CLIO DICTIONARIES IN POLITICAL SCIENCE
Jack C. Plano, Editor

THE INTERNATIONAL LAW DICTIONARY

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SERIES STATEMENT

Language precision is the primary tool of every scientific discipline. That aphorism serves as the guideline for this series of political dictionaries. Although each book in the series relates to a specific topical or regional area in the discipline of political science, entries in the dictionaries also emphasize history, geography, economics, sociology, philosophy, and religion.

This dictionary series incorporates special features designed to help the reader overcome any language barriers that may impede a full understanding of the subject matter. For example, the concepts included in each volume were selected to complement the subject matter found in existing texts and other books. All but one volume utilize a subject-matter chapter arrangement that is most useful for classroom and study purposes.

Entries in all volumes include an up-to-date definition plus a paragraph of *Significance* in which the authors discuss and analyze the term's historical and current relevance. Most entries are also cross-referenced to give the reader the opportunity to seek additional information related to the subject of inquiry. A comprehensive index, found in both hardcover and paperback editions, allows the reader to locate major entries and other concepts, events, and institutions discussed within these entries.

The political and social sciences suffer more than most disciplines from semantic confusion. This is attributable, *inter alia,* to the popularization of the language, and to the focus on many diverse foreign political and social systems. This dictionary series is dedicated to overcoming some of this confusion through careful writing of thorough, accurate definitions for the central concepts, institutions, and events that comprise the basic knowledge of each of the subject fields. New titles in the series will be issued periodically, including some in related social science disciplines.

— Jack C. Plano
Series Editor

A NOTE ON HOW TO USE THIS BOOK

The International Law Dictionary is organized so that entries and supplementary data relating to a particular topic are arranged alphabetically within subject-matter chapters. Entries pertaining to flag-state jurisdiction, the Law of the Sea Convention (1982), and the International Law of Marine Pollution, for example, can be found in the chapter entitled "The Law of the Sea." When doubtful about which chapter to consult, refer to the general index. Entry numbers for the definitions appear in the index in heavy black type; subsidiary concepts discussed within entries can be found in the index identified by entry numbers in regular type. For study purposes, numerous entries have also been subsumed under major topical headings in the index, giving the student access to broad classes of related information.

The authors have continued to follow the format of this dictionary series so as to offer the student a unique means of gathering information about the numerous areas pertaining to international law. This framework provides not only definitions of terms but also additional information highlighting the significance of each of the entries. Such a format makes the dictionary a versatile tool useful in a variety of ways, including (1) as a *dictionary* and *reference guide;* (2) as a *study guide* for courses in international law, international organization, and international relations; (3) as a *supplement* to international law textbooks or casebooks; (4) as a *source of review material* for the student enrolled in advanced courses in the field; and (5) as a *cognate-course aid* in various law-related courses, such as international business or public policy courses.

PREFACE

The Clio Dictionaries in Political Science Series is founded upon the premise that precise language is a basic tool of every intellectual discipline. This is particularly true in the field of law. Legal terms and concepts have specific meanings that are critical to an understanding of such a complex and changing subject. Yet it is difficult to create a reference source that will serve both the undergraduate student and the law practitioner or scholar. Should the definitions be general in nature in order to satisfy the needs of the student being introduced to international law for the first time, or should they be more technical and detailed for those already acquainted with this branch of law? We have attempted to meet the needs of both clienteles, the result being a unique reference source for those interested in public international law.

The three hundred and sixty-eight entries of this dictionary are grouped by subject matter into twelve chapters, the outline of the book corresponding to the latest developments in the theory and practice of international law. It begins with a general introduction to international law, its basic concepts and sources, and publicists important to its development. Subsequent chapters deal with states as subjects of international law; individuals, human rights, and international organizations; jurisdiction and jurisdictional immunities; the treatment of aliens; the spatial context (land, air and outer space, and the oceans); treaties; peaceful methods of settling disputes; use of force and war; and the laws of war and neutrality. The dictionary is a joint product of the coauthors in both its outline and selection of entries; but in general R. L. Bledsoe wrote Chapters 1–6 while B. A. Boczek authored Chapters 7–12, and substantively reviewed the contents of the volume. R. L. Bledsoe also thoroughly went through the text and drafted the Index.

In keeping with the format developed by Series Editor Jack C. Plano, each entry is defined, its basic features described, and is then followed by a *Significance* section in which an analytical, historical, and interpretative treatment of the entry is presented along with illustrative examples. This provides the reader with a greater understanding of the importance and meaning of the term, concept, or institution within its contemporary context.

