

**CASES AND COMMENTARY ON  
INTERNATIONAL  
LAW**

**Third Edition**

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*To Janet, Matthew, Robert, Philip, and Edward*  
—MWJ

*To Barbara, Sarah, and Ellen*  
—JEN

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## Preface to the Third Edition

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A comprehensive and scientific knowledge of international law is highly necessary, not only to lawyers practicing in our commercial ports, but to every [one] who is animated by liberal views, and a generous ambition to assume stations of high public trust. It would be exceedingly to the discredit of any person who should be called to take a share in the councils of the nation, if [that person] should be found deficient in the great leading principles of this law; and I think I cannot be mistaken in considering the elementary learning of the law of nations, as not only an essential part of the education of an American lawyer, but as proper to be academically taught.—James Kent, 1 *Commentaries on American Law* 20 (2d ed. 1832).

The teaching of international law in the American law school goes back at least as far as the Columbia lectures of Chancellor James Kent (1763-1847) and the four volumes of his *Commentaries on American Law* (1826-1830), the first great U.S. legal treatise. Kent's *Commentaries* begin with 200 pages devoted to the law of nations. The tradition of an American casebook on international law also dates to the 19th century. In 1893, Freeman Snow's *Cases and Opinions on International Law* made its appearance, followed in 1906 by a greatly developed and very influential revision, *Cases on International Law* by James Brown Scott.

Our casebook builds on this by now long-standing tradition, but departs from some of its immediate predecessors by providing an intellectual consolidation of what may have become a too-great proliferation of topics, issues, and cases. Our ambition is simply to teach: to give law professors and law students the cases and commentary necessary to achieve a first-class professional education in the fundamentals of international law. No matter what international law specialty a student may go on to study or to practice—international corporate law, international environmental law, international litigation, international human rights, etc.—we mean to lay the foundation for that study and practice in the pages that follow.

We believe that the order of our chapters constitutes a sensible organization for most courses in international law. Chapter 1 introduces international law, looking briefly at the subject's history and presenting and discussing two sample, albeit well-known, cases to illuminate the nature of international legal rules and international legal process. Chapters 2 and 3 examine the sources of international law in greater depth, showing the student how lawyers, judges, and jurists draw international legal rules from a variety of sources, *e.g.*, treaties, custom, general principles, natural law, *jus cogens*, and equity. Chapters 4 and 5 return to international legal process, exploring the ways in which international law is applied first in municipal courts and second in international tribunals. We then turn to the relationship between international law and the actors in international relations: individuals and international human

rights law in Chapter 6, states in Chapter 7, and international organizations, governmental and non-governmental, in Chapter 8. Finally, we address four topics of great practical importance in modern international law: the use of force in Chapter 9, common spaces and the environment in Chapter 10, the law of the sea in Chapter 11, and international conflict of laws in Chapter 12.

Many chapters deserve six hours of class, *i.e.*, about two weeks. So, even though this casebook is a great deal briefer than most, there is still about twenty weeks of material between the covers; in most courses some pruning will need be done. Ordinarily, we expect that teachers will choose to teach Chapters 1 through 5 in about seven or eight weeks and then choose from among Chapters 6 to 12 for an additional six or seven weeks. We have tried to make the later seven chapters free-standing so that any of them can be taught in any order after the first five chapters are completed.

For students who wish to go beyond the casebook, quite a number of textbooks are available, including Ian Brownlie, *Principles of Public International Law* (Oxford 6th ed. 2003), Mark W. Janis, *An Introduction to International Law* (Aspen 4th ed. 2003), and *Oppenheim's International Law* (Longman 9th ed. by Robert Jennings & Arthur Watts 1992). There are thousands of other books, articles, cases, and treaties cited below. However, footnotes and string citations from excerpted materials have ordinarily been omitted; when footnotes have been retained in the materials, the original's number has been used; brackets or three asterisks mark other omissions.

Chapters 1, 3, 4, 5, 6, and 12 have been the principal responsibility of Mark Janis and Chapters 2, 7, 8, 9, 10, and 11 the principal responsibility of John Noyes, but the two of us have used these materials over quite a number of years and, by now, have traded many ideas and much wording on most pages. We have also been fortunate in the assistance of others, and at the risk of inadvertently leaving out some names, let us mention those who have helped along the way: William Aceves, William Alford, David Bederman, Howard Berman, Rudolf Bernhardt, Phillip Blumberg, Anthony Bradley, John Bridge, Ian Brownlie, Thomas Buergenthal, Arthur Campbell, Michael Dessent, Laura Dickinson, Richard Edwards, Richard Finkmoore, Peter Fitzgerald, Maria Frankowska, James Friedberg, Richard Graving, Christine Gray, Richard Kay, Jeffrey Kelleher, David Kennedy, Chin Kim, Harold Koh, Robert Lutz, William Lynch, Hugh Macgill, Phyllis Marion, James Maxeiner, Diane May, Samuel Menefee, John Murphy, James Nafziger, Michael Newton, Nell Newton, Jeremy Paul, Michael Reisman, John Ryan, Philippe Sands, Henry Schermers, Stephen Schwebel, Steven Smith, Louis Sohn, Barbara Stark, Henry Steiner, Kenneth Vandavelde, and Carol Weisbrod. Several students and librarians at California Western School of Law, the University of Connecticut School of Law, the University of Oxford, and the Roger Williams University School of Law also provided able research support: Daniel Bender, Elizabeth Bonner, William Bookheim, Sanja Djajic, Todd

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