Preface to the Seventh Edition

This casebook is designed for an introductory course in international law. It can be used by students across the globe, although we consciously chose to gear its contents to a view of international law encountered from the U.S. perspective. In doing so, we build on traditional theories and concepts of public international law, while also addressing new institutions and other developments, especially the complex relationship between international and domestic legal orders. Our casebook analyzes how public international law frequently affects the private activity of both individuals and businesses. It considers how various actors and processes contribute to the development and evolution of international law. This casebook does not, however, offer detailed coverage of international trade, international investment, or other areas of international economic law.

This Seventh Edition represents a major updating and revision of the casebook. For example, the Seventh Edition:

- includes a restructured chapter on the sources of international law with an entirely new treatment of treaties and their alternatives;
- adopts a modern, conceptual approach to the subjects of international law, with new materials on statehood; and
- adopts a more conceptual and systematic approach to studying the roles of international organizations and international dispute resolution institutions.

The Seventh Edition also includes new materials reflecting developments since the publication of the last edition, including materials on:

- the law governing the use of force and cyber operations;
- legal issues associated with the military campaign against the Islamic State (ISIS), including a new case study in Chapter 1 focused on the international response to the rise of ISIS;
- new nonproliferation developments, including the Iranian and North Korean nuclear crises and the adoption of the Treaty on the Prohibition of Nuclear Weapons;
- the law of the sea, including the arbitral award governing disputed maritime claims in the South China Sea;
• international environmental law, including the conclusion of—and United
States announcement of withdrawal from—the Paris Agreement; and
• a number of major U.S. Supreme Court cases on international and foreign
relations law issues, including Bond v. United States (on fundamental princi-
ples of federalism and the treaty power under Article VI of the Constitution),
Zivotofsky v. Kerry (on the separation of powers between Congress and the
President in the field of foreign affairs), and Kiobel v. Royal Dutch Petroleum
Co. (on the Alien Tort Statute).

Every chapter has been updated with issues and materials to capture the new
and fast-paced developments in the field of international law. In addition, the Notes
and Questions have been thoroughly revised throughout the casebook.

Background

The United States and its people, like those living in countries around the world,
increasingly are enmeshed in international transactions and are influenced by
transnational developments. The governments of the United States and more
than 190 other nations deal daily on a wide range of issues with one another, with
international institutions and organizations (like the United Nations, the World
Trade Organization, the International Atomic Energy Agency, and the G-20),
and with regional organizations (such as the European Union, the Organization
range from essential, if mundane, matters (like postal agreements) to those of
considerable economic and foreign policy significance (such as economic sanc-
tions against North Korea). They concern the human rights standards that states
are required to accord to their citizens and the ongoing international efforts to
regulate global commons, like the biosphere. These issues even extend to matters
of life and death (e.g., the use of military force, efforts to combat the proliferation
of weapons of mass destruction, the conduct of war, and criminal accountability for
those responsible for mass atrocities).

Each day public and private entities move across borders many billions of dol-
ars worth of currency and goods, millions of people, and many thousands of ships,
planes, and other vehicles. They also engage in a tremendous degree of interna-
tional communication, through e-mail messages, telephones, and the Internet.

This international activity usually occurs in carefully structured ways, most
often without serious incident. The structure is provided by a complex and evolving
mix of international and national law. It is administered and enforced by interna-
tional and national entities, both public and private.

As a result, lawyers in the United States—like those around the world—are
increasingly affected by international law. They need to understand the rele-
vant international law rules and how they can affect the activities of their
clients—whether the client is a government or a private party. For example, can an
individual citizen invoke a treaty in domestic litigation? Does a U.S. law against ter-
rorism or against price-fixing extend to activity outside the territory of the United
States? How can individuals resort to international tribunals, such as international
arbitration institutions?
In addition, lawyers—like all citizens—benefit from understanding how international legal rules may shape and constrain the foreign policy decisions that the governments of the United States and other countries make.

