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## The Importance of American International Law Today for American Practitioners\*

BY JOHN H. WIGMORE

I have devoted myself, this past year, to an attempt to convince my fellow American lawyers that International Law is not merely a foreign subject, nor just a parlor subject, but is an *American* subject, and withal a practical subject, i. e., one whose knowledge will enable the practitioner to earn a fee.

When the Congress in 1935 and 1937 began passing Acts suspending the exercise of time-honored *rights* of American citizens as neutrals, and when copious Executive Orders and Departmental Regulations sent many lawyers scurrying to Washington to find how their clients' business would be affected by these laws and regulations, the correctness of my proposition above stated began to be fairly evident. When in 1941 the Congress began to modify and to repeal those Acts, and to go even further by repudiating the restrictions of what used to be our *duties* as citizens of a neutral State, my proposition took on a more active meaning. And finally, when December 7 and 8 came, with the declarations of war and another batch of Statutes and Executive Orders and Regulations suited for a state of war, my proposition became imperative, i. e., the American lawyer *must* know some elementary American international law.

As an effective means of convincing him of this, as well as of helping him in the task, I prepared last summer Part I of a "Guide to American International Law for American Practitioners," by compiling a sort of primer of 200 topics and annexing to each topic a sheaf of *American* treaties ("law of the land"), and statutes, and decisions applying the principles of international law to American affairs. And when the war-status arrived, I had also on hand Part II of this Guide, "Law for a State of War," with 100 citations of treaties, 100 of statutes, 300 of judicial decisions, and 100 of orders and regulations. These two booklets I donated to the legal profession and published them through the American Bar Association (1140 North Dearborn Street, Chicago); the author takes no royalties, and the Association prints at cost—50 cents for Part I (50 pages) and \$1 for Part II (80 pages).

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Now in these booklets only American authorities are cited. Moreover, the materials cited are reduced to a virtual minimum, i. e., to those which are or ought to be and may well be found in any association or county bar library, the standard United States Code and later statutes and the Federal and State reports.

However, there are included additional citations besides the above. And as these additional ones may not ordinarily be carried even in a good bar library, the question occurred to me, How can I help such a library to stock up with these needed authorities, so as to serve the practitioner? So I propose here to take advantage of the editor's kind invitation by offering a list of these additional source-materials with an estimate of the cost of acquisition.

*List of Needed Materials in American International Law<sup>1</sup>*

I. *Government Publications* (Supt. of Documents, Government Printing Office)

	<i>Estimated Cost</i>	
Francis Wharton, Digest of International Law (1887, 3 vols.)	\$ 6.00-	\$ 10.00
John Bassett Moore, Digest of International Law (1886-1906) (8 vols. reprint now in press) .....	15.00-	24.00
Green Hackworth, Digest of International Law. 1907-1941 (2 vols., 6 more later) .....	16.00-	20.00
John Bassett Moore, History and Digest of Arbitrations to which the United States has been a Party (1898, 6 vols.) .....	25.00-	25.00
United States Treaties and Conventions. 1776-1938 (ed. Malloy, Charles, Trenwith, 4 vols. 1910, 1923, 1938; out of print, but in press for a reprint) .....	20.00-	25.00
Department of State: Treaty Series, Executive Agreement Series, Conference Series, Arbitration Series (separate pamphlets, 5-10 cents apiece; consecutively numbered in each series) .....	10.00-	25.00
Department of State, Bulletin (weekly since July, 1939; subscription, \$2.75 a year) .....	16.50-	16.50
Foreign Service Regulations (in press: Consular Regulations and Diplomatic Instructions) .....	4.00-	8.00
Federal Register (daily, 1936; subscription, \$12.50 a year)	87.50-	87.50
Code of Federal Regulations (1938, 17 vols.): Supplements, 1938, 1939 (2 vols.) .....	45.00-	47.00
	<u>\$245.00-</u>	<u>\$288.00</u>

II. *Periodicals*

American Journal of International Law (Jackson Place, Washington, D. C.)—		
Complete set since Vol. I. 1906 (about 65 vols. obtainable only at second hand) .....		\$600.00
Incomplete set beginning with Vol. XI (21 vols.) ....	\$123.00	
(Annual subscription, \$5.00)		
	<u>\$123.00-</u>	<u>\$600.00</u>

<sup>1</sup>Other than Federal and State Codes, Statutes and Reports.—

The prices given were furnished by courtesy of Messrs. John Byrne & Co. and W. H. Lowdermilk & Co., Washington, D. C. (for Government publications), and N. A. Phemister Co., 42 Broadway, New York (for the treatises), and the office of the American Journal of International Law, Jackson Place, Washington (for the Journal).

