

Table of Contents

PREFACE	V
LIST OF GRAPHICS.....	XIX
LIST OF ABBREVIATIONS	XXI

PART 1. SYSTEMIC ELEMENTS OF INTERNATIONAL LAW

Chapter 1. Foundations of International Law.....	3
A. Structures of International Law	4
Basic Horizontal Structure: Interaction of States	4
Vertical Structure: International Organizations.....	7
Vertical Structure: Interface with National Law	8
Vertical/Horizontal Structure: Interaction of Persons	10
B. Theories of International Law	11
International Natural Law	11
International Legal Positivism	13
International Legal Realism	15
New Stream	17
International Law and Economics.....	18
International Law/International Relations	19
C. History of International Law	21
Ancient Times	21
Middle Ages in Europe	23
Rise of Nation-States.....	24
Rise of Positivism	26
Post-World War II Trends.....	27
International Law in American History	28
Further Reading	32
Chapter 2. Actors of International Law	35
A. States.....	35
Recognition of States	36
Modern Trends in Recognition of States	39
Recognition of Governments	41
Modern Trends in Recognition of Governments	42
Recognition in U.S. Practice	44
Rules on State Succession	49
Rules on Delimitation of Land Boundaries.....	50
B. International Organizations	52
Formation.....	52

Legal Personality	53
Legal Responsibility	56
Structure and Powers.....	59
Examples of International Organizations.....	64
C. Non-Governmental Organizations	73
D. Natural Persons and Groups	76
E. Legal Persons (Corporations).....	78
Further Reading	79
Chapter 3. International Law Creation.....	81
A. Treaties	81
Introduction	81
What Is a Treaty?	83
Making Treaties.....	84
Reserving to Treaties	87
Operation of Treaties.....	94
Invalidity, Termination, Withdrawal or Suspension	98
B. Customary International Law	101
Introduction	101
A General Practice.....	102
Accepted as Law (<i>Opinio Juris</i>).....	104
Persistent Objector Rule	105
Concept of <i>Jus Cogens</i>	106
Relationship of Treaties and Custom	108
Criticisms of Customary International Law	111
C. General Principles of Law	112
D. Subsidiary Sources: Courts and Teachings	114
E. Law-Making by International Organizations	117
Introduction	117
Emergent World Legislature? U.N. Security Council.....	118
Transnational Public Regulation: ICAO	120
F. Non-Legally-Binding Norms (“Soft Law”).....	125
Vague or General Treaty Provisions	126
Declarations or Political Pacts by States	127
Recommendations of International Organizations	129
Codes of Behavior for States or Non-State Actors.....	131
Further Reading	138
Chapter 4. International Dispute Resolution	141
A. Negotiation, Notification, and Consultation.....	141
B. Mediation and Conciliation.....	147
C. Arbitration	149
Commencing an Arbitration	149
How Arbitration Works	153
Selected Arbitral Institutions	155

D.	World Court	157
	Permanent Court of International Justice.....	157
	International Court of Justice	159
E.	U.S. Relationship with the World Court.....	173
	Jurisdiction Pursuant to Treaties	173
	Jurisdiction Under the “Optional Clause”	175
	Most Recent Cases Involving the United States	178
	Overall U.S. Track Record	183
F.	Other International Courts.....	185
	Court of Justice of the European Union.....	185
	European Court of Human Rights.....	186
	Inter-American Court of Human Rights	187
	African International Courts	188
	International Criminal Courts	189
	International Tribunal for the Law of the Sea	190
G.	National Courts	191
	Further Reading	194

Chapter 5. International Law Compliance and

	Coercion	197
A.	Compliance.....	198
	Effect of Initial Commitment.....	198
	Effect of Reputational Consequences	200
	Fear of Reciprocity.....	201
	Effect of “Compliance Pull” of the Rule	202
	Techniques for Identifying Non-Compliance	203
	Capacity-Building.....	207
	Compliance Due to National Processes.....	208
B.	Non-Forcible and Forcible Coercion of States	212
	Diplomatic Sanctions.....	212
	Economic Sanctions	214
	Military Enforcement.....	217
C.	Non-Forcible and Forcible Coercion of Persons.....	219
	Economic Sanctions	219
	Actions in National Courts to Enforce International Law	223
	Civil Actions to Enforce a Private Transaction	224
	Further Reading	227

