

Customary International Law

A Comprehensive Study of State
Practice, *Opinio Juris*, and the
Legitimacy of Norm Formation

Charles Quince

Series in Law



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Table of Contents

Introduction	ix
Disclaimer	x
Chapter I	
The International and Geopolitical Systems	1
The International System and the International Legal System	3
Chapter II	
Article 38 of the Statute of the Permanent Court of International Justice	5
Historical Background	5
Analysis of the Committee	8
Doctrinal Interpretations	10
Chapter III	
State Consent and International Customary Law	13
Value-Oriented Customary International Law	13
The Need for State Consent	15
Consent and Compliance	15
The Legitimacy of Consent	17
Consent as a Protective Shield	18
The Theoretical Framework of State Consent	19
Analysis of Consensualist Theories	19
The Autolimitation Theory	19
The Theory of Collective Will	22
State Consent and the Legitimate Authority of Customary International Law	23
Challenges and Perplexities Concerning State Consent	24
Complications of State Consent	25
The Merits of State Consent	26
State Consent as a Barrier Against Domination	27
The Predictability of State Consent	27
State Consent and Status Equality	28

Chapter IV

State Practice	29
An Overview of National Digests and the Concept of State Practice	29
The Council of European Resolutions	29
Repertoire de la pratique française en matière de droit international public	30
Repertório of the Brazilian Practice of Public International Law	30
Swiss Directory of Public International Law	30
Italian Practice of International Law	31
The Digest of United States Practice of International Law	31
The Australian Yearbook of International Law	32
The Japanese Annual of International Law	32
The Canadian Yearbook of International Law	32
Documents on Swedish Foreign Policy	32
The South Africa Yearbook of International Law	33
The British Digest of International Law	33
An Examination of Case Law	33
Notable International Law Cases	34
<i>The Asylum Case</i>	34
<i>Right of Passage Case</i>	34
<i>US Nationals in Morocco</i>	34
<i>The North Sea Continental Shelf Cases</i>	34
<i>Nuclear Tests Case</i>	35
State Entities and the International Legal System	35
Evidence of Customary International Law	36
Role of Non-State Entities	37
State Responsibility and the Customary Process	37
Position of State Organs in the Customary Process	38
State Practice and <i>Opinio Juris</i>	38
Challenges to Broader Notions of State Practice	39
Claims and Declarations in State Practice	40
Physical Assertion vs. Claims	40
Limitations of Physical Assertion Emphasis	41
The Scope of International Practice and Types of Custom	43
Requirements for Different Types of Custom	43

General Custom and the Question of Generality	44
Binding Nature and Derogation from General Customary Rules	45
<i>Lex Specialis Derogat Legi Generali</i>	46
The Principle as a General Principle of Law	46
Practical Issues and Limitations	47
Universal and General Custom	48
Normative Enhancement of Customary Rules	49
Customary International Law: Formation and Objection	49
General Uniformity	49
Individual Consistency	51
Continuity and Repetition	52
The Persistent Objector: Historical Background	53
The Persistent Objector and Original Consent	55
Original Consent as a Foundation for Universalism	55
Original Consent Challenging the Persistent Objector	
Doctrine	56
The Problem of Foreseeability in Customary International	
Law	56
Treaties, Customary International Law, and the Persistent	
Objector	57
The Persistent Objector: Further Analysis	57
The <i>Fisheries</i> Case	58
The <i>Asylum</i> Case	59
Limitations of the Persistent Objector Doctrine	60
Case Studies: France and South Africa	61
The Role of General Acquiescence	61
Implications and Conclusions	62
Chapter V	
The Subjective Element	65
Theories Related to an Established Customary Rule	65
The Court and Case Law	65
1. The Subjective Element as a Belief in a Set of Legal	
Correlatives	65
2. The Subjective Element as a Belief in Legal Duty/	
Obligation	66
3. The Subjective Element as a Belief in a Legal Right	66

