

INTERNATIONAL LAW

CASES AND MATERIALS

Fourth Edition

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American Casebook Series®



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Fourth Edition

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*This book is dedicated to our
predecessors in international law
at Columbia University*

*Philip C. Jessup
Wolfgang G. Friedmann
Oliver J. Lissitzyn*

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Preface to the Fourth Edition

This edition renews and enriches a “classical” casebook on international law. It reflects our aspiration to enable teaching international law in essential continuity with the great traditions of the discipline, yet with fresh appreciation and even some radical change.

In the years since the previous edition was published, international law has been invigorated with ideas and energy from peoples around the world. Grass-roots movements, transnational networks, and non-governmental organizations have focused attention on issues where international law can make notable contributions to solution of problems affecting all humanity. New standards of conduct have been elaborated in fields as diverse as human rights, trade, the environment, and disarmament; and new institutions are coming into being to realize ambitious goals through law. No longer is international law the specialized preserve of states, governments, or diplomats: it is now put to use by activists around the globe.

The transformations in the hitherto largely state-centered nature of our discipline have been a major theme of the present revision. Along with emphasizing the centrality of human rights in contemporary international law, we have given enhanced attention to non-state actors and their influence on the theory, content, and implementation of international law, illustrated by developments since the last edition, such as the Land Mines Convention and the treaty to establish an International Criminal Court.

The electronic revolution is also working changes in the ways that we teach and research international law. Within just the last few years, the informational resources that were formerly the province of experts in international law (with access to specialized research libraries) are now instantly available around the world. Our previous edition went to press without benefit of the WorldWide Web, while today that resource forms part of every international lawyer’s essential equipment.

The pace of change in the field of international law, and in the methodologies for finding and disseminating its sources, have posed challenges for the present revision. We strive in this edition to bring forward the best of the classical foundations of the discipline, while enriching the materials with suggestions for how our readers can explore at the cutting edge. The exigencies of print production have imposed a closing date of the end of calendar year 2000 for taking account of recent developments; but a new “Note on Electronic Technologies and International Law” offers a guide to finding the latest information about the topics in question.

Our editorial team has expanded to include another colleague at Columbia Law School. We have profited from suggestions received from many users of the previous editions. The result, we believe, is a casebook fit for the opening of the twenty-first century.

L.F.D.
L.H.
R.C.P.
O.S.
H.S.

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Documents

The editors of this book have compiled a collection of documents under the title "International Law, Basic Documents," published by the same publisher, for use in connection with this book.

In most cases when this book refers to an instrument, such as a treaty or United Nations resolution, or to specific articles or parts thereof, the reader will find the original text in "International Law, Basic Documents."

Of course, the reader may also find such instruments in original sources or in other collections of documents.

*

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Introduction to the Study of International Law

Traditionally, international law has been seen as the law of the international community of states, principally governing relations among states, the basic units in the world political system for more than 300 years. For more than half a century, however, international law has increasingly dealt also with other entities, including, notably, the individual as bearer of human rights.

That international law has been understood as the law made by states to govern relations among them implies important limitations. *Unless states have made them the subject of law between them*, non-governmental international organizations—the Catholic Church, the League of Red Cross Societies, the International Chamber of Commerce, the World Federation of Trade Unions—would not be governed by international law. Furthermore, under this theory, international law would not deal directly with multi-national corporations or other companies. It would not address other domestic matters that may be of international interest. International law is to be distinguished from national law that governs foreign and other transnational transactions and relations.

From some perspectives, no doubt, these exclusions are artificial. Some have insisted that contemporary international relations, surely, consist of much more than official relations between states or their governments; that even these relations cannot be understood in isolation from other relations involving other actors; and that the law of inter-governmental relations cannot be seen independently of other law governing other transnational relations. For these reasons, some prefer a more comprehensive perspective that includes all the law—national, international or mixed—that applies to all actors whose activities or influences cross state lines.

Certainly, for more than half a century, international law has governed relations between states and other entities and the status, rights, and duties of such entities. Ever-growing numbers of intergovernmental organizations have acquired existence and personality, rights and duties. By the beginning of the twenty-first century, sustained efforts to subject states to the authority of particular intergovernmental organizations, such as the European Union, have made notable progress. In addition, international law now protects human rights, and even accords individual human beings independent status and standing before some international bodies. International law also imposes duties on individuals and may bring them to international trial and punishment.

For purposes of study and analysis, there are good reasons for maintaining the traditional focus on interstate relations and institutions, even while recognizing that one must attend to all the other rings in the world circus as well. International law is a conceptually distinct and self-contained system of law, independent of the national systems with which it interacts. It deals with relations which individual states do not effectively govern. (The relation of international law to national law is a question with which each of them must strug-

gle, in different ways for their different purposes. See Chapter 3.) The study of international law in the United States (and this volume too) admix some constitutional and other national laws governing the conduct of foreign relations. For example, the treaty-making powers of the President-and-Senate, and limitations on those powers in favor of States' rights or individual rights, are questions of "Foreign Relations Law of the United States" that may have important international interest and even some international legal relevance. But they are not (strictly speaking) questions of international law.

International law is a discrete, comprehensive, legal system and the law of an international political order. While international law is therefore best studied with a minimum of confusing excursions into other, related legal domains, in other respects the study of international law might profit from a broader perspective. The governance and the law of the international political order would repay study with the care and the insights devoted to national law and how national societies are governed. Students of law and jurisprudence, of politics, of sociology, or of ideas, would do well to keep ever in mind that—*mutatis mutandis*—one can, and should, ask the same questions, from the same variety of perspectives, about international law as about domestic law or law generally, though the answers might be very different and even the questions themselves might have different significance. (Feminist analysis, "critical legal studies," and law-and-economics have not overlooked international law.)

