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A Review of International Human Rights: Problems of Law, Policy and Practice

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BOOK REVIEWS

A Review of INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW, POLICY AND PRACTICE Second Edition, by Richard B. Lillich. Boston, Massachusetts; Little, Brown and Company, 1991, Pp. 1062, $44.00; together with INTERNATIONAL HUMAN RIGHTS: DOCUMENTARY SUPPLEMENT, Boston, Massachusetts; Little, Brown and Company. 1991. Pp. 197. $8.95.

REVIEWED BY STEPHEN P. MARKS*

BEFORE the Second World War, human rights was neither a topic for domestic legal studies nor a component of international legal studies. With the place accorded to human rights in the United Nations Charter, and in bilateral and multilateral treaties, the subject began to occupy a respectable—albeit minor—place in public international law. As Professor Henkin has written, "[t]he political internationalization of human rights . . . led to a new, rich field of international law."[1] International human rights law consequently emerged as a subject of legitimate legal scholarship and, through courses at the Hague Academy of International Law and in law schools in the United States and abroad, as a suitable topic for specific courses. In 1973, the first major collection of cases and materials was published under the joint editorship of Professors Louis Sohn and Thomas Buergenthal.[2] It was a weighty tome of some fourteen hundred pages, plus a supplementary volume of documents. It had the indisputable merit of showing that international human rights constituted a serious body of law and practice.

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1. LOUIS HENKIN, INTERNATIONAL LAW: POLITICS, VALUES AND FUNCTIONS 221 (1990).

2. INTERNATIONAL PROTECTION OF HUMAN RIGHTS (Louis Sohn & Thomas Buergenthal eds., 1973).

In 1979 Professors Richard Lillich and Frank Newman teamed up to produce a streamlined and pedagogically manageable course book.[3] It was written in the heyday of the Carter Administration's human rights foreign policy. The ensuing decade saw human rights occupy a growing and often critical role in international affairs and foreign policy. The second edition of this work is therefore a welcome event.[4] This edition is edited by Lillich alone.[5]

The book, slightly more than one thousand pages in length, is organized, like the first edition, around twelve problems with accompanying materials, designed to explore, in the words of the editor, "the relevant principles, procedures, policies, and potentialities for protecting human rights through the international legal process."[6] This claim is well-founded, as is the claim that the problems "raise some of the most difficult and troublesome issues confronting the international community, especially the United States . . . ."[7] Indeed, torture, ethnic conflict, atrocities committed during armed conflict and other painful realities of today are studied as issues of both international law and of U.S. foreign relations law.

The statement of the problem in each chapter is practically unchanged from the previous edition.[8] The principal changes are in the fact situations addressed. The previous edition opened with the case of the execution of alleged spies in Iraq,[9] which was used to explore

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3. RICHARD B. LILLICH & FRANK C. NEWMAN, INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW AND POLICY (1973).

4. INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW, POLICY AND PRACTICE (Richard B. Lillich ed., 2d ed. 1991). Richard B. Lillich, the Howard W. Smith Professor of Law at the University of Virginia School of Law, is, among many distinctions, the President of the Procedural Aspects of International Law Institute and founder of the International Human Rights Law Group. The second edition by Lillich appeared after the publication of the casebook edited by Frank. C. Newman and David Weissbrodt mentioned in note 5 *infra*. Sohn and Buergenthal are currently updating their case book with Professor Theodore Meron while Professors Tom Farer and Philip Alston are at work on what will be the fourth recent case book in the field.

5. This updated edition began as a joint effort by the same partnership. However, Newman became involved with his former student, Professor David Weissbrodt, in the preparation of a course book that came out a few months ahead of Lillich's second edition. *See* FRANK NEWMAN & DAVID WEISSBRODT, INTERNATIONAL HUMAN RIGHTS: POLICY AND PROCESS (1991). Lillich warmly and graciously acknowledges Justice Newman's role as "a good friend, colleague, and co-worker in the international human rights law field." INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW, POLICY AND PRACTICE at x. (Richard B. Lillich ed., 2d ed. 1991)

6. *Id.* at ix.