4. The Subjective Element as a Recognition of the Validity of a Rule in Conventional and Customary International Law	66
5. The Subjective Element as the Opinion on the Content of a Customary Rule	67
6. The Subjective Element as a Factor That Determines Legally Relevant Omissions	67
7. The Subjective Element as the Expression of Acceptance of a Customary Rule	67
8. The Subjective Element as a Recognition of a Customary Rule	68
Analysis of the Court's Formulations	68
Evolutionary Developments in Customary International Law	75
Theoretical Frameworks on the Subjective Element	75
Critical Analysis of Cheng's Examples	76
Alternative Perspective on Cheng's Framework	77
D'Amato's Claim-Oriented Perspective	77
Critiques of D'Amato's Theory	78
Thirlway's Perspective: <i>Opinio Necessitatis</i>	79
Social Necessity and the Law	79
The Pre-Existing Rule School	80
The Relationship between the Subjective Element and State Practice	81
The Subjective Element by Another Name?	81

Chapter VI

The Customary Process: A Theoretical and Practical

Examination	85
State Actions and the International System	85
Social Factors and State Behavior	85
Expectations	86
State Preferences and Interactions in International Relations	87
Preferences	87
The Role of Attributes in Interactions	87
Structural Effects	88
Differentiated Values for Behaviors	88
Decentralized Interactions	88
Behavior Determinants and the Formation of Rules	89

The Legal Influence of State Acts and Interactions	90
State Acts and Legal Relationships	91
The Concept of Legal Claims and the Customary Process	91
The Development of Legal Relationships	93
Negative Acts, Recognition, and Renunciation	94
Positive Acts, Recognition, and Renunciation	96
Types of Recognition and Adoption	96
1. Recognition without Adoption	96
2. Recognition with Adoption	97
Coordinated Recognition	98
Impediments to Legal Relationships	98
Requirements for Diplomatic Protests	99
Effectiveness of Diplomatic Protests	99
Countermeasures Beyond Protests	100
Compromises and Their Effects	100
Effects of the General State of the Law	101
International Organizations	102
Identification and Definition of Customary Rules	102
The Development of Customary Rules	107
The Codification and Development of International Law	110
The Importance of Law-Making Procedures	110
Codifying Conferences and Conventions	112

Chapter VII

The Development of Customary International Law and the Two-Hundred-Mile EEZ	113
Widespread and Consistent State Practice	113
The Package Deal Argument	115
Repetition of the Practice over a Considerable Time Period	116
<i>Opinio Juris</i>	117
Rejection and Acceptance	117
The Scope of the EEZ Concept in Customary International Law	119
National Practice	119
Recent Jurisprudence of the ICJ	120
The Exclusive Economic Zone and Customary International Law	123
The High Seas	124
Submarine Cables	126

The Regime of Islands	126
Landlocked and Geographically Disadvantaged States	126
Marine Pollution	127
Marine Scientific Research	128
Table of Cases	129
Endnotes by Chapter	131
Bibliography	167
Index	171

Introduction

Customary international law is one of the most recognized sources of international law. Its decline as a law-making mechanism has, to paraphrase Mark Twain, been greatly exaggerated.¹ The norm development efforts of the United Nations have facilitated the creation of customary law on the international level. However, the concept of customary international law is subject to controversial and complex debates that call for the need to examine it in great detail.

This study involves two central objectives:

1. To clarify the intricate nature that defines customary international law, addressing it both as a law-creating mechanism and as a perceptible body of international rules
2. To develop a methodology through which a custom norm can be identified

The first six chapters will analyze the following questions:

- What is the relationship between the international system as a whole and the international legal system, and how does the geo-political process influence this relationship?
- What is State consent and its function within the norm development process?
- What is *opinion juris sive necessitatis* and its capacity within the development of customary international law?
- What is the role of State practice, what entities of the State are represented by it, and what are the requirements for it?
- How does the development of custom function?

Scholars and commentators have discussed, at length, the queries that are posed above. However, an examination of the various debates and discourses on the customary doctrine leaves far too many questions than it does answers. As this study progresses, we will see how some studies show logical inconsistency, others misinterpret the interrelationship between State practice and inter-State relations, while others simply provide an incomplete analysis of the whole customary international law process.

How does this study fit within the paradigm of examining customary international law? First, it is by no means definitive, nor is it an exhaustive study of the subject at hand. I will attempt to address the theoretical difficulties associated with the concept of customary international law and see if they can

be resolved within the parameters of State practice. While this study seeks to provide tentative answers, it also seeks to raise other questions and debates for further examination.

