

李 浩 / 著
Li Hao

现代国际法 论纲

Elements of Contemporary International Law

四川大学出版社

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About the Author

Li Hao, the author, graduated as a graduate from the Faculty of Politics of Southwestern Normal University in 1982 and as a postgraduate from Southwestern University of Political Sciences & Law in 1985. He was granted LL.M in the area of criminal procedure law. Upon graduation as a postgraduate he lectured on criminal procedure law and evidence at the Faculty of Law of Southwestern University of Political Sciences & Law. In 1989 he was a visiting scholar to the School of Law at Edinburgh University where he was devoted to researches on international law.

The author is specialized in the fields of procedure law, law of evidence and international law. He has published a number of academic thesis on evidence, criminal procedure and international law in a variety of law journals with national reputation such as 《政治与法律》、《比较法研究》、《现代法学》、《法商研究》 and others. Currently the author is an associate professor of international law at the School of Law of Sichuan University and has been lecturing on international law since 1994.

Preface

It is widely recognized that norms of State behaviors are becoming more and more important in today's international community in the sense that States are strongly motivated to establish a relationship of this or that nature with one and another. The relationship may be established in the areas of culture, economy, environmental protection or even outer space exploration. This fact makes international law, roughly defined as the accepted norms of international community, an outstanding branch of law governing the relations among States.

As a branch of legal science, international law is a compulsory course in the law departments or schools of law in most universities of various countries. So is the case in the School of Law of Sichuan University where I have been assigned to lecture on the subject to the students of law.

I have been conceiving of compiling a text-book on international law ever since I took the teaching position in the School of Law of Sichuan University. Practicing as a lawyer, however, has occupied most of my time, rendering it unrealistic to embark on the project as planned. As time passes by I suddenly realize that I have to take the matter more seriously, for fear of becoming incapable someday of putting the idea into practice due to my inactiveness in devoting to any

toilsome undertakings with the like nature. Pressure is always there and it is indeed the high time that I had to start doing it.

It is strongly advocated that international law should be a bilingual course, to be taught in both Chinese and English. I personally quite agree to the idea and consider it so essential to provide the students of law with an exclusive English text-book on the subject. As it is understood, international law is a huge legal system and writings on that system are usually filled up with vast materials such as cases, international treaties and diversified jurisprudential comments upon the subject, making it difficult for the students to grasp the essential elements of international law. Therefore, the main purpose of compiling this book is to attempt to introduce international law to the students in a brief, succinct, clear-cut but convincing style, discouraging me from writing an all-inclusive book on the subject. For that reason only, the book is entitled *Elements of Contemporary International Law*. Meanwhile, it is also the author's intention that users of this book may be given a chance to familiarize themselves with the fundamental English vocabulary or ways of expression in the research field of international law. Eventually the text-book so written has to be concise and the students are therefore required to refer to other more materials on the subject in order that a more profound understanding of the subject may be achieved.^①

It is merely an effort to do things but I do feel doubtful if the

① Readers are reminded hereby that rules of international law concerning human rights protection, international institutions, international environmental protection, international economic relations and international armed conflicts are not introduced due to the limited length of this book.

Preface

effort so made may produce any positive outcome. I look forward to critical remarks^① of any kind with the sincere expectation that I may be enabled to make further improvements to the book in the future.

Li Hao

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May1, 2007

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Chapter 1 Introduction

Section 1 Definition, Origin, Development and Nature of International Law

1. 1 Rules of Law in National and International Community

In terms of a national or domestic community, there must be rules of law which are formulated to govern the behaviors of different subjects therein. We therefore have different branches of law serving that purpose. For instance, civil law has to be there to govern civil disputes; administrative law has to be there to govern the governmental departments in their administrative acts and criminal law has to be there to govern criminal offences, etc.

As far as the international community is concerned, there also must be rules of law governing the behaviors of different subjects therein, i. e. different members or States in international community have to obey certain legal norms in order that they may be enabled to deal with each other in an expected harmonious milieu. These norms regulate the subjects in various aspects and different categories of rules of law have been formulated in different aspects of international relations, such as diplomatic relations, relations established in the areas

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of sea, outer space, environmental and human rights protection.

As a branch of legal science, international law shall have to explore into the following questions:

(1) Are there any rules of conduct in the international community?

(2) What is the nature of these rules if they do exist?

(3) What are these rules? and

(4) What liabilities are to be incurred in case of violation of these rules and what remedies (if any) are available for the redress of such violation?

1. 2 *Nomenclature of International Law*

(1) Nomenclature of International Law. Different scholars of international law employ different terms to refer to the norms of State conduct. For example, *international law* is used by scholars such as Oppenheim^① and Lauterpacht;^② *Law of Nations* is adopted by Brierly^③ while *Transnational Law* is used by Jessup.^④ It is noted that it was

① Lassa Francis Lawrence Oppenheim (1858 – 1919), renowned German jurist. He was educated in a number of German universities and went to England in 1895 and lived there until his death. He is the author of the internationally renowned *International Law: A Treatise*.

② Sir Hersch Lauterpacht (1897 – 1960), one of the leading figures in the research field of international law in the twentieth century. He was born in Poland and then naturalized as a British citizen and dedicated his whole life to the researches on international law. He once served as the judge of International Court of Justice (ICJ) from 1955 – 1960.

③ J. L. Brierly, noted British writer on international law.

④ Philip Caryl Jessup (1897 – 1986), American authority on international law.

Bentham^① who was the first scholar of law to use the term *international law*. In the nineteenth century 万国公法 was used to refer to international law when the law was first introduced into China. Nowadays, however, 国际法^② or 国际公法 is widely adopted in China to refer to international law.

1.3 Definition of International Law

Different writers on international law define international law in different ways.^③ Nevertheless international law may be roughly defined as the aggregate of the norms binding upon States in their intercourse with each other. This definition may not be a perfect one as international organizations tend to play an increasingly important role in international affairs. In addition, it appears that the legal status of individuals is being enhanced under international legal system. In general, however, international law is defined as the legal system regulating or governing State behaviors in their relations.

1.4 Features of International Law

Compared to municipal law or national law, international law presents quite a number of noticeable features. These features are identified in the following aspects:

(1) International law is mainly the legal norm governing State

① Jeremy Bentham (1748-1832), English philosopher, jurist, political theorist, and founder of utilitarianism.

② It is believed that the term 国际法 was borrowed from the Japanese writings on international law.

③ [美] 托马斯·伯根索尔, 肖恩·D·墨菲合著, 黎作恒译:《国际公法》, 法律出版社, 2005年版, 第2页。