7. *Id.*.

8. The word "nation" is dropped in favor of "state" in problems I, II and III. *Id.* at 16-164; Problem X, is expanded from "Achieving Respect for Human Rights in Armed Conflicts," to "Respect for Human Rights in Armed Conflict, Civil Strife, and States of Emergency" (Human Rights in Extremis). *Id.* at 766. Some minor wording changes occur in Problems V and XII. *Id.* at 308, 938.

9. LILLICH, *supra* note 3, at 16.

the legal obligations of the human rights clauses of the U.N. Charter; the new edition uses the expulsion of Asians from Uganda to introduce this problem.[10] In the previous edition, Problem III, dealing with human rights treaty obligations other than those of the U.N. Charter, concentrated on the International Convention on the Elimination of All Forms of Racial Discrimination,[11] whereas the new edition uses the *Suriname* case before the Human Rights Committee[12] and the application of the International Covenant on Civil and Political Rights.[13] Problem V on fact-finding, abandons the case of Chile[14] in favor of a broad range of countries and themes investigated by the U.N.[15] The thematic reporting procedures relate to torture,[16] discrimination based on religion or belief,[17] and summary or arbitrary executions.[18] Problem IX on regional case law substitutes *The Soering* case of the European Court of Human Rights[19] and *The Velasquez Rodriguez* case of the Inter-American Court of Human Rights[20] for two European cases (The *Golder* case[21] and the *Ireland v. U.K.* case[22]) in the previous edition. Finally, Problem X is expanded from the focus on the *My Lai* prosecutions in the first edition[23] to a much broader treatment of armed conflict and emergency situations.[24]

The set of problems in the second edition is almost entirely devoted to United Nations law and practice. The U.N. does indeed occupy a central place in the international law of human rights. Problems II and XII raise examples of domestic case law and foreign policy,[25] while Problem IX offers examples of regional case law.[26] Judicially, most legal decision-making based on international human rights law occurs through the domestic and regional courts and commissions, which can only be touched upon in these chapters.[27] The book can

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10. LILLICH, *supra* note 4, at 16.
11. LILLICH, *supra* note 3, at 135.
12. LILLICH, *supra* note 4, at 165.
13. *Id.* at 170.
14. LILLICH, *supra* note 3, at 263-266.
15. The country investigations include Cuba, Chile, Iran, Afghanistan, and Suriname. LILLICH, *supra* note 4, at 309.
16. *Id.* at 329.
17. *Id.* at 332.
18. *Id.* at 333.
19. *Id.* at 690.
20. *Id.* at 752.
21. LILLICH, *supra* note 3, at 563.
22. *Id.* at 589.
23. *Id.* at 666.
24. LILLICH, *supra* note 4, at 766.
25. *Id.* at 86, 938.
26. *Id.* at 638.
27. *Id.* at 93-97, 103-110.

only give limited attention to comparative domestic law applying international human rights[28] and can only mention the specialized agencies of the U.N.[29] Choices inevitably have to be made between completeness and clarity and those made by Lillich are sound ones.

When the first edition was conceived, the human rights organs of the U.N. system, including quasi-judicial treaty monitoring bodies, were to a large extent political in approach and marginal in impact. Nevertheless, this book demonstrates the legal importance of four decades of work within the U.N. system both to formulate norms and to seek new ways to ensure their application. Furthermore, it gives students a basis for assessing the prospects for an enhanced role of the organization, particularly in the new political context of the post-Cold War era.

The general introduction wisely provides extracts from a single text by John Humphrey, who directed the U.N.'s human rights division in the early years that condenses a complex legal and institutional background into a few well written pages.[30] The remainder of the book explores three sets of problems that are pedagogically linked.