**Objectives**

In introducing students to international law, this casebook has four major objectives:

1. **The casebook should provide students with a solid understanding of substantive international law.** We explore the sources and subjects of public international law, its principal theories and concepts, and recent developments in the law. In analyzing sources, we pay particular attention to treaties and customary international law, which students probably have not studied before in depth. In examining subjects of international law, we of course focus on states, but also international organizations and other subjects, including “peoples.” We then address other general concepts—such as international dispute resolution, the various principles for exercising prescriptive jurisdiction, and approaches to foreign sovereign immunity—before turning to particular substantive international law topics like human rights, the law of the sea, international environmental law, the use of military force and the conduct of warfare, and international criminal law, each of which is addressed in a separate chapter.

2. **This casebook also analyzes the international institutions that help public international law facilitate dramatically expanding international activity.** The years immediately after World War II witnessed tremendous creativity and accomplishment in establishing an international system. The United Nations, International Court of Justice (or World Court), World Bank, and International Monetary Fund (IMF) were established. While the International Trade Organization never got off the ground, the General Agreement on Tariffs and Trade (GATT) was signed. This progress stimulated hopes by some observers that a new international order was at hand.

   The reality of the world today is not, however, one characterized by a simple structure, but rather a complex mix of international and national law, administered and enforced by a variety of entities. Some of the post–World War II institutions like the World Bank and the IMF have grown and adapted effectively, and a weak GATT has been succeeded by a strong World Trade Organization (WTO). On the other hand, many believe that the United Nations and the International Court of Justice have not lived up to their proponents’ expectations. Although the end of the Cold War and the initial U.N. response to the 1990 Iraqi invasion of Kuwait revived hopes for the U.N.’s future, these hopes were dampened by the legal and diplomatic debate over Iraq in 2002-2003. The record since has been mixed, with important forms of cooperation in addressing the nuclear crises in North Korea and Iran and the authorization to use force to address a humanitarian crisis in Libya in 2011. But the U.N. has remained gridlocked over such issues as the Syrian civil war, the Israeli-Palestinian conflict, and Russia’s annexation of Crimea, among others.

   At the same time, other formal and informal institutional arrangements have emerged and assumed important roles. These other arrangements include evolving specialized international agencies like the International Atomic Energy Agency and the World Health Organization; regional organizations such as the European Union, the African Union, and the Association of Southeast Asian Nations (ASEAN); and informal groupings like the like the G-20. States have
increasingly accepted the use of international dispute resolution, resulting in the frequent resort to international arbitration and the dramatic expansion of international courts and tribunals, including international criminal courts, covering a wide range of substantive legal matters.

3. The casebook recognizes and studies the interaction between public international law and domestic law, including the way national agencies and courts interact with the international legal system. It is not uncommon for such entities to look to international law on jurisdictional and interpretive questions, as well as on certain substantive issues such as human rights. Since most of the users of this book will be students in law schools in the United States, we examine in depth the incorporation and operation of international law in the U.S. legal system; this includes substantial attention to the U.S. Constitution and U.S. laws that have international impact. At the same time, because American lawyers must appreciate the different principles found in foreign legal systems, materials from other legal systems are included to illustrate contrasting approaches.

4. Students will also be made aware of how international law increasingly affects—and is shaped by—private activity, both of individuals and businesses. For example, a national court might draw in part upon international human rights norms to find private actors liable for large damage judgments for their activities in foreign countries. Or WTO international trade rules might allow an injured country to impose retaliatory tariffs on imports of hundreds of millions of dollars of goods produced by companies in the country that was found to be violating the rules. And the question of sovereign immunity of foreign governments is not only of interest to governments and their diplomats, but can also be crucial to private company dealings with a foreign supplier owned by a government.

As a result, the future lawyer should understand how the rapidly expanding body of international law—including multilateral and bilateral agreements—is made, how it can be changed, and how it can affect a client’s interests. A student should also understand how governments make decisions and how diplomacy operates.

Overview of the Structure of the Book

This casebook is designed primarily for an introductory course in international law that involves two to five semester hours. There are sufficient materials to provide professors with flexibility to shape a course that reflects their own emphases and to choose among the materials.

Chapter 1 starts with the standard definition of international law, contrasts it with more familiar forms of domestic law, and introduces the ways in which international law is formed and enforced. A section on historical background briefly examines the development of international law and institutions, with attention to developing world perspectives on international law. The third section considers the nature of international law and examines various theories for understanding what it is and how it works. The chapter concludes with a new case study on the international response to the rise of the Islamic State (ISIS). This case study illustrates international law in action.

