

# INTERNATIONAL LAW

(An Introduction )

Gary L. Maris

Stetson University  
Deland, Florida

UNIVERSITY  
PRESS OF  
AMERICA



LANHAM • NEW YORK • LONDON

Copyright © 1984 by

University Press of America,™ Inc.

4720 Boston Way  
Lanham, MD 20706

3 Henrietta Street  
London WC2E 8LU England

All rights reserved

Printed in the United States of America

**Library of Congress Cataloging in Publication Data**

Maris, Gary L.

International law, an introduction.

Bibliography: p.

Includes index.

1. International law. I. Title.

JX3091.M34 1983 341

83-19849

ISBN 0-8191-3636-0 (alk. paper)

ISBN 0-8191-3637-9 (pbk. : alk. paper)

All University Press of America books are produced on acid-free paper which exceeds the minimum standards set by the National Historical Publications and Records Commission.



Dedicated

to

My wife Eunice, who provides me with  
moral support in my profession and a happy  
life outside the rigors and tensions of  
professional tasks

and

My students, who are a constant  
professional challenge to me and  
for whom this text is written

iii

S/A/704/10

## PREFACE

As a professor in a small liberal arts college, I am motivated by two major reasons for writing this textbook. The first is to have a book on international law that discusses the theoretical, cultural and political aspects of the law as well as the various rules of international law. This approach seems especially appropriate for undergraduates who are studying international law as a part of their general educational development. It is also critical to one's understanding of the law that he have some understanding of the cultural and theoretical elements, and that he can grasp the dynamics between law and politics.

The second reason for writing this book is to have one that retains the basic substance of international law but is more concise than the usual casebook and treatise on international law. A relatively concise textbook not only fits well with the attention span of undergraduates but allows room for class projects such as case briefings, hypothetical problems and short research papers. It is also appropriate for courses that may wish to include other topics along with international law such as a course in international law and international organizations.

However well I have achieved my goals is due to the help of numerous persons and organizations. I am indebted to the vast amount of scholarly efforts that have gone into producing a body of knowledge that promotes the understanding and the development of international law. No one can write a book such as this without the help of scholars who laboriously put together the collections of cases and documents, the publishers of international law journals, the writers of monographs that comprehensively place the many bits and pieces of law on a single topic at our disposal, and the authors of casebooks who, in a single volume, provide us with a quick and often thorough introduction to the major writings, cases and documents of the broad span of international law.

I have been fortunate to find helpful people and good resources in the Stetson University and University of Florida libraries. The library of the American

Society of International Law in Washington D. C. provided me with solitude, kindly assistance, and an abundance of materials.

Stetson University has provided me with two grants and one sabbatical making it possible to break away from regular teaching requirements and concentrate on research. My Chairman, Wayne Bailey, has consistently encouraged and supported me in this project in numerous ways.

I can never be appreciative enough of the time and effort given by colleagues who tediously went over the manuscript in an attempt to help me avoid errors I seem so insistent upon making. John Hague and Michael Raymond of Stetson University were kind enough to make suggestions as to the mechanics and style of writing. Margaret Bates of New College (University of South Florida) pointed me in some helpful directions. Burns Weston gave me the first thorough critical review of the manuscript which left me humbled and aware of the work yet to be done. Wesley Gould's detailed analysis of the manuscript sent me back into the libraries and caused the rethinking of numerous ideas. What was particularly remarkable about the assistance from Professors Weston and Gould is that neither of these gentlemen knew me, yet they took the time to comment in a detailed fashion on several hundred pages of manuscript from someone brash enough to ask them for this professional courtesy.

Of course no manuscript eventually emerges without the efforts of typists who often do more than simply type the words. Hence my thanks to Ida Tatum who typed the first draft and Chela Wood who typed the final manuscript. They are probably happier than I that this project has come to an end.

I would be remiss in not acknowledging the clarity of ideas that comes from having to struggle to answer the probing questions of students. I'm sure they will cause me to rethink or figure out how better to express some of the thoughts in the text which I feel so confident about now.

Finally, I want to thank the University Press of America for making this publication possible. The scholars who established this press have performed a service of great value to the academic community. It allows the scholar to move his ideas into print,

and it provides the academic world with many publications that the profit-oriented publishers may not feel would sell at the moment.

