in applying law to the inherent chaos of armed hostilities. Clarity and predictability help military commanders implement LOAC effectively and enhance the protection of persons and objects during armed conflict. But clear answers—at the expense of a thorough understanding of the realities and complexities of conflict, how conflicts begin and end, why states and other parties act in certain ways, and how the law operates to enable lawful and effective military operations—can ultimately act in cross purposes to the law and detract from its essential goals. Operational realities and complexities therefore need to drive answers in conjunction with legal theory and analysis, lest the law lose its essential animating force.

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Brierly's Law of Nations: An Introduction to the Role of International Law in International Relations (7th ed.). By Andrew Clapham. Oxford, New York: Oxford University Press, 2012. Pp. li, 518. Index. $120, £75, cloth; $50, £25, paper.

Brownlie's Principles of Public International Law (8th ed.). By James Crawford. Oxford, New York: Oxford University Press, 2012. Pp. lxxx, 803. Index. $235, £130, cloth; $65, £45, paper.

The year 2012 saw the publication of new editions of James Brierly's *Law of Nations* and Ian Brownlie's *Principles of Public International Law*, two classic works that have served as an introduction to international law for so many. The eighth edition of *Brownlie* appears just four years after the seventh, which seems reasonable given the pace of change in international life. By contrast, the seventh edition of *Brierly* appears almost fifty years after the previous edition (edited by Waldock), and fifty-seven years after the last edition by Brierly himself. Their simultaneous publication is an occasion to reflect on the current role of books that aim to cover the whole field of public international law. It also raises the question of who might benefit from such texts: students, practitioners, nonlawyers, or perhaps all of these? And having a new editor for an old favorite may raise concerns: will—or should—it be the same book? The new editors of these two highly respected works have evidently given much thought to all such questions.

The books are very different. *Brownlie* is a typical modern textbook, intended for students, but in some ways more suitable for the practitioner. It is packed with information, with reading lists and footnotes for onward travel. It is not a book to be read at a single sitting, though it is a book to be read as a whole. *Brierly*, by contrast, is a short work that can be read through rather easily and to advantage, even at one reading, by someone who has not been exposed to international law previously, whether lawyer or nonlawyer. In each case, the reader has been well served by the new editor.

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James Crawford is the Whewell Professor of International Law at the University of Cambridge and research professor of law at La Trobe University, Melbourne. He is the author of numerous writings in international law, including *The Creation of States in International Law*, now in its second edition.[1] He is also at Matrix Chambers in London and has an extensive practice as counsel before international courts and tribunals and as arbitrator.

To more than one generation of international lawyers, in the United Kingdom at least, *The Law of Nations* by James Brierly was *the* introduction to international law. A new edition has been long awaited. Over the years there were rumors of various editors hard at work, or at least selected, but still the book did not appear. It is to Andrew Clapham's great credit that he has successfully, and in a most interesting way, brought this project

[1] JAMES CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW (2d ed. 2006).

to completion. The new, seventh edition has a modified title and a new subtitle, inspired by the preface to the original work published in 1928. It is now entitled *Brierly's Law of Nations: An Introduction to the Role of International Law in International Relations*.

Of course, Clapham knows Brierly only from his writings. But he clearly admires Brierly greatly, both Brierly the lawyer and *Brierly* the book, and considers that he and it still have much to say to those struggling with some not too dissimilar issues almost sixty years after Brierly's death. Clapham's aim in this new edition is "to help Brierly explain again the role of international law in international relations, and, with him, to demystify the operation of international law today" (p. vii). The task he has set himself, to speak with Brierly's voice to today's world, is an almost supernatural one; he speaks of "virtual negotiations" and "a two-way conversation" with Brierly, of "imagining a co-author with opinions developed over a lifetime's writing" (pp. viii–ix).

Consistent with this aim, Clapham decided to work mostly from Brierly's own fifth edition (rather than the sixth edition by Waldock), and, in several instances, inserted into the book passages from other texts by Brierly. The result is a fascinating account of how a person formed by and, for a good part of his working life, operating in that strange period between the two World Wars would view the state of international law today, and how he might express himself about it. At the same time, the new edition is in no sense a historical curiosity. It is a thoroughly modern treatment of international law, as one would expect from Clapham and as Brierly would surely have wanted. In the preface, Clapham stresses the modern in Brierly, someone who even back in his day was "concerned, not only with the role of the individual and certain organizations, but also with the apparent failure of the dominant doctrine to recognize such non-State actors as subjects of international law" (pp. xii–xiii).