International law is not a "course"; it is a curriculum. Whether studied under one embracing rubric or spread over many, international law is a comprehensive, many-sided legal system. One can find in it the basic concepts of any legal system—property and tort, injury and remedy, status and contract. It has its own law-making and law-applying procedures. There is international commerce law and antitrust law, and a law of organizations and corporate bodies. There is law governing "public lands" and common environments, as in outer-space and the deep sea. The "public law" of the international legal system is not yet vast, as was true of the national law of even developed states only a few decades ago; nonetheless, it might well fill several courses in any comprehensive curriculum of international law, including international counterparts of constitutional law, administrative law, legislation, and judicial process. International trade law, the international law of intellectual property, international human rights law, and international environmental law have already earned study in independent courses and in courses combining national and international cases and materials.

Philosophers and other scholars of law can also impose their perspectives and ask their questions about the international legal system. There is a jurisprudence and a sociology of international law, and the beginnings of a criminology. The student of political science can—and should—consider the character of the international political system, its premises and assumptions, and how it is governed; he or she might ask whether there are legislative, executive, and judicial functions, and how they are exercised. He (she) might ask why law is made, and how it is made; whether law is enforced and what mechanisms are used to induce compliance with it; by what institutions is law interpreted, applied, developed; how are disputes settled; what is its system of administration, administrative regulation, law and procedure.

Analogies and nomenclature from domestic law are, of course, deceptive, for there are profound differences between domestic societies and international society (itself a metaphor), and between national and international law. But the concepts, the perspectives, even the nomenclature of domestic law, when used with caution and with awareness of the differences, can be directed at the international system as well. A comprehensive perspective on international law like that which is commonly applied to domestic law can benefit the student of international law.

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Note on Electronic Technologies and International Law

The revolution in electronic information resources has fundamentally transformed the methods for researching international law, and indeed the very landscape of our subject-matter. As this casebook went to press in 2001, new databases of materials relevant to international law were being created, and “older” databases (which might have been state-of-the-art just a few months before) were being refined, improved, or replaced. These developments have vastly enhanced the accessibility of international legal materials to all interested persons.

It will be important for every student and practitioner of international law to become familiar with the techniques of computer-assisted research that are most up-to-date at the time of the inquiry in question. Yet for the foreseeable future, printed materials must continue to serve as major reference sources; and in the case of many types of materials—particularly of historical character—electronic counterparts do not yet exist. Thus the users of this casebook, especially those who are being introduced to our subject-matter for the first time, are reminded that much of what is central to international law cannot necessarily be found on the Internet or other on-line services.

For the benefit of all users, we have followed the practice of giving citations to frequently-used printed publications, such as standard treaty series, national digests of practice, and case reports. Some of these now have electronic counterparts accessible to Internet users. For example, the website of the United Nations Treaty Office serves as an electronic reference point for the United Nations Treaty Series and for the Status of Multilateral Treaties Maintained by the Secretary-General, which has been issued annually as a printed volume but is now continuously updated as a electronic database. (N.B.: At the time of this writing it was not clear which Internet resources would be continued on the basis of free access, as some providers were moving to a paid-subscriber basis.)

In view of the ephemeral nature of many Internet resources and the quickly-changing landscape of domain names and addresses, we have not found it feasible in this edition to provide references to electronic resources alongside print citations. Nonetheless, we would like users to be aware of some of the entry points for searching on the Internet for materials relevant to our subject. A list of some of the most useful websites as of the present time is provided below.

In compiling the following list, we have been mindful of the transformative potential of the Internet, not only for ease of conducting research, but even for changing our very concept of the subject-matter. With the growing connection of human beings around the globe to the raw materials of international law, it is inevitable that the subject itself will come to seem, and will become, more relevant to everyday life.

Websites are grouped below in a few convenient categories—international and regional institutions, states and governmental bodies, non-governmental organizations and professional societies, and specialized topics. The user, of

course, should experiment with all these and many other available possibilities. We hasten to add that the order and grouping of these websites does not imply a hierarchy among them.

Some Useful Websites for Research in International Law

United Nations

- www.un.org

The United Nations website has much primary documentation from the U.N. system and includes a growing section on international law. Treaty documents can be accessed, and links are available to a variety of U.N. organs, including the International Court of Justice, the International Law Commission, the International Tribunal for Law of the Sea, war crimes tribunals, and human rights bodies. U.N. treaty records are available to subscribers and academic libraries at <http://untreaty.un.org>.

- www.icj-cij.org

The site for the International Court of Justice gives access to the Court's current docket, basic instruments, recent judgments, and transcripts of oral hearings on almost a same-day basis.

- www.unhchr.ch

The site for the U.N. High Commissioner for Human Rights is a convenient entry point to resources on human rights treaties and the work of U.N. organs and treaty implementing bodies.

- www.un.org/icty and www.ictt.org

The International Criminal Tribunals for the Former Yugoslavia and Rwanda provide much information about the workings of these bodies, including indictments, judgments, and reports.

Other Major International Institutions

- www.wto.org

This site contains essential materials about the World Trade Organization, the General Agreement on Tariffs and Trade, and related trade agreements.

- <http://www.ilo.org>

For information concerning the International Labour Organisation.

- www.imf.org and www.worldbank.org

For the International Monetary Fund and the International Bank for Reconstruction and Development.

Regional Institutions

- <http://www.coe.fr>

This is the main site for the Council of Europe.