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INTERNATIONAL LAW:
CASES, PROBLEMS,
AND TEXTS

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Dedication

To my students, past, present, and future, from whom I never stop learning
— Stephen McCaffrey

To the memories of my professors and mentors: Iain MacGibbon, Frank Newman, Richard Lillich, and Stefan Riesenfeld, and the living example of Thomas Buergenthal
— Dinah Shelton

To my parents: Joanne Bunnell and Anthony J. Cerone, Sr.
— John Cerone
Preface

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THE STATE OF THE WORLD

What is the role of international law in the life of the average person, assuming such a being can be identified? What do international lawyers do? An answer to either of these questions necessitates glancing at the modern world and considering the range of human activities that transcend the territory of a single state.
Preface

Over the centuries, the transnational dimension of social interaction has vastly increased, to the point where almost no topic remains entirely and exclusively regulated by domestic law. Even such typically local matters as succession and child custody are now the subject of multilateral treaties. All of a nation’s problems, from reducing violence and abuses of power, to countering criminal conduct, to protecting the most vulnerable members of society, have a global aspect.

Much of this internationalization is the result of technological change, from high speed aircraft to the communications revolution. Economic globalization, so evident in the latter part of the 20th century, had its counterparts in earlier periods, with the coming of the industrial revolution and the invention of the telephone, telegraph, and radio. In the middle of the 20th century, the development of rockets enabled activities in outer space that were previously unthinkable (except in the minds of writers like Jules Verne and H.G. Wells) and hence were unregulated.

The following paragraphs point out some of the realities that govern life at the beginning of the 21st century. They provide only a snapshot, but they illustrate many of the topics that are and must be of concern to international lawyers, policy-makers, and concerned citizens as they look to the future world in which their children and grandchildren will live.

The Planet: From space, the main feature of the earth is the division between land and water. About one-third of the earth is land, but only slightly more than 13% of that is arable. Mountains, deserts, lakes, and rivers are visible, as are some cities and a few human constructions, like the Great Wall of China. Storms can be observed, along with clouds and other indications of climate. Boundaries, borders, and other signs of political divisions are invisible.

Natural Resources: Freshwater is less than 3% of the total water on earth, with much of it frozen in ice. The Great Lakes of North America constitute about 20% of the earth’s available fresh water. There are 261 international rivers, covering 45.3% of the land-surface of the earth (excluding Antarctica). Twenty-one nations lie entirely within international river basins. Nineteen basins are shared by five or more riparian countries: the Danube has 17 riparian nations; five basins — the Congo, Niger, Nile, Rhine, and Zambezi — are shared between 9 and 11 countries; and 13 others — the Amazon, Ganges-Brahmaputra-Meghna, Lake Chad, Tarim, Aral Sea, Jordan, Kura-Araks, Mekong, Tigris-Euphrates, Volga, La Plata, Neman, and Vistula (Wista) — have between five and eight riparian countries. The great mountain ranges are also shared by states: the Rocky Mountains, the Himalayas, the Alps, the Carpathians, and the Andes among them. There are 1.75 million named and described species of life. Biological resources, like mineral resources, are unevenly distributed. 1.4% of the planet’s terrestrial environment harbors more than 44% of all plants and 35% of mammals, birds, reptiles, and amphibians, but coral reefs, not tropical rain forests, are the most biologically rich ecosystems on earth. An estimated 40% of the global economy is based on these biological products and processes, but about 24% (1,130) of mammals and 12% (1,183) of bird species are currently regarded as globally threatened.

People: There are approximately 6.6 billion people in the world. More than one-third of all people are located in just two countries: China, as of 2008, is estimated to have 1,329,311,149 inhabitants and India slightly fewer, 1,146,407,701. In contrast, 824 people are citizens of Vatican City. Population density varies enormously, from Monaco’s 16,754 per square kilometer to Greenland’s 0.03 per square kilometer. Over two-thirds of the world’s 800 million illiterate adults are found in only eight countries (India, China, Bangladesh, Pakistan, Nigeria, Ethiopia, Indonesia, and Egypt); two-thirds of all illiterate adults are women. In India, the death rate for children ages one to five is 50% higher for girls than for boys. Over 2.6 billion people, or about half the global population, live on less than two dollars a day and one billion survive on less than a dollar a day. The number of people living on less than two dollars a day in Central and Eastern Europe and the Commonwealth of Independent States rose from 23 million in 1990 to 93 million in 2001, or from 5 to 20%. In 2003, 18
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countries with a combined population of 460 million people registered lower scores on the human development index (HDI) than they did in 1990. Nearly two million children every year do not live to see their fifth birthday.