Bringing *Brierly* up to date after the eventful half century since the last edition, Clapham covers events ranging from the Iranian hostage crisis through the establishment of the World Trade Organization and International Criminal Court, to the attacks of September 11, 2001, and the use of force against Iraq and in Libya. Multilateral instruments, such as the 1966 International Covenant on Civil and Political Rights and the 1982 UN Law of the Sea Convention, as well as decisions of the International Court of Justice and other courts and tribunals since 1963, all find their place in the new edition. So too do products of the International Law Commission and select recent scholarship. Sections on *jus cogens*, "soft law," the attribution of conduct to a state, the deep seabed, law making by international organizations (in the section entitled "The Sources of Modern International Law"), and dispute settlement at the World Trade Organization have been added, while those dealing with the League of Nations, "types of dependent States," and the International Labour Organization were dropped. What was once entitled "The Application of International Law in British Courts" now refers to "domestic courts" at large (but does not actually elaborate much more). And small changes to the titles of some of the chapters, such as "Maintenance of International Peace and Security" instead of "Maintenance of International Order," attest, in and of themselves, to significant developments. Comparing the new edition to its predecessors illustrates how much international law has expanded over the past several decades, with terms such as *global administrative law* and *responsibility to protect*, or institutions such as the ad hoc international criminal tribunals for Rwanda and for the former Yugoslavia, now making their debut appearance in *Brierly* as well.

One of Clapham's most substantial additions is found in the section in chapter VI dealing with "Limitations on a State's Treatment of Its Own Nationals and Respect for International Human Rights," a field in which he has particular expertise and where "[o]ver the last 50 years, things have radically changed" (p. 236). Exemplifying just how much the relations between a state and its own nationals have become a matter of international law (and international bodies), Clapham interestingly suggests, *inter alia*, that the dynamic of international law is transforming "from a tool for international co-existence and co-operation into a legal system whose purpose is focused on human welfare generally and the dignity of the

individual in particular" (p. 241). Significant revisions have also been made to other sections in the book dealing with jurisdiction, as well as to those on treaties and on the use of force, to name but a few.

While taking account of such developments, Clapham has sought to preserve the overall structure of previous editions, with nine thematic chapters whose titles reflect the basic international law concepts of an earlier time. This format somewhat constrains his ability to provide a clearer sense of the expanded role that international law now serves in, for example, the more recent fields of international criminal law and international environmental law. It has also compelled him to place his new concluding section, general in scope, under the final chapter, "Resort to Force." A structural divergence from previous editions is evident, however, in the enhanced use of footnotes: Clapham felt that "the reader now expects indications for further reading" (p. ix) and has supplemented the text by many more references, the majority of which are aimed at law students rather than a general reader. The former will certainly find these helpful, and to the latter they have value in conveying a sense of how rich international law is both in theory and in practice.

Brierly nevertheless remains a "small book," as it was described in the introduction to the first edition; the number of pages is deceptive, since the publishers have retained the old small page size (albeit with somewhat smaller print). It also remains an accessible and illuminating text, which anyone can benefit from and indeed enjoy.

The eighth edition of Ian Brownlie's *Principles of Public International Law* is likewise no mere update. As was to be expected, Crawford has made his mark, both on the organization of the book and on substance. But he has chosen to assume "ownership of the text . . . while preserving a decent respect for the original author's known views" (p. xix), and the new edition does indeed largely retain the style, spirit, and much of the text of the original. It is still recognizably the *Brownlie* of earlier editions. Brownlie himself would no doubt have been pleased that this work has been updated, and will thus retain its relevance for today's international lawyers. "Too often," he once remarked of international law, "central subjects get rather ignored, people are always looking for conspicuously new subjects, and I have always had the view that some of the more classical subjects remain important, and are not worked out, as is sometimes assumed."[2]

