

INTRODUCTION TO THE SECOND EDITION

There are two schools of thought regarding international law. The first is that international law is a kind of residual grab bag of various old customs, a number of treaties, some decisions of the World Court and a more numerous collection of national decisions referring to international law, some U.N. resolutions, and a loose collection of writings of publicists. There are no coherent “theories” of international law, just various assertions that are more or less persuasive according to who is asserting them.

The second school of thought is that international law is pure law. It has grown out of the interactions of states over thousands of years. It reflects their mutual accommodations within the international system. It is a law that is deeply rooted in the self-interest of the aggregate of states even if, at any point in time, it is not in the self-interest of any one of them. It is not subject to violent change, as is domestic law, by the unrestrained wishes of a central legislature. And it has a central organizing theory—the theory of custom. Customary international law not only contains the rules and norms of international law at any given moment in time, but it also contains the meta-rules that enable nations, through their interactions, to modify old rules and norms or create new ones. The theory is deep and coherent, but not simple and not to be learned in a day. It informs and serves to validate all the manifestations of international law—the rules of custom, the rules of treaty interpretation, the weight given to international and national judicial decisions and the writings of publicists, the role of U.N. resolutions, and so forth.

Many important writers in the field of international law belong to the first school. The present book, and my own life’s work in international law, are dedicated to the proposition that it is the second school of thought that is correct.