Political facts: There are 192 United Nations Member States and two entities, Taiwan and the Vatican City, which carry on international relations but are not UN members. States range in size from Russia, with its 6,592,735 square miles, to Vatican City, which is 0.17 square mile. Independence is claimed by secession movements in numerous states, including Georgia, Russia, Turkey, Sri Lanka, the Philippines, and Serbia. Since 1990, the share of the world’s countries with multiparty electoral systems that meet wider criteria for democracy has risen from 39 to 55%, representing an increase of 1.4 billion people living under multiparty democracy. More than two-thirds of Africans now live in countries with democratic multiparty election systems.

Economics: Luxembourg and Lichtenstein have the highest per capita Gross Domestic Product (GDP), at over $100,000 (estimated in 2008), compared to Burundi and Zimbabwe, at less than $125 per capita annually. Twenty percent of the world’s population lives in developed nations, where they consume 86% of the world’s goods. The GDP of the poorest 48 nations is less than the combined wealth ($180 billion) of the world’s three richest people. The world’s richest 500 individuals have a combined income greater than that of the poorest 416 million people. Forty percent of the world’s population accounts for 5% of global income. The richest 10% accounts for 54%. The world’s 1025 billionaires in 2008 registered a combined wealth of $4.4 trillion, compared to the combined GDP of all the nations of Sub-Saharan Africa ($630 billion). Approximately 790 million people in the developing world are chronically undernourished, almost two-thirds of whom reside in Asia and the Pacific. Some 1.1 billion people in developing countries have inadequate access to water, and 2.6 billion people lack basic sanitation.

Trade: World merchandise exports accounted for $10.2 trillion in 2005 and commercial services exports amounted to $2.4 trillion the same year. The value of global trade in 2005 was two-and-a-half times the amount during 1990. Exports account for more than one-quarter of world income and more than one-third of income in Sub-Saharan Africa. The 350 largest transnational corporations account for almost 40% of the world’s merchandise trade. In 2007, McDonald’s had 14,000 restaurants in the United States and 17,000 in 117 other countries. Ninety percent of the 1000 restaurants it planned to open in 2008 were located outside the United States. Individual products are increasingly of multinational origin. General Motors gearboxes are assembled in Mexico, radiator caps come from plants in Chennai, India, and upholstery from suppliers in Indonesia, using materials imported from China. Boeing’s 777 jet aircraft is assembled in Boeing’s plant in Everett, Washington, from a fuselage made in Japan, wingtips coming from Korea, rudders from Australia, dorsal fins from Brazil, the main landing gear from Canada and France, and flight computers from the United Kingdom. Manufacturing of the Microsoft Xbox takes place in a Taiwanese company, but the Intel processors come from any of 11 production sites, including China, Costa Rica, Malaysia, and the Philippines. Graphics processors are manufactured by a U.S. company at a plant in Taiwan. The hard drive is assembled in China from components produced in Ireland. The DVD-ROM is manufactured in Indonesia. Final assembly takes place in China.

Currency: Average daily global turnover in foreign exchange market transactions totaled $3.21 trillion in June 2008. This was more than 10 times the size of the combined daily turnover on all the world’s equity markets. Foreign exchange trading increased by 38% between April 2005 and April 2006 and more than doubled since 2001. Going further back, in the 1970s, foreign exchange markets handled between $10 and $20 billion daily. Cross-border trade in U.S. Treasury bonds is over $500 billion a year. International bank lending increased from $265 billion in 1975 to $4.2 trillion in 1994.

Transportation: In 1927, Charles Lindberg took 33 hours to fly solo across the Atlantic Ocean. In
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2008, some 22,000 commercial flights a month took 5 to 10 hours between the United States and Europe. According to the World Travel and Tourism Council, tourism and its related economic activities generate 11% of Global Domestic Product, employ 200 million people, and transport nearly 700 million international travelers per year. This figure is expected to double by 2020. Tourism also represents one of the top five exports for 83% of all countries and is the main source of foreign currency for 38% of countries. Between 1980 and 1996, international travel more than doubled, from 260 million persons to 590 million.