Chapter 6. Rules on State Responsibility

A.	General Principle of Responsibility	230
B.	Attribution of Conduct to a State	231
C.	Concept of Breach.....	234
D.	Obligations of a Breaching State.....	236
	Restitution	237

Compensation	237
Satisfaction	240
Interest	241
E. Rights of an Injured State.....	242
Invocation of Breaching State's Responsibility	242
Countermeasures.....	248
Further Reading	251

PART 2. INTER-RELATIONSHIP OF INTERNATIONAL LAW AND NATIONAL LAW

Chapter 7. Foreign Relations Law of the United States255

A. Separation of Powers.....	255
Congressional Power	255
Executive Power	262
Judicial Power.....	281
B. Federal-State Relations	285
Reasons for Federal Dominance	285
Bases for Striking Down State Laws	287
C. International Law as a Part of U.S. Law	289
Treaties in U.S. Law.....	290
Statutes and Regulations Implementing Treaties	294
Customary International Law in U.S. Law	297
Example: Alien Tort Statute.....	301
D. Use of Foreign Law in U.S. Law.....	305
Further Reading	310

Chapter 8. Exercise of National Jurisdiction313

A. Jurisdiction and U.S. Foreign Relations Law.....	313
B. Permissible Bases of Prescriptive Jurisdiction under International Law.....	319
General Approach.....	319
Territorial Jurisdiction.....	321
Nationality Jurisdiction.....	322
Passive Personality Jurisdiction	324
Protective Jurisdiction	325
Universal Jurisdiction.....	326
Combinations of Jurisdictional Bases	330
Discretion to Exercise Permissible Jurisdiction	330
Reasonableness of Exercising Jurisdiction	331
Concurrent Jurisdiction	334
C. Jurisdiction to Adjudicate and Enforce.....	334
D. Act of State Doctrine	338
Act of State Doctrine Generally.....	338
Act of State Doctrine and the Political Branches	340

Possible Limitations to the Doctrine	341
Further Reading	343
Chapter 9. Immunity from National Jurisdiction	345
A. Diplomatic and Consular Immunity	346
Purpose of the Immunity	346
Diplomatic Immunity	346
Consular Immunity	349
U.S. Statutory Law	350
B. Special Missions Immunity	350
C. Other Immunities for Foreign State Officials	351
Immunity <i>Ratione Personae</i> (Head-of-State Immunity)	352
Immunity <i>Ratione Materiae</i>	355
D. State Immunity	357
International Law on State Immunity	357
Historical Development in the United States	359
Foreign Sovereign Immunities Act (FSIA) Generally	361
Agencies and Instrumentalities	363
General Grant of Immunity	366
Waiver Exception	367
Commercial Activity Exception	368
Expropriation Exception	370
Inheritance/Immovable Property Exception	371
Tort Exception	372
Arbitration Exception	373
Terrorist State Exception	374
Counterclaims Exception	378
Extent of Liability	379
Attachment and Execution	379
E. Immunities Relating to International Organizations	380
Further Reading	384

**PART 3. SPECIALIZED AREAS
OF INTERNATIONAL LAW**

Chapter 10. Human Rights	389
A. Introduction	389
B. State Responsibility for Injury to Aliens	392
C. Global Human Rights Instruments	398
U.N. Charter and Human Rights	398
Universal Declaration of Human Rights	401
Human Rights Covenants (ICCPR and ICESCR)	404
Other Key Human Rights Treaties	409
U.S. Adherence to Human Rights Treaties	420

