

International Law

Written by one of the world's leading international lawyers, this is the new and updated edition of Professor Klabbers' landmark textbook. International law can be defined as 'the rules governing the legal relationship between nations and states', but, in reality, it is much more complex, with political, diplomatic, and socio-economic factors shaping the law and its application. This refreshingly clear, concise textbook encourages students to view international law as a dynamic system of organizing the world. Bringing international law back to its first principles, the book is organized around four questions: where does it come from? To whom does it apply? How does it resolve conflict? What does it say? Building on these questions with both academic rigour and clarity of expression, Professor Klabbers breathes life and energy into the subject. Footnotes point students to the wider academic debate, while chapter introductions and final remarks reinforce learning. The second edition has been updated throughout, with particular attention to recent judicial decisions, and features new sections on sovereign debt relief, the prompt release of vessels, and the Antarctic.

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International Law

Jan Klabbers
Second Edition



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Contents

Detailed Table of Contents page VII
Preface to the Second Edition XIII
Preface to the First Edition XV
Table of Cases XVIII
List of Abbreviations XXVII

PART I THE STRUCTURE OF INTERNATIONAL LAW

1	The Setting of International Law	3
2	The Making of International Law	24
3	The Law of Treaties	44
4	The Subjects of International Law	72
5	Jurisdiction, Powers, and Immunities	99
6	The Individual in International Law, Including Human Rights	118
7	The Law of Responsibility	137
8	International Courts and Tribunals	154
9	Sanctions, Countermeasures, and Collective Security	180

PART II THE SUBSTANCE OF INTERNATIONAL LAW

10	Use of Force	203
11	The Law of Armed Conflict	220
12	International Criminal Law	237
13	The Seas, the Air, and Outer Space	255
14	Protecting the Environment	278
15	The Global Economy	295

PART III THE SURROUNDINGS OF INTERNATIONAL LAW

- 16 Domestic Courts and their Relationship with International Law** 319
- 17 The Politics and Ethics of International Law and Global Governance** 337
- 18 By Way of Conclusion** 349
- Select Bibliography* 353
- Index* 358

Detailed Table of Contents

Preface to the Second Edition page XIII
Preface to the First Edition XV
Table of Cases XVIII
List of Abbreviations XXVII

PART I THE STRUCTURE OF INTERNATIONAL LAW

1	The Setting of International Law	3
	Introduction	3
	The Seventeenth Century	4
	Colonialism	6
	International Law and the Global Economy	8
	The International Legal System	10
	International Legal Theories	12
	International Law in International Relations Theory	16
	Globalization, Global Governance and International Law	18
	Ethics and International Law	20
	Final Remarks: A Critical Perspective	21
	Further Reading	22
2	The Making of International Law	24
	Introduction	24
	Two ships (or perhaps three): <i>Lotus</i> and <i>Wimbledon</i>	25
	Article 38 ICJ Statute	27
	Treaties	28
	Customary Law	29
	The Method of Custom: The <i>Paquete Habana</i>	32
	Consent and the Persistent Objector	33
	A Normative Problem, or Towards Modern Custom	34
	On Law-Breaking and Law-Making	35
	General Principles of Law	37
	Unilateral Declarations	38

viii Detailed Table of Contents

Other Possible Sources and the Renewal of Sources Doctrine	40
Final Remarks	42
Further Reading	43
3 The Law of Treaties	44
Introduction	44
Two Basic Principles	45
The Concept of Treaty	46
The Conclusion of Treaties	48
Reservations	51
Interpretation	56
The Application of Treaties	58
Treaty Revision	61
Validity and Invalidity	63
Termination and Suspension	66
Final Remarks	70
Further Reading	70
4 The Subjects of International Law	72
Introduction	72
States	74
Recognition of States (or Governments)	77
Acquisition of Territory	82
Internationalized Territory	85
Statehood: Continuity and Change	86
International Organizations	90
The United Nations	94
Other Subjects	95
Final Remarks	97
Further Reading	98
5 Jurisdiction, Powers, and Immunities	99
Introduction	99
Five Principles	99
Extraterritorial Jurisdiction	105
Concurrent Jurisdiction	107
The Powers of International Organizations	108
Sovereign Immunities	110
Heads of State and Others	112
Diplomatic Privileges and Immunities	113
Final Remarks	115
Further Reading	116
6 The Individual in International Law, Including Human Rights	118
Introduction	118
From Slavery to Human Rights	119
The Institutionalization of Human Rights	122
The Application of Human Rights	125
Group Rights	127

