

THE  
AMERICAN JOURNAL  
OF  
INTERNATIONAL LAW



VOLUME I.

PART I.

JANUARY AND APRIL, 1907.

---

*Reprinted with the permission of The American Society of International Law*

JOHNSON REPRINT CORPORATION  
NEW YORK AND LONDON

**COPYRIGHT, 1907, BY  
THE AMERICAN SOCIETY OF INTERNATIONAL LAW**

**First reprinting, 1962, Johnson Reprint Corporation**

# TABLE OF CONTENTS, VOLUME ONE

## PART I.

NUMBER 1, JANUARY, 1907.

THE NEED OF POPULAR UNDERSTANDING OF INTERNATIONAL LAW. <i>Elihu Root</i> , Secretary of State .....	1
INTERNATIONAL RESPONSIBILITY TO CORPORATE BODIES FOR LIVES LOST BY OUTLAWRY. <i>John W. Foster</i> , formerly Secretary of State.....	4
INTERNATIONAL LAW; ITS PRESENT AND FUTURE. <i>John Bassett Moore</i> , Pro- fessor of International Law in Columbia University.....	11
DOCTOR FRANCIS LIEBER'S INSTRUCTIONS FOR THE GOVERNMENT OF ARMIES IN THE FIELD. <i>George B. Davis</i> , Judge Advocate General, United States Army .....	13
THE CALVO AND DRAGO DOCTRINES. <i>Amos S. Hershey</i> , Professor of Interna- tional Law in the University of Indiana.....	26
INSURGENCY AND INTERNATIONAL MARITIME LAW. <i>George Grafton Wilson</i> , Professor of International Law in Brown University.....	46
THE DOCTRINE OF CONTINUOUS VOYAGES. <i>Charles Burke Elliott</i> , Justice of the Supreme Court of Minnesota.....	61
NOTES ON SOVEREIGNTY. <i>Robert Lansing</i> .....	105
BOARD OF EDITORS .....	129
EDITORIAL COMMENT .....	129
Prospectus .....	130
Constitution .....	131
Societies of International Law.....	135
Carlos Calvo .....	137
The Algeciras Conference .....	138
Lake Mohonk Conference on International Arbitration, 1906.....	140
The Peace of the Marblehead.....	141
Mr. Root's South American Trip.....	143
The Newfoundland Fisheries .....	144
The Nature of the Government in Cuba.....	149
The Japanese School Question.....	150
CHRONICLE OF INTERNATIONAL EVENTS. <i>Henry G. Crocker</i> .....	154
PUBLIC DOCUMENTS RELATING TO INTERNATIONAL LAW, 1906. <i>Philip De Witt</i> <i>Phair</i> .....	186

