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The Changing Nature of Customary International Law Customary International Law in Times of Fundamental Change Customary International Law and Treaties Customary International Law Customary International Humanitarian Law The Discourse on Customary International Law The Theory, Practice and Interpretation of Customary International Law The Customary International Law of Human Rights International organisations, non-State actors, and the formation of customary international law Reexamining Customary International Law Custom, Power and the Power of Rules Global Customary International Law Index Does state behavior contrary to a rule of customary international law undermine the existence of that rule? The Formation and Identification of Rules of Customary International Law in International Investment Law The Rule of Unwritten International Law Customary International Law Ways and Means of Making the Evidence of Customary International Law More Readily Available Customary International Law in Times of Fundamental Change The Identification and Development of Customary International Law The Concept of Custom in International Law Developments in Customary International Law Custom's Future The European Union and Customary International Law The Status of Customary International Law, Treaties, Agreements and Semi-official Or Unofficial Agreements in Chinese Law Customary International Humanitarian Law: Volume 1, Rules The Rome Statute as Evidence of Customary International Law Realizing Utopia International Customary Law and Codification Identification of Customary International Law Judicial Practice, Customary International Criminal Law and Nullum Crimen Sine Lege How International Law Works Perspectives on the ICRC Study on Customary International Humanitarian Law Customary International Law and Treaties Unratified treaties as a source of customary international law The Precautionary Principle, Multilateral Treaties and the Formation of Customary International Law Global Customary International Law Index The Persistent Objector Rule in International Law Customary International Law and Treaties Ways and Means of Making the Evidence of Customary International Law More Readily Available The Individual and Customary International Law Formation

The International Committee of the Red Cross's study of Customary International Humanitarian Law by Jean-Marie Henckaerts and Louise Doswald-Beck (Cambridge University Press, 2005) contains a unique collection of evidence of the practice of States and non-State actors in the field of international humanitarian law, together with the authors' assessment of that practice and their compilation of rules of customary law based on that assessment. The study invites comment on its compilation of rules. Perspectives on the ICRC Study on Customary International Humanitarian Law was originally published in 2007, and results from a year-long examination of the study by a group of military lawyers, academics and practitioners, all with experience in international humanitarian law. The book discusses the study, its methodology and its rules and provides a critical analysis of them. It adds its own contribution to scholarship on the interpretation and application of international humanitarian law. Building on an empirical analysis of the jurisprudence of the International Court of Justice and the two ad hoc tribunals for ex-Yugoslavia and Rwanda, this book sheds new light on the development of custom as a source of international (criminal) law. Customary international law is a branch of international law based on the customary norm. The “International Court of Justice, jurists, the United Nations, and its member states” all regard custom as one of the fundamental sources of international law, alongside general principles of law and treaties. Many states acknowledge the presence of customary international law in theory, while there are conflicting views on what norms it contains. "Treaties, decisions of national and international courts, national law, views of national legal advisors, diplomatic communication, and practice of international institutions" were mentioned as kinds of proof of CIL by "the International Law Commission" in 1950. The Committee issued "Conclusions on the Identification of Customary International Law," together with commentary, in 2018. The "United Nations General Assembly" praised the findings and urged them to be widely disseminated. This analytical monograph is a technical work on the concept of customary international law. We have covered the concept of a Global Customary International Law Index. Traditionally, customary international law is a field in which how states behave and make decisions, the old traditional way is not left unaccounted. In the era of globalization (fourth stage), the purpose of CIL is declining or saturating. It does not anyways mean the end of customary international law – because the transformation of the rules-based international order clearly suggests that there is ample scope for assessing the way international law is widely accepted and put into judicious use by the international community and the ‘subjects’ of international law. This monograph is divided into 9 chapters with a list of references. We have even included an emerging concept in public and private international law, entitled as Soft Law, and have dedicated a special chapter to it. This work is a part of the series of Global Customary International Law Index, a research initiative by Global Law Assembly, the member-organization of Indic Pacific Legal Research LLP. Although customary international law has long been an important source of rights and obligations in international relations, there has been extensive debate in recent years