

1. Record Nr.	UNINA9910960734403321
Autore	Crawford James <1948-2021.>
Titolo	Chance, order, change : the course of international law : general course on public international law // James Crawford
Pubbl/distr/stampa	[The Hague] : , : Hague Academy of International Law, , [2014]
ISBN	90-04-26809-X
Edizione	[1st ed.]
Descrizione fisica	1 online resource (537 pages) : illustrations
Collana	Pocketbooks of the Hague Academy of International Law
Disciplina	341.01
Soggetti	International law Dret internacional Llibres electrònics
Lingua di pubblicazione	Inglese
Formato	Materiale a stampa
Livello bibliografico	Monografia
Note generali	Full text of the lecture published in December 2013 in the Recueil des cours, Vol. 365.
Nota di bibliografia	Includes bibliographical references (p. 507-525) and index.
Nota di contenuto	Intro -- Chance, Order, Change :The Course of International Law -- TABLE OF CONTENTS -- Preface -- Introduction and overview -- Part I. International law as law -- Chapter I. Soft law for a hard world -- A. The realist challenge - "international law is too weak to be any good" -- B. Some responses to the realist challenge -- 1. The historiographical response -- 2. The empirical response -- 3. The processual response -- C. A Modern Analogue of Melos ? East Timor -- D. Conclusion : Incorporating and Transcending Realism -- Chapter II. International law as custom or false consciousness ? -- A. Attempts to Define Customary International Law -- B. Opinio juris as an interloper -- 1. The recent origins of opinio juris -- 2. De-systematizing international law : The SS "Lotus" -- 3. How much opinio juris is required ? -- C. Opinio juris as an attitude of the subject of law -- D. Opinio juris in a world without institutions -- E. A false consciousness ? -- Chapter III. Sovereignty and law -- A. Sovereignty and its limits -- B. How can a sovereign State be "bound" by law ? -- 1. The "pure fact" view : Austin, Schmitt -- 2. The "legal" view : Kelsen, Lauterpacht -- 3. Schmitt and Kelsen compared -- C. The usefulness of "sovereignty" -- 1. The S word -- 2. The future of sovereignty -- D. Conclusion -- Chapter IV. Making law by treaty -- A. The Baxter paradox - "the more agreement, the less law" -- B. The North Sea Continental Shelf cases and the

derivation of custom from treaty -- 1. Declaratory treaties -- 2. Universal treaties -- 3. Case study one : the 1949 Geneva Conventions -- 4. Case study two : the "outer continental shelf" under the United Nations Convention on the Law of the Sea 1982 -- C. Avoiding the Baxter paradox -- D. Solving the Baxter paradox -- Chapter V.

International law and indeterminacy -- A. The problem of indeterminacy.

1. The problem introduced -- 2. Species of indeterminacy -- B. Linguistic indeterminacy -- 1. The Hartian premise -- 2. Linguistic indeterminacy and international law -- 3. Resolving linguistic indeterminacy : international law responses -- C. Substantive indeterminacy -- 1. David Kennedy and North American indeterminacy -- 2. Martti Koskenniemi and European indeterminacy -- 3. Challenging substantive indeterminacy -- D. Conclusion : eppur si muove -- Part II. International law as a system -- Chapter VI.

Personality and participation -- A. A relational process between participants -- 1. Conceptions of a "system" of law -- 2. The coherence challenge -- 3. The relation between international law and international society : transnational rules lacking societies -- 4. International law is a system, even if imperfect -- B. The problem of international personality -- 1. Recognition and subjectivity of legal personality -- 2. Participation and effect at the horizontal level -- C. Conclusion -- Chapter VII. International and national law : serving two masters ? -- A. The myth of the "dédoulement fonctionnel" -- B. The need for interaction between international and national laws -- C. Models of Interaction -- D. Relations between the law of nations and domestic legal systems -- 1. Underpinnings to constitutional classification -- E. International law in national legal orders -- 1. Preliminary points -- 2. State obligations to effectuate international law domestically -- 3. Implementing treaty and custom in four systems -- (a) The United Kingdom -- (b) The United States -- (c) France -- (d) Germany -- (e) Treaty making processes in civil law jurisdictions -- F. Conclusions : a return to dédoulement fonctionnel ? -- Chapter VIII. The impossibility of multilateralism -- A. Bilateral, multilateral, plurilateral -- B. Development of multilateralism.

