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Understanding International Law

THIRD EDITION

Stephen C. McCaffrey

CAROL OLSON ENDOWED PROFESSOR OF INTERNATIONAL LAW
UNIVERSITY OF THE PACIFIC
MCGEORGE SCHOOL OF LAW



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Preface

As with the previous editions, this book is intended for the newcomer to international law—whether law student, lawyer or judge, layperson or undergraduate—not the specialist. It attempts to explain in plain English what international law is, why it exists, and the basic subjects it covers. In this sense the title of the book is, I hope, appropriate.

The book deals with the law governing the relations between the countries of the world. This body of law has developed over the centuries through the practice of states, as countries are called in the parlance of international law. States treat this law as having binding force. They benefit from it, and expect other states to follow it. This is even true when the benefit of a rule is indirect, or enjoyed by the international community as a whole, as in the case of the rule prohibiting genocide, rules protecting human rights, and the rules making up international humanitarian law.

As I tell my students, international law is similar to domestic law in the broad scope of its coverage: there are international-law counterparts to most of the domestic-law subjects studied in law school. It is thus difficult to do the subject justice within the compass of a three-hour course or a small volume such as this one. I have attempted to address this issue by focusing in the present volume on how law is made and functions in the international community, and on the basic subjects of international law. An understanding of these matters should equip the reader to delve into other areas of interest in the field.

While emphasizing these basic issues and subjects, the book attempts to at least touch upon topics of current relevance, such as terrorism, international criminal law, the use and applicability of international law in United States courts, and the law governing the use of military force. This coverage is intended as an introduction only; the interested reader is encouraged to pursue sources discussing these issues in greater depth.

The Law of Treaties is given particular attention, chiefly because of the increasing importance of the treaty in international life. The number of treaties has mushroomed since the Second World War and many of these agreements include over 100 states as parties. Because of their number and the breadth of their coverage, treaties are thus the main form of international legislation. But since they are also contractual in character, and since many multilateral treaties allow states to place conditions on their acceptance of them, the law governing treaties is necessarily more complex than if they were the exact equivalent of national legislation or contracts.

This third edition comprehensively updates all of the book's chapters, adds a new chapter (Chapter 10) on International Criminal Law, and provides new text where appropriate.

I hope the book will prove helpful in understanding international law, and I welcome readers' comments on it.

Stephen C. McCaffrey

March, 2020

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About the Author

Stephen McCaffrey teaches Public International Law at the University of the Pacific, McGeorge School of Law. He was a member of the U.N. International Law Commission (ILC) for 10 years (1982–1991), chaired the Commission’s Thirty-Ninth Session (1987–1988) and was special rapporteur for the ILC’s work on the Law of the Non-Navigational Uses of International Watercourses (1985–1991). He has served as Counselor on International Law in the State Department, as counsel in a number of cases before the International Court of Justice and international arbitral tribunals, and regularly advises governments and international organizations.

Glossary

The following are explanations of certain terms that one often encounters in international law. They are offered for the assistance of the reader and are not intended to be precise definitions or translations.

erga omnes—toward all; obligations *erga omnes* are those owed to all.

jus ad bellum—the rules of international law concerning the right to go to war or to use force.

jus cogens—a peremptory norm of general, or customary, international law.

lex ferenda (or *de lege ferenda*)—law as it ought to be; law in the process of formation.

jus in bello—the law applicable during armed conflict.

lex specialis (or *generalia specialibus non derogant*)—a principle of interpretation according to which a specific law or provision prevails over a general one.

lex lata—law as it is; positive law.

pacta sunt servanda—treaties are binding on the parties and must be performed in good faith.

municipal law—national or domestic law.

pacta tertiis nec nocent nec prosunt or simply *pacta tertiis*—a treaty creates neither rights nor obligations for a third state (i.e., a state that is not a party to the treaty) without its consent.

travaux préparatoires—preparatory work; “legislative history” relating to a treaty.

uti possidetis iuris—the principle that colonial boundaries will not be disturbed after former colonies achieve independence.

