

1988

Interpreting State Practice Under Treaties: A Brief Colloquy on the Composition of Customary International Law

Law Review staff

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/vjtl>



Part of the [International Law Commons](#)

Recommended Citation

Law Review staff, Interpreting State Practice Under Treaties: A Brief Colloquy on the Composition of Customary International Law, 21 *Vanderbilt Law Review* 457 (2021)

Available at: <https://scholarship.law.vanderbilt.edu/vjtl/vol21/iss3/1>

This Article is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in Vanderbilt Journal of Transnational Law by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact mark.j.williams@vanderbilt.edu.

Vanderbilt Journal of Transnational Law

VOLUME 21

1988

NUMBER 3

Interpreting State Practice Under Treaties: A Brief Colloquy on the Composition of Customary International Law

International treaties are presently recognized as an important source for determining the content of customary international law. Nevertheless, the precise weight accorded treaties in this respect has proved to be a topic of considerable debate. In an article entitled *Customary International Law: The Problem of Treaties*, Professor A.M. Weisburd rejected the view that treaties provide conclusive evidence of state practice. Instead, he argued that the act of undertaking a treaty obligation is simply one form of state practice and may be overcome by contrary state practice. Therefore, state practice contrary to treaty obligations must be considered when formulating rules of customary international law.

Professor Weisburd's position explicitly rejected the widely supported view that state practice contrary to treaty obligations has little relevance to the determination of customary international law norms. Professor Weisburd cited Professor Anthony D'Amato as a leading proponent of the position that treaties are important contributors to, and reflections of, customary norms. In 1971, Professor D'Amato forcefully confronted the traditional view that treaties had no bearing on the creation of customary international law. Many commentators now regard his influential book, *The Concept of Custom in International Law*, as the point of departure for any discussion of this topic.

In the following discussion, Professor D'Amato takes issue with Professor Weisburd's interpretation of the impact of state practice under treaties. Although the central debate specifically addresses the issue of human rights, the discussion provides a valuable framework for deciding

whether contrary state practice effectively undermines the conclusive effect of treaties in developing rules of customary international law.