

J. L. BRIERLY

THE LAW OF
NATIONS

AN INTRODUCTION TO
THE INTERNATIONAL LAW
OF PEACE

SIXTH EDITION

EDITED BY

SIR HUMPHREY WALDOCK
C.M.G., O.B.E., Q.C., D.C.L.,
CHICHELE PROFESSOR OF
PUBLIC INTERNATIONAL LAW
IN THE UNIVERSITY OF OXFORD

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PREFACE TO FIFTH EDITION

THE purpose of this book remains what it was when it was first published in 1928. It is not intended as a substitute for the standard textbooks on the subject, but as an introduction for students who are beginning their law courses, or, I hope, for laymen who wish to form some idea of the part that law plays, or that we may reasonably hope that it will play, in the relations of states. That question cannot be answered by *a priori* methods which lead too often either to an under-estimation of the services that international law is already rendering, or to an equally mistaken assumption that it offers us the key to all our international troubles. The truth is that it is neither a myth on the one hand, nor a panacea on the other, but just one institution among others which we can use for the building of a better international order.

J. L. B.

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notions that are accepted in our modern civilization. It was thus described by the U.S.-Mexican Claims Commission:¹

'the propriety of governmental acts should be put to the test of international standards, and . . . the treatment of an alien, in order to constitute an international delinquency, should amount to an outrage, to bad faith, to wilful neglect of duty, or to an insufficiency of governmental action so far short of international standards that every reasonable and impartial man would readily recognize its insufficiency. Whether the insufficiency proceeds from deficient execution of an intelligent law or from the fact that the laws of the country do not empower the authorities to measure up to international standards is immaterial.'

The standard therefore is not an exacting one, nor does it require a uniform degree of governmental efficiency irrespective of circumstances; for example, measures of police protection which would be reasonable in a capital city cannot fairly be demanded in a sparsely populated territory, and a security which is normal in times of tranquillity cannot be expected in a time of temporary disorder such as may occasionally occur even in a well-ordered state. But the standard being an international one, a state cannot relieve itself of responsibility by any provision of its own national law. Thus the central government of a federal or other composite state may be *constitutionally* unable to secure that justice is rendered to an alien by the authorities of a member state or of a colony,

¹ Opinions of Commissioners, *Neers* case, at p. 73.

but if the central government is the only government which has relations with other states its *international* responsibility is not affected by the domestic limitation of its own powers.

It is ordinarily a condition of an international claim for the redress of an injury suffered by an alien that the alien himself should first have exhausted any remedies available to him under the local law. A state is not required to guarantee that the person or property of an alien will not be injured, and the mere fact that such an injury has been suffered does not give his own state a right to demand reparation on his behalf. If a state in which an alien is injured puts at his disposal apparently effective and sufficient legal remedies for obtaining redress, international law requires that he should have had recourse to and exhausted these remedies before his own state becomes entitled to intervene on his behalf.¹ The principle of this rule is that a state is entitled to have a full and proper opportunity of doing justice in its own way before international justice is demanded of it by another state. The local remedies which must be exhausted include administrative remedies of a legal nature but not extra-legal remedies or remedies as of grace.² They have also been held in the *Ambatielos Award*³ to include purely procedural rights, such as the right to call a witness, if the exercise of the procedural right was essential to the success of the case. The Tribunal

¹ See *Resolution of the Institute of International Law* (1956), vol. 46, p. 364.

² *Finnish Vessels Arbitration* (1934), 3 *R.I.A.A.*, p. 1479.

³ 1956 *International Law Reports*, p. 306.