ix Detailed Table of Contents

Self-determination	129
Nationality	130
The Right to Have Rights? Stateless Persons, Refugees and Migrants	132
Final Remarks	135
Further Reading	135
7 The Law of Responsibility	137
Introduction	137
From Custom to Codification	138
State Responsibility: Two Basic Principles	139
Responsibility and Private Acts	141
Circumstances Precluding Wrongfulness	143
Consequences of Responsibility	144
Responsible to Whom?	145
Responsibility of International Organizations	147
Individual Responsibility	149
Shared Responsibility?	151
Final Remarks	152
Further Reading	153
8 International Courts and Tribunals	154
Introduction	154
Settling Disputes	154
Arbitration	156
Adjudication and the ICJ	158
Jurisdiction	162
Admissibility	169
Interim Measures of Protection	172
Compensation	173
Miscellaneous Issues	174
Advisory Opinions	176
Judicial Review?	177
Final Remarks	178
Further Reading	179
9 Sanctions, Countermeasures, and Collective Security	180
Introduction	180
<i>Inadimplenti Non Est Adimplendum</i>	181
Retorsion	182
Reprisals and Countermeasures	183
Collective Security	185
Triggering Collective Action	190
The Role of the General Assembly	192
Peacekeeping	194
Individual Sanctions	195
Limits to the Security Council?	198
Final Remarks	199
Further Reading	199

PART II THE SUBSTANCE OF INTERNATIONAL LAW

- 10 Use of Force** 203
 Introduction 203
 Abolishing War 204
 The UN Charter 205
 Self-defence 208
 Humanitarian Intervention 214
 Terrorism 215
 The End of Armed Conflict 218
 Final Remarks 219
 Further Reading 219
- 11 The Law of Armed Conflict** 220
 Introduction 220
 International Humanitarian Law 221
 International and Non-international Conflicts 224
 Proportionality and Military Necessity 226
 Arms and Weapons 227
 International Humanitarian Law and International Organizations 229
 International Humanitarian Law and Privatization 230
 Foreign Occupation 231
Jus Post Bellum and Post-conflict Governance 233
 Wars against Phenomena 234
 Final Remarks 235
 Further Reading 235
- 12 International Criminal Law** 237
 Introduction 237
 War Crimes Trials and the ICC 237
 Core Crimes 243
 Individual Responsibility 246
 Transboundary Police Cooperation 248
 Extradition 250
 Deportation and Abduction 252
 Final Remarks 253
 Further Reading 254
- 13 The Seas, the Air and Outer Space** 255
 Introduction 255
 Outline of the Maritime Regime 256
 Internal Waters 259
 Territorial Sea and Contiguous Zone 259
 Exclusive Economic Zone (EEZ) 261
 Continental Shelf 262
 High Seas 263
 The Deep Seabed 265
 Maritime Delimitation 266

xi Detailed Table of Contents

	Prompt Release, Provisional Measures	269
	Air Law	271
	Space Law	274
	Final Remarks	276
	Further Reading	277
14	Protecting the Environment	278
	Introduction	278
	Early Case Law	279
	<i>Pulp Mills</i>	281
	Specific Issues	284
	The Antarctic	290
	Proceduralization and Institutionalization	291
	Compliance Procedures	292
	Final Remarks	293
	Further Reading	294
15	The Global Economy	295
	Introduction	295
	Private International Law	296
	International Taxation	298
	Financial Institutions	299
	World Trade and the WTO	301
	Investment Protection	306
	Economic 'Soft Law'	309
	Development and a New International Economic Order	312
	Debt Relief	313
	Final Remarks	314
	Further Reading	315

PART III THE SURROUNDINGS OF INTERNATIONAL LAW

16	Domestic Courts and their Relationship with International Law	319
	Introduction	319
	Monism and Dualism	320
	Direct Effect	323
	Incorporating International Law	327
	The Special Case of the European Union	329
	Towards a New Dualism?	331
	Avoidance Strategies	334
	Final Remarks	335
	Further Reading	336
17	The Politics and Ethics of International Law and Global Governance	337
	Introduction	337
	Global Governance	337
	The Politics of International Law	341
	Global Ethics	343

xii Detailed Table of Contents

Towards Virtue?	345
Final Remarks	348
Further Reading	348
18 By Way of Conclusion	349
<i>Select Bibliography</i>	353
<i>Index</i>	358

Preface to the Second Edition

One of the perks of writing a textbook is that one may get the chance to correct errors, clarify things that have remained obscure, and present the reader with new materials and understandings. The current edition has corrected a few errors and typos and has hopefully clarified a few things that were obscure. It has also been updated in a general way by including recent materials (such as court cases), updating information about the status of treaties, and adding some references to recent (and not so recent) literature as well as recent events, from the annexation of Crimea by Russia to the curious phenomenon of Brexit. In addition, I have added a few pages on topics that were not, or insufficiently, covered in the previous edition, including sovereign debt restructuring, environmental protection in the Antarctic, and prompt release of vessels under the UN Convention on the Law of the Sea. Finally, each chapter except the final one ends with a short list of suggestions for further reading – this too is new.

