

Law Among Nations

An Introduction to Public International Law

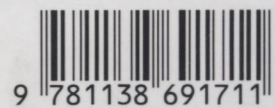
Eleventh Edition

**Gerhard von Glahn and
James Larry Taulbee**



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An Introduction to Public International Law

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GERHARD VON **GLAHN**

University of Minnesota-Duluth

JAMES LARRY **TAULBEE**

Emory University

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Law Among Nations

Offering a more accessible alternative to casebooks and historical commentaries, *Law Among Nations* explains issues of international law by tracing the field's development and stressing key principles, processes, and landmark cases.

This comprehensive text eliminates the need for multiple books by combining discussions of theory and state practice with excerpts from landmark cases. The book has been updated in light of the continuing revolution in communication technology, the dense web of linkages between countries that involve individuals, and bodies both formal and informal; and covers important and controversial areas such as human rights, the environment, and issues associated with the use of force. Renowned for its rigorous approach and clear explanations, *Law Among Nations* remains the gold standard for undergraduate introductions to international law.

New to the Eleventh Edition

- Added or expanded coverage of timely issues in international law:
 - Drones and their use in the air and in space
 - Immigration
 - Islamic views of international law
 - Inviolability and the difference between diplomatic immunity and sovereignty, in light of the Benghazi attack
- Thoroughly rewritten chapters in areas of great change:
 - International criminal law
 - Just war and war crime law
- New cases, statutes, and treaties on many subjects

Gerhard von Glahn (late) was Professor of Political Science at the University of Minnesota-Duluth.

James Larry Taulbee is Professor Emeritus of Political Science at Emory University.

Praise for the Eleventh Edition

Thorough, insightful, informative, and readable, *Law Among Nations* is the gold standard for international law textbooks. This text includes a brilliant compilation of legal material, and is essential reading for students of international law at all levels.

Jeffrey S. Morton, *Florida Atlantic University*

I have used *Law Among Nations* for several years in undergraduate law and international relations classes and found that it works well for instructor and students alike. The coverage is comprehensive, including environmental law and economic law as well as the more traditional topics, with clear explanations of complex international law subjects. I am looking forward to using the new edition.

David A. Gantz, *University of Arizona*

Larry Taulbee has updated and improved this International Law text, which continues to be the very best summation of the legal approach. It allows non-lawyers to understand how the different states (countries), as well as non-state actors and even individuals, are regulated by the laws that most states follow most of the time, and the rules that persist even when those rules are ignored. Students are exposed to legal cases, but unlike a law school text, it provides clear explanations of the complicated rules that have emerged over centuries but continue to become more complicated and relevant to everyone everywhere, whether or not they realize it.

Henry Frank Carey, *Georgia State University*

In memory of Gerhard von Glahn (1911–1997)
Viro benignitatis doctrinaeque

For Diane

PREFACE

As an introduction to the eleventh edition of *Law Among Nations*, it still seems fitting to quote from the preface to the first edition with regard to the purpose of the book. Professor von Glahn noted that he intended to write “a text adapted specifically for the typical undergraduate course in international law . . . using the traditional approach to the subject but incorporating in the actual text, whenever called for as illustrative materials, abstracts of classic and modern cases.” He chose the title *Law Among Nations* to emphasize the essential structure of the international legal system.

The world has changed markedly since the first edition. The end of the Cold War; the continuing revolution in communication technologies; the dense web of financial and other functional linkages between countries that involve individuals and agencies at every level of society, not just foreign offices, as well the continuing growth, both formal and informal, of international institutions have added many dimensions to the idea of “among.” To illustrate this in a simple fashion, consider the factual elements in the following case:

A French court will hear a criminal libel case involving a review, written in English by a German law professor, of a book published by a Dutch company, written in English by a French citizen who lives in Israel. The review appeared on a website based in the United States and moderated by an American professor of law.¹

While a problem in private international law, it nonetheless illustrates perfectly the world of the present and its challenges. Even when Professor von Glahn prepared his last edition (seventh), this would not have been a possibility.

As the world has changed, we have questions about how quickly “law” may change to reflect new circumstances. In updating the text, I have taken especial notice of the problems. International law has become increasingly important to our everyday lives, yet many not only question its existence, but see certain regimes as unwelcome intruders into matters that should be within the exclusive jurisdiction/domain of individual states. Those readers in the United States should instantly relate to the problem because it mirrors the continuing internal struggle between the federal government and the individual American states. In many areas, agreements have proliferated, but many questions remain about the depth of commitment when governments have to make hard decisions that may affect powerful domestic interests. In controversial areas such as human rights, the environment, the law of the sea, and issues associated with the use of force, I have identified the issues and the ongoing competing arguments.

¹A. Liptak, “Book Review Brings Libel Lawsuit with Global Reach,” *The International Herald Tribune* (February 22, 2011), 3.

NEW TO THIS EDITION

I have again revised the material in each chapter to reflect changes since the last edition. Chapter 2 has an updated and extended discussion of the promises and problems of globalization and the idea of global governance. Through the use of small case studies and references to other chapters, I have also made an effort to point out and connect issues that connect across many dimensions and issue areas in an attempt to present a dynamic process rather than the “still” pictures that a great majority of textbooks reflect. Most issues do not exist in isolation. They are embedded in, and influenced by, broader concerns. The book continues to evolve in that it focuses upon process in terms of application as much as “the letter of the law.” In addition, I have increasingly tried to tie the subject matter closer to mainstream scholarship in international politics.