Required by the publisher to keep *Brownlie* to the same length as the previous edition, Crawford has engaged in thoughtful updating and restructuring. A noteworthy and welcome addition is an introductory chapter, with sections on the "Development of the Law of Nations," "International Law as Law," and "The Reality and Trajectory of International Law." (Brownlie himself persistently objected, over the course of some forty years and seven editions, to writing such an introduction, preferring instead to go directly into the sources of the law.) Painting a broad picture of the history and nature of international law, the introduction provides a valuable context even for the advanced text that *Brownlie* essentially is, if only just as a reminder. Another change that is quickly evident is the more central place given in the new edition to international organizations, with the chapter dedicated to them now placed in part two of the book ("Personality and Recognition") rather than toward the end of the book as was previously the case. International organizations have come a long way since Brownlie's first edition, where "international institutions" were dealt with in a chapter that was originally envisioned as "brief and its object confined to providing a conspectus of the subject-matter and a guide to further materials."[3]

Crawford's reordering of parts and chapters makes eminent sense (for example, in bringing together the chapters on the claims process, dispute settlement, and the use of force under a new part entitled "Disputes"). It also reinforces the

[2] Ian Brownlie, *To What Extent Are the Traditional Categories of* Lex Lata *and* Lex Ferenda *Still Viable? in* CHANGE AND STABILITY IN INTERNATIONAL LAW-MAKING 66 (Antonio Cassese & Joseph H. H. Weiler eds., 1988). Brownlie added on that occasion that "the first duty of an international jurist is at least to monitor what is going on. If you do not do that, you are lost; at least you are not a jurist, you are something else." *Id.* at 91.

[3] IAN BROWNLIE, PUBLIC INTERNATIONAL LAW: SYNOPSIS OF A TEXT BOOK 7–8 (1962) (on file with Oxford University Press).

notion that international law is a system and allows greater room for some more recent developments, such as the rise of investment treaty arbitration and the coexistence of several international courts and tribunals. His edition also places somewhat more emphasis on theory by comparison with previous editions, but in the right amount. Several chapters have been largely rewritten, including those dealing with the relations (now plural) of international and national law, statehood, and the law of state responsibility. Thoroughly updated and more user-friendly (for example, by introducing internal numbering of sections and subsections), the new *Brownlie* will surely maintain its preeminence in the field.

A number of questions may occur to anyone looking at these new editions. A basic question concerns the role of works that aim to cover the whole sweep of international law (or at least the law of peace), especially those that aim to do so within the modest compass of a single volume. Such works continue to appear, particularly in Europe, Australia, and Latin America, both new books and new editions. In North America and Asia, they are less common, perhaps because of the use of the casebook method of teaching. Sean Murphy's *Principles of International Law* (a second edition of which also appeared in 2012)[4] is a notable exception. As Crawford explains in his preface, producing a single volume reflects the systemic nature of international law and the need for international law as a whole; and it correlates, anyhow, to the way international law is still being taught.

And the target audience? It is common to divide law books, including public international law books, into those for students (such as *Brierly* and *Brownlie*) and those for practitioners (such as *Oppenheim*[5]). But this is too binary. *Brierly* was originally conceived more as a book for the general reader, and that remains an important role, though now updated it will surely be seen as a useful introductory textbook. It also has considerable authority and may well be cited by practitioners. *Brownlie* was conceived as an aid to teaching. But from the outset, while much admired by students, it was regarded as quite advanced, if not difficult, suited not as an introduction but as something to be used by those who already had some grounding in the subject. It too has often been cited by practitioners. Even in today's much changed world (including the Internet), textbooks continue to be valuable for governments, courts, and tribunals. And well-respected textbooks, like *Brierly* and *Brownlie*, still play their part in contributing to the development of international law.

Yet another question that may occur to a reader of these two new editions is whether it remains necessary, in our day and time, to stress that international law is law. Crawford implies that previous editions of *Brownlie* have already spoken "perceptively about international law as law" (p. xvii), but has nevertheless decided to include in the new edition's introduction a section entitled "International Law as Law." Elsewhere in his introduction, too, he emphasizes that international law is law, and that it is indeed effective as such. Clapham, for his part, has left almost untouched Brierly's original section on "The Legal Character of International Law," and has borrowed for his concluding section, entitled "The Present Role of International Law," paragraphs written by Brierly in the 1940s. These paragraphs refer to international law as being in a "very rudimentary stage" and suggest that "international law today is a system in being, and it is possible, though perhaps not very easy, to discover how it is working" (pp. 502–03). Do these words, written some seventy years ago, still serve to describe the role of international law today? We would like to hope—and suggest—otherwise. International law is no longer the preserve of a small international elite and is no longer confined to a handful of actors or a limited set of topics. It is all around us, with its effects as law clearly recognized across numerous fields of human activity. What Brierly was one of few people to know back in his day—the "true picture . . . [found at that time mainly in] courts in which international legal questions are decided and [] legal departments of foreign offices" (pp. 503–04)—is now common knowledge among many.

