**Chapter Four**

**International Customary Law**

**Topics**

4.1 Books & Articles Related to Customary International Law

4.2 Articulation & Act Theory

4.3 Claim & Response Theory

4.4 Identification of Customary International Law (Work of the International Law Commission)

4.5 International Joint Commission (IJC) (Canada/U.S.)

4.6 Juvenile Death Penalty

4.7 No-Harm Rule

4.8 Rio Declaration

4.9 Special Custom

4.10 Stockholm Declaration

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**4.1 Books & Articles Related to Customary International Law**

Anthony A. D’Amato, Concept of Custom in International Law (Cornell University Press 1971).

Custom’s Future: International Law in a Changing World (Curtis A. Bradley ed., Cambridge University Press 2016).

Michael P. Scharf, *Accelerated Formation of Customary International Law*, 20 ILSA J. Int’l. & Comp. L. 305 (2013), available at [Accelerated Formation of Customary International Law 20 ILSA Journal of International and Comparative Law 2013-2014 (heinonline.org)](https://heinonline.org/HOL/LandingPage?handle=hein.journals/ilsaic20&div=18&id=&page=).

Michael P. Scharf, Customary International Law in Times of Fundamental Change: Recognizing Grotian Moments (Cambridge University Press 2013).

The “Custom” chapters in any of the general international law hornbooks identified as additional resources for Chapter One.

**4.2 Articulation & Act Theory**

D’Amato, *supra* Section 4.1.

**4.3 Claim & Response Theory**

Myers McDougal, Editorial Comment: *The Hydrogen Bomb Tests and the International Law of the Sea*, 49 Am. J. Int’l. L. 356 (1955), available at [The Hydrogen Bomb Tests and the International Law of the Sea (yale.edu)](https://openyls.law.yale.edu/bitstream/handle/20.500.13051/1786/Hydrogen_Bomb_Tests_and_the_International_Law_of_the_Sea__The.pdf?sequence=2).

Professor McDougal’s theory also is described in a modern context in James Green, *The Rise of Twiplomacy and the Making of Customary International Law*, 21:1 Chinese J. Int’l. L. 1 (2022), available at [Rise of Twiplomacy and the Making of Customary International Law on Social Media | Chinese Journal of International Law | Oxford Academic (oup.com)](https://academic.oup.com/chinesejil/article/21/1/1/6548215).

**4.4 Identification of Customary International Law (Work of the International Law Commission)**

-Comprehensive Webpage Regarding the International Law Commission’s Work

[Identification of customary international law — Analytical Guide to the Work of the International Law Commission — International Law Commission (un.org)](https://legal.un.org/ilc/guide/1_13.shtml)

-Draft Conclusions on Identification of Customary International Law, with Commentaries (2018)

[Draft conclusions on identification of customary international law, with commentaries, 2018 (un.org)](https://legal.un.org/ilc/texts/instruments/english/commentaries/1_13_2018.pdf).

**4.5 International Joint Commission (IJC) (Canada/U.S.)**

-International Joint Commission Homepage

[History of the IJC | International Joint Commission](https://www.ijc.org/en/who/history)

**4.6 Juvenile Death Penalty**

-U.S. Supreme Court opinion declaring the juvenile death penalty unconstitutional

*Roper v. Simmons,* 543 U.S. 551(2005), available at [Roper v. Simmons | Oyez](https://www.oyez.org/cases/2004/03-633).

**4.7 No-Harm Rule**

-2001 Draft Articles

[Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries – 2001](https://legal.un.org/ilc/texts/instruments/english/commentaries/9_7_2001.pdf)

**4.8 Rio Conference**

-Rio Declaration Text

[United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 3-14 June 1992 | United Nations](https://www.un.org/en/conferences/environment/rio1992)

**4.9 Special Custom**

Anthony D’Amato, *The Concept of Special Custom* (2010), Northwestern University School of Law Working Papers Series, available at [The Concept of Special Custom in International Law (northwestern.edu)](https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1115&context=facultyworkingpapers).

**4.10 Stockholm Conference**

-Stockholm Declaration Text

[United Nations Conference on the Environment, Stockholm 1972 | United Nations](https://www.un.org/en/conferences/environment/stockholm1972)