1. Thinking multilaterally -- 2. A residual bilateralism ? -- C. Special Categories of Multilateral Norms -- D. Standing -- 1. An actio popularis? -- 2. Articles on State Responsibility -- E. Conclusion -- Chapter IX. Fragmentation, proliferation and "self-contained regimes" -- A. The problem -- 1. A case study : Hirsi Jamaa v. Italy -- 2. Defining fragmentation -- 3. Species of fragmentation -- B. Substantive aspects of fragmentation -- 1. Fragmentation as a crowded bar -- 2. Substantive fragmentation and its resolution -- C. Institutional aspects of fragmentation -- 1. The overlapping jurisdictions of international courts and tribunals -- 2. Proliferation and comity -- D. Self-contained regimes -- 1. Self-contained regimes, lex specialis and the law of treaties -- E. Conclusion : the centre holds -- Chapter X. Universality of international law -- A. Introduction -- B. The history of universality -- 1. Origins : from the seventeenth to the nineteenth century -- 2. Challenges : the twentieth and twenty-first centuries -- C. Universality today -- 1. Universality versus regionalism -- 2. The legal significance of regionalism -- D. The future of universality -- Part III. The rule of (international) law -- Chapter XI. The rule of law and equality under the law -- A. The rule of law as an ideal for legal systems -- 1. Conceptions of the rule of law -- 2. Is there an international rule of law ? -- 3. Features of the international rule of law -- B. Equality before the law -- 1. Formal equality of States -- 2. The equalizing process of formal equality -- 3. The international rule of law and unsocialized

entities -- 4. The inequality of States in the context of the use of force -- 5. Substantive inequality among a "system" of equal sovereigns -- 6. Human equality in international law -- Chapter XII. Democracy and accountability.

A. Is democracy relevant to the international rule of law ? -- 1. "Democracy" may be shifting in meaning -- B. Promotion of democracy within States -- 1. Traditional international law was not democratic -- 2. A further undemocratic feature : non-intervention -- 3. Is international law changing ? -- 4. Democratic rights have become more entrenched -- 5. Election monitoring has become more common -- 6. Democracy and the discourse of good governance -- C. A democratic global system ? -- D. An open question -- Chapter XIII. Institutions above the law ? the Security council -- A. The accountability challenge -- B. The accountability of international organizations -- C. The Security council - a special case ? -- D. Constraints on the Security council -- E. A further constraint ? -- F. "Legislative" resolutions -- G. Is the validity of Security council resolutions justiciable ? -- H. Considerations of process and practice -- Chapter XIV.

Constitutionalizing international law -- A. Meanings of "constitutionalization" -- 1. Relationship to the basic norm of international law -- 2. Relevance to the international rule of law -- B. A constitution for individuals or for States ? -- C. Identifying the international constitution -- 1. A system underpinned by a social contract -- 2. Is the UN Charter a constitution ? -- 3. Beyond the UN Charter -- D. Constitutionalization as a leitmotif -- Chapter XV. An irremediably unjust world ? -- A. The search for human flourishing -- B. Armed conflict and international justice -- 1. Problems of regulating armed conflict -- 2. Limiting the use of force -- 3. Unilateral intervention -- 4. Collective intervention -- 5. Responsibility to Protect ? -- 6. Criminal prosecutions : and justice for all ? -- 7. Immunity and iniquity -- C. Peacetime (in)justice -- 1. The global economic order and absolute poverty.

2. Justice and the world's resources -- D. Conclusion -- Bibliography -- About the author -- Biographical note -- Principal publications -- Index.

Sommario/riassunto

Chance, Order, Change: The Course of International Law, General Course on Public International Law by J. Crawford The course of international law over time needs to be understood if international law is to be understood. This work aims to provide such an understanding. It is directed not at topics or subject headings — sources, treaties, states, human rights and so on — but at some of the key unresolved problems of the discipline. Unresolved, they call into question its status as a discipline. Is international law "law" properly so-called? In what respects is it systematic? Does it — can it — respect the rule of law? These problems can be resolved, or at least reduced, by an imaginative reading of our shared practices and our increasingly shared history, with an emphasis on process. In this sense the practice of the institutions of international law is to be understood as the law itself. They are in a dialectical relationship with the law, shaping it and being shaped by it. This is explained by reference to actual cases and examples, providing a course of international law in some standard sense as well.