Handbook of International Law, second edition

To the new student of international law, the subject can appear extremely complex: a system of laws created by States, courts and tribunals operating at the global and national level. A clear guide to the subject is essential to ensure understanding. This handbook provides exactly that: written by an expert who both teaches and practises in the field, it focuses on what the law is, how it is created, and how it is applied to solve day-to-day problems. It offers a uniquely practical approach to the subject, giving it relevance and immediacy. The new edition retains a concise, user-friendly format allowing central principles such as jurisdiction and the law of treaties to be understood. In addition, it explores more specialised topics such as human rights, terrorism and the environment. This handbook is the ideal introduction for students new to international law.

Anthony Aust is a solicitor and former Deputy Legal Adviser of the Foreign and Commonwealth Office, London. He now practises as a consultant on international law and constitutional law to governments, law firms and international organisations. He is a visiting professor at various universities. His publications include Modern Treaty Law and Practice (Cambridge, 2nd edn 2007).
Handbook of International Law

Second Edition

ANTHONY AUST
For Kirsten
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreword to the First Edition</td>
<td>xxv</td>
</tr>
<tr>
<td>Preface to Second Edition</td>
<td>xxvii</td>
</tr>
<tr>
<td>Acknowledgements</td>
<td>xxxi</td>
</tr>
<tr>
<td>Table of treaties</td>
<td>xxxii</td>
</tr>
<tr>
<td>Table of MOUs</td>
<td>xlv</td>
</tr>
<tr>
<td>Table of cases</td>
<td>xlv</td>
</tr>
<tr>
<td>Glossary of legal terms</td>
<td>liv</td>
</tr>
<tr>
<td>List of abbreviations</td>
<td>lviii</td>
</tr>
</tbody>
</table>

1 International law

1 Introduction

1 Private international law

2 Transnational law

2 The nature of international law

3 But is international law really law?

4 International lawyers

5 The sources of international law

5 Treaties

6 Customary international law

8 General principles of law recognised by ‘civilized’ nations

8 Good faith

8 Estoppel

8 Norms

9 Judicial decisions

9 Teachings of the most highly qualified publicists

9 General international law

10 Obligations *erga omnes*

10 *Jus cogens*

11 ‘Soft law’

11 Comity

11 Domestic law

12 Subjects and objects of, and actors in, international law

13 National liberation movements

13 NGOs
# 2 States and recognition

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>15</td>
</tr>
<tr>
<td>Criteria for statehood</td>
<td>15</td>
</tr>
<tr>
<td>Recognition of States</td>
<td>16</td>
</tr>
<tr>
<td>Vatican City</td>
<td>18</td>
</tr>
<tr>
<td>Taiwan</td>
<td>18</td>
</tr>
<tr>
<td>Turkish Republic of Northern Cyprus</td>
<td>19</td>
</tr>
<tr>
<td>Soviet Republics and former Soviet Republics</td>
<td>19</td>
</tr>
<tr>
<td>Yugoslavia</td>
<td>21</td>
</tr>
<tr>
<td>Domestic courts and unrecognised States</td>
<td>21</td>
</tr>
<tr>
<td>Self-determination</td>
<td>22</td>
</tr>
<tr>
<td>Secession</td>
<td>23</td>
</tr>
<tr>
<td>Territorial integrity and \textit{uti possidetis}</td>
<td>24</td>
</tr>
<tr>
<td>Recognition of governments</td>
<td>25</td>
</tr>
<tr>
<td>Governments in exile</td>
<td>26</td>
</tr>
<tr>
<td>\textit{De jure} and \textit{de facto} recognition</td>
<td>26</td>
</tr>
<tr>
<td>Palestine</td>
<td>26</td>
</tr>
<tr>
<td>Western Sahara</td>
<td>28</td>
</tr>
<tr>
<td>Means of recognition</td>
<td>28</td>
</tr>
<tr>
<td>Overseas territories</td>
<td>29</td>
</tr>
<tr>
<td>British territories</td>
<td>29</td>
</tr>
<tr>
<td>Colonies</td>
<td>30</td>
</tr>
<tr>
<td>Protectorates</td>
<td>31</td>
</tr>
<tr>
<td>Protected States</td>
<td>31</td>
</tr>
<tr>
<td>Condominiums</td>
<td>31</td>
</tr>
<tr>
<td>Mandated and trust territories</td>
<td>32</td>
</tr>
</tbody>
</table>

# 3 Territory

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>33</td>
</tr>
<tr>
<td>Boundary, border or frontier?</td>
<td>34</td>
</tr>
<tr>
<td>Delimitation and demarcation</td>
<td>34</td>
</tr>
<tr>
<td>Intertemporal rule</td>
<td>35</td>
</tr>
<tr>
<td>Critical date</td>
<td>35</td>
</tr>
<tr>
<td>Means of acquisition</td>
<td>35</td>
</tr>
<tr>
<td>Discovery</td>
<td>36</td>
</tr>
<tr>
<td>Conquest and annexation</td>
<td>36</td>
</tr>
<tr>
<td>Cession</td>
<td>37</td>
</tr>
<tr>
<td>Occupation and prescription</td>
<td>37</td>
</tr>
<tr>
<td>Acquiescence, estoppel and recognition</td>
<td>38</td>
</tr>
<tr>
<td>Boundary treaties</td>
<td>38</td>
</tr>
<tr>
<td>Leases</td>
<td>39</td>
</tr>
<tr>
<td>Rivers</td>
<td>39</td>
</tr>
<tr>
<td>State servitudes</td>
<td>40</td>
</tr>
</tbody>
</table>

