

Contents

Note: The page numbers below refer to the published volume. Page numbers in the internet version may differ widely.

Foreword by Richard A. Falk v

Preface xi

Table of Contents xv

Part One: THE SETTING

1. Introduction 3

 The Need for a Theory of Custom 3

 The Possibility of a Theory of Custom 10

2. The Context and Functions of Custom 21

 The International Law Context 21

 Determining the Context of International Law 33

 Custom as a Secondary Rule of Law Determination 41

Part Two: THE THEORY OF CUSTOM

3. The Search for Custom: Traditional Views 47

 Material and Psychological Elements 47

 Quantitative Analysis: Usage 56

 Quantitative Analysis: *Opinio Juris* 66

4. A Reformulation of the Theory of Custom 73

 The Qualitative Element: Articulation 74

 The Qualitative Element: Act or Commitment, 87

 The Role of Protest 98

5. Treaties and Custom 103

 Parametric Considerations 105

 Judicial Decisions 113

 Examples from State Practice 128

 Opinions of Writers 138

 Theoretical Considerations, 149

Part Three: THE AUTHORITATIVENESS OF THE RESORT TO CUSTOM IN INTERNATIONAL CONFLICT SITUATIONS

- 6. Basic Factors 169
 - The Concept of Authoritativeness 169
 - Factors of Initiative and Imitation 172
 - The Alleged Countervailing Pressure of Freedom of State Action 177
- 7. Reinforcing Factors 187
 - Consent 187
 - Estoppel 199
 - Reasonableness 215

Part Four: SPECIAL PROBLEMS

- 8. The Concept of Special Custom 233
 - The Two Kinds of Custom 234
 - The Bifurcation of Custom in Early Civil And Common Law 237
 - Special Custom in International Law 246
- 9. Sources and Evidences of Law 264
- 10. Conclusion 269

Selected Bibliography 275

Index 283