The first set focuses on the normative basis of the U.N. human rights regime. Is human rights law really law? The answer to this question requires the examination of the legal nature of the U.N. Charter's human rights provisions in international law,[31] and their applicability by U.S. courts.[32] This first set of problems then turns to U.N. treaty law[33] and model domestic laws based on U.N. standards.[34]

The second set of problems deals with the means used by the United Nations to induce compliance with the norms explored in the first set of problems. These include fact-finding,[35] petition procedures,[36] sanctions short of force[37] and the use of armed force for human rights purposes.[38]

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28. *Id.* at 91-117.

29. *Id.* at 50, 382, 428-429, 432.

30. *Id.* at 1-13.

31. Problem I draws on excellent writings by Sieghart, Robertson, Farer, Brierly, Schachter and Schwelb. *Id.* at 32-33, 33, 33-35, 37-39, 40-45, 48-53.

32. Problem II draws on Schachter, Hudson, Wright, Kunz and Schwelb with appropriate case law. *Id.* at 91-97, 100-103, 103-109, 117-121, 121-126.

33. Problem III draws on Bilder, Henkin, Robertson, Marks, Leckie and Shelton. *Id.* at 173-174, 176-178, 180-183, 183-184, 190-191, 194-198.

34. Problem IV focuses on the Standard Minimum Rules for the Treatment of Prisoners and writings by Besharov and Mueller, Skoler, Toman, Rodley, and Heijder. *Id.* at 253, 242-252, 268-278, 291-292, 292-293, 293-295.

35. Problem V contains writings by Robertson, Ermacora, Thoolen & Verstappen, Ramcharan, Weissbrodt and several U.N. rapporteurs. *Id.* at 312-316, 327-328, 344-347, 363-367, 336.

36. Problem VI contains writings by Parson, Carey, Lillich, Teltsch, Newman, Tolley and Farer. *Id.* at 376-382, 383-386, 386-388, 403-404, 413-415, 415-428, 435-437.

37. Problem VII draws on writings by McDougal & Reisman, Lillich, Davidow, Strack,

The third set of problems concerns what I would call alternative human rights regimes: the regional regime,[39] the regime of international humanitarian law,[40] the regime of criminal law,[41] and that of the foreign policy process.[42]

There is a compelling pedagogical logic to this sequence from norms to procedures to regimes. It is important in teaching international human rights to deal forthrightly with the matter of the existence of binding law. It is equally important to distinguish, without unduly complicating matters, basic procedures operating internationally. Norms remain abstract, unless accompanied by effective procedures to induce compliance; procedures may be inaccessible, manipulated or ineffective unless linked to community expectations based on the rule of law. The impact of law on society depends on the effectiveness of what the political scientist calls regimes and what lawyers call legal process, namely, the combination of law and procedures in ways that induce compliance. By moving from norms and procedures to regimes, this book does more than provide a tool for teaching about international human rights; it helps the student understand what law is, in an area in which the legal nature and effectiveness of normative activity is often challenged.

Another pedagogical advantage of the work is that the fact situations lend themselves to discussion, role-playing and other dynamic teaching methods. The comments and questions are informative and challenging. Complex and controversial points of doctrine are often explained in concise, clear language, as illustrated by the following passage from the comment after the problem concerning humanitarian intervention:

> This Problem raises questions about the contemporary relevance of the traditional doctrines of humanitarian intervention and forcible

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Losman, Renwick, Auglin, Doxey and Baldwin. *Id.* at 453-459, 501-509, 522-525, 525-526, 526-528, 528-531, 531-532, 532-541.

38. Problem VIII draws on writings by Fonteyne, Brownlie, Lillich, Rodley, Teson, Bowett, Schachter and Shannon. *Id.* at 577-587, 588-595, 595-606, 610, 611-612, 617-622, 627-630, 636-637.

39. Problem IX contains an overview by Weston, Lukes, and Hnatt and articles on the Inter-American system by Farer and Buergenthal. *Id.* at 640, 731-739, 739-751.

40. Problem X draws on writings by Draper, Baxter, Roberts, Aldrich, Smith, Meron, Junod, Weissbrodt, Buergenthal and Beatty. *Id.* at 774-778, 809-816, 816-819, 819-822, 830-831, 831-832, 839- 841, 842-846, 849-851, 860-863.