\textit{Res communis}                                                    | 40   |
<table>
<thead>
<tr>
<th>Contents</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Common heritage of mankind</td>
<td>40</td>
</tr>
<tr>
<td>Territorial integrity and <em>uti possidetis</em></td>
<td>40</td>
</tr>
<tr>
<td><strong>4</strong> Jurisdiction</td>
<td>42</td>
</tr>
<tr>
<td>Introduction</td>
<td>42</td>
</tr>
<tr>
<td>Territorial principle</td>
<td>43</td>
</tr>
<tr>
<td>Nationality principle</td>
<td>43</td>
</tr>
<tr>
<td>Passive personality principle</td>
<td>44</td>
</tr>
<tr>
<td>Protective principle</td>
<td>44</td>
</tr>
<tr>
<td>Universal and quasi-universal jurisdiction</td>
<td>44</td>
</tr>
<tr>
<td>Effects doctrine</td>
<td>45</td>
</tr>
<tr>
<td>Alien Tort Claims Act 1789</td>
<td>47</td>
</tr>
<tr>
<td>Abduction</td>
<td>47</td>
</tr>
<tr>
<td><strong>5</strong> The law of treaties</td>
<td>49</td>
</tr>
<tr>
<td>Introduction</td>
<td>49</td>
</tr>
<tr>
<td>The Vienna Convention on the Law of Treaties 1969</td>
<td>50</td>
</tr>
<tr>
<td>What is a treaty?</td>
<td>50</td>
</tr>
<tr>
<td>Concluded between States</td>
<td>51</td>
</tr>
<tr>
<td>In written form</td>
<td>51</td>
</tr>
<tr>
<td>Governed by international law</td>
<td>51</td>
</tr>
<tr>
<td>Embodied in a single instrument or in two or more related instruments</td>
<td>52</td>
</tr>
<tr>
<td>Given any name</td>
<td>52</td>
</tr>
<tr>
<td>Signed?</td>
<td>53</td>
</tr>
<tr>
<td>MOUs</td>
<td>53</td>
</tr>
<tr>
<td>But are MOUs really treaties?</td>
<td>54</td>
</tr>
<tr>
<td>Agreements between States governed by domestic law</td>
<td>55</td>
</tr>
<tr>
<td>Capacity to make treaties</td>
<td>55</td>
</tr>
<tr>
<td>Federations</td>
<td>55</td>
</tr>
<tr>
<td>Overseas territories</td>
<td>55</td>
</tr>
<tr>
<td>International organisations</td>
<td>56</td>
</tr>
<tr>
<td>Credentials and full powers</td>
<td>56</td>
</tr>
<tr>
<td>Credentials</td>
<td>56</td>
</tr>
<tr>
<td>Full powers</td>
<td>57</td>
</tr>
<tr>
<td>Adoption and authentication</td>
<td>57</td>
</tr>
<tr>
<td>Adoption</td>
<td>57</td>
</tr>
<tr>
<td>Consensus</td>
<td>58</td>
</tr>
<tr>
<td>Authentication</td>
<td>58</td>
</tr>
<tr>
<td>Final act</td>
<td>59</td>
</tr>
<tr>
<td>Consent to be bound</td>
<td>59</td>
</tr>
<tr>
<td>Signature only</td>
<td>59</td>
</tr>
<tr>
<td>‘Open for signature’</td>
<td>59</td>
</tr>
<tr>
<td>Witnessing</td>
<td>60</td>
</tr>
<tr>
<td>Exchange of instruments</td>
<td>60</td>
</tr>
</tbody>
</table>
Ratification 60
Who can sign the instrument of ratification? 61
Acceptance or approval 61
Accession 61
Any other agreed means 61
‘Signatory’, ‘party’ and ‘adherence’ 62
The ‘all States’ and ‘Vienna’ formulas 62

Rights and obligations before entry into force 62
Obligation not to defeat the object and purpose of a treaty before its entry into force 63
Withdrawal of consent to be bound before entry into force 63
Development of treaties 63

Reservations 64
Bilateral treaties 64
Multilateral treaties 64
Interpretative declarations 65
Disguised reservations 65
Reservations generally not prohibited 65
Acceptance of, and objection to, reservations 66
‘Plurilateral treaties’ 67
Constituent instrument of an international organisation 67
All other cases 67
The legal effects of reservations and of objections to reservations 68
Unresolved issues 69
Reservations to human rights treaties 70
Treaty-monitoring bodies 71
Some ways of minimising the problem of reservations 71
Procedure 72
Late reservations 72
The International Law Commission study 72

Entry into force 73
Express provisions 73
Date of entry into force 74
Provisional application 74
Preparatory commissions 74

Treaties and domestic law 74
Duty to perform treaties 75
Constitutional provisions 75
Dualism 75
Monism 76
United Kingdom 76
United States 78
Implementation by states of a federation 80
<table>
<thead>
<tr>
<th>Contents</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Territorial application</td>
<td>81</td>
</tr>
<tr>
<td>Territorial extension clauses</td>
<td>81</td>
</tr>
<tr>
<td>Declaration on signature or ratification of a multilateral treaty</td>
<td>81</td>
</tr>
<tr>
<td>Political subdivisions of metropolitan territory</td>
<td>82</td>
</tr>
<tr>
<td>Successive treaties</td>
<td>82</td>
</tr>
<tr>
<td>Interpretation</td>
<td>82</td>
</tr>
<tr>
<td>Article 31 General rule of interpretation</td>
<td>83</td>
</tr>
<tr>
<td>Paragraph 1</td>
<td>83</td>
</tr>
<tr>
<td>Paragraph 2 (context)</td>
<td>84</td>
</tr>
<tr>
<td>Paragraph 3(a) (subsequent agreements)</td>
<td>85</td>
</tr>
<tr>
<td>Paragraph 3(b) (subsequent practice)</td>
<td>86</td>
</tr>
<tr>
<td>Paragraph 3(c) (relevant rules of international law)</td>
<td>86</td>
</tr>
<tr>
<td>Paragraph 4 (special meaning)</td>
<td>87</td>
</tr>
<tr>
<td>Supplementary means of interpretation</td>
<td>87</td>
</tr>
<tr>
<td>Implied terms</td>
<td>89</td>
</tr>
<tr>
<td>Interpretation of treaties in more than one language</td>
<td>89</td>
</tr>
<tr>
<td>Third States</td>
<td>90</td>
</tr>
<tr>
<td>Amendment</td>
<td>91</td>
</tr>
<tr>
<td>Bilateral treaties</td>
<td>91</td>
</tr>
<tr>
<td>Multilateral treaties</td>
<td>91</td>
</tr>
<tr>
<td>Duration and termination</td>
<td>93</td>
</tr>
<tr>
<td>Express provisions</td>
<td>93</td>
</tr>
<tr>
<td>Termination or withdrawal by consent</td>
<td>95</td>
</tr>
<tr>
<td>No provision for termination or withdrawal</td>
<td>95</td>
</tr>
<tr>
<td>Termination or suspension for breach</td>
<td>95</td>
</tr>
<tr>
<td>Supervening impossibility of performance</td>
<td>96</td>
</tr>
<tr>
<td>Fundamental change of circumstances (<em>rebus sic stantibus</em>)</td>
<td>97</td>
</tr>
<tr>
<td>Severance of diplomatic or consular relations</td>
<td>97</td>
</tr>
<tr>
<td>Outbreak of hostilities</td>
<td>97</td>
</tr>
<tr>
<td>Can one validly withdraw from a treaty and immediately become a party again?</td>
<td>98</td>
</tr>
<tr>
<td>Desueteude</td>
<td>98</td>
</tr>
<tr>
<td>Invalidity</td>
<td>99</td>
</tr>
<tr>
<td>‘Unequal treaties’</td>
<td>100</td>
</tr>
<tr>
<td>The depositary</td>
<td>100</td>
</tr>
<tr>
<td>Designation of a depositary</td>
<td>101</td>
</tr>
<tr>
<td>Multiple depositaries</td>
<td>101</td>
</tr>
<tr>
<td>Duty to act impartially</td>
<td>101</td>
</tr>
<tr>
<td>Functions of the depositary</td>
<td>102</td>
</tr>
<tr>
<td>Correction of errors</td>
<td>102</td>
</tr>
<tr>
<td>Registration and publication</td>
<td>102</td>
</tr>
<tr>
<td>Registration</td>
<td>102</td>
</tr>
<tr>
<td>Publication</td>
<td>104</td>
</tr>
</tbody>
</table>
6 Diplomatic privileges and immunities

Introduction

The establishment of diplomatic relations and permanent diplomatic missions

The functions of a diplomatic mission

The members of the mission

Persona non grata

Size and composition of the mission staff

The premises of the mission

Facilitating the acquisition of premises for the mission

Help with facilities for the mission

Inviolability of the premises of the mission

Police action

Service of legal process

Immunity from jurisdiction

Bank account of the mission

Protection from intrusion or damage

Disturbance of the peace of the mission and impairment of its dignity

Asylum

When inviolability of mission premises begins and ends

Exemption of mission premises from taxation

Inviolability of mission archives

Means of transport

Freedom of movement

Freedom of communication

Inviolability of official correspondence

The diplomatic bag

What is a diplomatic bag?

