

## A COURSEBOOK IN INTERNATIONAL LAW

### INTRODUCTION

This coursebook, and its companion volume *International Law Anthology*, together comprise a complete set of teaching materials for a comprehensive and intellectually challenging law school course in international law. There is no need for additional or supplementary materials, such as a "documents" supplement, because conventions and treaties are reproduced in the coursebook at the points in which they are relevant.

Readings from the companion volume, *International Law Anthology*, are incorporated by reference throughout this coursebook. In addition, this coursebook consists of primary materials (cases and treaties), supplementary notes, and a substantial number of provocative questions that should stimulate useful classroom discussion.

The coursebook harkens back to an old philosophy about teaching materials for a course in public international law—it gets down to basics. The old casebooks did that. But about thirty years ago, casebooks in international law started expanding uncontrollably. Each new edition contained huge accretions of stultifying detail. Many of the casebooks on the market today are tangible proof of the adage that you can miss the forest for the trees. They often leave the student with the oversaturated feeling of having had to learn more than he or she ever wanted to know about international law.

In contrast, the present coursebook ought to leave the student with a feeling of having learned a lot less than he or she wanted to know about international law. Its purpose is to open a door to a lifetime of additional study and contemplation about the major legal issues in the world.

International law is a wonderfully cohesive system of norms that has evolved over centuries. In this course we will study its history, its evolution, its nineteenth century focus on the state, its twentieth century focus on the individual, its sources, and its institutions. These topics all fit together; they are not separate autonomous chapters (as some coursebooks treat them). In the present coursebook you will find the chapters connected to each other and succeeding each other in logical progression. The aim here is to provide the student with a sense of the interconnectivity of international law and an ability to take an argument that arose out of one context and apply it to a wholly different context. This ability to argue across subject areas is the result of the classical holism of our subject, a holism that is the product of the best legal minds concerned with the most important problems facing nations and societies over many centuries.

Like an old-fashioned "Great Books" course where you actually read the books instead of reading commentaries about the books, this coursebook takes a "Great Cases" approach. It digs deeply into a few leading cases rather than skimming over snippets of thousands of cases. When well-argued cases are presented at generous length, they come alive for the student. One gets the feel of an exciting battle—often a war—that was fought in the courtroom. Dissenting opinions sometimes surprise the reader with relevant facts that the majority of the court failed to mention, and with persuasive contentions that don't seem to go away despite their immediate lack of success in persuading the majority of the court in the case at hand. These contentions may surface in some new case in the future, perhaps in a case argued by today's student of international law.

What is not old-fashioned about this coursebook is that it is user-friendly. The numerous questions enable the student to enter into a mental dialogue with the cases, treaties, and readings from the Anthology. True learning takes place when the student works out his or her own answers to the questions; the next day's classroom discussion then serves as a check on what the student has worked out, and a guide toward a better approach to working out the next day's questions. By the end of the course, students will have acquired some expertise in problem-solving. Nothing can be more important in one's legal education than becoming an expert in solving problems. Law itself is nothing other than a formal mechanism invented by people to help solve problems. While most law school courses deal with solving problems that arise in a single nation, our subject deals with problems that arise among nations.

International law is one of the liveliest, most exciting, most important, most jurisprudential, most challenging courses in the law school curriculum. The labor of love that has gone into compiling this coursebook and its companion Anthology will be repaid each time international law is discovered anew by a student, and doubly repaid if this course becomes a visa for embarking upon a world-class profession.

### A NOTE ON ORGANIZATION

The reader may wonder why this coursebook does not slavishly follow the order of presentation of the accompanying Anthology. The reason is that the Anthology was organized in order to present its contents in the

most universally accessible manner for any reader using it for any purpose. In contrast, the purpose of the present coursebook is pedagogical only. The subject matter of international law is presented here according to the organizational dynamics of classroom teaching, with the overall progression going from analysis to synthesis.

### A NOTE ON SYLLABUS

This coursebook and its accompanying Anthology contain more material than can be fitted into a three-hour one-semester course in international law. Thus there will probably be a need for some selectivity in making assignments.

If selection is required, there is perhaps an irreducible minimum that needs to be covered, namely, chapters 1 through 5, 7 and 8. Some professors may also regard chapter 11 (international law in U.S. courts) as essential, and others may justifiably say that one cannot omit international criminal law (chapter 6) from an international law course. In any event, if at the end of the semester some students complain that the materials were not covered in their entirety, take it as a compliment for an exciting course!

### Acknowledgments

I would like to thank, first of all, my students at Northwestern who used these materials in pre-publication form in the course in International Law given in the spring semester of 1994: Stephanie Accongio, Jeff Ahmadian, Glenn Andreas, Craig Babbitt, Derrick Brent, Jason Chung, Karen Clanton, Amanda Clayman, Magda El Guindi-Rosenbaum, Andrew Everset, Alysia Faulkner, Markus Funk, Roberta Garcia-Isaza, Melissa Gerardi, Joshua Goldman, Kristin Graham, Ellen Head, Marcus Heyder, Kevin Jack, James Jardin, Katrin Knudsen, David Lamb, Jonathan Lonner, Peter McCabe, Susan McKeever, Meredith Monaco, John Moynihan, Christy Noland, Kevin Young Joo Pak, David Perlson, Eric Phillips, Melissa Polich, Daniel Pombo, Hillary Post, Kimberly Prince, Heather Rosing, Monica Santiago, Daniel Schwartz, Juie Sherman, Mikhaal Shoaib, Thomas Snook, Christopher Waack, Naima Walker, David Weigert, and Shinwon Yoon. They graciously put up with the occasional procedure of my revising the materials as we went along. They also had to endure the uncertainty that results from not having a complete copy of the course materials in hand at the beginning of the course; instead, chapters and installments were handed out as the semester progressed. There were times when the students almost caught up to my ongoing preparation of the materials; if they had done so, I would have been left with nothing to teach. But we managed to muddle through and, at the end, it was by all student accounts an unusually successful course.

I owe a special debt of gratitude to one of the students in the course, Meredith Monaco, who served as my research assistant in the summer of 1994 and helped me prepare the materials for publication. I would also like to thank my superb secretary, Martin Glynn.

I'd like to repeat the thanks to the contributors to *International Law Anthology* and say to them: Your essays seemed even better and more persuasive to me in rereading them for my class in international law than they originally seemed when I asked you for permission to include them in the Anthology.

Finally, let me say that it has been a pleasure working with the good people at Anderson Publishing Company. If there is something old-fashioned about the coursebook, there's also something old-fashioned about Anderson's work ethic.

### A CONCLUDING QUOTE

“It is better to debate a question without settling it than to settle a question without debating it.”

—Joseph Joubert