41. Problem XI draws on writings by Bridge, Mueller, Pella, Wright, Wise, Bassiouni and Carey. *Id.* at 867-882, 882-886, 886-890, 890-894, 894-896, 896-900, 930-933.

42. Problem XII contains writings by Lillich, Vance, Carter, Hoffmann, Kissinger, Derian, de Onis, Evans & Novak, Reagan, DeYoung & Krause, Rockefeller, Schumacher, Lewis, Rosenblum, Buchwald, Baker, Miller, Shestack, Abrams, Schifter and Schell. *Id.* at 952-953, 955-960, 960-961, 965-966, 966-972, 972-977, 978-979, 979-980, 980-981, 981-987, 991, 991-993, 993-995, 995-997, 997-998, 1001-1002, 1007-1010, 1025-1028, 1031-1034, 1034-1040, 1043-1044.

> self-help to protect nationals. Note the fundamental difference between State A's intervention in State B to protect the latter's nationals from their own government (*e.g.*, Bangladesh) and its intervention to protect its own nationals (*e.g.*, Entebbe). The latter doctrine is really based on diplomatic protection carried to its furthest reach, protection legally justified as an exercise of the right of self-defense under Article 51 of the UN Charter.[43]

Nor does the editor hesitate to express personal opinions in the comments. For example, after presenting an extract from the *Sei Fujii* case, in which the California Supreme Court rejected the lower court's position that a discriminatory law violated U.S. obligations under the U.N. Charter, Lillich mocks the Court's assertion that the law was "clear". He points out that it "ignored both Supreme Court precedents on self-executing treaties in general and scholarly views on whether the Charter's human rights clauses were self-executing in particular."[44] This and other firm positions are reasonable and add a degree of *engagement*, which is appropriate in this field. Editors of case books on international human rights law tend to share the essential premises of most activists, namely, that human rights law is a part of international law to be taken seriously; that states, including the United States, should ratify human rights treaties and incorporate them into municipal law; that domestic courts should apply this law; that positions taken by political, judicial and quasi-judicial organs of international organizations are significant; and that human rights should be a major foreign policy concern. Lillich is a strong advocate of these positions. Lawyers, government officials and diplomats who do not share these positions may be found in Lillich's book.

I said above that the book has a U.N. bias, which I find justified. It also has a Western male bias, which is less justified. There are practically no female authors[45] or non-Western authors.[46] There is a rich literature on international human rights law to which this book gives an excellent introduction. However, not only have women contributed significantly to the field[47] but feminist thinking has challenged some

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43. *Id.* at 633.

44. *Id.* at 113.

45. Exceptions include an article on the implementation of U.S. policy by Patricia Derian, who was Assistant Secretary of State for Human Rights and Humanitarian Affairs under Carter, explaining the implementation of U.S. policy, *id.* at 972-980, and one by Professor Dinah Shelton. *Id.* at 194-198.

46. Exceptions include several extracts from writings by Berthie Ramcharan, *id.* at 363-367, 848, a two-and-a-half-page extract by Chhangani from THE INDIAN J. OF INT'L LAW on the expulsion of Ugandan Asians, *id.* at 60-62, and a quote from Umozurike on the Tanzanian intervention, within a comment. *Id.* at 75.

47. Writings by Rosylin Higgins, Suzanne Bastide, Lori Damrosch, and Diane Orentlicher come to mind.

approaches of international human rights scholarship and action.[48] While law in general and international law in particular are properly bending to listen to a diversity of voices, one would expect international human rights law to be in the forefront, if for no other reason than because women's rights have always been part of international human rights and the very concept of universal human rights presupposes respect for a diversity of cultures and languages. Lillich's book is perhaps an accurate reflection of scholarly writing published in the legal literature in the United States. We must await other case books and writers[49] to provide the gender and ethnic diversity I hope the field will acquire in coming years. For now, the second edition of *International Human Rights: Problems of Law, Policy and Practice* is an excellent teaching tool, which I recommend for law school courses on the subject.