One of the most difficult problems in revising a textbook comes from the temptation to revise by accretion. Texts can rapidly become like river deltas, slowly expanding in a sprawling manner to fill available space. In updating chapters, I understand that instructors have their own preferences regarding the appropriate emphasis on historical background, topics, cases, and political science–international relations theory. As both a teacher and an author, I am very much aware of the competing demands of making a very complex area of international interaction fit into a semester course. Appending the word “introduction” actually complicates rather than simplifies the problems. What in terms of prior knowledge can instructors expect students to bring with them to the course? I have kept these ideas in mind as I have updated, added, and deleted.

As an introduction, the book does not attempt a comprehensive analysis of any issue area. It seeks to introduce students to the central principles and concepts and illustrate them with useful examples. Still, doing a revision to an introduction involves some difficult choices. In keeping with the original vision, I have tried to balance history, jurisprudence, controversies, and discussions of the substantive law with illustrative cases. In this edition, I have deleted many of the references to classic texts and cases that now seem extremely dated. Because of space limitations, I may have deleted some material that individual instructors have found useful. I welcome your comments here. This effort is also reflected in the bibliographies, which have been considerably condensed and updated to focus primarily on more recent scholarship. Note, however, that in some cases where the standard cases illustrate fundamental principles clearly, I have retained the old. In response to reader comments, I have deleted the chapter on international economic law.

All chapters have been edited to reflect current data, cases, legal literature, controversies, and problems. In Chapter 2, I have expanded the discussion of Chinese and Islamic views of international law. Chapters 7–10 have been considerably edited for content, coherence, and length. But, in particular, I have updated the discussions of the continuing problem of piracy and slavery in Chapter 16, as well as the activities and decisions of international courts in Chapter 17. Finally I have totally rewritten Chapters 19–21 on the use of force and war crimes.

The book does reflect my personal point of view in one respect. I believe that one of the fundamental problems of teaching (and understanding) how international law works comes from a lack of attention to international legal process. No

matter how you look at it, international law is “messy.” A course in American constitutional law has a simple format—one court, one constitution, and one legislature. A course in *law among nations* requires that students first understand what method, “source,” or forum applies and why, before they tackle the question of what substantive law may apply and why. That question often poses a considerable set of additional conundrums. For this reason, I have “front-loaded” the discussion of the structure and processes of the international legal system in an effort to provide students with some guide to penetrate the chaos. After all, is not the purpose of all law the peaceful resolution of disputes according to appropriate rules?

Many texts present still pictures when the critical question involves understanding the dynamic process. Why do we often discuss all of the “substantive issues and rules,” and then suddenly decide that we will then deal with process as a secondary issue? Does not “process” apply all through the course? The manner in which rules are applied is important. Would we teach a course in some aspect of domestic law without presuming that students first knew the court structure, levels of determination, alternative methods of dispute resolution, why the choice of venue, and the reasoning (how) of decisions? If students simply learn “what is” at a particular moment, their “learning” will quickly become irrelevant because in many areas, international law is constantly in a state of “being and becoming,” to borrow a famous phrase. One can learn fundamentals and principles, but the question is always, how do these apply to situations in actual cases?

ACKNOWLEDGMENTS

I gratefully acknowledge the perceptive comments of Robert L. Bledsoe, David A. Gantz, Mark Gibney, Sharon O'Brien, and Emilia Justyna Powell. Their critical reviews and personal communications helped me immeasurably as I revised the text. To each I owe much for their time, effort, and willingness to help make this a better presentation for students. I wish to thank my editor, Jennifer Knerr, for the opportunity to undertake this new edition and for her encouragement throughout the process. My students and colleagues over the years have provided perceptive commentary on many subjects covered in this text. For that I am very appreciative. They have often made me think about the issues from very different perspectives. Nonetheless, any errors of omission or commission remain mine.

J. L. T.
CANTON, GEORGIA
JUNE 2016

ABBREVIATIONS

Certain sources utilized frequently throughout this volume are cited in abbreviated form as follows:

AJIL	<i>American Journal of International Law</i>
CSM	<i>Christian Science Monitor</i>
Current Policy	<i>U.S. Department of State, Bureau of Public Affairs publication</i>
EJIL	<i>European Journal of International Law</i>
Gist	<i>U.S. Department of State, Bureau of Public Affairs publication</i>
ICJ Reports	<i>International Court of Justice, Reports of Judgments, Advisory Opinions, and Orders (1947–)</i>
ICLQ	<i>International and Comparative Law Quarterly</i>
ILC	<i>International Law Commission</i>
ILM	<i>International Legal Materials</i>
LNTS	<i>League of Nations Treaty Series</i>
NYT	<i>The New York Times</i>
Proceedings	<i>Proceedings of the American Society of International Law</i>
T.I.A.S.	<i>Treaties and Other International Acts Series</i>
UNGAOR	<i>United Nations General Assembly official records</i>
UNSCOR	<i>United Nations Security Council official records</i>
UNTS	<i>United Nations Treaty Series</i>
U.S.C.	<i>United States Code</i>
U.S.C.A.	<i>United States Code Annotated</i>
Y.B.	<i>Yearbook</i>

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