What may the diplomatic bag contain?

Prohibition on opening or detaining the diplomatic bag

Scanning the diplomatic bag

Diplomatic couriers

Personal inviolability

No arrest or detention

Safeguarding from attack

Inviolability of the private residence

Inviolability of private papers, correspondence and property

The difference between diplomatic immunity and State immunity
Diplomatic immunity 127
   Exception (a): private immovable property in the territory of the receiving State 128
   Exception (b): private involvement in succession proceedings 128
   Exception (c): private professional or commercial activity 128
   Proof of diplomatic immunity 129
   Immunity from giving evidence 129
   What immunity is not 130
   Immunity from execution 130
   Waiver of immunity 130
   Social security exemption 131
   Exemption from taxation 132
   Exemption from personal services 133
   Exemption from customs duties and inspection 133
   Members of the family of a diplomatic agent 134
      Working spouses 134
   Administrative and technical staff 135
   Service staff 135
   Private servants 135
   Nationals and permanent residents of the receiving State 136
   Commencement of privileges and immunities 136
   Termination of privileges and immunities 137
   Third States 137
      Diplomats in transit 137
      Communication in transit 138
   Duties of the mission to the receiving State 138
   End of the functions of a diplomatic agent 139
      Facilities for departure 139
   Breach of diplomatic relations and the protection of the interests of the sending State 139
   Non-discrimination and reciprocity 140
   Special missions 141
   Consular relations 142

7 State immunity 145
   Introduction 145
   The relationship of State immunity to other legal doctrines 146
      Diplomatic immunity distinguished 146
      Non-justiciability 146
      Act of State 147
      Human rights 147
   Sources of the law on State immunity 148
   Which entities enjoy immunity? 149
   Exceptions to immunity 150
<table>
<thead>
<tr>
<th>xiv</th>
<th>Contents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consent</td>
<td>150</td>
</tr>
<tr>
<td>Commercial transactions</td>
<td>151</td>
</tr>
<tr>
<td>Contracts of employment</td>
<td>153</td>
</tr>
<tr>
<td>Torts (delicts)</td>
<td>154</td>
</tr>
<tr>
<td>Ownership, possession and use of property</td>
<td>155</td>
</tr>
<tr>
<td>Intellectual and industrial property rights</td>
<td>156</td>
</tr>
<tr>
<td>Ships</td>
<td>156</td>
</tr>
<tr>
<td>Aircraft and space objects</td>
<td>157</td>
</tr>
<tr>
<td>Registration of a foreign judgment</td>
<td>157</td>
</tr>
<tr>
<td>Criminal jurisdiction</td>
<td>157</td>
</tr>
<tr>
<td>Enforcement</td>
<td>157</td>
</tr>
<tr>
<td>Pre-judgment measures of constraint</td>
<td>157</td>
</tr>
<tr>
<td>Execution of the judgment</td>
<td>158</td>
</tr>
<tr>
<td>Procedure</td>
<td>158</td>
</tr>
<tr>
<td>Service of process</td>
<td>158</td>
</tr>
<tr>
<td>Judgment in default</td>
<td>159</td>
</tr>
<tr>
<td>Visiting forces</td>
<td>159</td>
</tr>
<tr>
<td>Civil claims</td>
<td>159</td>
</tr>
<tr>
<td>Criminal jurisdiction</td>
<td>160</td>
</tr>
<tr>
<td>Heads of State, heads of government, foreign ministers and other senior officials</td>
<td>161</td>
</tr>
<tr>
<td>Civil proceedings</td>
<td>161</td>
</tr>
<tr>
<td>Criminal proceedings</td>
<td>161</td>
</tr>
</tbody>
</table>