D.	Global Human Rights Institutions	422
	Human Rights Committees	423
	U.N. Human Rights Council	427
	U.N. High Commissioner for Human Rights	430
	U.N. High Commissioner for Refugees	431
E.	Regional Human Rights Instruments/Institutions	432
	Europe	432
	Americas.....	436
	Africa	441
	Islamic States	444
F.	Immigration and Refugees.....	445
	Further Reading	447
Chapter 11. Law of the Sea		449
A.	Introduction	449
B.	Major Maritime Zones.....	450
	Baselines and Internal Waters	450
	Territorial Sea.....	453
	Contiguous Zone	456
	Continental Shelf.....	457
	Exclusive Economic Zone	459
	Islands and Archipelagoes	462
	High Seas	464
	Deep Sea-Bed Area	467
	Straits.....	468
	Delimitation of Maritime Boundaries	469
	Hot Pursuit Across Maritime Zones	472
C.	Regulation of Certain Uses of the Sea	472
	Maritime Pollution	472
	Fishing.....	474
	Protection of Whales.....	477
	Recovery of Underwater Artifacts	478
D.	Dispute Settlement.....	479
E.	Should the United States Ratify the LOSC?	482
	Further Reading	486
Chapter 12. International Environmental Law.....		489
A.	Structural Overview	489
	Historical Background.....	489
	Recent Developments	494
	International and Non-Governmental Organizations.....	497
	Key Principles	500
	Techniques of Legal Regulation.....	502
	Techniques for Imposing Liability.....	503

B.	Regulation in Important Sectors	511
	Ozone Depletion.....	511
	Global Climate Change	513
	Biological Diversity	517
C.	Cross-Sectoral Issues.....	520
	Trade and Environment.....	520
	Extraterritorial Application of Environmental Law	523
	Further Reading	525
Chapter 13. International Criminal Law		527
A.	Introduction	527
B.	General Transnational Cooperation.....	527
	Mutual Legal Assistance.....	527
	Extradition	530
C.	Transnational Cooperation Concerning Important Sectors	533
	Terrorism	534
	Narcotics.....	536
	Corruption.....	537
	Organized Crime.....	538
	Cybercrime	539
D.	International Crimes.....	541
	General Elements of International Crimes	541
	Crime of Aggression	542
	War Crimes	544
	Crimes Against Humanity	546
	Genocide	547
E.	International Criminal Tribunals	548
	<i>Ad Hoc</i> U.N. Tribunals for Yugoslavia and Rwanda.....	548
	International Criminal Court	551
F.	Regional Court for Africa	560
G.	Hybrid Courts	561
	Cambodia Extraordinary Chambers	561
	East Timor Special Panels	563
	Supreme Iraqi Criminal Tribunal	564
	Kosovar Special Panels	565
	Sierra Leone Special Court	566
	Special Tribunal for Lebanon	567
	Special Criminal Court for the Central African Republic.....	569
	Extraordinary African Chambers in Senegal	570
	Further Reading	570
Chapter 14. Use of Armed Force and Arms Control.....		573
A.	<i>Jus Ad Bellum</i>	573
	General Prohibition on the Use of Force.....	573

Inherent Right of Self-Defense	580
Peace Enforcement by the Security Council	592
Peace Enforcement by Regional Organizations	597
Mixed Bases for the Use of Force	599
U.N. Peacekeeping	600
B. <i>Jus In Bello</i>	602
Restrictions on Methods of Warfare	603
Protections for Victims of Warfare	607
Example: 2003 Intervention in Iraq	616
C. Arms Control.....	618
Background	618
Conventional Weapons	619
Chemical and Biological Weapons.....	621
Nuclear Weapons	622
Confidence-Building	627
Further Reading	627
Chapter 15. International Legal Research	629
A. Treatises and Other Scholarly Material	629
B. International Agreements.....	633
International Agreements Generally	633
International Agreements of the United States	635
C. State Practice	637
Contemporary Practice of Governments	637
Practice of the United States	638
D. International Organization Practice	640
Practice of International Organizations Generally	640
Practice of the United Nations	640
International Law Commission	641
E. Judicial and Arbitral Decisions	642
F. General Internet Research.....	645
G. Further Reference Works.....	646
CASES INDEX.....	649
TREATIES INDEX	655
SUBJECT INDEX.....	661