<b>JUDICIAL DECISIONS INVOLVING QUESTIONS OF INTERNATIONAL LAW</b> . . . . .	<b>200</b>
Petit, United States Marshal for the District of Indiana, v. Walshe . . . . .	200
Wright v. Henkel . . . . .	202
State of Missouri v. State of Nebraska, and State of Nebraska v. State of Missouri . . . . .	203
Louisiana v. Mississippi . . . . .	204
Ortega v. Lara . . . . .	208
The United States v. The Paquete Habana . . . . .	209
Ribas y Hijo v. United States . . . . .	210
Colombia v. Cauca Company . . . . .	212
Northern Pacific Railway Company v. American Trading Company . . . . .	214
Missouri v. Illinois . . . . .	215
Kansas v. Colorado . . . . .	215
West Rand Gold Central Mining Company, Limited, v. The King . . . . .	217
Decision by the Swiss Federal Court Concerning the International and Constitutional Effects of Territorial Possession and the Duty of a Succeeding State to Recognize the Concessions Granted by its Predecessor . . . . .	235
<b>BOOK REVIEWS: BOOK NOTES</b> . . . . .	<b>250</b>
American Diplomacy: Its Spirit and Achievements. <i>John Bassett Moore</i> . . . . .	250
Recueil des Arbitrages Internationaux. <i>A. de Lapradelle, and N. Politis</i> . . . . .	252
A Digest of International Law. <i>John Bassett Moore</i> . . . . .	254
The Practice of Diplomacy as Illustrated in the Foreign Relations of the United States. <i>John W. Foster</i> . . . . .	257
The Aliens Act and the Right of Asylum. <i>N. W. Sibley and Alfred Elias</i> . . . . .	260
Report of French-Venezuelan Mixed Claims Commission Under Protocol of 1902. <i>Jackson H. Ralston, assisted by W. T. S. Doyle</i> . . . . .	261
The Legislative History of Naturalization in the United States from the Revolutionary War to 1861. <i>Frank George Franklin</i> . . . . .	262
International Law: A Treatise. <i>David J. Brewer</i> . . . . .	263
American Consular Jurisdiction in the Orient. <i>Frank E. Hinckley</i> . . . . .	264
Manuel de droit International public. <i>Henry Bonfils</i> . . . . .	264
Völkerrechtsquellen in Auswahl herausgegeben. <i>Max Fleischmann</i> . . . . .	264
The Purchase of Florida: Its History and Diplomacy. <i>Herbert Bruce Fuller</i> . . . . .	265
The Consular Service of the United States: Its History and Activities. <i>Chester Lloyd Jones</i> . . . . .	265
The Manuel Historique de la Question du Schlesvig. <i>Franz de Jessen, editor</i> . . . . .	265
La république et le canal de Panama. <i>Henri Pansa</i> . . . . .	265
La Question d'Égypte. <i>Charles de Freycinet</i> . . . . .	266
International Law with Illustrative Cases. <i>Edwin Macey</i> . . . . .	266
Early Diplomatic Negotiations of the United States with Russia. <i>John C. Hildt</i> . . . . .	266
Traité de la France avec les pays de l'Afrique du Nord. <i>E. Rouard de Card</i> . . . . .	266
Recueil international des traités du XXe Siècle, <i>Baron Deschamps and Louis Renault, editors</i> . . . . .	266

BOOK REVIEWS: BOOK NOTES — <i>Continued.</i>	
A Practical Guide for Russian Consular Officers. <i>A. Heyking</i> .....	266
La Traité Nègrière aux Indes de Castille. Contrats et traités d'Assiento. <i>Georges Scelle</i> .....	266
L'Affaire Marocaine. <i>Victor Bérard</i> .....	267
La diplomatie de la troisième république et le droit des gens. <i>Frantz Despagenet</i> .....	267
Histoire de la Représentation Diplomatique de la France auprès des Cantons Suisses. Vol. III. <i>Edouard Rott</i> .....	267
Les lois de la guerre continentale. <i>Paul Carpentier</i> , translator.....	267
Zeitschrift für Völkerrecht und Bundesstaatsrecht. <i>Josef Kohler</i> , editor..	267
Rivista di diritto internazionale.....	267
Revista de derecho internacional y política exterior. <i>Marquis de Olivart</i> , editor.....	267
Krieg und Seekabel. Eine völkerrechtliche Studie. <i>Franz Scholz</i> .....	267
Les Cables sous-marins, leur protection en temps de paix et en temps de guerre. <i>Pierre Jouhannaud</i> .....	267
Der Tatbestand der Piraterie nach geltendem Völkerrecht. <i>Paul Stiel</i> ....	267
Die Kriegskonterbande in der Völkerrechtswissenschaft und der Staaten- praxis. <i>Max Wiegner</i> .....	268
Das Untersuchungsrecht des internationalen Seerechts in Krieg und Frieden. <i>Max J. Lowenthal</i> .....	268
Manuel diplomatique et consulaire. <i>R. Monnet</i> .....	268
The Law of Aliens and Naturalization. <i>H. S. I. Hemiques</i> .....	268
Spanish-American Diplomatic Relations preceding the War of 1898. <i>H. E. Flack</i> .....	268
The Report of the Twelfth Annual Meeting of the Lake Mohonk Confer- ence on International Arbitration, 1906.....	268
Régimen internacional de los rios navegables. <i>Ismael López</i> .....	268
The International Position of Japan as a Great Power. <i>Saiji George Hishida</i> .....	268
Essais d'histoire diplomatique américaine. <i>Achille Viallate</i> .....	268
Les lois de la guerre et la neutralité. <i>Fernand Verraes</i> .....	268
Le droit international; Les principes, les théories, les faits. <i>Ernest Nys</i> ..	268
International Documents, a collection of Conventions and other inter- national acts of a law-making kind. <i>E. A. Whittuck</i> .....	269
International Law and Diplomacy of the Russo-Japanese War. <i>Amos S. Hershey</i> .....	269
PERIODICAL LITERATURE OF INTERNATIONAL LAW, 1906.....	270