8 Nationality, aliens and refugees

Nationality                                163
Introduction                               163
Dual nationality                          163
Citizenship                               164
The right to leave and return to one's State of nationality 165
Passports                                 165
Statelessness                             165
Legal persons                             166
Ships and aircraft                        167
Diplomatic protection                     167
Aliens                                    168
Property of aliens                        169
Asylum                                    170
Diplomatic asylum                         170
Refugees                                  171
Definition of refugee                     171
Application for refugee status            173
Fear of persecution                       174
Exceptions to refugee status              175
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-refoulement</td>
<td>176</td>
</tr>
<tr>
<td>Protection for the State of refuge</td>
<td>176</td>
</tr>
<tr>
<td>Obligations of the State of refuge to the refugee</td>
<td>177</td>
</tr>
<tr>
<td><strong>9 International organisations</strong></td>
<td></td>
</tr>
<tr>
<td>Introduction</td>
<td>178</td>
</tr>
<tr>
<td>Membership and representation</td>
<td>179</td>
</tr>
<tr>
<td>Credentials</td>
<td>180</td>
</tr>
<tr>
<td>Withdrawal</td>
<td>180</td>
</tr>
<tr>
<td>International legal personality</td>
<td>180</td>
</tr>
<tr>
<td>Immunities and privileges</td>
<td>181</td>
</tr>
<tr>
<td>Liability</td>
<td>183</td>
</tr>
<tr>
<td>Dispute settlement</td>
<td>184</td>
</tr>
<tr>
<td>The United Nations</td>
<td>184</td>
</tr>
<tr>
<td>The (so-called) UN specialised agencies</td>
<td>185</td>
</tr>
<tr>
<td>Staff disputes</td>
<td>185</td>
</tr>
<tr>
<td><strong>10 The United Nations, including the use of force</strong></td>
<td></td>
</tr>
<tr>
<td>Introduction</td>
<td>186</td>
</tr>
<tr>
<td>Membership</td>
<td>186</td>
</tr>
<tr>
<td>Withdrawal, suspension and expulsion</td>
<td>188</td>
</tr>
<tr>
<td>Regional groups</td>
<td>188</td>
</tr>
<tr>
<td>The UN's principal organs</td>
<td>189</td>
</tr>
<tr>
<td>The UN's specialised agencies</td>
<td>189</td>
</tr>
<tr>
<td>The General Assembly</td>
<td>190</td>
</tr>
<tr>
<td>Main Committees of the General Assembly</td>
<td>190</td>
</tr>
<tr>
<td>Sixth Committee</td>
<td>191</td>
</tr>
<tr>
<td>The Security Council</td>
<td>192</td>
</tr>
<tr>
<td>Membership</td>
<td>192</td>
</tr>
<tr>
<td>Working methods</td>
<td>192</td>
</tr>
<tr>
<td>Powers of the Security Council</td>
<td>195</td>
</tr>
<tr>
<td>Sanctions</td>
<td>199</td>
</tr>
<tr>
<td>Human rights</td>
<td>203</td>
</tr>
<tr>
<td>UNITING FOR PEACE</td>
<td>204</td>
</tr>
<tr>
<td>Charter amendment</td>
<td>204</td>
</tr>
<tr>
<td>Use of force</td>
<td>205</td>
</tr>
<tr>
<td>Prohibition on the use of force</td>
<td>206</td>
</tr>
<tr>
<td>Security Council authorisation for the use of force</td>
<td>206</td>
</tr>
<tr>
<td>Self-defence</td>
<td>208</td>
</tr>
<tr>
<td>Humanitarian intervention</td>
<td>211</td>
</tr>
<tr>
<td>A responsibility to protect?</td>
<td>214</td>
</tr>
<tr>
<td><strong>11 Human rights</strong></td>
<td></td>
</tr>
<tr>
<td>Introduction</td>
<td>215</td>
</tr>
<tr>
<td>Who enjoys the rights?</td>
<td>216</td>
</tr>
<tr>
<td>Contents</td>
<td></td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>---</td>
</tr>
<tr>
<td>What is a human right?</td>
<td>217</td>
</tr>
<tr>
<td>Universal human rights treaties</td>
<td>217</td>
</tr>
<tr>
<td>United Nations</td>
<td>217</td>
</tr>
<tr>
<td>ILO</td>
<td>219</td>
</tr>
<tr>
<td>Regional human rights treaties</td>
<td>219</td>
</tr>
<tr>
<td>European Convention for the Protection of Human Rights and Fundamental Freedoms 1950</td>
<td>219</td>
</tr>
<tr>
<td>American Convention on Human Rights 1969</td>
<td>220</td>
</tr>
<tr>
<td>African Charter on Human and Peoples’ Rights 1981</td>
<td>220</td>
</tr>
<tr>
<td>Arab Charter on Human Rights 1994</td>
<td>220</td>
</tr>
<tr>
<td>Outline of the principal civil and political rights</td>
<td>221</td>
</tr>
<tr>
<td>Right to life</td>
<td>221</td>
</tr>
<tr>
<td>Prohibition of torture</td>
<td>222</td>
</tr>
<tr>
<td>Prohibition of slavery and forced labour</td>
<td>222</td>
</tr>
<tr>
<td>Right to liberty and security</td>
<td>223</td>
</tr>
<tr>
<td>Right to a fair trial</td>
<td>223</td>
</tr>
<tr>
<td>No punishment without law</td>
<td>224</td>
</tr>
<tr>
<td>Respect for private and family life</td>
<td>224</td>
</tr>
<tr>
<td>Freedom of thought, conscience and religion</td>
<td>224</td>
</tr>
<tr>
<td>Freedom of expression</td>
<td>225</td>
</tr>
<tr>
<td>Freedom of assembly and association</td>
<td>225</td>
</tr>
<tr>
<td>Right to marry</td>
<td>225</td>
</tr>
<tr>
<td>Right to an effective remedy</td>
<td>225</td>
</tr>
<tr>
<td>Prohibition of discrimination</td>
<td>226</td>
</tr>
<tr>
<td>Freedom of movement</td>
<td>226</td>
</tr>
<tr>
<td>Right to free elections</td>
<td>226</td>
</tr>
<tr>
<td>Right to property</td>
<td>227</td>
</tr>
<tr>
<td>Right to education</td>
<td>227</td>
</tr>
<tr>
<td>General qualifications to rights</td>
<td>227</td>
</tr>
<tr>
<td>Reservations</td>
<td>228</td>
</tr>
<tr>
<td>Derogations</td>
<td>228</td>
</tr>
<tr>
<td>Enforcement</td>
<td>229</td>
</tr>
<tr>
<td>European Court of Human Rights</td>
<td>229</td>
</tr>
<tr>
<td>Other regional treaties</td>
<td>232</td>
</tr>
<tr>
<td>Human Rights Committee</td>
<td>232</td>
</tr>
<tr>
<td>Other UN monitoring bodies</td>
<td>234</td>
</tr>
<tr>
<td>12 The law of armed conflict (international humanitarian law)</td>
<td>235</td>
</tr>
<tr>
<td>Introduction</td>
<td>235</td>
</tr>
<tr>
<td>Sources</td>
<td>236</td>
</tr>
<tr>
<td>International and internal armed conflicts</td>
<td>237</td>
</tr>
<tr>
<td>Weaponry</td>
<td>238</td>
</tr>
<tr>
<td>Conventional weapons</td>
<td>238</td>
</tr>
<tr>
<td>Nuclear, chemical and biological weapons (WMD)</td>
<td>239</td>
</tr>
<tr>
<td>Contents</td>
<td></td>
</tr>
<tr>
<td>----------</td>
<td></td>
</tr>
<tr>
<td>Reprisals 240</td>
<td></td>
</tr>
<tr>
<td>Prisoners of war 240</td>
<td></td>
</tr>
<tr>
<td>Mercenaries 241</td>
<td></td>
</tr>
<tr>
<td>Civilians and civilian objects 242</td>
<td></td>
</tr>
<tr>
<td>Occupied territory 242</td>
<td></td>
</tr>
<tr>
<td>Palestine 243</td>
<td></td>
</tr>
<tr>
<td>Enforcement 243</td>
<td></td>
</tr>
<tr>
<td>UN forces 244</td>
<td></td>
</tr>
<tr>
<td>International Committee of the Red Cross 244</td>
<td></td>
</tr>
</tbody>
</table>

### 13 International criminal law

- Introduction 245
- Mutual legal assistance 245
- Extradition 246
  - Political offence/exception 248
  - Simplified extradition 248
  - Irregular means 249
- International crimes 250
  - Piracy 250
  - Slavery 251
  - Genocide 251
  - Crimes against humanity 252
  - War crimes 253
  - Aggression 253
  - Responsibility of superiors 253
  - Superior orders 254
- International tribunals 254
  - International Criminal Tribunal for the Former Yugoslavia (ICTY) 255
  - International Criminal Tribunal for Rwanda (ICTR) 256
  - Sierra Leone Special Court 257
  - Extraordinary Chambers of the Courts of Cambodia 257
  - Special Tribunal for Lebanon 258
- International Criminal Court (ICC) 258
  - Jurisdiction 259
  - Surrender of accused persons 260
  - Personal responsibility 261
  - United States 261
  - Procedure 262

### 14 Terrorism

- Introduction 264
- Definitions 265
  - ‘State terrorism’ 265
  - ‘State-sponsored terrorism’ 265
- Universal terrorism conventions 265
| No international definition of terrorism | 265 |
| The sectoral, segmental or incremental approach | 267 |
| The main provisions of the universal terrorism conventions | 269 |
| ‘International’ terrorism | 269 |
| Definition of the offences | 269 |
| Quasi-universal jurisdiction | 270 |
| ‘Refugees’ and terrorism | 274 |
| Security Council | 274 |
| Lockerbie | 275 |
| Bin Laden, Al-Qaida and the Taliban | 276 |
| **15 The law of the sea** | 278 |
| Introduction | 278 |
| Internal waters | 279 |
| Right of access by foreign ships | 279 |
| Baselines | 280 |
| Territorial sea | 281 |
| Islands | 282 |
| Innocent passage | 282 |
| Rights of the coastal State over ships in innocent passage | 283 |
| Contiguous zone | 284 |
| Exclusive economic zone | 284 |
| Rights, jurisdiction and duties of the coastal State in the EEZ | 285 |
| Rights and duties of other States in the EEZ | 285 |
| International straits | 285 |
| Archipelagos | 286 |
| Continental shelf | 287 |
| Construction of artificial islands and other installations in the EEZ or on the continental shelf | 288 |
| Delimitation | 288 |
| Territorial sea | 288 |
| EEZ and continental shelf | 289 |
| The Area | 290 |
| The high seas | 290 |
| Freedom of navigation | 290 |
| Hot pursuit | 293 |
| Other freedoms | 294 |
| Nationality of ships | 295 |
| Warships and ships used only on government non-commercial service | 296 |
| Landlocked and geographically disadvantaged States | 297 |
| Fishing | 297 |
| In internal waters and the territorial sea | 297 |
| In EEZs | 298 |
### 16 International environmental law