I owe a great deal of thanks to all of those who have provided comments and feedback. Quite a few colleagues expressed their appreciation of the book's approach, and urged me to keep it in place in future editions. Some anonymous reviewers have made suggestions on the basis of a request by the publisher – these invariably proved helpful, and those reviewers will notice that quite a few of their suggestions have found their way into the text. Some readers (Oliver Diggelman, Nikolaos Ioannides, John Palmer, and Winston Parker) took the trouble to contact me to tell me about typos, inaccuracies, and infelicities. The comments from students, in classrooms in Helsinki and elsewhere, proved extremely useful: if students don't get it, then it's time to rewrite. My wife Margareta read big chunks, and prevented me from making more errors than I would care to admit, while Gilda and Johan just make me happy. At the Press, I am indebted to my editors, in particular Marta Walkowiak and Valerie Appleby.

If there was one point coming out of the reviews commissioned by CUP, it was the common observation that the text was not detailed enough. One reviewer felt that human rights remained under-illuminated; someone else thought that the acquisition of territory deserved a chapter of its own, and yet another reviewer thought that I should pay more attention to the work of the United Nations. All are right of course, and all will continue to think that the text could use more detail. Sadly, though, adding a lot more detail would turn

xiv Preface to the Second Edition

the book into something it was never meant to be. The trick is to combine the broad brush with an eye for detail; I have aimed to provide detailed information and analysis, but have also been mindful of the desire to keep the book readable.

It should perhaps also be borne in mind that a book such as this inevitably ends up compromising between two demands. On the one hand, it should explain how the law works. On the other hand, it should also state what the law says. The two sometimes come together, but sometimes also pull in opposite directions; at such moments, I have generally prioritized the explanatory dimension. Thus I sometimes provide classic case law if I think it is more illustrative than more recent decisions, and I sometimes devise hypothetical examples if real life examples are too complicated to serve as useful illustrations.

A challenge faced by most parents of young children is how to combine the demands of work and family life. It is safe to say that this edition would not exist without the contribution made by my parents-in-law, Lea and Markus. It is to them that this edition is dedicated.

Preface to the First Edition

This book has been a long time in the making. While the actual writing started in 2009 and took place, intermittently, until May 2012, the book reflects more than twenty years of teaching international law. The basic premise underlying it is that international law should not be studied as a vast and ever-increasing collection of rules, but is better approached as a way of thinking about and organizing the world. With that in mind, like all legal systems the international legal order can profitably be studied by asking four questions. First, there is the question of where the law comes from: what are its sources? Second, to what entities or individuals does the law apply or, in other words, what are its subjects? Third, what does the law do in cases of conflict (i.e. settlement), and, finally, what does the law actually say? What is its substance?

This book is organized with those four questions in mind. The first three, together pointing to the basic structure of the system, make up Part I of this book (Chapters 1–9): sources, subjects, and settlement, broadly conceived. This is the stuff all international lawyers (probably even all lawyers, in these days of globalization) will sooner or later be confronted with; all lawyers need to have some idea of how international law is made, in what circumstances states can be held responsible, how international tribunals function and whether or not specific entities are subject to international law.

The fourth question, asking about the substantive rules, makes up Part II (Chapters 10–15). It will be noticed that Part I is longer and more analytical than Part II. This is only natural: the most Part II can aspire to is to provide a basic description of the various branches of international law, without much detail. After all, international law spans, quite literally, the world, as well as most of the policy issues that one can think of. There is international law on topics as wide and diverse as international crime, international investment, international taxation, the movement of refugees, the protection of the environment and much, much more. Hence, a book such as this, limited in scope, can only cover the basics. Fortunately, though, there are wide bodies of literature available, as the footnotes testify, and for those who want more detailed generalist expositions there are at least three useful larger and more detailed

general textbooks on the market. The interested reader could do worse than to pick one of these to read alongside the present book.¹