about whether this body of law is equipped to address complex modern problems such as climate change, international terrorism, and global financial instability. In addition, there is growing uncertainty about how, precisely, international and domestic courts should identify rules of customary international law. Custom's Future seeks to address this uncertainty by providing a better understanding of how customary international law has developed over time, the way in which it is applied in practice, and the challenges that it faces going forward. Reflecting an interdisciplinary mix of historical, empirical, economic, philosophical, and doctrinal analysis, and containing chapters by leading international law experts, it will be of use to lawyers, judges, and researchers alike. Realizing Utopia is a collection of essays by a group of innovative international jurists. Its contributors reflect on some of the major legal problems facing the international community and analyse the inconsistencies or inadequacies of current law. They highlight the elements - even if minor, hidden, or emerging - that are likely to lead to future changes or improvements. Finally, they suggest how these elements can be developed, enhanced, and brought to fruition in the next two or three decades, with a view to achieving an improved architecture of world society or, at a minimum, to reshaping some major aspects of international dealings. Contributions to the book thus try to discern the potential, in the present legal construct of world society, that might one day be brought to light in a better world. As the impact of international law on national legal orders continues to increase, this volume takes stock of how far international law has come and how it should continue to develop. The work features an impressive list of contributors, including many of the leading authorities on international law and several judges of the International Court of Justice. Customary international law is one of the principal sources of public international law. Although its existence is uncontroversial, until now the content of customary international law in the area of human rights has not been analyzed in a comprehensive manner. This book, from one of international law's foremost scholars and practitioners, provides an unparalleled account of the customary international law of human rights. It discusses the emergence of this customary law, the debates about how it is to be identified, and the efforts at formulation of customary norms. In doing so, the book provides a useful and accessible introduction to the content of international human rights. The author uses the Universal Declaration of Human Rights as a basis to examine human rights norms, and determine whether they may be described as customary. He makes use of relatively new sources of evidence of the two elements for the identification of custom: State practice and opinio juris. In particular, the book draws on the increasingly universal ratification of major human rights treaties and the materials generated by the Universal Periodic Review mechanism of the Human Rights Council. The book concludes that a large number of human rights norms may indeed be described as customary in nature, and that courts should make greater use of custom as a source of international law. This study analyzes the methods used by international criminal tribunals when determining customary international criminal law and to consider the compatibility of these approaches with the nullum crimen sine lege principle. In this context, the following research questions are of particular importance: Is there one approach common to all international criminal tribunals, or can different approaches be detected in their jurisprudence when determining customary international law? Do international criminal tribunals regard both traditional elements of customary international law – State practice and opinio iuris – as necessary elements for the establishment of customary international law? Do international criminal tribunals argue along the lines of the International Court of Justice (ICJ), requiring a high frequency and consistency of State practice that is both “extensive and virtually uniform”?In addition, the book analyzes the evidence used by international criminal tribunals in order to establish the constituent elements of customary international. It then poses the question: Do international criminal tribunals distinguish, as defined by Schwarzenberger, between the “law-creating processes” of public international law on the one hand, and the “law-determining agencies” as a subsidiary means of determining rule of law on the other?Assuming that they exist, how can different methodological approaches to determine customary international law be assessed in light of the nullum crimen sine lege principle? Does the principle require judges to apply the traditional method to establish customary international law as being based on extensive, uniform and enduring State practice accompanied by opinio iuris? Can the principle balance the desire for justice and the specificities of law creation of the international legal order with fairness for the accused? How can the law be accessible and criminal punishment foreseeable, when the underlying legal basis for criminal convictions, namely customary international criminal law, is unwritten in nature? Essay from the year 2020 in the subject Law - European and International Law, Intellectual Properties, , language: English, abstract: The purpose of this essay is to assess the impact of the behaviour of a State, which contrary to a rule of customary international law, on the existence of rule of customary international law, in terms of whether it undermines the existence of that rule or strengthens it. To