## NUMBER 2, APRIL, 1907.

THE REAL QUESTION UNDER THE JAPANESE TREATY AND THE SAN FRANCISCO SCHOOL BOARD RESOLUTION. Address by the President of the American Society of International Law. <i>Elihu Root</i> .....	273
THE CONVENTION OF 1907 BETWEEN THE UNITED STATES AND THE DOMINICAN REPUBLIC. <i>Jacob B. Hollander</i> .....	287

NOTES ON SOVEREIGNTY IN A STATE. <i>Robert Lansing</i> .....	297
SOME SUGGESTIONS AS TO THE PERMANENT COURT OF ARBITRATION. <i>Jackson H. Ralston</i> .....	321
INTERNATIONAL ARBITRATION. <i>William L. Penfield</i> .....	330
A PERMANENT TRIBUNAL OF INTERNATIONAL ARBITRATION: ITS NECESSITY AND VALUE. <i>R. Floyd Clarke</i> .....	342
THE GENEVA CONVENTION OF 1906. <i>George B. Davis</i> .....	409
THE DEVELOPMENT OF INTERNATIONAL LAW. <i>Richard Olney</i> .....	418
BOARD OF EDITORS.....	431
EDITORIAL COMMENT.	
The Second Peace Conference of The Hague.....	431
The Dissolution of the Union of Norway and Sweden.....	440
The International Status of Korea.....	444
Japanese Situation.....	449
The New Immigration Law.....	452
The New Citizenship Law.....	458
The Question of Expulsion.....	462
Transit in Extradition Cases.....	465
Extraterritoriality and the United States Court for China.....	469
Anglo-American Relations.....	480
Anglo-French Convention Respecting the New Hebrides.....	482
The Abolition of "Prize Money".....	483
Anglo-French-Italian Agreement Regarding Abyssinia.....	484
The Joris Case and the Turkish Capitulations.....	485
Resolutions Adopted by the Institute of International Law, at Ghent, in September, 1906.....	485
Annual Meeting of the American Society of International Law.....	486
CHRONICLE OF INTERNATIONAL EVENTS. <i>Henry G. Crocker</i> .....	488
PUBLIC DOCUMENTS RELATING TO INTERNATIONAL LAW. <i>Philip De Witt Phair</i> .....	504
JUDICIAL DECISIONS INVOLVING QUESTIONS OF INTERNATIONAL LAW.....	511
A. C. de Baca, et al., v. The United States and the Navajo Indians.....	511
Chauncey Thomas v. The United States.....	513
The Philippine Sugar Estates Development Company (Limited) v. The United States.....	514
Warner, Barnes and Co. (Ltd.) v. The United States.....	517
Galban and Company, a Corporation, v. The United States.....	518
Charles F. Wyman, Petitioner; John W. M'Evoy, Public Administrator, v. Charles F. Wyman.....	520
Zartarian v. Billings. Supreme Court of the United States.....	523
Mortensen v. Peters (High Court of Judiciary of Scotland).....	526
BOOK REVIEWS: BOOK NOTES.....	544
Les Sanctions de L'Arbitrage International. <i>Jacques Dumas</i> .....	544
Report on the Subject of Citizenship, Expatriation, and Protection Abroad. <i>James B. Scott, David Jayne Hill, and Gaillard Hunt</i> .....	548