Of course, there is a caveat to all of the above. Despite the efforts of so many people, I am sure I have persisted in making errors. These I must take full responsibility for, since I will have managed to make them despite all the help provided to me.

## ABBREVIATIONS

AJIL	<u>American Journal of International Law</u>
All ER	<u>All England Reports</u>
APSR	<u>American Political Science Review</u>
ASIL	<u>American Society of International Law</u>
B Ver Ge	<u>Bundes Verfassungs Gericht</u> (German Constitutional Court)
Black	<u>U.S. Supreme Court Reports</u> (1861-62)
CMR	<u>Court Martial Reports</u>
COMECON	<u>Council for Mutual Economic Assistance</u> (U.S.S.R. and East Europe)
CQ	<u>Congressional Quarterly</u>
Cranch	<u>U.S. Supreme Court Reports</u> (1801-15)
DLR	<u>Dominion Law Reports</u> (Canada)
ECOSOC	<u>Economic and Security Council</u> (U.N.)
ECR	<u>European Court Reports</u>
EEC	<u>European Economic Community</u>
FAO	<u>Food and Agriculture Organization</u>
F.2d	<u>Federal Reporter, 2nd Series</u> (Cir. Courts)
F. Supp.	<u>Federal Supplement</u> (Dst. Courts)
GATT	<u>General Agreement on Tariffs and Trade</u>
IAEA	<u>International Atomic Energy Agency</u>
IBRD	<u>International Bank for Reconstruction</u> and Development
ICJ	<u>International Court of Justice</u>
IDA	<u>International Development Association</u>
IFC	<u>International Finance Corporation</u>
ILO	<u>International Labor Organization</u>
ILR	<u>International Law Reports</u> (earlier was <u>Annual Digest of Reports of Public</u> <u>International Law</u> )
IMF	<u>International Monetary Fund</u>
ITU	<u>International Telecommunication Union</u>
KB	<u>King's Bench</u> (U.K.)
L. Ed.	<u>Lawyer's Edition, U.S. Supreme Court</u> <u>Reports</u>
LOS	<u>U.N. Conference on the Law of the Sea</u>
NATO	<u>North Atlantic Treaty Organization</u>
OAS	<u>Organization of American States</u>
OAU	<u>Organization of African Unity</u>
OECD	<u>Organization for Economic Cooperation</u> and Development
OEEC	<u>Organization for European Economic</u> Cooperation

PCIJ	<u>Permanent Court of International Justice</u>
QB	<u>Queen's Bench (U.K.)</u>
SEATO	<u>Southeast Asia Treaty Organization</u>
S.CT.	<u>Supreme Court Reporter (West Pub. Co.)</u>
UNCTAD	<u>U.N. Conference on Trade and Development</u>
UNEF	<u>U.N. Emergency Force</u>
UNESCO	<u>U.N. Educational, Scientific, and Cultural Organization</u>
UNICEF	<u>U.N. Children's Fund</u>
UNRIAA	<u>U.N. Reports of International Arbitral Awards</u>
US	<u>U.S. Supreme Court Reports</u>
WCR	<u>World Court Reports</u>
Wheat.	<u>U.S. Supreme Court Reports (1816-1827)</u>
WHO	<u>World Health Organization</u>
WLR	<u>Weekly Law Reports (U.K.)</u>
WOMP	<u>World Order Models Project</u>



## TABLE OF CONTENTS

PREFACE

ABBREVIATIONS

CHAPTER

I. INTRODUCTION . . . . .	1
Structure of book . . . . .	3
A Guide for Student Research . . . . .	5
A Note on Bibliography and Footnotes . . . . .	8
II. HISTORY AND CULTURE . . . . .	9
Historical Perspective . . . . .	9
World Cultural Diversity and International Law . . . . .	20
III. THE NATURE OF INTERNATIONAL LAW: SOURCES AND APPLICATION . . . . .	31
Definition . . . . .	31
Private International Law . . . . .	42
Sources of International Law . . . . .	44
Subjects of International Law . . . . .	58
The Relationship of the International Legal System to the National Legal System . . . . .	62
IV. MAJOR THEORETICAL APPROACHES TO INTERNATIONAL LAW . . . . .	67
Natural Law . . . . .	67
Legal Positivism . . . . .	71
Policy-Contextual Approach . . . . .	75
Purist-Contextual Synthesis . . . . .	82
Marxist Theory . . . . .	83
Functionalism . . . . .	85
Systems Theory . . . . .	86
Conclusion . . . . .	87
V. THE STATE IN INTERNATIONAL LAW . . . . .	91
The Gaining and Losing of Personality . . . . .	91