be able to do this, it is expedient that the following issues are addressed: What is Customary International Law? What are rules of customary international law? Contrary state behavior. Customary International Law is one of the major sources of International law and is described in Article 38(1)(b) of the Statute of the International Court of Justice, 1946, as "general practice accepted as law." According to the Legal Information Institute of the Cornell Law School, "Customary international law refers to international obligations arising from established international practices, as opposed to obligations arising from formal written conventions and treaties. Customary international law results from a general and consistent practice of states that they follow from a sense of legal obligation." It was also defined by Judge Read in Fisheries (UK v Norway) (1951), as the generalization of the practice of States. Customary International Humanitarian Law, Volume I: Rules is a comprehensive analysis of the customary rules of international humanitarian law applicable in international and non-international armed conflicts. In the absence of ratifications of important treaties in this area, this is clearly a publication of major importance, carried out at the express request of the international community. In so doing, this study identifies the common core of international humanitarian law binding on all parties to all armed conflicts. Comment Don:RWI. "A study of their interactions and interrelations, with special consideration of the 1969 Vienna Convention on the Law of Treaties."--T.p. This analytical monograph is a technical work on the concept of customary international law. We have covered the concept of a Global Customary International Law Index. Traditionally, customary international law is a field in which how states behave and make decisions, the old traditional way is not left unaccounted. In the era of globalization (fourth stage), the purpose of CIL is declining or saturating. It does not anyways mean the end of customary international law - because the transformation of the rules-based international order clearly suggests that there is ample scope for assessing the way international law is widely accepted and put into judicious use by the international community and the 'subjects' of international law. This monograph is divided into 9 chapters with a list of references. We have even included an emerging concept in public and private international law, entitled as Soft Law, and have dedicated a special chapter to it. Provides an in-depth study of the theory, history, practice, and interpretation of customary international law. Reexamining Customary International Law takes on the complex issues and controversies surrounding the history, theory, and practice of customary international law as it reexamines customary law's increasingly important role in world affairs. It incorporates the expertise of distinguished authors to probe many difficult issues that remain unresolved concerning the doctrine of customary law. At the same time, this book engages in a profound exploration of the practical role of customary international law in a variety of important fields, including humanitarian law, human rights law, and air and space law. This book explains the most foundational aspect of international law in international relations terms. A state monopoly on customary international law formation was once required and acceptable, given the status states enjoyed as the sole subjects of international law. Since the drafting of the most commonly cited doctrinal sources of customary international law, legal personhood has been extended to individuals. During this same time period, individuals have come to participate in treaty-making in some key areas of international law, including human rights. The customary international law of human rights, no less than treaty law, has direct effects on individuals. It sees them as the subjects protected by those provisions that have attained the status of customary law. Unlike treaty law, though, there is no space in the traditional customary international law doctrine for individuals to participate in the law-making process. As a result, there is currently a disjuncture in customary international law; individuals are its subjects but are not seen as legitimate participants in its formation. Uncomfortable with this state of affairs, this Article seeks to investigate whether the participation of individuals in customary international law formation is desirable. First, it takes note of a prior observation of legal scholars that individuals do, through various mechanisms, already play an active role in customary international law formation despite the doctrinal insistence that only States play such a role. Second, this Article develops theoretical justifications for the inclusion of individuals in customary international law formation. Finally, calling on established legal institutions as well as on social science tools for assessing individuals' practices, beliefs and expectations, the Article proposes methods by which individuals might participate in the customary international law formation process. "The book guides the reader through an analysis of eight distinct performances at work in the discourse on customary international law. One of its key claims is that customary international law is not the surviving trace of an ancient law-making mechanism that used to be found in traditional societies. Indeed, as is shown throughout, customary international law is anything but ancient, and there is hardly any doctrine of international law that contains so many of the features of modern thinking. It is also argued that, contrary to mainstream opinion, customary international law is in fact shaped