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A Problem-Oriented Approach

*Third  
Edition*



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# INTERNATIONAL LAW NORMS, ACTORS, PROCESS

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## A Problem-Oriented Approach

### Third Edition

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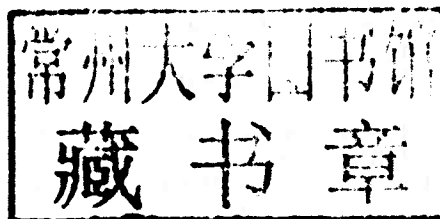
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**To**  
**Theresa, Elizabeth, and Joel**  
**Nancy, Benjamin, and Isabel**  
**and**  
**Meredith, Brianna, and Lauren**

# Preface

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Our book is designed to provide a general introduction to the range and reach—and the possibilities and limits—of contemporary international law. To do so, the book is built around a series of current problems that illustrate international law in action. These materials are intended to convey an understanding of the profound transformations that mark international law in the current era, and of recent theories and developments that challenge some of the discipline's most basic assumptions. Today's students and tomorrow's international lawyers will benefit from a casebook prepared with these fundamental shifts in the nature of the subject in mind.

The book is also designed to convey to students a keen sense of the process for the making, interpretation, and application of international legal norms, rather than focusing on law as a set of detailed rules or doctrines. It is our experience as teachers that the best way to get students interested in these processes and to show their relevance to modern society is to rely as much as possible on real situations where the law has made—or not made—a difference. Using real-world problems permits students to consider the formation and application of international law in the specific contexts in which such problems arise, and to appreciate the complexity and interrelated character of international legal issues as they appear to lawyers in practice. Moreover, we believe that only through an examination of international law's principal actors, methods of law making, and key subjects can a student fully understand what it means to have law in a context that lacks a single legislature, executive, or judiciary.

The problems are chosen, in part, for their importance or intrinsic interest and, in part, to highlight many of the profound transformations that characterize international law in the twenty-first century. Thus, throughout the text we focus on creative new forms of law making, including "soft" law, as well as treaty regimes; the increased importance of non-state actors, such as corporations, sub-state units, and non-governmental organizations; new compliance strategies; the growth of critical subject areas, notably international criminal law and international economic law; and the erosion of traditional divisions among these subjects. Given our focus on current international legal controversies, we omit a number of classic doctrinal areas that receive extended treatment in other texts but that do not raise critical process-related issues as dramatically as those we have chosen.

We recognize that no limited number of problems can present the entire spectrum of international law. Indeed, we have consciously avoided the temptation to create a treatise, or to present encyclopedic treatments of the limited range of issues covered. Instead, our overriding goal has been to create a book that serves as an effective teaching tool. To this end, each chapter begins with a short introduction to the particular field of international law at issue, and each problem begins with an overview and a series of questions designed to orient the student to the materials that follow. Problems are followed by relevant primary and secondary source materials. These materials are both interdisciplinary and multi-perspectival and are intended to enrich the student's understanding of relevant issues. Notes and questions are kept to a minimum.

This book is organized into six parts, each consisting of two or more chapters for a total of fourteen chapters. Part I introduces students to international law and law making. Chapter 1 uses two problems to illustrate both basic concepts and the changing nature of contemporary international law. Chapter 2 uses a series of problems to serve as vehicles for a discussion of treaties, customary international law, and soft law. Part II focuses on the principal participants (other than individuals) in the international legal system. Chapter 3 reviews the processes of state formation and dissolution, self-determination, state succession, and related issues, as well as the legal status and powers of international organizations. In recognition of the prominence that non-state actors have assumed in contemporary international law, Chapter 4 includes three problems that explore the variety and roles that these entities play.

Part III explores the interactions between international and domestic law. Chapter 5 focuses on the impact of international law in domestic systems, while Chapter 6 explores the ways that states assert their authority abroad. Part IV focuses on the use of international law to protect human dignity. Chapter 7 covers human rights, including both civil and political rights, and economic, social, and cultural rights. We also include two chapters on rapidly evolving areas: Chapter 8 examines the legal regulation of the conduct of war, and Chapter 9 covers issues of individual accountability for human rights abuses. Part V focuses on issues generated by the interdependence of states and the need for collective action to protect international common resources and to facilitate international economic activity. Chapter 10 covers the law of the sea; Chapter 11 examines international environmental law; and Chapter 12 explores international economic law.

We take seriously the challenges of those who question the relevance, legitimacy, and justice of international law. Most casebooks bury these issues near the end of an introductory chapter, after which the issues disappear. As a conceptual matter, we think that starting a book with these issues often appears to be unduly defensive; as a practical matter, we think that discussing these issues before students have studied international law is unlikely to be productive. We also think the issues are too important to be treated in this way. Thus, we raise questions about the relevance and efficacy of international law throughout the text. We devote Part VI, the final part of the book, to an examination of the most important challenges to international law. Chapter 13 examines the use of force in international affairs. In Chapter 14, the book's final chapter, we focus more explicitly on the legitimacy, relevance, and justice of international law, through an examination of several contemporary issues, including the legal issues raised by the September 11, 2001 attacks on the United States and their aftermath.

The book is designed to stimulate interest in, and thinking about, international law. It is an invitation to share our commitment to exploration of the uses and limits of international law—where it succeeds, where it fails, and how it can be improved. We welcome your comments and suggestions.

*Jeffrey L. Dunoff*  
*Steven R. Ratner*  
*David Wippman*

June 2010

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# Authors' Note

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In order to provide a sense of the appearance of original international legal documents, we have attempted as much as possible to retain the formatting of documents as they appear in the original, authoritative source. In some cases, this results in different typefaces in the text. For convenience, additions to excerpted material are indicated by brackets. Deletions are indicated by ellipses, unless the deletions occur at the beginning of court or tribunal decisions or dissents. Citations and footnotes are generally omitted from excerpted materials without using an ellipsis. Footnotes that appear in excerpted materials retain the numbering of the originals; footnotes denoted by an asterisk are the authors'.

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