Recognition . . . . .	93
Rights and Duties of States . . . . .	106
Succession and Continuity . . . . .	107
Diplomatic Relations . . . . .	111
Sovereign Immunity . . . . .	119
Act of State . . . . .	125
Foreign Claims Settlement . . . . .	130
VI. THE INDIVIDUAL IN INTERNATIONAL LAW:	
SUBJECT, NATIONAL, ALIEN . . . . .	135
Individuals as Subjects . . . . .	135
Nationality and Citizenship . . . . .	139
Extent of State Jurisdiction . . . . .	147
Aliens . . . . .	153
Extradition and Asylum . . . . .	167
VII. THE INDIVIDUAL IN INTERNATIONAL LAW:	
HUMAN RIGHTS, WAR CRIMES . . . . .	179
Human Rights . . . . .	179
War Crimes . . . . .	203
Constitutionalism and International Law . . . . .	209
VIII. INTERNATIONAL AGREEMENTS . . . . .	213
Agreements Other Than Treaties . . . . .	213
Treaties . . . . .	217
Special Problems . . . . .	223
The Invalidity or Termination of Treaties . . . . .	229
IX. LAND, AIR AND SPACE LAW . . . . .	235
Land . . . . .	235
Air Law . . . . .	243
Space Law . . . . .	251
X. LAW OF THE SEA . . . . .	259
Interests at Stake . . . . .	261
Internal Waters . . . . .	263
Territorial Sea . . . . .	268
Contiguous Zone . . . . .	280
Continental Shelf . . . . .	280
Economic Zone . . . . .	283
High Seas . . . . .	285
Defense Zones/Peace Zones . . . . .	296
Scientific Research . . . . .	297

Pollution . . . . .	297
Politics and the Law of the Sea . . . . .	301
<b>XI. THE USE OF FORCE . . . . .</b>	<b>309</b>
General History, Prohibitions and Problems . . . . .	309
Non-Intervention and Types of Force . . . . .	312
Legal Justifications and Categories Concerning the Use of Force . . . . .	316
War . . . . .	328
The United Nations and the Use of Force . . . . .	346
Effectiveness of International Law with Regard to the Use of Force . . . . .	349
Determinants of the Development of International Law and the Use of Force . . . . .	358
<b>XII. THE RELEVANCE OF INTERNATIONAL LAW     WITHIN INTERNATIONAL POLITICS . . . . .</b>	<b>363</b>
International Law and Politics: A Process of Interaction and Not a Dichotomy of Interests and Behavior . . . . .	363
The Role of International Law: National Decision-Makers . . . . .	369
International Law in Major Crises . . . . .	373
International Law in Routine Matters . . . . .	376
Basic Problems in Effectiveness of International Law . . . . .	378
Elements of Effectiveness in International Law . . . . .	388
Fishing Limits: An Example . . . . .	396
<b>BIBLIOGRAPHY . . . . .</b>	<b>401</b>
Digests of International Law . . . . .	401
Casebooks and Reports of Cases . . . . .	401
Table of Cases . . . . .	404
Treaty Sources . . . . .	419
Documents . . . . .	421
Periodicals . . . . .	433
Books and Articles . . . . .	435
<b>INDEX . . . . .</b>	<b>467</b>

## CHAPTER I

### INTRODUCTION

The object of this book is to indicate the substance of international law and the interaction between law and politics. The skepticism levied at international law is unwarranted and a result of inadequate understanding of the dimensions of international law. International law is not only effective in international relationships but critical to our present and future satisfaction of basic values. To find physical and economic security in a time when over \$500 billion is spent on arms around the world, when nuclear holocaust possibilities lurk behind international conflicts, and when nations import up to 90% of some of their critical items for their economy, requires attention to world peace and order techniques, including the establishment of rules for individual and state behavior.