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48. *See generally* Hilary Charlesworth et al., *Feminist Approaches To International Law*, 85 AM. J. INT'L LAW. 613 (1991) (review of feminist perspectives on international law). For feminist views of international human rights law, see Helen B. Holmes, *A Feminist Analysis of the Universal Declaration of Human Rights, in* BEYOND DOMINATION: NEW PERSPECTIVES ON WOMEN AND PHILOSOPHY 250 (Carol C. Gould ed., 1983); Andrew Byrnes, Can the Categories Fit the Crimes? The Possibilities for a Feminist Transformation of International Human Rights Law (paper delivered at Conference on International Human Rights and Feminism, New York, Nov. 18, 1988); Jessica Neuwirth, *Towards a Gender-Based Approach to Human Rights Violations*, 9 WHITTLER L. REV. 399 (1987); Charlotte Bunch, *Women's Rights as Human Rights: Toward a Re-vision of Human Rights*, 12 HUM. RTS. Q. 486 (1990).

49. In the late seventies, Unesco published a collective work designed for teaching purposes, which had thirteen authors from a well-balanced geographical range, although only one was female. Originally published in French, KAREL VASAK, LES DIMENSIONS INTERNATIONALES DES DROITS DE L'HOMME, (1978), versions were later published in English, INTERNATIONAL DIMENSIONS OF HUMAN RIGHTS (Karel Vasak & Philip Alston eds., 1982), as well as Portuguese, Spanish and Japanese. Having been involved in the preparation of that volume and having later used it for teaching purposes, I find it more valuable as a reference work than as a course book. Meron edited a two volume work designed for teaching that had a collective authorship, several authors being non-American. *See* HUMAN RIGHTS IN INTERNATIONAL LAW: LEGAL AND POLICY ISSUES (Theodor Meron ed., 1984).

A Review of INTERNATIONAL LAW By Barry E. Carter and Phillip R. Trimble. Boston, Massachusetts; Little, Brown and Company, 1991, Pp. 1444, $46.95; together with INTERNATIONAL LAW: SELECTED DOCUMENTS, Boston, Massachusetts; Little, Brown and Company. 1991. Pp. 788. $19.95.

REVIEWED BY DANIEL T. MURPHY*

WITH the publication of *International Law,*[1] Professors Carter and Trimble have provided a most welcome addition to the array of materials available for the teaching of public international law. It is the first totally new entrant into this area in over ten years.[2] The work is in the traditional casebook format.[3] A cursory glance at its table of contents would reveal that the work follows the fairly typical progression, beginning with the hoary eternal question of whether international law is law, its sources, subjects, and effects, and then moving on to the treatment of several areas of substantive international law. From this cursory review one might conclude that the authors' exposition of the corpus of public international law is likewise very traditional. Such a conclusion however, would be unwarranted.

In the preface, the authors set forth several objectives of the text.[4] In addition to the obvious aim of introducing students to the fascinating, and sometimes amorphous, principles of international law, the authors seek to emphasize the processes by which such law is made and applied through extensive treatment of the supporting institutions and systems for dispute resolution. Also, they wish to highlight the increased intersection or blurring of public international law and pri-

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1. BARRY E. CARTER & PHILLIP R. TRIMBLE, INTERNATIONAL LAW (1991).

2. Several other widely used sets of public international law teaching materials have recently been revised. *See, e.g.,* LOUIS HENKIN ET AL., INTERNATIONAL LAW, (2d. ed. 1987); HENRY J. STEINER ET AL., TRANSNATIONAL LEGAL PROBLEMS (3d. ed. 1986); J. SWEENEY ET AL., THE INTERNATIONAL LEGAL SYSTEM (3d. ed. 1988); and BURNS H. WESTON ET AL., INTERNATIONAL LAW AND WORLD ORDER (2d. ed. 1990).

3. Prior to its publication, the most recent set of teaching materials was the provocative problem based course book of Weston, Falk and D'Amato. *Supra* note 2.