by texts, and originates from a textual environment"--Page 4 de la couverture. States often regard themselves bound by treaty rules which have developed under customary international law, even though many of the treaties themselves have not been ratified. The Law of the Sea Convention, for instance, has generated new customary rules which modified the 1958 Geneva Conventions. These & many other issues are dealt with clearly & systematically in this informative handbook on the relations between written & unwritten international law. The conclusions of the first edition of Customary International Law & Treaties were largely confirmed by the International Court of Justice in the Nicaragua Case. This fully revised second edition, while basing itself on the original version, brings the subject up to date. In The Rome Statute as Evidence of Customary International Law, Yudan Tan offers a detailed analysis of topical issues concerning the Rome Statute of the International Criminal Court as evidence of customary international law. A study of their interactions and interrelations, with special consideration of the 1969 Vienna Convention on the Law of Treaties. This volume offers new practical and theoretical perspectives on one of the most complex questions regarding the formation of international law, namely that actors other than states contribute to the making of customary international law. Notwithstanding the International Law Commission’s valuable contribution, the making of customary international law remains riddled with acute practical and theoretical controversies that continue to be intensively debated. Making extensive reference to the case-law of international law courts and tribunals, as well as the most recent scholarly work on customary international law, this volume provides a comprehensive study of the contribution of international organisations and non-state actors to the formation of customary international law. With innovative tools and guidance for law students, legal scholars, and researchers in law, as well as legal practitioners, advisers, judges, arbitrators, and counsels, this collection is essential reading for those wishing to understand and address contemporary questions of international

law-making. Patrick Dumberry provides a comprehensive analysis of the rules of customary international law in the field of international investment law. Filling a conspicuous gap in the legal literature, Andrew T. Guzman's How International Law Works develops a coherent theory of international law and applies that theory to the primary sources of law, treaties, customary international law, and soft law. Starting where most non-specialists start, Guzman looks at how a legal system without enforcement tools can succeed. If international law is not enforced through coercive tools, how is it enforced at all? And why would states comply with it?--Publisher. This is the first book to explore the concept of 'Grotian Moments'. Named for Hugo Grotius, whose masterpiece De jure belli ac pacis helped marshal in the modern system of international law, Grotian Moments are transformative developments that generate the unique conditions for accelerated formation of customary international law. In periods of fundamental change, whether by technological advances, the commission of new forms of crimes against humanity, or the development of new means of warfare or terrorism, customary international law may form much more rapidly and with less state practice than is normally the case to keep up with the pace of developments. The book examines the historic underpinnings of the Grotian Moment concept, provides a theoretical framework for testing its existence and application, and analyzes six case studies of potential Grotian Moments: Nuremberg, the continental shelf, space law, the Yugoslavia Tribunal's Tadic decision, the 1999 NATO intervention in Serbia and the 9/11 terrorist attacks. This book sets out to articulate a comprehensive theory of customary international law that can effectively resolve the conceptual and practical enigmas surrounding it. It takes a multidisciplinary approach and draws insights from international law, legal theory, political science, and game theory. It is anchored in a sophisticated ethical framework and explores the interrelationships between customary international law and ethics. The book gathers a group of scholars interested in both public international law and EU law to cover different facets of the relationship between the European Union and customary international law. Considering the distinct perspectives taken by international law and EU law, while also looking into the space in between the two, individual chapters tackle complex questions such as whether and on what bases the European Union is bound by customary international law as a matter of international law and EU law; how the European Union contributes to the development of international custom; and how different stakeholders – the Court of Justice of the European Union, the EU's political organs and EU citizens – rely upon customary rules. The book thus offers a systematic account of the relevance of customary international law for the external relations and internal functioning of what is no doubt the most remarkable regional international organization of our time. Customary International Humanitarian Law, Volume I: Rules is a comprehensive analysis of the customary rules of international humanitarian law applicable in international and non-international armed conflicts. In the absence of ratifications of important treaties in this area, this is clearly a publication of major importance, carried out at the express request of the international community. In so doing, this study identifies the common core of international humanitarian