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>303</td>
</tr>
<tr>
<td>What is the environment?</td>
<td>305</td>
</tr>
<tr>
<td>The development of international environmental law</td>
<td>305</td>
</tr>
<tr>
<td>Concepts</td>
<td>306</td>
</tr>
<tr>
<td>The precautionary approach</td>
<td>306</td>
</tr>
<tr>
<td>The polluter pays</td>
<td>307</td>
</tr>
<tr>
<td>Sustainable development</td>
<td>307</td>
</tr>
<tr>
<td>Environmental impact assessment (EIA)</td>
<td>308</td>
</tr>
<tr>
<td>Whaling</td>
<td>309</td>
</tr>
<tr>
<td>Other fishing</td>
<td>309</td>
</tr>
<tr>
<td>Wildlife</td>
<td>311</td>
</tr>
<tr>
<td>Biological diversity</td>
<td>312</td>
</tr>
<tr>
<td>The ozone layer, climate change and the Kyoto Protocol</td>
<td>313</td>
</tr>
<tr>
<td>Nuclear material</td>
<td>314</td>
</tr>
<tr>
<td>The marine environment</td>
<td>315</td>
</tr>
<tr>
<td>Emergencies</td>
<td>316</td>
</tr>
<tr>
<td>Liability</td>
<td>316</td>
</tr>
<tr>
<td>Dumping</td>
<td>317</td>
</tr>
<tr>
<td>Hazardous wastes</td>
<td>317</td>
</tr>
<tr>
<td>Liability for environmental damage</td>
<td>317</td>
</tr>
<tr>
<td>Enforcement</td>
<td>318</td>
</tr>
</tbody>
</table>