Communications: International telephone calls increased from 33 billion minutes in 1990 to 183 billion minutes in 2006. Between 1960 and 1990, the cost of processing information fell from $75 per million operations to less than one-hundredth of a cent. The cost of a three-minute telephone call from New York to London was $245 in 1930 (using 1990 dollars), $50 in 1960, $3 in 1990 and $0.35 in 1999. Trade in cultural communications (literature, music, cinema, radio, and television) almost tripled between 1980 and 1991, from $67 billion to $200 billion. The largest U.S. export industry is entertainment, and more than 50% of revenues for Hollywood films come from overseas. An estimated 70% of films shown in Europe in 1987 came from the U.S.. Between 1980 and 1996, it is estimated that the number of television sets in the world grew from 550 million to 1.4 billion in 1996, with Asia showing the highest growth from 100 million to 650 million. Sales of multimedia industries reached $110 billion in 1993.

Natural Disasters and Public Health: Some 260 million people were affected by climate disasters between 2000 and 2004, more than 89% of them located in developing countries. In 2004, the Asian tsunami killed more than 300,000 people. However, the HIV/AIDS pandemic has inflicted the single greatest reversal in recent human development. In 2003, the pandemic claimed three million lives and left another five million people infected, orphaning millions of children. Botswana has suffered a decline in life expectancy of 31 years, while in Zambia life expectancy has fallen by 14 years since the mid-1980s. Diseases transmitted through water or human waste are the second leading cause of death among children worldwide, after respiratory tract infection. The overall death toll is an estimated 3,900 children every day. Vaccine preventable illnesses — like measles, diphtheria, and tetanus — account for another 2 to 3 million childhood deaths. Drug-resistant tuberculosis, malaria, dengue fever, Ebola, and other diseases are spreading with increased human movements and changes in the environment.

Crime: Financially, the most important international criminal activities are: drug and human trafficking, illicit arms trade, stolen art and artifacts, illegal wildlife trade, and dumping of hazardous or toxic products and waste. But according to UN crime statistics, the single-most reported crime in the world is rape, although financial (currency counterfeiting and money laundering) and high-tech crimes are increasing. Just one international investment fraud case involved more than 2,000 victims from 60 countries. They were defrauded a total of approximately US $200 million. Cooperative transnational law enforcement is increasing: On Thursday, September 3, 1998, law enforcement agents in 32 U.S. cities and Australia, Austria, Belgium, Finland, France, Germany, Italy, the Netherlands, Norway, Portugal, Spain, and Sweden raided the homes of suspected internet child pornographers. The Interpol database on child victims holds more than 550,000 images, a 400% increase since its creation in 2001. The database on stolen art logged in more than 400 new cases in 2005 involving close to 1,850 items. In total, the stolen art database contained more than 28,500 records from 112 countries. Interpol's automated database known as the International DNA Gateway contains over 55,000 records from 41 countries. In December 2005, Interpol created the Interpol-United Nations Security Council Special Notice for individuals associated with Al Qaeda and the Taliban, as listed by the “1267 Committee” of the UN Security Council and subject to the freezing of assets, travel bans, and arms embargoes.
Conflict: There have been some 127 internal and international wars since the end of World War II. Since 1990, more than three million people have died in armed conflict and about 25 million people remain internally displaced because of conflict or human rights violations. The Rwandan genocide in 1994 killed almost one million people. The civil war in the Democratic Republic of the Congo has killed some 7% of the population. In Sudan a two-decade-long civil war between the north and the south claimed more than two million lives and displaced six million people. Infectious disease, hunger, and environmental degradation remain far deadlier than armed conflict but each of them is both a cause and an effect of violent conflict. Of the 32 countries in the low human development category as measured by the UN’s Human Development Index, 22 have experienced conflict at some point during the past 15 years, including 9 of the 10 at the bottom. Small arms claim more than 500,000 lives a year, the majority of them in the world’s poorest countries. More lawyers are involved: during the 1991 Gulf War, the U.S. army deployed some 200 lawyers to the Gulf region. The first reservists called up were six lawyers of the 46th International Law Detachment.

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