We are indebted to a number of people whose contributions in various capacities have aided immensely in the fruition of this undertaking. We owe a particular debt to Professor Jack C. Plano who not only encouraged us to undertake the project but also devoted much time to critical reading of the manuscript in all its stages. Cecelia A. Albert, our ABC-CLIO editor responsible for shepherding us through the project to its conclusion, was a model of understanding and support as deadlines kept slipping by. We cannot say enough about the professional word processing skill, efficiency, and patience of Karen Lynette as she worked through numerous drafts, catching errors that we overlooked. Finally, the only way in which we can thank our families for their tolerance and understanding of the disruption of family life such a project entails is to point to the dictionary and hope that its use by students and others will foster a greater commitment to international law and a safer and more peaceful world for themselves and their families as well as ours.

In a work of this length and complexity there is ample opportunity for errors of commission and omission. For such, the authors claim sole responsibility and encourage the readers to alert them to any that they discover.

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CONTENTS

The International Law Dictionary

1. International Law in General

Act of State Doctrine **(1)**

The rule that a state's executive, legislative, or judicial acts—having effect within that state's territory—are not subject to judicial inquiry by other states. The act of state doctrine has a long history of support in the United States, with perhaps its clearest expression set forth by the Supreme Court in *Underhill v. Hernández,* 168 U.S. 250 (1897): "Every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory." While the doctrine is not universally accepted, it is founded upon the principle of state sovereignty and the assumption that a state is better able to determine the validity of its acts vis-à-vis its own laws than is the court of another state. In American courts, the doctrine is viewed more as a matter of constitutional law than of international law, with courts generally exercising judicial restraint vis-à-vis the executive branch in matters of foreign policy. *See also* SOVEREIGNTY, 75.

Significance The act of state doctrine is widely supported by both Anglo-American law countries (the British refer to it as the sovereign act doctrine) and communist states, while many noncommunist civil law countries prefer to deal with such issues through conflict of laws (private international law). The act of state doctrine raises several sets of issues, particularly those in which acts may be contrary to international law or where they are contrary to the public policy of another state affected by such acts. U.S. courts have held that the act of state doctrine is applicable in those instances when foreign actions are contrary to U.S. policy. In the controversial Supreme Court case of *Banco Nacional de Cuba v. Sabbatino,* 376 U.S. 398 (1964), the Court was not

willing to apply the doctrine in those instances where the issue is an alleged violation of international law. The controversy evoked by the *Sabbatino* decision prompted the Congress in 1964 to pass an amendment to the Foreign Assistance Act of 1961, the so-called "Hickenlooper Amendment," which forbids U.S. courts to decline to rule on grounds of the act of state doctrine in cases involving expropriation of American property in violation of international law. Despite the Hickenlooper Amendment, American courts have generally viewed acts of state as political rather than legal issues. Therefore, the initial determination of a course of action is left to the executive branch before ruling on the merits of the case, since foreign policy is mainly in that branch's domain. Some foreign courts, however, have been more willing to rule on the legality of acts of state such as in the case of *Anglo-Iranian Oil Co., Ltd. v. Jaffrate* (Aden Supreme Court, 1953), in which the Court held the Iranian Nationalization Act of 1951 to be contrary to international law.

Austinianism **(2)**

A theoretical school of jurisprudence that holds that law exists only when it emanates from a superior authority and can be enforced by punitive sanction. Austinianism is named after the English author and jurist John Austin (1790–1859) who, in his *Lectures on Jurisprudence,* argued that law is the command of a sovereign enforced by the threat or use of force (police action). To Austin and his followers, international law is at best international "positive" morality. Any international norms to which a state subscribes are voluntary and inferior to domestic law. The Austinian school is sometimes referred to as the "analytical" school. *See also* AUTOLIMITATION, DOCTRINE OF, 3; TRANSFORMATION, DOCTRINE OF, 44.

Significance Austinianism holds that international law is not true law because there is no superior authority above the state to enforce international legal norms and to punish transgressors. To the followers of Austin's thinking, only when an authority superior to the state is created with the power to enforce the observance of international norms will international law be true law. Despite such arguments by the Austinian school, the constitutions of many states contain explicit statements attesting to the existence of and subscription to international law, and international practice universally recognizes the legal nature of this system of law. Nevertheless, the decision (as well as the means) to sanction violators of international law remains largely that of states rather than of regional or global agencies.

Autolimitation, Doctrine of **(3)**

A school of thought on the nature of international law which suggests that, since a state can create binding domestic (municipal) law, it can also create binding international law. However, the autolimitation school goes on to say that since the state voluntarily creates such laws, the state may also unilaterally terminate them. This doctrine of self-limitation was popularized by Georg Jellinek in his *Die rechtliche Natur der Staatsverträge* (The Legal Nature of Treaties, 1880) and *Allgemeine Rechtslehre* (General Jurisprudence 3d ed, 1914). *See also* AUSTINIANISM, 2; MONISTS, 23.

Significance The autolimitation school approaches the debate over the nature of international law by rejecting the assertion of the Austinans that international law is not law at all. At the same time, autolimitationists resemble Austinians in the weak and untenable position in which they place international law vis-à-vis the state. This is the case because of the central role accorded states in creating legal norms. Since the state alone creates the norms and voluntarily abides by them, states may also unilaterally terminate them. This position is sometimes referred to as inverted monism, since it argues for supremacy of municipal law over international law in a hierarchical legal system.