III. *General Treatises.*

*Estimated Cost*

Charles Cheney Hyde (Columbia University), "International Law, Chiefly as Interpreted and Applied by the United States" (Boston, Little, Brown & Co., 2 vols. 1922, out of print; 2d ed. 3 vols. 1942, in press).....	\$ 30.00-	\$ 30.00
George Grafton Wilson (Harvard University) "Handbook of International Law" (St. Paul, West Pub. Co., 3d ed. 1939) .....	5.00-	5.00
	\$ 35.00-	\$ 35.00

IV. *Special Treatises* (some are out of print)

Edwin M. Borchard (Yale University), "Diplomatic Protection of Citizens Abroad: the Law of International Claims" (New York, Banks L. Pub. Co., 1915) .....	\$ 10.00-	\$ 15.00
James W. Garner (Illinois University), "International Law in the World War" (New York, Longmans Green, 2 vols. 1920) .....	5.00-	10.00
Clyde Eagleton (New York University), "Responsibility of States in International Law" (N. Y. University Press, 1928) .....	4.00-	8.00
Jackson H. Ralston, "The Law and Procedure of International Tribunals" (Stanford University Press, 1926, and Supplement, 1936) .....	5.00-	7.00
The same, <i>International Arbitration from Athens to Locarno</i> (Stanford University Press, 1929) .....	5.00-	7.00
A. H. Feller, <i>The Mexican Claims Commissions, 1913-1934: a Study in the Law and Procedure of International Claims</i> (New York, Macmillan, 1935) .....	7.00-	7.00
James Brown Scott, ed. <i>The Hague Court Reports: First Series 1916, Second Series 1932</i> (New York, Oxford University Press) .....	9.00-	9.00
Manley O. Hudson, <i>World Court Reports: vol. I, 1922-1926, vol. II, 1927-1932, vol. III, 1932-1935</i> (Washington, Carnegie Endowment for International Peace, 1934, 1938) .....		no charge to libraries
Manley O. Hudson, "The World Court 1921-1938: a Handbook of the Permanent Court of International Justice" (World Peace Foundation, Boston, 5th ed. 1938) .....	3.00-	4.00
J. E. Harley, <i>Documentary Book on International Relations</i> (Los Angeles, Suttonhouse, 1934) .....	4.00-	6.00
	\$ 52.00-	\$ 73.00
Total .....	\$455.00-	\$996.00

In the above list, the *American Journal of International Law* must be deemed indispensable. Each "volume" consists of two books—Part I, *Articles, Book Reviews, Chronicle of Events, etc.*, and Part II, *Official Documents*: Part I is the equivalent of scores of treatises; and Part II contains the text of hundreds of the most important official documents. A set of that Journal will alone *almost* suffice to orientate the practitioner in the subject.

Equipped with the above materials, a law library could amply serve the first-aid needs (and more) of any lawyer ambitious to familiarize himself with American International Law and practice.

That it is our duty as a profession so to prepare ourselves was pointed out in wise words a generation ago by that eminent fellow-practitioner and leader of international progress, Elihu Root, winner of a Nobel Peace Prize, in his salute to the founding of the American Journal of International Law (1906, vol. 1, page 1):

“The Need of Popular Understanding of International Law.

“The increase of popular control over national conduct, which marks the political development of our time, makes it constantly more important that the great body of the people in each country should have a just conception of their international rights and duties.

“Governments do not make war nowadays unless assured of general and hearty support among their people; and it sometimes happens that governments are driven into war against their will by the pressure of strong popular feeling. It is not uncommon to see two governments striving in the most conciliatory and patient way to settle some matter of difference peaceably, while a large part of the people in both countries maintain an uncompromising and belligerent attitude, insisting upon the extreme and uttermost view of their own rights in a way which, if it were to control national action, would render peaceable settlement impossible. \* \* \*

“Of course it cannot be expected that the whole body of any people will study international law; but a sufficient number can readily become sufficiently familiar with it to lead and form public opinion in every community in our country upon all important international questions as they arise.”

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## Pre-trial Conferences

The report of the judicial council for Massachusetts demonstrates once again the success of the pre-trial conference. The pre-trial system was instituted in Suffolk County in 1935 under rule of court as an experiment based upon the successful operation of the system in Detroit and elsewhere. It has now been extended in Massachusetts in many of the judicial districts. Of the 5,912 cases appearing on the pre-trial docket in Suffolk County for the fiscal year ending June 30, 1941, only 1,846 were sent to the trial courts. Settlement was achieved in 2,059 and of the total number appearing on the calendar, 4,601 were disposed of in one way or another on the pre-trial list. The ratio in the four other counties in Massachusetts reporting on pre-trial statistics was about the same as that reported in Suffolk County.