seem likely to be worthy of the attention of the International Law Commission in connexion with article 24 of its Statute. The first is the question of access to Governmental archives which, as is well known, is not always easy. It is not in every case even possible to obtain information in advance as to what archives are open and what they comprise. A general inquiry into the situation prevailing in Europe was undertaken by the Institute of Intellectual Co-operation and some information of interest to international lawyers is to be found in the Guide international des archives—Europe published by that body in 1934. Amongst other surveys extant may be mentioned that in the Guide to the History of the United States, 1775-1921, by S. F. Bemis and G. B. Griffin (1935), and Temperley and Penson’s Survey of British State Papers (A Century of Diplomatic Blue Books, 1814-1914, (1938)). Recent monographic literature indicates that there is a growing trend towards an inductive approach and that greater reliance is being placed on materials illustrating State practice. It would clearly be very useful if Governments would be more liberal in giving permission to scholars to use such materials. And the International Law Commission might be disposed to consider how Governments could be encouraged to this end.

Again, the possibility may be considered of promoting the wider distribution of existing collections of evidence of international law. One step in this direction would be the obtaining of precise information as to what is actually in the libraries in the different capitals and other national research centres. If, as appears very possible, such a survey should reveal important gaps, the provision of nuclear collections, possibly deposited with the various national libraries, might be considered. The supply of photostatic copies of works now out of print would be another possibility which might be explored, as also would be the enlistment of the co-operation of Governments and of private foundations with a view to the establishment and maintenance of standard libraries of international law in different parts of the world.
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