The Role of International Custom in Public International Law

ABSTRACT

Besides international treaty, international custom is one of the main sources of a public international law. Although international custom is systematically taught in elementary courses of public international law and it forms the basis of this field, it still remains a subject of many discussions.

Possible interpretations of international custom are provided by International Court of Justice in its case law, by other authors currently active in public international law and also by the International Law Commission, sessions of which (among other things) aim to clarify this matter. The inconsistency in the identification of the main elements of international custom, the unclear role of international organizations, different theoretical opinions concerning the relationship between general practice and *opinio iuris* and relationship between treaties and international custom are the core questions of this thesis.

To these ends, in its first chapter this thesis firstly delineates the historical development of theoretical constructions concerning international custom. In the second and third chapter, this thesis analyses in detail two elements of international custom (general practice and *opinio iuris*), which are illustrated on cases of the International Court of Justice with respect to the role of international organizations. The third and fourth chapter describe the persistent objector rule and the concept of particular custom. Furthermore, this thesis describes possible situations arising from the relationship between international treaties and international custom with respect to the codification of international custom in international treaties, which is the main consequence of their relationship. Conclusion then dwells on recent discussions on the topic of affected states doctrine which may be relevant for future development in the field of public international law.