4. CARTER & TRIMBLE, *supra* note 1, at xl-xlii.

vate law, and international law and municipal law. The work certainly well sets forth principles of international law. But the orientation of the text is the emphasis on the increasing relevance of international law in domestic law and private law contexts. This orientation is perhaps one of the text's greatest strengths.

The authors state that the work is intended for an introductory course of two to five credit semester hours. They use the work in three semester hour courses.[5] To me personally, the twelve chapters[6] and over 1400 pages were a daunting volume of material, and I was not able to maintain the suggested schedule. The text includes extensive materials regarding both the procedural aspects of international law, and the application of international law and its substantive provisions. The final chapters deal with more discrete areas of substantive international law; state responsibility and human rights, law of the sea, the law of space and aviation, environmental law, and use of force. Following the author's suggestion,[7] I selected from among the chapters. Perhaps ironically, I chose to leave out many of the chapters dealing with substantive principles.

Most chapters begin with an extremely well written introductory note which places that chapter's material in context, and forms a very useful framework for discussion. Also, a set of notes and questions follow each major topic within the chapter. These too are excellent mediums for fostering discussion and offer real life application of some of the more abstract material. Through these notes and questions the work nicely bridges the gulf between the traditional case book which offers breadth of coverage and completeness, perhaps at the expense of reality, and the problem method book which may sacrifice coverage for application of principles.

The issues within the chapters are treated with the usual array of cases, excerpts from treatises and articles, together with relevant statutory and treaty provisions and frequent reference to the relevant provisions of the *Restatement (Third)*.[8] The standard cases are employed;

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5. Teachers' Manual to INTERNATIONAL LAW, at v-xii.

6. The twelve chapters are captioned: 1. What is International Law?; 2. Treaties and Customary International Law; 3. International Law in the United States; 4. International Dispute Resolution; 5. States and Other Major International Entities; 6. Foreign Sovereign Immunity and the Act of State Doctrine; 7. Allocation of Legal Authority Among States; 8. State Responsibility—Injuries to Aliens and International Human Rights; 9. The Law of the Sea; 10. The Law Governing Airspace, Aviation and Outer Space; 11. International Environmental Law; and 12. Use of Force and Arms Control.

7. The authors note that they intentionally included more material than one can reasonably cover in a three semester hour course, thereby providing a full range of material form which the instructor may select. Teachers Manual to INTERNATIONAL LAW, at v.

8. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES (1987).

but in addition, numerous other cases are set forth which are seen less often. From the perspective of an instructor, it is refreshing to have new and different cases presented. For the most part the cases seem well edited to include the portions relevant to the topic.

A documentary supplement of over 700 pages accompanies the text in which the materials are grouped to follow the chapters in the text. This source provides a compendium of major international agreements together with some bi-lateral treaties and statutes. The text itself contains large excerpts from these same documents. Classroom discussion can thus take place with or without reference to the supplement.

In the first chapter, dealing with definitions and the reality of international law, several different perspectives are offered. Excerpts from the writings of Professors Henkin[9] and Brierly[10] are juxtaposed with those of Professors Chen[11] and one of the authors, Professor Trimble.[12] Following these excerpts are extensive materials on the Iran Hostage crisis as a setting of international law in action.

Chapter Two discusses treaty and customary law. Although the chapter intends to introduce students to the two most important sources of international law, the materials do not deal with them as such. In particular, the treatment of treaties is quite detailed. It is more an exposition of the substantive law of treaties than the usual discussion of the law-creating aspects of treaties for the signatories and perhaps non-parties.[13] There is extensive treatment of the Vienna Convention[14] and a number of subsidiary issues treated therein, including the invalidity of treaties, *jus cogens*, interpretations of treaties, reservations, and breaches. In contrast, the chapter's treatment of custom as a source of international law follows a fairly typical format. There is some emphasis on the law making capacity of international organizations, particularly the United Nations General Assembly.