Against this background, Chapter 2 introduces the basic building blocks—or sources—of international law. Students first learn what a “treaty” is and examine
important issues of treaty law governing the formation, interpretation, invalidity, and termination of treaties. The chapter also describes customary international law, including different views about the role of state practice compared to normative statements by states. We then consider other sources of international law, including general principles of law and, as a subsidiary matter, judicial decisions and the teaching of publicists. The chapter explores the changing ways in which international law is being made today, including the expanding role played by international organizations, transnational networks of government regulators, and nonstate actors—both multinational corporations and nonprofit groups. Finally, there is a section on soft law, or nonbinding rules that nevertheless seek to establish international norms.

Chapter 3 considers the relationship between international and domestic legal systems, with a particular focus on the U.S. legal system. It begins by considering the general question of how international law can relate to—and be incorporated into—a domestic legal system. It then turns to the United States and explores the scope of the U.S. treaty power and the circumstances under which treaties are enforceable by private parties in U.S. courts. It considers the foreign relations powers of the national government more generally, and the constitutional law that governs interactions between Congress and the President in foreign relations. This includes consideration of modes of making international agreements other than Article II treaties and issues related to the exercise of presidential powers in the context of the post–September 11 response to terrorism. The chapter discusses the status of customary international law in U.S. courts, with particular emphasis on the use of such law in international human rights litigation under the Alien Tort Statute. The chapter concludes by examining the role of the individual U.S. states in foreign relations and the circumstances under which their foreign relations activities will be deemed to be preempted.

Chapter 4 examines the major, distinctive means by which international disputes are settled. It starts with the process of international negotiation, turns to the International Court of Justice (ICJ), and then analyzes the growing role of regional and specialized courts (focusing on the Court of Justice of the European Union as an example of the former and the Dispute Settlement Body of the World Trade Organization as an example of the latter). We also address the increasingly important role of international arbitration, especially investor-state arbitration. Finally, there is a section on the role of domestic courts and the enforcement of foreign court judgments.

Chapter 5 defines the “state” and introduces some of the consequences of statehood, including the principles of state responsibility. We examine the role of recognition by other countries on the question of statehood as well as the separate question of recognition of governments. This chapter also considers international organizations as subjects of international law, including issues related to the capacities and responsibilities of such organizations. It addresses the structure and functions of a number of key illustrative international organizations, including the United Nations (the most significant global international organization), the World Trade Organization (an important functional organization), and the European Union (the most developed regional organization).

Chapter 6 examines the various international bases for a state to make its law applicable to persons and conduct within and outside its territory (jurisdiction to
prescribe) and the evolving international rules purporting to limit the extraterritorial application of law. We investigate as well the rules governing efforts at extraterritorial enforcement and adjudication. For comparison purposes, the chapter concludes with a section that considers briefly the principles governing choice of law in private disputes.

Chapter 7 considers the immunities that states have from suit in the domestic courts of other states, focusing especially on the immunity provided for in the U.S. Foreign Sovereign Immunities Act. We also consider the foreign sovereignty immunity rules applied by other states. The chapter additionally considers international law relating to diplomatic immunity of diplomats and consular officials as well as the rules governing the immunity of heads of state. Finally, the chapter discusses the “act of state doctrine,” a common law doctrine applied by U.S. courts that limits their examination of actions by foreign governments.

Chapter 8 considers the limitations on the state’s treatment of individuals within its territory. It begins with traditional rules protecting aliens and alien property, a discussion that invites consideration of principles of attribution under the law of state responsibility. The chapter then turns to the more expansive modern international human rights law rules that protect a state’s own citizens from mistreatment at the hands of their government. Among other things, the chapter discusses some of the most important human rights treaties and institutions, considers customary international human rights law, looks at the history of U.S. involvement in international human rights treaty regimes, and examines the burgeoning system of regional human rights law and institutions.

