International Conflict Resolution Processes

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Contents

Preface

The issue of whether international law is really law has long dominated both scholarly and practical conversations about the efficacy of law and international legal institutions. This book was written to explore how international conflicts and disputes are actually handled, managed, and sometimes resolved with combinations of law and legal principles, but also political, diplomatic, and economic factors, used with a number of different processes that involve law, as well as human, social, political, and other sources of actions. The materials here take a socio-legal approach to international, cross-border conflicts and disputes so that law students, lawyers, diplomats, and public officials can learn how to utilize a wide variety of potential avenues for dispute resolution. We call this concept of multiple possible choices process pluralism. We examine different bodies of international law, but also look at international relations, political theory, political economy, and geopolitical approaches to understanding human conflicts. We look at conflicts over materiel and resources, as well as identity, ethnicity ,and economic investment and the newer forms of aspirations for human rights recognition. In short, as we study conflict and war, we search for more effective ways to achieve and sustain peace for all of humankind.

In our legal field it is common to think of legal issues as "disputes" to be handled in courts (adjudication) or as "cases" to be managed through negotiation or mediation, resulting in decisions, treaties, or awards (arbitration). In the broader field of conflict resolution, disputes are situated within contexts, often spanning many years, many borders, different cultures, different kinds of parties (private and public), and even different legal systems (civil, common law, mixed systems). Moreover, they operate at many different layers of legal action—international diplomacy, international public legal institutions, private international institutions and processes, hybrid processes (e.g., state-private investors, individual vs. state human rights), and regional as well as international and local or "municipal" (domestic) processes and institutions. Without a real "World Court" at the top of a vertical hierarchy of legal institutions, international disputes are actually conducted through many different kinds of processes—negotiation, mediation, arbitration, adjudication, hybrids of these, and newer forms of reckoning and restitution, e.g., transitional justice and truth and reconciliation commissions, among others.

Modern dispute resolution can occur in person or online or electronically, both facilitating or hindering human understanding and recognition. New ideas for both human cooperation, but sadly also human competition and harm (see our chapter

on "wicked problems" in international relations), are explored here as we seek both systematic and one-off solutions to seemingly intractable problems (e.g., the environment, the Middle East, resource allocations, poverty, health, cyberattacks, etc.).

The materials here have been developed over fifteen years of teaching in over twenty-five different countries as we have sought to flesh out how international law and diplomacy is actually practiced in the world. Both of us have been negotiation, mediation, and arbitration scholars and practitioners for decades. We have worked in many countries and taught students and professionals on virtually every continent. We wrote this book to provide both theory and practical instruction in how international conflict resolution is practiced in both public law and private commercial settings. We provide excerpts of theory, practice, illustrative examples of international disputes and conflicts, actual decisions, opinions, treaties, awards, and problems for students to reflect on. Notes and questions follow each section for students to engage actively with the material. A prior course in public international law might be desirable but is not necessary, as would a prior course in general dispute resolution or procedure. Students no longer need documentary supplements—they can follow along on their laptops with appropriate websites and documents of relevant legal materials.

The teacher's manual, available with this text, provides ideas for instruction, including role-plays and simulations, and suggestions for how to respond to the questions asked. We also provide many references to relevant films, videos, and other supplementary material. We have successfully used this material both in the United States and in many other countries where the study of law is both undergraduate (as a first degree) and graduate or professional education.

Our goal in writing this book is to share a belief that "one size will not fit all"—be that litigation, diplomacy, or war. Different kinds of matters (dyadic private international commercial disputes and multi-lateral cooperation agreements on the environment, cross border family disputes, migration, trade and economic development, and individual and group violence and harm) require different kinds of processes for management, handling, and resolution. New forms of conflict are developing every day (cybercrime), and new forms of cooperation are also developing (dispute system design, online dispute resolution, artificial intelligence, crowdsourcing).

We are peacemakers in our work and personal lives, and we hope this book will inspire a new generation to think creatively about how to solve problems and contribute to the education of more international (and domestic) peacemakers.

Let us know what you think.

In peace,

Carrie Menkel-Meadow
Andrea Kupfer Schneider

Acknowledgments

This book began when one of us was the Faculty Director and Professor at the Centre for Transnational Legal Studies in London (a joint program of Georgetown Law School and fifteen other law faculties, with students from all over the world). Most law students were busy studying legal texts, doctrines, treaties, codes, treatises, books, and articles and had little to no idea about how international law was actually practiced. The CTLS program introduced, through a Global Practice Exercise (written by one of the co-authors here), engagement of students in international practice (using private commercial arbitration, public law legal argument, human rights proceedings, environmental and anti-proliferation of weapons treaty negotiations, and international criminal matters). In subsequent years, both Georgetown Law Center (through the initiative of then Dean Alex Aleinikoff) and the University of California, Irvine, founded as a new law school in 2008, required some form of international law instruction in the first year of law school, for which one of the co-authors here wrote several experiential teaching exercises.

