

# THE INTERNATIONAL LEGAL SYSTEM

CASES AND MATERIALS

SIXTH EDITION

MARY ELLEN O'CONNELL

RICHARD F. SCOTT

NAOMI ROHT-ARRIAZA

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# THE INTERNATIONAL LEGAL SYSTEM

SIXTH EDITION

*by*

**MARY ELLEN O'CONNELL**

Robert and Marion Short Chair in Law  
and Research Professor of  
International Dispute Resolution—Kroc Institute  
University of Notre Dame

**RICHARD F. SCOTT**

Distinguished Professor of International Law  
Thomas Jefferson School of Law  
Professor of International Law Emeritus  
The American University of Paris

**NAOMI ROHT-ARRIAZA**

Professor of Law  
University of California  
Hastings College of the Law



FOUNDATION PRESS

2010



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195 Broadway, 9th Floor

New York, NY 10007

Phone Toll Free 1-877-888-1330

Fax (212) 367-6799

[foundation-press.com](http://foundation-press.com)

Printed in the United States of America

**ISBN** 978-1-59941-183-5

Mat #40510345

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*Dedicated to  
The Rev. Theodore M. Hesburgh, C.S.C.,  
and Peter, with love,*

*Lorraine, Karen, Jeffrey and Holly, with love,*

*and  
Helen Roht, pioneer internationalist,  
and Gilberto, Laura and Rafa, with love*

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## PREFACE TO THE SIXTH EDITION

With each new edition of this casebook, its authors have reflected on the dramatic expansion and refinement of international law since the previous edition. This has certainly been true of international law since the 5th edition was published in 2001. Indeed, the whole history of international law is a history of dramatic expansion from its origins in Europe in the 17th century as a law for peaceful co-existence of states to today where it extends geographically to all parts of the globe and to most dimensions of international life. International law provides functional support to the international system and to humanity's aspirations for a more just, secure, and peaceful world.

More specifically, the functions of this body of law include the very creation and preservation of the international system, the provision of substantive rules of law to govern the relations of states among themselves and with international organizations, together with the fundamental rights of states, individuals and organizations in the system. These law-making functions are designed to “do justice” in those relations, to keep peace in the system, and to provide the durable means of facilitating the smooth conduct of international relations. The international legal system as we know it could not exist in any acceptable form without these applications of the rule of law.

Our view of the “international legal system” includes not only the traditional and evolving body of international law in the public sector but also the surrounding areas of the national law that bear on a state's conduct of foreign relations: the domestic constitutional systems' treatment of international law together with the domestic legislative and regulatory measures employed to implement international law. The domestic law feature of the system is the focus of Chapter 11 on “International Law in National and Regional Legal Systems”, with material from the UK, France, U.S., Argentina, the European Union, and South Africa, but the topic appears throughout the casebook. We employ national and regional cases and legislation alongside international decisions and agreements to demonstrate both the complexity of the system and its uniqueness.

Material from other systems underscores that international law is very different from the domestic law of states. The casebook is designed to introduce students to this very different system with its unique means for law creation, application, and enforcement. We aim to introduce a whole legal curriculum in a book designed for a one semester course. The original authors of this casebook said the following in the preface to the first edition:

We have done our best to make this book a teaching tool. It may be useful also to practitioners and even to scholars—at least at some

points. But what we have wanted most to do is to get the attention of today's law students, those men and women who, for better or worse, will have so much influence on how the world will go.<sup>1</sup>

The authors of the current edition have much the same aim. We have retained the first edition's goal of giving students a working knowledge of international law. Even in the first edition, however, the authors hoped only to build "trails toward the various advanced courses" in international law. That is all the more true of the current authors. In the intervening four decades international law has expanded exponentially. We very much encourage students to take additional courses in international law to build on the basic introduction found in this book. As international law has expanded, so have the opportunities for students to expand and deepen their knowledge of the system.

Nevertheless, while we encourage students to take more courses, it also our sincere belief that there is no substitute for a general introductory course, despite the inevitable constraint that many topics must be presented in abbreviated form. A general course provides students with knowledge of the foundations underlying the system as a whole—regardless of topic area. More importantly, a general course provides an understanding of the inter-connectedness of the system and the links between international law and other legal systems.

The current edition of the casebook was designed for just such a general course. It begins in Chapter 1 with a brief introduction to international law, its history, basic components, and some discussion of the nature of the world in which international law operates. Chapter 2 introduces the sources of international law and the basic processes of international law-making. Chapter 3 discusses the primary subjects of international law: states, individuals, and organizations of all kinds operating internationally. Chapter 4 reviews the scope of international law in terms of jurisdiction and immunity. Chapter 5 introduces human rights and Chapter 6 the law governing the world's environment and shared spaces. Chapter 7 is on the international economy. Chapter 8 concerns how responsibility for international legal wrongs is determined. Chapter 9 looks at dispute resolution, how claims are made and resolved at the international level. Chapter 10 sets out the basic rules for the lawful use of force, such as in self-defense. Chapter 11 introduces the place of international law in a variety of legal systems. Chapter 12 takes up a new question with this edition: has international law evolved from being primarily the law of an inter-state system to the law of a community? Some legal theorists suggest that as a body of law becomes more sophisticated, it fosters greater integration among the governed. Is international law having this impact on our world? Does this impact account for the concern registered by some about international law and their wish to limit its impact? In the world of today with its

1. JOSEPH MODESTE SWEENEY, COVEY T. OLIVER, & NOYES E. LEECH, *CASES AND MATERIALS ON THE INTERNATIONAL LEGAL SYSTEM* (1973).

extraordinary global challenges is it possible to limit international law? And if it were, what would be the cost of doing so? These are questions to consider as you pursue the materials in this casebook, and, perhaps, a career in international law.

We have made many changes to the last edition to meet these goals for the new edition. Nevertheless, we are very much indebted to all of our predecessors, but especially, Christopher Blakesly, Edwin Firmage, and Sharon Williams, authors of the fifth edition.

MARY ELLEN O'CONNELL

RICHARD F. SCOTT

NAOMI ROHT-ARRIAZA

January 2010

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## ACKNOWLEDGMENTS

We would like to thank Layla Krog of the Notre Dame Law School for exceptional office assistance. We would also like to thank our research assistants: Erin Watkins, Patrick Carrier, Rochelle Krebs, Kyle Sommer, Nino Guruli, Menaka Fernando, Sarah Newby, and Cara Hughes. At the Thomas Jefferson School of Law we would like to thank Professors Aaron Schwabach and Kenneth Vandavelde for comments on part of the draft manuscript, and the library staff, including Professor Karla Castetter, Patrick Meyer, Dorothy Hampton, Norma Dunn, June Macleod, Jane Larrington and Leigh Inman. Thanks also to Patti Ogden and Mary Cowser of the Kresge Law Library of the Notre Dame Law School.

We would like to acknowledge our indebtedness to the following authors, publishers and organizations for giving us permission to reprint excerpts from the books, periodicals and other documents indicated below:

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Routledge/Taylor & Francis Group, excerpt from, Richard W. Mansbach and Kirsten L. Rafferty, *Introduction to Global Politics*, 6-9 (2008).

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