Chapters Three, Four, Five, and Seven are among the more distinctive elements of the work. In these chapters, the processes and procedures of international law and its integration with municipal law and private law are emphasized. At the conclusion of consideration of

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9. LOUIS HENKIN, HOW NATIONS BEHAVE 3 (2d ed. 1979).

10. JAMES L. BRIERLY, THE LAW OF NATIONS 49-56 (6th ed. 1965).

11. LUNG-CHU CHEN, AN INTRODUCTION TO CONTEMPORARY INTERNATIONAL LAW (1989).

12. Phillip R. Trimble, *International Law, World Order and Critical Legal Studies*, 42 STAN. L. REV. 811, 833-34 (1990).

13. *Compare*, HENKIN, *supra* note 2, at 35, 386.

14. Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1969, 1155 U.N.T.S. 331, U.N. Doc. A/CONF. 39/27 (entered into force January 27, 1980).

these chapters, students should have a fairly keen appreciation of the multiplicity of applications of international law and of its relevance in a variety of municipal law settings.

Chapter Three, titled "International Law in the United States" contains an extensive treatment of the various constitutional issues involving the treaty power and the relation of treaty and customary law to domestic law. The chapter treats these issues exclusively from the perspective of the United States. There is no discussion of the doctrine of incorporation as understood elsewhere.[15] Separately, Chapter Six offers a detailed exposition of the twin doctrines of foreign sovereign immunity and act of state, again almost exclusively from the United States perspective.

Chapter Four deals with the variety of international dispute resolution mechanisms and fora. After a brief exposition of how negotiation, mediation and conciliation function as dispute resolution mechanisms, the chapter focuses on the more structured third party fora. There follows treatment of the International Court of Justice and its jurisdiction, including extensive excerpts from the jurisdictional phase of *Nicaragua v. United States*[16] and its aftermath.[17] The Court of Justice of the European Communities is used as an example of regional international courts. Material is offered both on the structure and jurisdiction of the court as well as the sources of Community law and its relationship to national law.[18] Finally, there is extensive treatment of international arbitration. The arbitral process is considered, as well as the enforcement of arbitral awards,[19] and the role of domestic courts in applying international law and enforcing foreign judgements. In this context, there is a discussion of the relationship between municipal and international law in other legal systems.[20]

The treatment of states and other international entities in Chapter Five considers only briefly, the classic questions of statehood and recognition. Attention is given to some of the more anomalous situa-

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15. *Compare*, HENKIN, *supra* note 2, at 141-44 (and the numerous sources cited therein).

16. Military and Paramilitary Activities In and Against Nicaragua (Nicar. v. U.S.), 1984 I.C.J. 392.

17. CARTER & TRIMBLE, *supra* note 1 (Letter from George P. Schultz, U.S. Secretary of State, to the U.N. Secretary General, (Oct. 7, 1985)).

18. *See, e.g.*, CARTER & TRIMBLE *supra* note 1, at 317-26 (Text regarding Case 106/77, Amministrazione delle Finanze dello Stato v. Simmenthal, S.p.A., 1978 E.C.R. 629; and Case 26/62, Van Gen en Loos v. Nederlandse Administratieder Belastingen, 1963 E.C.R. 1. These issues could at least as readily have been included in Chapter Three, thereby making the presentation of the relationship between international law and municipal law more complete.).

19. *See*, Mitubishi Motor Corp. v. Soler, 473 U.S. 614 (1985); Parsons & Whittemore Overseas Co. v. Societe General de L'Industrie des Papier (RAKTKA), 508 F.2d 969 (1974).

20. Again, perhaps this material would fit better in Chapter Three.

tions, such as Taiwan and the PLO. Carter and Trimble provide an overview of the structure and workings of the United Nations, the International Monetary Fund (IMF) and World Bank, the General Agreement on Tariffs and Trade (GATT), the North Atlantic Treaty Organization (NATO), and the Organization of American States (OAS), as well as a much more detailed treatment of the structure and "constitution" of the European Community.