### 17 International civil aviation

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>319</td>
</tr>
<tr>
<td>International Civil Aviation Organization</td>
<td>319</td>
</tr>
<tr>
<td>Meaning of aircraft</td>
<td>320</td>
</tr>
<tr>
<td>Civil and State aircraft, including military aircraft</td>
<td>320</td>
</tr>
<tr>
<td>National airspace</td>
<td>320</td>
</tr>
<tr>
<td>Domestic air services</td>
<td>321</td>
</tr>
<tr>
<td>International air services, scheduled and non-scheduled</td>
<td>321</td>
</tr>
<tr>
<td>International airspace</td>
<td>321</td>
</tr>
<tr>
<td>Civil aircraft and airlines</td>
<td>322</td>
</tr>
</tbody>
</table>
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Air services agreements</td>
<td>322</td>
</tr>
<tr>
<td>Warsaw and Rome Conventions</td>
<td>324</td>
</tr>
<tr>
<td>Jurisdiction over civil aircraft</td>
<td>325</td>
</tr>
<tr>
<td>Use of force against aircraft</td>
<td>325</td>
</tr>
<tr>
<td><strong>18 Special regimes</strong></td>
<td></td>
</tr>
<tr>
<td>Introduction</td>
<td>327</td>
</tr>
<tr>
<td>Antarctica</td>
<td></td>
</tr>
<tr>
<td>- The Antarctic Treaty System (ATS)</td>
<td>328</td>
</tr>
<tr>
<td>- The Antarctic Treaty</td>
<td>328</td>
</tr>
<tr>
<td>- Sovereignty clause</td>
<td>329</td>
</tr>
<tr>
<td>Measures</td>
<td></td>
</tr>
<tr>
<td>- The Environmental Protocol</td>
<td>330</td>
</tr>
<tr>
<td>Amendment of the Treaty and the Protocol and its Annexes</td>
<td>331</td>
</tr>
<tr>
<td>Secretariat</td>
<td>332</td>
</tr>
<tr>
<td>CCAMLR</td>
<td>332</td>
</tr>
<tr>
<td>The Arctic</td>
<td>333</td>
</tr>
<tr>
<td>Svalbard</td>
<td>334</td>
</tr>
<tr>
<td>Canals</td>
<td></td>
</tr>
<tr>
<td>- Suez Canal</td>
<td>335</td>
</tr>
<tr>
<td>- Panama Canal</td>
<td>336</td>
</tr>
<tr>
<td>- Kiev Canal</td>
<td>336</td>
</tr>
<tr>
<td>International rivers</td>
<td></td>
</tr>
<tr>
<td>- Freedom of navigation</td>
<td>337</td>
</tr>
<tr>
<td>- Other uses of watercourses</td>
<td>338</td>
</tr>
<tr>
<td>Outer space</td>
<td></td>
</tr>
<tr>
<td>- Outer space treaties</td>
<td>339</td>
</tr>
<tr>
<td>- The geostationary orbit</td>
<td>341</td>
</tr>
<tr>
<td>- The International Space Station</td>
<td>341</td>
</tr>
<tr>
<td>International space organisations</td>
<td></td>
</tr>
<tr>
<td>Intelsat</td>
<td>342</td>
</tr>
<tr>
<td>Inmarsat</td>
<td>342</td>
</tr>
<tr>
<td><strong>19 International economic law</strong></td>
<td></td>
</tr>
<tr>
<td>Introduction</td>
<td>344</td>
</tr>
<tr>
<td>Bilateral investment treaties</td>
<td></td>
</tr>
<tr>
<td>- A typical BIT</td>
<td>345</td>
</tr>
<tr>
<td>- The entities protected</td>
<td>345</td>
</tr>
<tr>
<td>- Types of investment product</td>
<td>346</td>
</tr>
<tr>
<td>- Treatment of investments</td>
<td>346</td>
</tr>
<tr>
<td>- Expropriation and compensation</td>
<td>347</td>
</tr>
<tr>
<td>- Civil disturbance, etc.</td>
<td>348</td>
</tr>
<tr>
<td>- Dispute settlement</td>
<td>349</td>
</tr>
<tr>
<td>- Duration of BITs</td>
<td>349</td>
</tr>
<tr>
<td>ICSID</td>
<td>350</td>
</tr>
</tbody>
</table>
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Energy Charter Treaty</td>
<td>353</td>
</tr>
<tr>
<td>World Trade Organization</td>
<td>353</td>
</tr>
<tr>
<td>Dispute Settlement</td>
<td>354</td>
</tr>
<tr>
<td>Panels</td>
<td>356</td>
</tr>
<tr>
<td>Appellate Body</td>
<td>356</td>
</tr>
<tr>
<td>Recommendations</td>
<td>357</td>
</tr>
<tr>
<td>Compensation and countermeasures</td>
<td>357</td>
</tr>
<tr>
<td>NAFTA</td>
<td>358</td>
</tr>
<tr>
<td>MERCOSUR</td>
<td>359</td>
</tr>
<tr>
<td>International commercial arbitration</td>
<td>359</td>
</tr>
<tr>
<td>20 Succession of States</td>
<td>361</td>
</tr>
<tr>
<td>Introduction</td>
<td>361</td>
</tr>
<tr>
<td>Independence of an overseas territory</td>
<td>362</td>
</tr>
<tr>
<td>Secession</td>
<td>362</td>
</tr>
<tr>
<td>Dissolution</td>
<td>362</td>
</tr>
<tr>
<td>Merger</td>
<td>363</td>
</tr>
<tr>
<td>Absorption and extinction</td>
<td>363</td>
</tr>
<tr>
<td>Recovery of sovereignty</td>
<td>363</td>
</tr>
<tr>
<td>Transfer of territory</td>
<td>364</td>
</tr>
<tr>
<td>Continuity of statehood</td>
<td>364</td>
</tr>
<tr>
<td>Succession to treaties</td>
<td>364</td>
</tr>
<tr>
<td>Customary law principles</td>
<td>365</td>
</tr>
<tr>
<td>Former colonies and other dependent territories</td>
<td>366</td>
</tr>
<tr>
<td>Germany</td>
<td>368</td>
</tr>
<tr>
<td>Russia</td>
<td>368</td>
</tr>
<tr>
<td>Former Soviet republics</td>
<td>368</td>
</tr>
<tr>
<td>The Baltic States</td>
<td>369</td>
</tr>
<tr>
<td>Former Yugoslav republics</td>
<td>369</td>
</tr>
<tr>
<td>Czechoslovakia</td>
<td>370</td>
</tr>
<tr>
<td>Hong Kong and Macao</td>
<td>371</td>
</tr>
<tr>
<td>Succession to State property, archives and debts</td>
<td>371</td>
</tr>
<tr>
<td>Former Yugoslav republics</td>
<td>372</td>
</tr>
<tr>
<td>Membership of international organisations</td>
<td>372</td>
</tr>
<tr>
<td>Representation in international organisations</td>
<td>374</td>
</tr>
<tr>
<td>Hong Kong Special Administration Region</td>
<td>374</td>
</tr>
<tr>
<td>Nationality of natural persons</td>
<td>374</td>
</tr>
<tr>
<td>21 State responsibility</td>
<td>376</td>
</tr>
<tr>
<td>Introduction</td>
<td>376</td>
</tr>
<tr>
<td>Terminology</td>
<td>377</td>
</tr>
<tr>
<td>General matters</td>
<td>378</td>
</tr>
<tr>
<td>The internationally wrongful act of a State</td>
<td>378</td>
</tr>
<tr>
<td>General principles</td>
<td>378</td>
</tr>
<tr>
<td>Attribution of conduct to a State</td>
<td>379</td>
</tr>
<tr>
<td>Contents</td>
<td>Page</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>Organs of the State</td>
<td>379</td>
</tr>
<tr>
<td>Unauthorised or <em>ultra vires</em> conduct</td>
<td>380</td>
</tr>
<tr>
<td>Other conduct attributable to the State</td>
<td>381</td>
</tr>
<tr>
<td>Breach of an international obligation</td>
<td>382</td>
</tr>
<tr>
<td>Intertemporal rule</td>
<td>382</td>
</tr>
<tr>
<td>Extension in time of breach of an international obligation</td>
<td>383</td>
</tr>
<tr>
<td>Breach consisting of a composite act</td>
<td>383</td>
</tr>
<tr>
<td>Circumstances precluding wrongfulness</td>
<td>383</td>
</tr>
<tr>
<td>Content of the international responsibility of a State</td>
<td>385</td>
</tr>
<tr>
<td>Cessation and non-repetition</td>
<td>385</td>
</tr>
<tr>
<td>Reparation</td>
<td>385</td>
</tr>
<tr>
<td>Forms of reparation</td>
<td>386</td>
</tr>
<tr>
<td>Serious breaches of obligations under peremptory norms of general international law</td>
<td>389</td>
</tr>
<tr>
<td>The implementation of the international responsibility of a State</td>
<td>389</td>
</tr>
<tr>
<td>Invocation of responsibility by an injured State</td>
<td>389</td>
</tr>
<tr>
<td>Notice of claim by an injured State (Article 43)</td>
<td>390</td>
</tr>
<tr>
<td>Admissibility of claims</td>
<td>390</td>
</tr>
<tr>
<td>Loss of right to invoke responsibility</td>
<td>390</td>
</tr>
<tr>
<td>Plurality of injured or responsible States</td>
<td>390</td>
</tr>
<tr>
<td>Countermeasures</td>
<td>391</td>
</tr>
<tr>
<td>Objects and limits of countermeasures</td>
<td>392</td>
</tr>
<tr>
<td>Proportionality</td>
<td>392</td>
</tr>
<tr>
<td>Procedural conditions</td>
<td>393</td>
</tr>
<tr>
<td>Obligations not affected by countermeasures</td>
<td>394</td>
</tr>
<tr>
<td>Responsibility of an international organisation</td>
<td>394</td>
</tr>
<tr>
<td>Individual responsibility</td>
<td>395</td>
</tr>
<tr>
<td>22 Settlement of disputes</td>
<td>396</td>
</tr>
<tr>
<td>Introduction</td>
<td>396</td>
</tr>
<tr>
<td>Informal means</td>
<td>397</td>
</tr>
<tr>
<td>Negotiations and consultations</td>
<td>397</td>
</tr>
<tr>
<td>Involvement of third parties</td>
<td>397</td>
</tr>
<tr>
<td>Compulsory binding settlement</td>
<td>400</td>
</tr>
<tr>
<td>Jurisdiction and admissibility</td>
<td>401</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>401</td>
</tr>
<tr>
<td>Admissibility</td>
<td>406</td>
</tr>
<tr>
<td>International arbitration</td>
<td>407</td>
</tr>
<tr>
<td>Permanent Court of Arbitration (PCA)</td>
<td>408</td>
</tr>
<tr>
<td>Mixed arbitral tribunans</td>
<td>409</td>
</tr>
<tr>
<td>International Court of Justice</td>
<td>412</td>
</tr>
<tr>
<td>Composition of the ICJ</td>
<td>414</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>415</td>
</tr>
<tr>
<td>---------------------------</td>
<td>-----</td>
</tr>
<tr>
<td>Reciprocal declarations</td>
<td>416</td>
</tr>
<tr>
<td>Variations of declarations</td>
<td>420</td>
</tr>
<tr>
<td>Admissibility</td>
<td>421</td>
</tr>
<tr>
<td>Intervention by third parties</td>
<td>421</td>
</tr>
<tr>
<td>The applicable law</td>
<td>422</td>
</tr>
<tr>
<td>Non-appearance</td>
<td>422</td>
</tr>
<tr>
<td>Provisional measures/interim measures of protection</td>
<td>422</td>
</tr>
<tr>
<td>Judicial review?</td>
<td>424</td>
</tr>
<tr>
<td>Procedure and practice</td>
<td>424</td>
</tr>
<tr>
<td>Judgments</td>
<td>426</td>
</tr>
<tr>
<td>Effect, interpretation and revision</td>
<td>426</td>
</tr>
<tr>
<td>Advisory opinions</td>
<td>427</td>
</tr>
<tr>
<td><strong>23 The European Union</strong></td>
<td></td>
</tr>
<tr>
<td>Introduction</td>
<td>430</td>
</tr>
<tr>
<td>A brief history</td>
<td>431</td>
</tr>
<tr>
<td>Member States</td>
<td>431</td>
</tr>
<tr>
<td>European Communities, European Community or European Union?</td>
<td>432</td>
</tr>
<tr>
<td>Institutions</td>
<td>433</td>
</tr>
<tr>
<td>Council of Ministers</td>
<td>434</td>
</tr>
<tr>
<td>Commission</td>
<td>435</td>
</tr>
<tr>
<td>Parliament</td>
<td>435</td>
</tr>
<tr>
<td>Court of Auditors</td>
<td>436</td>
</tr>
<tr>
<td>Legislative procedure</td>
<td>436</td>
</tr>
<tr>
<td>Consultative procedure</td>
<td>437</td>
</tr>
<tr>
<td>Co-decision procedure</td>
<td>437</td>
</tr>
<tr>
<td>EU law</td>
<td>437</td>
</tr>
<tr>
<td>The Treaty and legislation</td>
<td>438</td>
</tr>
<tr>
<td>Supremacy of EU law</td>
<td>438</td>
</tr>
<tr>
<td>Court of Justice</td>
<td>438</td>
</tr>
<tr>
<td>Court of First Instance</td>
<td>440</td>
</tr>
<tr>
<td>Preliminary rulings</td>
<td>440</td>
</tr>
<tr>
<td>Common Foreign and Security Policy and Police and Judicial Co-operation in Criminal Matters</td>
<td>441</td>
</tr>
<tr>
<td>Legal personality and treaties</td>
<td>442</td>
</tr>
<tr>
<td>Human rights</td>
<td>443</td>
</tr>
<tr>
<td>Acquis communautaire</td>
<td>444</td>
</tr>
<tr>
<td>Competence</td>
<td>444</td>
</tr>
<tr>
<td>Comitology</td>
<td>444</td>
</tr>
<tr>
<td>European Economic Area</td>
<td>444</td>
</tr>
<tr>
<td>Languages</td>
<td>444</td>
</tr>
<tr>
<td>Qualified majority voting</td>
<td>445</td>
</tr>
</tbody>
</table>
## Contents