While Parts I and II cover the four questions set out above (sources, subjects, settlement, and substance), the book does not stop after Part II. It also contains a, fairly brief, Part III (Chapters 16 and 17), addressing the context of international law. This addresses the circumstance that international law does not exist in a vacuum, but is closely related, on the one hand, to national legal systems (discussed in Chapter 16) and, on the other hand, to global governance, politics, and ethics (discussed in Chapter 17). As Joseph Weiler once suggested during a round-table discussion at New York University, present-day textbooks on international law should ideally reflect the circumstance that international law is part of a broader pattern of global governance, and not stick to describing a stilted world where all legally relevant rules are made by duly empowered diplomats, representing sovereign states. In Weiler's words, global governance 'is a coloring agent that suddenly illuminates phenomena that, under the normal spectacle of international law, you didn't see'.² This book hopes to reflect the two ideas that international law is of relevance to global governance, but sometimes struggles to come to terms with it. However, the format of this book does not allow for an in-depth discussion of the political context of international law: Part III remains necessarily brief. Readers with an interest in these matters may be well advised to read this book alongside a recent collection of articles edited by Crawford and Koskenniemi.³

This is a textbook on international law, and this simple fact has at least two important implications. First, since the aim is to outline the international legal order, the book is not set up as a commentary on current events. I accept that the reader may wish to see how the law is applied to specific events, and where possible this has been done, but without singling out specifically current events. Such comments on current events as there are serve purely illustrative purposes, if only because current events tend to have a limited shelf life; what is current today may be forgotten tomorrow.

Second, this is a book on international law, and while there is room for the argument that the European Union (EU) is part of international law, it does not address the EU separately, except where the practice of the EU is of relevance. Thus, there are fragments on the treaty practice of the EU, and a few paragraphs on the attitude of the EU to international law, but no detailed discussion of EU law, if only because others are far better qualified to discuss the EU than I am.⁴

¹ James Crawford, *Brownlie's Principles of Public International Law*, 8th edn (Oxford University Press, 2012); Malcolm Evans (ed.), *International Law*, 4th edn (Oxford University Press, 2014); and Malcolm Shaw, *International Law*, 7th edn (Cambridge University Press, 2014). Perhaps the most comprehensive single-volume treatise at the moment is in French: Patrick Daillier, Mathias Forteau, and Alain Pellet, *Droit International Public*, 8th edn (Paris: LGDJ, 2009), while a useful methodology and guide on how to do research is also in French: Olivier Corten, *Méthodologie du droit international public* (Brussels: Editions ULB, 2009).

² José E. Alvarez et al., 'The Shape of Global Governance', (2010) *NYU Law School Magazine*, 22–9, also available at <http://blogs.law.nyu.edu/magazine/2010/roundtable-global-governance/> (visited 25 May 2012).

³ James Crawford and Martti Koskenniemi (eds.), *The Cambridge Companion to International Law* (Cambridge University Press, 2012).

⁴ The best general overview available is Paul Craig and Gráinne de Búrca, *EU Law: Text, Cases, and Materials*, 5th edn (Oxford University Press, 2011).

xvii Preface to the First Edition

Finally, a note on sources. I have generally refrained from listing the specific places where treaties or other instruments can be found, for the solid reason that these instruments are easier to find these days by a quick Internet search than by going through the volumes of the United Nations Treaty Series (UNTS) or any domestic treaty series. However, most of the important treaties referred to in this book are available in a single collection.⁵ With court decisions, I have generally aimed at listing a material source. With International Court of Justice (ICJ) decisions, this has been the ICJ Reports; with other cases, this has often (if not invariably) been the invaluable *International Law Reports* or its predecessor, the *Annual Digest*. Decisions of the European Court of Human Rights (ECtHR), moreover, are far more easily accessible on the Court's website⁶ than in any published form.

Since this book is the product of more than twenty years of teaching, the number of people to whom I have become indebted is way too large to be listed. Still, a few need to be singled out. The late Bert Vierdag gave me my first official teaching job in 1990, at the University of Amsterdam. Martti Koskenniemi brought me to Helsinki six years later, and has been and remains a close friend and an immense influence. I have benefited from having some extremely good teachers, including Gerd Junne, Pieter Jan Kuijper, and Richard Lauwaars, and my approach to international law and the global order reflects their influences. Not only did they teach me properly about international law and international politics, they also taught by example about good teaching. And then there is the influence of more than twenty generations of students, at Amsterdam, Helsinki, and a variety of other places.

Many colleagues suggested things to read; I owe all of them a big 'thank you'. Antti Kivivuori and Alice Neffe provided me with specific materials. I am heavily indebted to Magda Kmak and Rain Liivoja, who read some of the draft chapters and provided useful comments, as did several anonymous reviewers for Cambridge University Press. Working with the Press has been, as always, a delight, thanks to the wonderful support offered by Finola O'Sullivan and Sinead Moloney. This book is dedicated to my wife Margareta and my children, Johan and Gilda.