To study law in general is to study values and processes involved in establishing norms for behavior so that we may create an orderly society and achieve certain values. To study international law is to focus on the international realm and world order. The development of world order constitutes a key feature of our historical period. The needs of nation-state systems are pointing towards more orderly relations, more predictability in international behavior, and more cooperation in utilizing world resources and deriving benefits from international elements.

The world citizen, which we all are now by the nature of the times, despite the failure of many to realize this, needs to understand the establishment of international norms of behavior for the same reason it is essential to understand the domestic norms--to seek control over our lives. It is essential to the development of international order that we understand the establishment of international norms of behavior. At some points people will need to move beyond strict national sovereignty perspectives, develop an awareness that "general welfare" needs transcend boundaries, and begin thinking of national interest as necessitating world institutional developments. National interest

requires today the growth of international decisional authorities and controls and an international concern for peoples wherever they may live.

The development of international institutions needs the growth of an international orientation to political life. Contemporary political thought on political systems, national or international, emphasizes the necessity for cultural support for any particular system to operate. The values held by a people, their view of politics and reality, and their acquiescence in certain ideas determine the possibilities of these ideas becoming practice. For example, if the people of a country hold few attitudes we could identify as democratic, it is difficult to establish a democratic political system. Individual and group psychology is a vital part of international relations. Intensity of insecurity, fear of foreign power (xenophobia), acceptance of international institutions, emphasis on legal solutions, motivation by political opportunism, and other political attitudes affect the type of international system possible. For the development of a world order some values need to be altered and new ones accepted. McDougal and Feliciano in their massive work on minimum world order argue:

The task of highest priority . . . for every one genuinely committed to the goal values of a world public order of human dignity, accordingly, appears to be that of creating in all peoples of the world the perspectives necessary both to their realistic understanding of the common interest in minimum order and their acceptance and initiation of the detailed measures in a sanctioning process appropriately designed to secure such interest.  
(McDougal and Feliciano, 1961: 376.)

Wagar, Falk and other researchers into world order possibilities argue for at least creating the "climate of expectations" which will lead to a receptivity for cosmopolitan ideas and leaders for a world order.

Socialization of political values on the domestic level has undergone a considerable amount of study while the study of inculcating international values and the development of acceptance of international norms among peoples is still neglected. To pay little attention to this factor is to allow for ideas to become norms and explanations of reality when, in fact, they should not.

For example, for the last several decades the prevailing idea in international relations has been that international relations consists basically of a balance of power. If this idea remains unchallenged or unqualified, it will persist as our picture of reality; and efforts by decision-makers to act in a seemingly contrary way, such as urging fuller acceptance of the compulsory jurisdiction of the International Court of Justice, will meet public opposition. The image or reality in the public's mind needs to be altered. The enlightenment of the students to the possibilities and nature of international law and the alternatives within international behavior could enrich the image of reality and provide fertile ground for flexible political action. A decision-maker can then propose actions moving toward increased commitment to world legal order with the support of the public.

In international relations there is the possibility of what Harold Lasswell described as the "crowd response" where individuals are pushed toward a group response and individual, critical judgment is set aside. (Lasswell, 1968: 666.) The intent of this book is to help students develop a critical understanding of international law--its rules, processes, successes and failures--so that they will have a critical, multi-dimensional image of international law and avoid becoming simply faces in the crowd.

### Structure of Book

This book seeks to provide an integrated picture of international law by discussing items such as historical perspective, cultural concerns, connections between law and politics, and questions of the effectiveness of international law, as well as providing an introduction into the major areas of international law. Time is spent on defining international law and discussing theoretical approaches to international law in order to engage the mind in some of the deeper concerns. Such theoretical readings generally are not warmly received by students due to the higher level of abstraction than one finds in simply describing the contents of a case or document. Yet, here are the basic directions for the intellectual enterprise which lead one to study certain items and arrive at certain conclusions. The significance of an interest in theoretical ap-

proaches is expressed well by Hans Linde in pointing out how one's orientation directs the questioning, research efforts, and conclusions of scholars:

If one sees the decisions of national leaders as a function of the national political process, one's target is likely to be the input of legal considerations within the institutions of the process, through strengthened legal offices, parliamentary committees, professional and citizens' associations, and the like. If one sees law as datum of social psychology and of acculturation, the target will expand to encompass the perceptions and values of the national society, or at least its elites. Conventional positivists may concentrate on the need for more, clearer, and better rules of international law, while others will go further and see the only hope for genuine 'law' in stronger international institutions to administer and 'enforce' those rules. Political decisions studies like Ehrlich's tend to see law operate as a prediction of the reaction of other governments in or outside international forums; this focus suggests that governments should be more ready to state and communicate their reactions to one another's contemplated actions with explicit and careful attention to legal premisses. Systems analysts add that the premisses communicated should be chosen for their systemic implications in an international regime of reciprocity, not just for the immediate situation. (Linde, "Comment," in Ehrlich, 1974: 156-157.)