BOOK REVIEWS: BOOK NOTES — *Continued.*

Die Kodifikation des Automobilrechts. <i>Fr. Meili</i> .....	554
Automobile Regulations of France and Other Countries. <i>H. Cleveland Coxe</i> .....	554
A History of Diplomacy in the International Development of Europe. <i>David Jayne Hill</i> . Vol. II.....	556
The Establishment of Territorial Sovereignty.....	556
Droit International. Les lois de la guerre et la neutralité. <i>Fernand Verraes</i> .....	558
Lettres et papiers du Chancelier Comte de Nesselrode. 1760-1850. <i>A. de Nesselrode</i> , editor .....	559
La doctrine de Monroë et l'Amérique Latine. <i>Daniel Antokoletz</i> .....	559
Commerce in War. <i>L. A. Atherly-Jones</i> , assisted by <i>H. H. L. Bellot</i> .....	559
Revista de derecho internacional y política exterior. Vol. II, No. 4.....	560
La codification du droit international privé. Bulletin des conférences de la Haye. <i>T. M. C. Asser</i> , editor.....	560
Questions of International Law and Diplomacy Involved in the Spanish-American War. <i>E. J. Benton</i> .....	560
Revue Générale de droit international public. <i>Joseph Delpech's</i> article on the revision of the Geneva Convention.....	560
Fahnenfucht und Verletzung der Wehrpflicht durch Auswanderung. Eine rechtswissenschaftliche und politische Studie zu den Deutsch-amerikanischen Bancroftverträgen. <i>Ludwig Bendix</i> .....	560
La fondation de l'empire allemand. <i>Ernest Denis</i> .....	560
Das Kriegerrecht zu Lande in seiner neuesten Gestaltung. <i>Albert Zorn</i> ....	560
The History of the Papacy in the XIX Century. <i>Fredrik Nielsen</i> .....	560
International Law. <i>L. Oppenheim</i> .....	561
The International Law and Diplomacy of the Russo-Japanese War. <i>Amos S. Hershey</i> .....	561
The Austinian Theory of War. <i>W. Jethro Brown</i> .....	561
PERIODICAL LITERATURE OF INTERNATIONAL LAW.....	562

## PART II.

NUMBER 3, JULY, 1907.

THE INTERNATIONAL CONGRESSES AND CONFERENCES OF THE LAST CENTURY AS FORCES WORKING TOWARD THE SOLIDARITY OF THE WORLD. <i>Simeon E. Baldwin</i> .....	565
INTERNATIONAL UNIONS AND THEIR ADMINISTRATION. <i>Paul S. Reinsch</i> ....	579
AMERICAN IDEALS OF INTERNATIONAL RELATIONS. <i>Albert Bushnell Hart</i> ....	624
THE EXTENT AND LIMITATIONS OF THE TREATY-MAKING POWER UNDER THE CONSTITUTION. <i>Chandler P. Anderson</i> .....	636
SECOND PEACE CONFERENCE AT THE HAGUE. <i>David J. Hill</i> .....	671
STATE LOANS IN THEIR RELATION TO INTERNATIONAL POLICY. <i>Luis M. Drago</i> , 692	

BOARD OF EDITORS.....	727
EDITORIAL COMMENT.	
The National Arbitration and Peace Conference of New York.....	727
First Annual Meeting of the American Society of International Law....	729
The Growth of International Law under a Permanent Court of Arbitration .....	730
The Assassination of Gen. Barrillas.....	734
The Association of International Law.....	739
The Fur Seal Question.....	742
The Recent Agreements Concluded Between Japan and France.....	748
The Supplement.....	749
CHRONICLE OF INTERNATIONAL EVENTS. <i>Henry G. Crocker</i> .....	750
PUBLIC DOCUMENTS RELATING TO INTERNATIONAL LAW. <i>Philip De Witt Phair</i> .....	761
JUDICIAL DECISIONS INVOLVING QUESTIONS OF INTERNATIONAL LAW.....	767
The State of Kansas v. The State of Colorado et al.....	767
Percy v. Stranahan.....	784
United States of America v. C. A. Biddle.....	793
BOOK REVIEWS: BOOK NOTES.....	797
A History of Diplomacy in the International Development of Europe. <i>David Jayne Hill</i> . Vol. I.....	797
Traite de Droit Public International. <i>A. Merignhac</i> .....	800
Le Droit International, Les Principes, Les Theories, Les Faits. <i>Ernest Nys</i> .....	801
A Treatise on the Law of Naturalization of the United States. <i>Frederick Van Dyne</i> .....	802
Proceedings of the National Arbitration and Peace Congress, New York, April, 1907. <i>Robert Erskine Ely</i> , editor.....	804
PERIODICAL LITERATURE OF INTERNATIONAL LAW.....	805
APPENDIX — List of memorable international conferences, etc., appended to the above article, by <i>Hon. Simeon E. Baldwin</i> .....	808