Codification and Progressive Development of International Law **(4)**

A systematic organization and statement of the international legal norms pertinent to a specific topic. This can be (1) "codification," that is, a more precise formulation and systematization of rules in fields where there already has been extensive state practice, precedent, and criteria; or (2) "progressive development," meaning the preparation of draft conventions on subjects that have not yet been sufficiently developed in the practice of states. *See also* INTERNATIONAL LAW COMMISSION, 16; TREATY, 279.

Significance Codification efforts have dominated the twentieth century in the evolution of international law, beginning with the landmark Hague Conventions of 1899 and 1907, resulting from the conferences of the same years, and the League of Nations–sponsored Codification Conference of 1930. In the post–World War II era, much of the codification of international law has been the result of the work of the International Law Commission created by the United Nations General Assembly in 1947 in response to Article 13 of the United Nations Charter enjoining the Assembly to encourage the progressive devel-

opment of international law and its codification. The four 1958 Geneva conventions dealing with various aspects of the ocean regime, the 1961 Vienna Convention on Diplomatic Relations, and the 1969 Vienna Convention on the Law of Treaties are only a few examples of codification efforts of the International Law Commission. Other codification of international law has been undertaken by the United Nations itself—the United Nations Convention on the Law of the Sea (1982) is an outstanding example. Other international organizations, both public and private—nongovernmental organizations or NGOs; for example, the International Committee of the Red Cross—have also been engaged in codification work in their particular spheres of interest.

Comity **(5)**

Friendly gestures or courtesies extended to one state by another without legal obligation. Comity (*comitas gentium*) is based upon the concept of the equality of states and is normally reciprocal. Extended and widespread usage of such practices may eventually lead to their becoming part of customary international law, but such gestures are not in the strictest sense part of the law of nations. *See also* SOURCES OF INTERNATIONAL LAW: CUSTOM, 39.

Significance Comity aids in promoting and maintaining friendly relations among states. It is apparent in such matters as (1) a public vessel of one state dipping its flag when passing a public vessel of another state, or (2) states reciprocating in not requiring passports or visas when citizens of one country visit the other for short periods of time. While technically not legal norms, such practices can be widely observed and have from time to time evolved into customary practices and/or were codified, thus becoming part of international law. A recent example is the exemption from customs duties of articles for personal use by diplomats (formerly an example of international comity), which is now reflected in the 1961 Vienna Convention on Diplomatic Relations (Article 36).

Communist View of International Law **(6)**

To Marxist-Leninist states, international law is that body of norms to which states have given their consent to be bound. Communist states view sovereignty as the key feature of the international system, and it governs their reaction to specific international norms. The communist view of international law claims to be based upon the principles of

peaceful coexistence; mutual respect for the territorial integrity and sovereignty of states; nonaggression; noninvolvement in the internal affairs of states; and equality and mutual benefit. In Soviet legal theory, peaceful coexistence is central to the Soviet Union's view of international law and, while initially viewed as only temporary by the People's Republic of China, the Chinese have also accepted it as the foundation of the international legal order in the post–Cultural Revolution period.

Significance Initially the communist view of international law was that it was only a temporary phenomenon developed by capitalist states and would wither away as states ultimately would, in the Marxist view. The Soviet focus upon peaceful coexistence as the basis of international law gives the international legal order a greater role. In the Soviet view, peaceful coexistence is a means to protect socialist states and keep them apart from capitalist states. Conversely, Western states have assumed that peaceful coexistence is a means of linking states together in a more constructive and positive relationship. In adapting Marxist-Leninist theory to the international legal order, communist states have viewed states as the only subjects of international law, denying individuals standing under any conditions. More recently, they have included international organizations as subjects of international law. To such states, treaties form the basis upon which states accept international legal norms (as they must give their consent to such norms and it is, therefore, an expression of their sovereignty). Norms based upon custom and usage are viewed with caution (although not necessarily rejected), as they are capitalist in origin. The same may be said about general principles of law. At the same time natural law is not rejected, as it is viewed by communist legal theorists as part of the historical dialectic. Soviet theorists have developed a typology of international law, consisting of international law as it applies to dealings between capitalist states, between capitalist and socialist states, and between socialist states, the latter being the highest form of law. Ironically, while sovereignty is the key to the relationships of the first two categories, being the means whereby socialist states protect themselves against capitalist states, it is not so absolute in dealings between socialist states. The Chinese also divide international law into categories—socialist, Western, and Soviet (the latter being inferior to the socialist legal order represented by the People's Republic of China). To the Chinese, a major distinction in their approach to international law in contrast to the Soviet approach is that the latter is reactionary and status quo oriented, while the Chinese hold that international law is progressive and should address the concerns of the Third World.