Clapham in his concluding section moreover awards a central place to addressing the skeptical

[4] SEAN D. MURPHY, PRINCIPLES OF INTERNATIONAL LAW (2d ed. 2012).

[5] OPPENHEIM'S INTERNATIONAL LAW (Robert Jennings & Arthur Watts eds., 9th ed. 1992).

and idealist positions on international law. So, too, to a degree, does Crawford in his opening chapter, and it may be thought that it is ultimately against this background that they provide their account of the discipline. But perhaps the time has come to recognize that the force and character of international law as law can no longer seriously be challenged: that the extreme conceptions clearly do not fit the current reality evidenced by the rich content of the books themselves. The claim that international law is not in fact law is not a mainstream opinion (if it ever was), and should not be treated as such. While the somewhat irregular features and unique development of international law as law need to be addressed, this should not be done from an apologetic or a defensive position.[6] In the words of Brierly that do remain relevant today, "Most of those popular arguments which prove the non-legal or the peculiarly abstract nature of international legal principles are the pseudo-realist arguments of the theorist who, if he or she has examined the subject at all, has seen it in books and not in action" (p. 504).

The excellence of these new editions of *Brierly* and *Brownlie* is unquestionable. Both student and hardened old-hand—and those in between—will find much in them that is challenging and memorable. This reflects the extraordinary abilities of both the original authors and the new editors. The books are also, as before, complementary (and will continue to be found as close companions on the library bookshelf). Anyone coming new to international law who reads both will acquire a rounded picture of the modern role and rules of public international law. Each is highly recommended, indeed essential, for any law library. Given their competitive price, they are also suitable additions for any private collection of public international law books.

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[6] *See also* Sean D. Murphy, *The Concept of International Law*, 103 ASIL PROC. 165–69 (2009).

"Partly Laws Common to All Mankind": Foreign Law in American Courts. By Jeremy Waldron. New Haven, CT: Yale University Press, 2012. Pp. xv, 288. $65, £45.

Courts in both civil law and common law jurisdictions have long used foreign laws and jurisprudence in their opinions. The principles and maxims of the ancient Roman civil law suffuse both traditions even today, and medieval Canon Law continues to exercise influence over legal systems throughout Europe and beyond.[1] In Africa, Latin America, and Asia, the influence of the law of former colonizing powers frequently overshadows traditional law-ways. Given the transnational origins of all modern legal systems, it may seem anomalous to accuse courts referring to foreign laws and legal decisions as perverting democracy or corrupting a mythically pure national system of law. And indeed, the practice of judicial citation to foreign sources is relatively uncontroversial in most countries. Courts in the Commonwealth of Nations frequently cite to other Commonwealth judicial decisions, as well as laws and judicial decisions of the United States and sometimes other foreign countries. In the words of the book under review, "nobody gives a damn" (p. 17).

In the United States during the last few decades, it has been another story entirely. Many damns indeed have been bestowed on judges displaying such cosmopolitanism. The seemingly mundane practice of referring to foreign laws[2] has ignited fierce political and legal controversy. Media editorials have excoriated judges open to using foreign law.[3] Some members of Congress have attempted,

[1] *See generally* ALAN WATSON, THE MAKING OF THE CIVIL LAW (1981); JAVIER MARTÍNEZ TORRÓN, ANGLO-AMERICAN LAW AND CANON LAW (1998); Edward D. Re, *The Roman Contribution to the Common Law*, 29 FORD. L. REV. 447 (1961).

[2] Using foreign law has a long history in this country as well. *See* David J. Seipp, *Our Law, Their Law, History, and the Citation of Foreign Law*, 86 BOSTON U.L. REV. 1417, 1428–35 (2006).

[3] *See, e.g.*, Editorial, *Foreign Law Rules in U.S. Courts,* WASH. TIMES, June 26, 2012, *at* http://www.washingtontimes.com/news/2012/jun/26/foreign-law-rules-in-us-courts; Editorial, *Kagan's Foreign Law Trumps Con-law*, WASH. TIMES, May 25, 2010, *at* http://www.washingtontimes.com/news/2010/may/25/kagan-foreign-law-trumps-