David Harris

Cases and Materials on International Law

Seventh Edition



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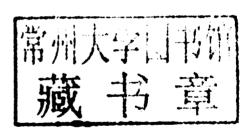
ON INTERNATIONAL LAW

SEVENTH EDITION

By

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PREFACE TO THE SEVENTH EDITION

There have been many important developments in international law since the last edition of this casebook. The credit for many of these goes to the International Court of Justice. The Court's Wall advisory opinion is notable for its further clarification of the inter-relationship of international humanitarian law and international human rights law and its confirmation of the extra-territorial effect of UN human rights treaties, as well as for its ruling that the wall could not be justified on grounds of self defence. Self defence was also in issue in the Armed Activities case, in which the Court gave an important judgment on various aspects of the prohibition of the use of armed force, in one of the very few cases in which this crucial area of international law has been squarely addressed by it. When the same litigants returned to The Hague in the Armed Activities (New Application) case, the Court, disappointingly, rejected an argument that a reservation to the Genocide Convention was invalid as contrary to ius cogens; but at least it did recognise, for the first time in its history, that ius cogens is a concept known to customary international law. Similarly, its findings in the Genocide case on claims of genocide in the Balkan conflict have met with a mixed response. Very welcome were the Court's clarifications of the law on diplomatic protection of individuals and companies in the Diallo case. In other judgments there were more rulings on maritime boundaries and territorial title, which have long been the Court's staple diet. In one of these judgments, in the Pedra Branca case, the Court pronounced helpfully on prescription as a basis for title. Finally, the doctrine of forum prorogatum came alive again, with the Court's ruling that it had jurisdiction on this basis in the Certain Questions of Mutual Assistance case. At the time of writing, the Court had yet to give its eagerly anticipated response to the General Assembly's request for an advisory opinion on the Kosovo case.

But the International Court of Justice has had no monopoly as a source of recent developments in international law. ICSID arbitration awards, such as the CMS Gas case, have applied the law concerning necessity as a ground precluding wrongfulness and the Eritrea-Ethiopia Claims Commission has given a controversial ruling on the legality of obtaining title by the use of force (Partial Award: lus Ad Bellum: Ethiopia's Claims 1-8 Claims). The International Law Commission has produced new texts, including its Draft Articles on Diplomatic Protection, which contain some challenging proposals for progressive development, and its Guiding Principles applicable to Unilateral Declarations of States. A decision on the question whether the Commission's Draft Articles on State Responsibility for Internationally Wrongful Acts will be translated into a treaty was further postponed. Elsewhere, the Security Council was unexpectedly called upon to "legislate" in an unfamiliar area, empowering states to act against the seizure of ships off Somalia.

An important institutional change took place in the UN human rights system, with the replacement of the UN Commission on Human Rights by the UN Human Rights Council. Although the Council is proving to be no less influenced by politics than its predecessor, its new Universal Periodic Review procedure may become a significant innovation. New UN human rights instruments have also been adopted, particularly the Convention on the Rights of Persons with Disabilities, the Convention for the

Protection of All Persons from Enforced Disappearance and the Declaration on the Rights of Indigenous Peoples. The HRC and CAT have given important rulings on extraordinary rendition (Agiza , Alzery) and abortion (Llantoy Huamain).

In responding to these and other developments, I have been greatly assisted in bringing the casebook up to date by Chris Henderson, a former PhD student in the University of Nottingham School of Law, and Claire Balding, an intern on the University of Nottingham Talent Builder programme in the Human Rights Law Centre of the School of Law. I would like to thank them for their excellent work as research assistants in the preparation of this new edition.

The book generally takes account of developments as far as January 2010. Where possible, more recent developments have been noted.

D.J. Harris Human Rights Law Centre School of Law University of Nottingham April 2010

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