Concerning methodology, this work consists of seven chapters:

- Chapter I explores the international and geopolitical systems
- Chapter II analyzes Article 38 of the Statute of the Permanent Court of International Justice
- Chapter III examines State consent
- Chapter IV covers State practice
- Chapter V investigates the subjective element of customary international law
- Chapter VI deals with the theoretical inner workings of the customary process
- Chapter VII covers the relationship between customary international law and the two-hundred-mile Exclusive Economic Zone

This methodology will not only show the uniqueness of the topics concerning customary international law but also how each topical subject is connected to the whole. This structure is designed to give a comprehensive review of the main issues regarding customary international law and may compel the reader to explore this complex subject further.

Disclaimer

Certain chapters in this book (Chapters 3, 4, 5, and 6) were edited using AI tools to assist with grammar and syntax correction. All final content has been reviewed by the author to ensure accuracy and consistency in tone and style.

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Index

A

Acquiescence, 25, 61, 95, 109, 117, 153, 159
Adoption (of legal claims), 97, 111
Anarchy (in international system), (see Geo-political systems)
Antelope, The case, 145
Arbitration, 11, 147
Asylum case, 43, 51, 59, 69, 147, 155
Attributes (in state interactions), 87
Australia, practice of, 35, 115, 137, 139, 153, 157, 165
Autolimitation theory, 19, 135

B

Bilateral customs, 43
Brazil, practice of, 133

C

Canada, practice of, 77, 121
Case law, 33, 57
Chile, practice of, 97, 121
Chronological law, 25, 63
Claim-oriented perspective, 77
Claims (legal), 91, 93, 95, 97, 99, 101
Codification, 103
Collective will theory, 23
Committee of Jurists, 11, 133
Consent, state, 3, 15, 17, 19, 21, 23, 25, 27, 47, 55, 57, 59, 63, 95, 137, 139, 141, 145
 As barrier against domination, 27
 As protective shield, (see pages on Consent)
 Challenges to, (see pages on Consent)

 Merits of, (see pages on Consent)

 Need for, 15, 17

 Original, 55, 57

 Relationship to treaties, (see Treaties)

 Theoretical framework of, 19, 23

Continental Shelf cases, 45, 83, 97, 117, 121, 123, 143, 147, 153, 155, 161, 165

Continuity (in state practice), 9, 53

Corfu Channel case, 121

Custom, 7-125 (passim)

 Bilateral, 43

 General, 43, 45, 47, 49, 61, 79, 117, 145, 161

 Regional, 43, 69

 Universal, 43, 49

Customary international law, 7-125 (passim)

 Definition of, (throughout main chapters)

 Development of, 103-125

 Formation and objection, 49-63

 Identification of, (throughout main chapters)

 Relationship to EEZ, 115-125

D

Decentralized interactions, 3

Delimitation, maritime, 51, 53, 95, 117, 121, 123, 153

Diplomatic protests, 39, 99

E

Effectiveness, concept of, 41, 99, 137, 149

Evolutionary principle, 55, 75, 89

Exclusive Economic Zone (EEZ), 115, 121, 123, 157, 159, 161

Development of, 115-125
 National practice of, 119, 121
 Recognition of, 117
 Rights of coastal states in, (see
 EEZ main entry)
 Scope of concept in customary
 law, 115-125

F

Falkland Islands, 87, 101
 Fisheries case, 41, 49, 51, 53, 59,
 61, 67, 93, 95, 101, 115, 117, 119,
 121, 141, 143, 147, 149, 151, 153,
 159
 France, practice of, 61, 133, 151,
 153

G

General acquiescence, 61
 General custom, 43, 45, 47, 49, 61,
 79, 117, 145, 161
 General principles of law, 7, 37,
 143
 Great Britain, practice of, 95
 Gulf of Maine case, 39, 51, 105, 121

H

High seas, 47, 115, 121, 123, 125,
 161, 163
 Historical background (of Article
 38), (see Committee of Jurists)
 Hudson, Manley O., 43, 155

I

Individual consistency, 51
 International Court of Justice
 (ICJ), 11, 143
 International Law Association,
 161
 International Law Commission,
 25, 35, 45, 81, 103, 107, 111, 137,
 141, 143, 149, 151, 161
 International organizations, 11,
 33, 107, 109
 Intertemporal law, 101

Italy, practice of, 133

J

Japan, practice of, 133, 165
 Joint Declarations, 35
 Jus cogens, 3, 21, 23, 45, 47, 49, 57,
 61, 83, 133, 143, 145
 Jus dispositivum, 93