While it is common to discuss the bases of nation state jurisdiction,[21] the authors have done so quite extensively and differently from the treatment in other texts. In Chapter Five it is established that one of the characteristics of statehood is the ability to exercise jurisdiction within and outside its territory. Chapter Seven then examines the premise that international law is fundamentally concerned with the allocation of power and authority among nation states, and the limitations on such imposed by legal norms.

Following the methodology of the *Restatement (Third)*, the materials in Chapter Seven are grouped under the subheadings of "Jurisdiction to Prescribe Public Law" and "Jurisdiction to Enforce Public Law."[22] Within the prescriptive jurisdiction section, the five traditional bases for jurisdiction and promulgation of rules[23] are treated with cases and commentary. The materials demonstrate the potential for collision of jurisdiction, and explore the value of the balance of state interests in obtaining or exercising jurisdiction analysis as a means of ameliorating those collisions.[24] The section on jurisdiction to enforce treats such topical issues as extradition and abduction,[25] production of documents, and evidence.[26] Finally, there is an interesting section on international conflict of laws. Through this material the authors demonstrate that domestic courts determine which nation state may regulate private law matters, tort, contract, etc., by deciding under conflict of laws principles which nation's substantive law will be applied to resolve a controversy.[27]

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21. *See, e.g.*, HENKIN, *supra* note 2, at 820-891.

22. RESTATEMENT (THIRD), *supra* note 8, at 235 (Pt. IV, chs. 1, 2 & 3).

23. Territoriality, Effects, Nationality, Passive Personality, and Universality.

24. *See, e.g.*, McCulloch v. Sociedad National de Marineros de Honduras, 372 U.S. 10 (1963); United States v. Aluminum company of America, 148 F.2d 416 (2nd Cir. 1945); Timberlane Lumber Company v. Bank of America, 549 F.2d 597 (9th Cir. 1976); RESTATEMENT (THIRD), *supra* note 8, § 403. For an illustration of the continued importance of this subject, *see* K. Brasher, *Bush Plans Trade Policy Change Soon,* N.Y. Times, Mar. 11, 1992, at D6, Col. 1.

25. *E.g.*, Kerr v. Hilton, 699 F.2d 181 (4th Cir. 1983); United States v. Tosciano, 500 F.2d 267 (2d Cir. 1974).

26. *E.g.*, Marc Rich & Co. v. United States, 707 F.2d 663 (2d Cir.), *cert. denied*, 463 U.S. 1215 (1983); Societe Nationale Industrielle Aerospaciale v. United States Dist. Ct. for the S. Dist. of Iowa, 482 U.S. 522 (1987).

27. Pancotte v. Sociedad de Safaris de Mocambique, S.A.R.L., 422 F. Supp. 405 (N.D. Ill. 1976).

The remaining chapters treat substantive areas of public international law, and use fairly traditional format.

The discussion of international human rights in Chapter 9 emphasizes the various means of enforcement, through domestic courts[28] and national litigation,[29] as well as regional and United Nations enforcement.

In the final chapter on the use of force, extensive materials discuss the United Nations peace keeping effort through observer missions, and the military response to Iraq's invasion of Kuwait. Also, there is material on U.S. legislation, such as the War Powers Resolution,[30] and on arms control.

The text is one I look forward to using again for a variety of reasons. Obviously the inclusion of the most current available materials is an advantage. Beyond that, the text affords considerable flexibility, because of the breadth of coverage. It seems, more so than other texts, to be heavily weighted toward the United States and the position and materials here regarding the issues presented. While this may give a truncated perspective, it has a real advantage. By placing so much of the material in contexts familiar to them, and by providing much statutory and constitutional material that they may have encountered elsewhere, the text demonstrates to the students the real relevance of these international law issues in the domestic context. This is one of the authors objectives, and we all benefit from their success in accomplishing it.

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28. Filartiga v. Pena-Irala, 630 F.2d 876 (2d Cir. 1980); Tel-Oren v. Libyan Arab Republic, 726 F.2d 774 (D.C. Cir. 1984).

29. 22 U.S.C. § 262(d) (1989).

30. 50 U.S.C. §§ 1541-48 (1991).