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Schengen</td>
<td>445</td>
</tr>
<tr>
<td>Subsidiarity</td>
<td>445</td>
</tr>
<tr>
<td>The Lisbon Treaty</td>
<td>446</td>
</tr>
<tr>
<td>Documentation</td>
<td>448</td>
</tr>
<tr>
<td>Index</td>
<td>449</td>
</tr>
</tbody>
</table>
Tony Aust has already produced *Modern Treaty Law and Practice* (Cambridge University Press, 2000; Chinese edn, 2005; 2nd English edn, 2007). This was an exercise in the handbook mode which some scholars profess to dislike, and which most of them certainly neglect. In my own case, I confess that that book is often to hand, because it is a place to start looking at problems in the law of treaties on an everyday basis. It does not claim to be definitive, but it succeeds in its task of introducing and of providing initial guidance in a clear and well-informed way. Take for example the short discussion on provisional application (ibid., pp. 172–6), an issue of great practical significance as to which there is little or nothing in the older treatises. What he says is clear, well illustrated – one is pointed to difficulties and prominent instances (e.g. the Energy Charter Treaty) – and one is told that the case of provisional application which everyone knows – GATT 1947 – is ‘hugely atypical’.

The clear guidance and practical sense of *Modern Treaty Law and Practice* is here repeated on the broader canvas of general international law, an area of equal significance but much less accessible than the law of treaties. These days everyone including taxi drivers talks about customary international law, although they probably (and wisely) do not use the term. But there is an awareness that an imminent threat is a condition for action in self-defence; that the Security Council can authorise individual States to use force but may be expected to do so in clear language; that crimes against humanity are punishable and might be punished; and that human rights confront State responsibility with consequences for both. Providing guidance in this much broader frame is a challenge. But non-specialists have to start somewhere and this is a good place to start.

Tony Aust brings to the work a sense of humour, of balance and of British practice – but the work is not parochial. Her Majesty’s Government has a long tradition (back to the 1880s) of a legal adviser in the Foreign Office, and there has been a consistent pattern of consultation on issues perceived as legal. It can be traced in the United Kingdom Materials on International Law (UKMIL), published in the *British Yearbook of International Law* since 1978 and running now to thousands of pages – but it goes back much further than that. Senior
decision makers tend to say that they like their lawyers 'on tap and not on top' (as one British ambassador to the UN put it). But if one is ever involved in a long-running international dispute it is a fair bet that the government which has had a consistent, legally informed approach is the more likely to prevail, whatever the initial merits may have been. Aust has been a participant in this process from the British side for as long as thirty-five years – a process sometimes affected by forays from Lord Chancellors (as in Suez in 1956) or Attorneys-General (as with Iraq in 2003) but constant and generally consistent. In turn, good international law has reinforced sustainable international policy – witness those two occasions where the costs of the alternatives were considerable.

The treatment of the subject is light and sometimes schematic – more detailed issues will require more research. But he covers the ground and gives a good idea of its shape and contours, and this is a valuable service at a time of overspecialisation.

James Crawford
Whewell Professor of International Law
University of Cambridge
28 April 2005
Preface to Second Edition

Quotation is a national vice.¹

The Oxford English Dictionary defines a handbook as a short manual or guide; and this book is intended to be a helpful means of finding out about international law. As James Crawford said in his foreword, a handbook is meant to be kept often to hand. So, when one comes across a problem (perhaps a new area of the international law or a new concept or term of that law) one can turn first to the handbook and get a quick answer to questions such as: What is a State? What is the exclusive economic zone? Who is a refugee? What is the legal regime of Antarctica? How are diplomatic and State immunity confused? What is Palestine? Should one prefer an arbitral tribunal to an international court? What is a Chapter VII resolution? My purpose is to explain international law principles and rules in a clear and concise way. I avoid as far as possible theory and speculation.

Although the book can be read as an introduction to the subject, it is also designed to meet the need for a practical guide for those concerned with international law, whether on a regular or an occasional basis. In the twentieth century, a tremendous amount was written about international law. General works may be intended rather more for the student. Dealing as they do with the history of international law, its doctrines and intellectual problems, such works do not always have enough space to set out the law in detail. That is right. Most students of international law, whether undergraduate or postgraduate, will not practise it.

However, today, many people need to know about international law, not only legal advisers to foreign ministries. Therefore, an object of this book is to make more people aware of the international law that lies behind so many ordinary activities. Today international law affects almost every sort of human activity. To take one simple example: foreign flights by air are only possible because of an elaborate network of bilateral treaties; and they have been concluded pursuant to a multilateral treaty (the Chicago Convention of 1944) which provides the basic legal structure for the regulation of international civil aviation. And

¹ Evelyn Waugh, The Loved One, 1948, Ch. 9.
when your aircraft crashes, treaties going back to 1929 may limit the compensation received by your family (see pp. 324–5 below).

In recent years, treaties providing for the protection of human rights and the environment have become widely known. But there are many other important areas regulated by treaties – some of which date back to the nineteenth century – yet they are largely unknown, except to the specialist. That the Table of Treaties is much longer than the Table of Cases merely reflects the fact that treaties now play a much more important role in the day-to-day work of the international lawyer. Today, decisions of international courts and tribunals have a less central role. Similarly, common law practitioners will be familiar with the way legislation, primary and secondary, has increased so much in volume and complexity in the last sixty years that it is now the principal element of their work.