Chapter 9 deals with the international law of the sea. It focuses primarily on the key principles and rules in the Law of the Sea Convention, which came into force in 1994 and has been adopted by almost all the major countries of the world, except for the United States (though the United States has accepted many of the Convention’s provisions as customary international law). It outlines key issues like the nationality and status of vessels, the delimitation and breadth of the territorial sea, and the breadth and legal rights and duties associated with the contiguous zone and the exclusive economic zone. The chapter also examines the decision of an arbitral tribunal established under the Law of the Sea Convention addressing China’s maritime claims to waters in the South China Sea enclosed by its so-called “nine-dash line,” and the status of certain objects in the South China Sea claimed by China as giving rise to its maritime zone claims.

Chapter 10 introduces the international legal regimes covering environmental matters. It begins with customary international law principles and “soft law” norms in this field and then describes how these rules are being rapidly supplemented by detailed multilateral treaty regimes. The chapter addresses the international legal response to two environmental challenges in particular: first, the relatively successful international effort to deal with ozone depletion through the Montreal Protocol and related agreements, and second, the continuing struggle to respond to climate change via the U.N. Framework Convention on Climate Change and subsequent treaties, including the Paris Agreement adopted in 2015.

Chapter 11 explores international law regarding the use of force. After introductory historical materials, the chapter examines the justifications for the use of force that emerged after World War II, especially the legal norms in the U.N. Charter. The chapter in this regard first considers when states may permissibly use
force without external authorization. Among the circumstances considered are self-defense (including anticipatory self-defense), the use of force to counter terrorism, and humanitarian intervention. The chapter next addresses the use of force pursuant to the collective security powers of the U.N. Security Council, including peacekeeping and peace enforcement operations such as those following Iraq’s 1990 invasion of Kuwait and the 2011 response to abuses against civilians in Libya. (The chapter also examines the contested 2003 U.S.-led invasion of Iraq.) A section on international humanitarian law (the law that deals with the conduct of war) includes materials on the Geneva Conventions of 1949 and the 1977 Additional Protocols. There is also a section on international efforts to combat the proliferation of weapons of mass destruction, with a focus on the nuclear proliferation challenges presented by North Korea and Iran. A brief concluding section on U.S. domestic law governing the allocation of powers regarding the conduct of war (notably the War Powers Resolution) follows.

Chapter 12 on international criminal law begins with a brief look at international cooperation by states to counter transnational crime. It then explores principles of individual responsibility under international law initially elaborated at the Nuremberg trial and defines the main substantive international offenses including genocide, crimes against humanity, war crimes (grave breaches of the Geneva Conventions), torture, and certain terrorism-related offenses. The final section explores the institutional arrangements for prosecuting international crimes, including domestic courts, international tribunals, and mixed or “hybrid” courts. This section includes a detailed look at the International Criminal Court and some of the legal controversies associated with it. The chapter concludes with a brief examination of some alternatives to prosecuting international crimes, such as amnesty and truth commissions.

While the materials in each chapter include key excerpts of important documents, the texts or excerpts of many basic documents—including major international treaties, excerpts from the U.S. Constitution and key U.S. statutes, and important United Nations resolutions—are provided in a separate Documentary Supplement.

In short, our approach is a blend of the traditional and the new. It should provide the basis for a rigorous course in the dynamic subject of international law.

For this Seventh Edition, Mr. Weiner was primarily responsible for the revisions and updates in Chapters 1C, 2B-F, 4, 8, 10, 11, and 12. Mr. Hollis was primarily responsible for changes in Chapter 1A-B, 1D, 2A, 3, 5, 6, 7, and 9. This edition has benefited greatly from frequent communication between the two active co-authors, with each making contributions and comments on the other’s chapters.

Our efforts on this Seventh Edition were helped considerably by the comments received from many people who have used the earlier editions—faculty, students, and others. As before, we very much welcome your comments on this edition.

Allen S. Weiner
Duncan B. Hollis
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Previous Editions

Barry Carter and Phillip Trimble originally conceived this casebook and co-authored the first three editions. After Mr. Trimble left academia in 2001, he chose just to comment on the Fourth Edition and did not work on any subsequent editions. Curtis Bradley was an active co-author for the Fourth Edition.

I joined the project and was Mr. Carter’s active co-author for the Fifth and Sixth Editions. He and I worked closely and collaboratively on those two editions before his untimely passing. Mr. Hollis has now joined me as co-author of this Seventh Edition.

Allen S. Weiner

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