## NUMBER 4, OCTOBER, 1907.

THE LEGAL NATURE OF INTERNATIONAL LAW. <i>James Brown Scott</i> .....	831
THE HISTORY OF THE DEPARTMENT OF STATE. <i>Gaillard Hunt</i> .....	867
THE AMERICAN CONSULAR SERVICE. <i>Wilbur J. Carr</i> .....	891
CITIZENSHIP AND ALLEGIANCE IN CONSTITUTIONAL AND INTERNATIONAL LAW. <i>W. W. Willoughby</i> .....	914
WOULD IMMUNITY FROM CAPTURE, DURING WAR, OF NON-OFFENDING PRIVATE PROPERTY UPON THE HIGH SEAS BE IN THE INTEREST OF CIVILIZATION? <i>C. H. Stockton</i> .....	930
BOARD OF EDITORS.....	944



## EDITORIAL COMMENT.

The January Journal.....	944
The Second Peace Conference of The Hague.....	945
The Integrity of China and the "Open Door" .....	954
The Northeastern Fisheries Question.....	963
Secretary Root's Visit to Mexico.....	964
The Regulation of Immigration and the Doctrine of Expatriation.....	967
The Case of Johnson v. Browne.....	970
The Meeting of the International Law Association at Portland.....	971
Recent Disturbances in Morocco.....	975
The San Dominican "Enabling Act".....	978
The Recent Anglo-Russian Convention.....	979
The Dispute between the Argentine Republic and Uruguay as to their Jurisdiction in the Rio de la Plata.....	984
CHRONICLE OF INTERNATIONAL EVENTS. <i>Henry G. Crocker</i> .....	989
PUBLIC DOCUMENTS RELATING TO INTERNATIONAL LAW. <i>Philip De Witt Phair</i> .....	1009
JUDICIAL DECISIONS INVOLVING QUESTIONS OF INTERNATIONAL LAW.	
Baird v. Walker.....	1016
Browne v. United States.....	1018
Johnson v. Browne.....	1022
In the Matter of the Probate of the Will of Young John Allen.....	1029
Von Thodorovich v. Franz Josef Beneficial Association.....	1039
BOOK REVIEWS: BOOK NOTES.	
International Law as Interpreted During the Russo-Japanese War. <i>F. E. Smith and N. W. Sibley</i> .....	1044
The International Law and Diplomacy of the Russo-Japanese War. <i>Amos S. Hershey</i> .....	1044
La Proprieta Privata Nelle Guerre Marittime Secondo Il Diritto Inter- nazionale Pubblico. <i>Tullio Giordana</i> .....	1052
Commerce in War. <i>L. A. Atherly-Jones</i> (assisted by <i>Hugh H. L. Bellot</i> ) ..	1053
Problems of International Practice and Diplomacy with Special Reference to The Hague Conferences and Conventions and other General Inter- national Agreements. <i>Sir Thomas Barclay</i> .....	1056
Arbitration in Latin America. <i>Gonzalo de Quesada</i> .....	1061
Report of the Thirteenth Annual Meeting of the Lake Mohonk Confer- ence on International Arbitration, 1907.....	1062
PERIODICAL LITERATURE OF INTERNATIONAL LAW.....	1065

## ANNOUNCEMENT

The first issue of the AMERICAN JOURNAL OF INTERNATIONAL LAW aims to cover the year 1906. Hereafter each number will deal wholly or principally with the quarter immediately preceding the date of issue. It is therefore expected that the size of the JOURNAL will be lessened in proportion, but the space devoted to the leading articles will remain approximately the same.

JAMES BROWN SCOTT,

*Managing Editor.*

*January, 1907.*