law binding on all parties to all armed conflicts. This book seeks to re-appreciate the concept of customary international law as a form of spontaneous societal self-organisation, and to develop the methodological consequences that ensue from this conception for the practice of its application. In pursuing this aim, the author draws from three different strands of scholarship that have not yet been considered in connection with one another: First, general jurisprudential theories of customary law; second, theories of customary international law, especially as they relate to international relations scholarship; and third, methodological approaches to the interpretation of international law. This expansive, philosophical layout of the book enables the author to put the conceptual enigmas of customary international law into a broader perspective. Among the issues discussed in the book are the dichotomy of its traditional and modern forms and the respective benefits and disadvantages of inductive and deductive approaches to its ascertainment. In the course of this analysis, the author draws insights from Friedrich August Hayek’s theory of law as a ‘spontaneous order’, an information-processing device which enables the participants of a legal system to make use of decentralised knowledge. The book argues that the major advantage of custom as a source of international law lies in the fact that it is the result of a gradual process of trial and error, rather than the product of deliberate planning. This makes it a particularly apposite source of law in a time of seismic shifts in the distribution of power within a vastly diverse community of States, when a new global order is expected to emerge, the contours of which are not yet clearly discernible. This book applies general concepts of legal philosophy to explain the continuing relevance of custom as a source of international law while at the same time inferring from this theoretical framework concrete practical and methodological consequences, the most important of which is the special role that purposive interpretation plays with respect to rules of international custom. Given this broad approach, the book will be of interest to several groups of potential readers including academics interested in the philosophy of customary law in general, academic international lawyers and legal practitioners, especially judges, scholars of international relations and all those interested in how the international community of States organises itself. "This Research Collection provides a comprehensive spectrum of articles published in the last seven decades in the field of customary international law. International custom "as evidence of a general practice accepted as law", is considered one of the two main sources of international law as it primarily derives from the conduct of sovereign States, but is also closely connected with the role of the international judge when identifying the applicable customary rule, a function it shares with the bodies in charge of its codification (and progressive development), starting with the International Law Commission. Though mainly considered to be general international law, international custom has a complex relationship with many specific fields of law and specific regions of the world. Alongside the key articles, this important collection includes an original introduction by the editor and will be invaluable to everyone interested in the subject"-- This book examines the evolution of customary international law (CIL) as a source of international law. Using the International Criminal Tribunal for the former Yugoslavia (ICTY) as a key case study, the book explores the importance of CIL in the development of international criminal law and focuses on the ways in which international criminal tribunals can be said to change the ways in which CIL is formed and identified. In doing so, the book surveys the process and substance of CIL, as well as the problematic distinction between the elements of state practice and opinio juris. By applying an inclusive positivist approach, Noora Arajärvi analyses the methodologies of identification of CIL in selected cases of the ICTY, and their normative foundations. Through examination of the case-law and the reasoning of courts and tribunals, Arajärvi demonstrates to what extent the court's chosen method of identification of CIL affects the process of custom formation and the resulting system of norms in general. The book will be of great value to researchers and scholars of international law, international relations, and practitioners with interests in customary international law. The persistent objector rule is said to provide states with an 'escape hatch' from the otherwise universal binding force of customary international law. It provides that if a state persistently objects to a newly emerging norm of customary international law during the formation of that norm, then the objecting state is exempt from the norm once it crystallises into law. The conceptual role of the rule may be interpreted as straightforward: to preserve the fundamentalist positivist notion that any norm of international law can only bind a state that has consented to be bound by it. In reality, however, numerous unanswered questions exist about the way that it works in practice. Through focused analysis of state practice, this monograph provides a detailed understanding of how the rule emerged and operates, how it should be conceptualised, and what its implications are for the binding nature of customary international law. It argues that the persistent objector rule ultimately has an important role to play in the mixture of consent and consensus that underpins international law.

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