An attempt is made throughout the book, especially in discussing the law's effectiveness, to understand the limitations of international law as well as what it can do. Students of international law must come to grips with its problems as well as its effective rules. Basic concepts such as national interest and national sovereignty must be enjoined and their relationships to international law understood. One needs to deal with how international law is supported by balance of power political interests as well as sometimes being thwarted by such considerations. One needs to learn why nations obey treaties and also the fact that treaties are sometimes violated while nations twist legal words like advocates who are prepared to argue any side of a given issue. The lawful behavior of nations in a multitude of international activities needs to be studied, but

a leap cannot be made from observing lawful behavior in international economics or a highly technical area such as aircraft safety rules to expectations of similar order in the use of military force.

### A Guide for Student Research

The length of this book is such as to provide a substantial survey of international law but leave time for students to participate in various research projects. Students and professors should be able to use this text as an effective tool into an understanding of international law and a take-off into further exploration. The basic understanding of ideas and information is in the text itself. If the reader will carefully use the bibliographical notes at the end of each chapter and the various bibliographical sections, he can quickly launch himself into a deeper study of a particular topic. For example, should one wish to go beyond the text material in researching the law of the territorial sea, he can quickly build up a set of basic references in the following manner. First, note any references used in the chapter to guide one to specific articles and books. Second, the bibliographical note at the end of the chapter gives some selected sources on the law of the sea. Third, the bibliography of casebooks give a choice of major texts providing excerpts from cases, documents, and, sometimes, books and articles on the territorial sea. Fourth, the bibliographical section on documents provides information on basic documents such as the 1982 Convention on the Law of the Sea that should be perused.

The reality often is that a student has limited time and in most schools limited resources. Thus, it seems useful to provide a basic research strategy which will allow the student to move quickly to some basic materials most likely to be available.

1. The first step is to peruse this text in the manner indicated above in order to establish an initial understanding of the topic and an initial list of cases documents, articles, and books.

2. The second step is to go to one or two of the larger texts that have compiled cases and materials on international law. Bishop (1971); Leech, Oliver and Sweeny (1973); Steiner and Vagts (1976), Weston, Falk,



D'Amato (1980), and Henkin, Pugh, Schachter, Smit (1980) are more recent books of this nature. Von Glahn's survey text (1981) is also excellent to begin one's research. Other books are listed in the bibliography. In this manner, one can expand his introduction to the topic beyond this book's information and pick out some of the key cases and documents not mentioned here, as well as checking footnote sources for relevant articles and books. The casebooks provide excerpts of cases and documents that are often located in sources not available to students at small schools or, given the press of time, these excerpts save digging out the particular decisions and documents and reading them in their entirety.

3. Third, one can go to the Digest of International Law dealing with United States law, which is probably available in any government documents section of a library and orients one thoroughly and quickly to the United States' perspective as well as many of the issues involved.

4. The American Journal of International Law should be explored next. This is a major internationally respected publication found in most libraries. A glance at the indexes found in the last issues for each year will reveal not only articles but excerpts of court cases, documents and United States government pronouncements on various topics. (The AJIL is also one of the journals indexed in the Social Science Index, a general reference work for periodicals.) The use of the AJIL provides more specialized treatment of topics than is available in the general textbooks and allows one to update information using the most recent cases and events. Since lower court decisions are seldom available to schools without a law school, the AJIL is a good source of summarized information on such decisions.

5. The fifth step in the research strategy is to search the indexes of International Legal Materials. Its indexes will lead one to full texts of documents and cases which would be hard to get hold of otherwise. This is especially good for items such as United Nations resolutions, treaties to which the United States is not a party, and lower court decisions. It also lists recent ratifications of various treaties, especially those to which the United States is a party.

6. If the topic requires reading some Supreme