L

Landlocked states, 161
 Lex specialis derogat legi generali,
 143
 Lotus case, 67, 141, 155

M

Marine environmental protection,
 127
 Marine pollution, 127
 Maritime delimitation, 121
 Minquiers and Ecrehos case, 41,
 99

N

National digests, 139
 Nicaragua case, 49, 67, 121, 123,
 147, 153, 163, 165
 North Sea Continental Shelf cases,
 39, 45, 53, 95, 117, 121, 123, 143,
 147, 149, 151, 153, 155
 Nottebohm case, 41, 43, 67
 Nuclear Tests case, 35, 153

O

Opinio juris, 15, 23, 25, 39, 67, 75,
 77, 79, 81, 83, 107, 109, 117, 155
 As an element of customary
 law, (see Opinio juris main
 entry)
 As belief in legal
 duty/obligation, (see Opinio
 juris main entry)
 Relationship to state practice,
 (see State practice)

P

Paquete Habana case, 55, 145
Persistent objector, 53, 55, 57, 61, 63, 145, 147
 Doctrine of, 53-63
 Historical background, 53, 55
 Limitations of, (see Persistent objector main entry)
Physical assertion, 41
Political expediency, 71
Pre-existing rule school, 81

R

Recognition, 9, 39, 41, 93, 95, 97, 99, 117, 153
 Of legal claims, 93, 95, 97
Regional custom, 43, 69
Renunciation, 95, 153
Repetition (in state practice), 9, 53
Right of Passage case, 43, 53, 73, 147, 149, 151, 153
Rome Statute, 135
Rousseau, Jean-Jacques, 151

S

Security Council, 15, 103, 135, 147
Self-determination, 37, 101, 103
Social necessity, 79, 83
South Africa, practice of, 33, 61, 143
Sovereign equality, 3
Sovereignty, 21, 23, 47, 63, 95, 99, 101, 103, 125, 153, 159
State practice, 11, 31-63, 81, 105, 109, 115, 117, 119, 139, 151
 Analysis of, 33-41
 Continuity and repetition in, 9, 53
 Individual consistency, 51
 National digests of, 139
 Relationship to subjective element, (see Subjective element)
 Widespread and consistent, (see Widespread practice)
Subjective element, 25, 67-83, 147, 151

 Analysis of, 67-83
 Relationship to state practice, (see State practice)
Submarine cables, 125, 165
Sweden, practice of, 115, 153, 157

T

Temple of Preah Vihear case, 159
Territorial sea, 99, 115, 121, 127, 161, 163
Thirlway's perspective, 79
Treaties, 11, 21, 25, 27, 31, 35, 57, 61, 107, 121, 137, 141, 143, 145, 149, 159
 Customary international law and, (see Treaties main entry)
 Relationship to EEZ, 121
Truman Proclamation, 77, 101
Turkey, practice of, 161

U

Uniformity, 49, 51, 53, 105
United Kingdom, practice of, 61, 95, 121, 141, 143, 149, 151, 153, 165
United Nations, 11, 17, 67, 103, 109, 123, 135, 141, 147, 151, 153, 155, 157
United States, practice of, 31, 55, 67, 77, 87, 93, 97, 101, 115, 121, 125, 133, 139, 143, 147, 157, 161, 163
Universal custom, 43, 49
US Nationals in Morocco case, 43, 53

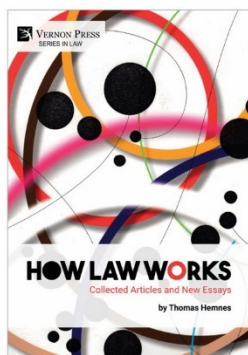
V

Venezuela, practice of, 11, 55, 161
Vienna Convention on the Law of Treaties, 3, 137, 143, 159

W

Widespread practice, 7, 9

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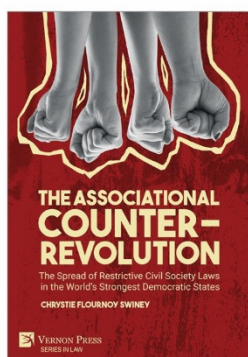
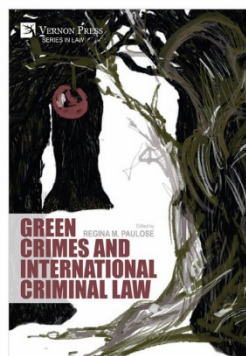
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