The vital role played by international law is often not obvious even to lawyers, unless they specialise in the subject. Fortunately, in recent years George W. Bush, Saddam Hussein and Slobodan Milosèviç have done much to heighten awareness of the law on the use of force, UN sanctions, war crimes and crimes against humanity. Yet specialists – whether lawyers or not – in areas such as human rights, the environment or the European Union, often do not have a good grounding in international law, even though their fields have been created wholly or largely by treaties. A physicist needs to have advanced mathematics, and no doctor could qualify without a good knowledge of chemistry and biology. Similarly, international civil servants, government officials, NGO staff and other specialists all need to be more familiar with the international law underlying their subject, and not just the particular texts that may seem relevant.

It is a mistake to think that only international courts and tribunals decide disputes about international law. National courts and tribunals still decide most of them. And international law can reach far down into the internal legal order of States, sometimes with unexpected effects. In 1994, a merchant ship belonging to a former communist State was arrested in Scotland on the initiative of the crew who had not been paid for months. Normally the arrest would have been perfectly proper, but, unknown at first to the local court, there was a bilateral treaty, between that State (when it was communist) and the United Kingdom, which prohibited the arrest of merchant vessels for such a purpose. The treaty had been made part of UK law and had not been revoked or amended.

Although law is always developing, it is a mistake to think that all of it is uncertain. International law develops continually. It has its share of grey areas, but that does not mean that it is always a matter of opinion. Most of the basic principles and rules are well established. As with the law of each State, the problems faced daily are concerned more with how to apply a well-established rule to the facts. This goes also for most cases before national courts and tribunals. Cases such as Pinochet (see pp. 5 and 162 below) are the exception, not the rule.
All practising lawyers know how different the practice of law is from what they learned as a student. It is the same for international law. I have therefore included as much as possible of its practical aspects. This book explains how the law is actually developed and applied by States and international organisations. I was very fortunate to have been a foreign ministry legal adviser for thirty-five years. It gave me an insight into how things are done, and I have put much of my experience into this book. When I have not been able to draw on that experience, or that of former colleagues, I have been able to use my understanding of what international law can really do, and what it is important. This understanding has been developed during a lifetime of practice, which inevitably gives one a feel for what is really important. I have aimed to convey this throughout the book.

I hope that teachers and students of international law will find the book of value. There is an increasing awareness of the need to teach international law (and not just EU law), and especially how it is developed, within its proper context, and this book has certainly benefited from teaching students over the years. The proper context is largely that of diplomacy. One cannot properly appreciate why a treaty or a UN Security Council resolution was drafted in a particular way unless one understands something of the political or diplomatic process that produced it and how problems are eventually solved. That knowledge helps to explain what diplomats and other international negotiators actually do. Yet, in any country, diplomats are a small minority. I have therefore tried to set international law in the context in which it is made.

This book is not just of interest to diplomats, as is largely the case with Satow and similar books. My aim is to cover most areas of international law, not just those that are of particular interest to a diplomat (Denza’s excellent and authoritative Diplomatic Law is limited to the Vienna Convention on Diplomatic Relations). Nevertheless, I hope this book will be useful to diplomats who may well be concerned with many more aspects of international law than they think. Even those who work in foreign ministries or embassies with easier access to expert legal advice have a need to understand that advice so that they can act upon it properly and effectively. There are all too many diplomats with no or little legal knowledge of the international law which underlies their work or who work largely without legal advice, having to deal with international legal problems as best they can.

The chapters vary much in length. The longer ones, such as those on the law of treaties, of diplomatic relations and of the sea, give a fairly detailed treatment of those topics, since they are central to any study of international law. Other, more specialised topics, like human rights and environmental law, are dealt with more summarily since they cannot be described in detail in a book of this length: the leading British work on international environmental law has over 800 pages which is much longer than this book. So, many chapters are more in the nature of introductions to the subject; the background and concepts being concisely described, and longer and learned sources of information mentioned.
Preface to Second Edition

Whenever possible, I have tried to use primary sources: treaties, judgments and authoritative commentaries. It is always desirable to consult the original text, be it a Security Council resolution, a treaty or whatever. Reading what you want to know often clears the mind of ‘spin’, which may have been put on the text. Like many others, inevitably I have had to rely also on leading general works like Oppenheim’s International Law (vol. 1, 9th edn, London, 1992) and Shaw’s International Law (6th edn, Cambridge, 2008), as well as many other books and articles.

All the chapters have references to books and articles, cases and other materials, which the reader is encouraged to consult. Websites are indispensable today. Shaw’s International Law has a useful list of websites. This book does not have such a list, but wherever possible the text will mention the relevant sites, including some of the more obscure. But one must always remember that website addresses do sometimes change. When this happens – or at other times – resort to a Google search may be necessary.

As far as possible, the facts and law are stated as at 31 July 2009, although inevitably some later developments have been added at the proof stage.

All material, comments and corrections should be sent to me at: aiaust@aol.com.
Acknowledgements

Practitioners and scholars expert in a particular field have been good enough to take time to comment on whole or parts of draft chapters, to point out mistakes and omissions or to provide and suggest or correct material. I must therefore particularly thank Mahdad Fallah Assadi, Jane Crellin, Nevil Hagon, Arancha Hinojal, Johannes Huber, Saskia Hufnagel, Robert Kennedy, John Louth, Denzil Millar, Annebeth Rosenboom and Mark Villager. But, I am bound to have left some people out.

However, all opinions and errors are mine.

I must also thank Sinéad Moloney and the team at Cambridge University Press for helping to put together this second edition for publication.

Lastly, I must again thank my wife, Kirsten Kaarre Jensen, for putting up with the demands on me – and therefore her – of writing, as well as making perceptive suggestions from the viewpoint of a former diplomat and, what is equally important, a non-lawyer.
Table of treaties

Where appropriate, a treaty is listed under the name or acronym by which it is commonly known or the subject matter is mentioned first. Today, some multilateral treaties are regularly amended, and therefore the most reliable source for the up-to-date text may well be an official website.

Multilateral treaties

- Aarhus Convention 1998, 2161 UNTS 450 (No. 37770); ILM (1998) 999 303
- Additional Protocols of 1977 to the Geneva Conventions, 1125 UNTS 3 (No. 17512); ILM (1977) 1391; UKTS (1999) 29 and 30; R&G 419 236, 237, 238, 241–4, 256, 266, 273
- AETR II Agreement 1970, 993 UNTS 143 (No. 14533) 70–1
- Agreement on Succession (former Yugoslavia), 2262 UNTS No. (40296); ILM (2002) 1 101, 372
- Antarctic Marine Living Resources Convention (CCAMLR) 1980, 402 UNTS 71 (No. 22301); ILM (1980) 837; UKTS (1982) 48; TIAS 10240; B & B Docs. 628 179, 310, 328, 332, 442
- Antarctic Seals Convention 1972, 1080 UNTS 175 (No. 16529); ILM (1972) 837; UKTS (1978) 45 328
- Antarctic Treaty 1959, 402 UNTS 71 (No. 5778); UKTS (1961) 97 64, 328, 339, 396