Since that time these materials were further developed and honed in courses taught in the United States, Singapore, Italy, France, Germany, Israel, the United Kingdom, Argentina, Chile, Paraguay, Costa Rica, Nicaragua, Belgium, China, Hong Kong, Canada, Mexico, Australia, and Switzerland, among others. Students utilizing these materials have competed in international competitions in negotiation, mediation, arbitration, and international adjudication (e.g., Jessup). Faculty at a number of law schools have used these materials to develop more participatory and experiential methods of instruction in their otherwise more conventional courses, so we hope we have contributed to the growing diversification of legal pedagogy throughout the world.

We are indebted to and grateful for Carol McGeehan who brought us to Carolina Academic Press where we have been well edited by Ryland Bowman and TJ Smithers, among others.

Carrie thanks her research assistants on this project, Celine Gruaz and Alexandra Cadena, who were wonderful students in the International Dispute Resolution course which first tested these materials; her faculty assistant who solved many problems along the way, Maria Gonzalez De Toro; and UCI librarians extraordinaire Dianna Sahhar and Jeff Latta. She especially thanks her many international colleagues who have worked with her on many courses, conferences, and legal matters in different countries and invited her to teach in many of the world's greatest law schools—Sil-

via Faerman, Orna Rabinovitz-Einy, Moti Moroni, Oran Gayzal, Katherine Lynch, Alain Verbeke, Hugo Rojas, Ana Silva, Carlos Silva, Carlos Ruffinelli, Loukas Mistelis, Maxi Scherer, Rutger Metsch, Remy Gerbay, Victor Ramraj, Naomi Creutzfeldt, Horst Eindmuller, Linda Mulcahy, Jeff Waincymer, Franz Werro, Ulrike Schultz, Avrom Scher, Eleanor Myers, Joel Lee, Pierre Tercier, Michael Freeman (deceased), Michael Palmer, Maria Moscati, Marion Roberts, Chiara Besso, Leticia Coppo, Chris Honeyman, Amy Cohen, and others. Merci, gracias, toda raba, obrigada, danke, grazie, and more. Much of the final work and editing on this book was completed when Carrie was resident at Oxford's Centre for Socio-legal Studies, and she thanks Linda Mulcahy and Florian Grisel for great hospitality, and the graduate students at the Centre for brilliant conversations and tea in troubled times—keeping me internationally and peace focused with large dollops of political theory argumentation! The University of California's generous sabbatical and leave policies has allowed sufficient time for both the production of this book and residencies in other places to test it out. Her ten years of teaching our first year required course (no longer required) in International Legal Analysis, with its curious first year students, inspired much of the instructional focus of this book. At UC Irvine, the Center for Global Peace and Conflict Resolution Studies has provided a helpful venue for presentation of some of the chapters, case studies, and ideas developed here.

Finally, without Robert Meadow, linguist and political scientist extraordinaire, none of this would have been possible. Traveling the physical world and the world of ideas for over fifty years has been Carrie's great joy.

Andrea is grateful for years of support at Marquette University Law School to first teach international conflict resolution in general and then make it a "traveling" course that, over the years, visited European courts, Israel, Cuba, and Ireland. Each year and each course brought new challenges and insights into how these many processes worked—and did not work—in creating peace around the world. She looks forward to more trips in the future with Cardozo law students. The many students who have traveled with her were inspirational in motivating research, writing, and yet more teaching in this field. To April Kutz, Morgan Henson, and Margaret Spring from Marquette Law School and Emily Glazier and Samantha Harberg from Cardozo School of Law—she is grateful for all of their help in pulling together these materials.

Andrea also thanks her extended family for being "dragged" on trips to conflict zones—to Belfast, to Sarajevo, all over Israel—to do field research and advance planning for her student trips. Mixing education and tourism has always been a joy for her.

We both thank Scott Goodman for tireless and detailed work on our permissions and making sure we are set to publish!

We want to especially thank each other for a collaboration that is now over twenty years old on many textbooks, conferences, and joint activities that has united us in friendship and in seeking a more peaceful world, together. Collaboration is a beautiful

thing—proving that two heads are better than one, and that we always learn something when working with someone else.

We hope you, readers, will also learn well with others, and make the world a better, more peaceful place.

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