⁵ Malcolm D. Evans (ed.), *Blackstone's International Law Documents*, 10th edn (Oxford University Press, 2011); see also Jan Klabbers (ed.), *International Law Documents* (Cambridge University Press, 2016).

⁶ At www.echr.coe.int/echr/.

Table of Cases

INTERNATIONAL FORA

Badinter Commission

Opinion no. 1, 29 November 1991 82, 158
Opinion no. 3, 11 January 1992 81
Reactions, 26 May 1993 158

Conciliation Commission

Jan Mayen Conciliation Commission, 19–20 May 1981 156

Court of Justice of the European Union (CJEU)

A. Racke GmbH & Co. v. Hauptzollamt Mainz, Case C-162/96, [1998] ECR I-3655 69
Ahlström and others v. Commission, Joined cases 89, 104, 114, 116, 117 and 125–129/85,
[1988] ECR 5193 (*Woodpulp*) 105
Criminal Proceedings against Jean-Claude Lévy, Case C-158/91, [1993] ECR I-4287 326
Defrenne v. Sabena, Case 43/75, [1976] ECR 455 62
France v. Commission, Case C-233/02, [2004] ECR I-2759 42
Kadi and Al Barakaat v. Council and Commission, Joined cases C-402/05 P and C-415/05 P,
[2008] ECR I-6351 197, 332
Van Gend & Loos v. Netherlands Internal Revenue Administration, Case 26/62, [1963] ECR I
329–30

European Court of Human Rights (ECTHR)

Al-Skeini and Others v. United Kingdom (Application no. 55721/07), 7 July 2011 106
Amuur v. France (Application No. 19776/92), 25 June 1996 107
Bankovic and others v. Belgium and others, admissibility (Application no. 52207/99),
decision of 12 December 2001 106

xix Table of Cases

- Behrami and Behrami v. France* (Application no. 71412/01), and *Saramati v. France and others* (Application no. 78166/01), decision of 2 May 2007 20, 132, 148, 230
- Belilos v. Switzerland* (Application no. 10328/83), 29 April 1988 54
- El Masri v. Former Yugoslav Republic of Macedonia* (Application No. 39630/09), 13 December 2012 106
- Golder v. United Kingdom* (Application no. 4451/70), 21 February 1975 123
- Handyside v. United Kingdom* (Application no. 5493/72), 7 December 1976 126
- Husayn (Aby Zubaydah) v. Poland* (Application No. 7511/13), 24 July 2014 106
- Ilascu v. Moldova and Russia* (Application No. 48787/99), 8 July 2004 107
- Jaloud v. Netherlands* (Application No. 47708/08), 20 November 2014 106
- Lautsi and others v. Italy* (Application No. 30814/06), 18 March 2011 350
- Loizidou v. Turkey*, preliminary objections (Application no. 15318/89), 23 March 1995 106
- McCann and others v. United Kingdom* (Application no. 18984/91), 27 September 1995 127
- Perincek v. Switzerland* (Application No. 27510/08), 7 December 2013, 15 December 2015 126, 244
- Saramati v. France* see *Behrami and Behrami v. France*
- Streletz, Kessler and Krenz v. Germany* (Application nos. 34044/96, 35532/97 and 44801/98), 22 March 2001 234, 247

GATT/WTO

- European Communities – Measures Prohibiting the Importation and Marketing of Seal Products*, WT/DS400/AB/R and WT/DS401/AB/R, 22 May 2014 304
- United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products*, WTO, DS381, panel report circulated 15 September 2011 42
- United States – Restrictions on Import of Tuna*, DS21R-39S155 302

General Court (EU, formerly Court of First Instance)

- Kadi v. Council*, Case T-315/01, [2005] ECR II-3649 197
- Opel Austria GmbH v. Council*, Case T-115/94, [1997] ECR II-39 50–1

International Arbitral Awards

- Abyei Arbitration*, award of 22 July 2009 85
- Air Services Agreement of 27 March 1946*, award of 9 December 1978 184–5
- Alabama Claims* 1872 157
- Anglo-French Continental Shelf*, award of 30 June 1977 53
- Arctic Sunrise Arbitration (Kingdom of the Netherlands v. Russian Federation)*, award on jurisdiction, 26 November 2014 271
- Arctic Sunrise Arbitration (Kingdom of the Netherlands v. Russian Federation)*, final award, 14 August 2015 271
- Bering's Sea (USA/UK)*, award of 15 August 1893 280

xx Table of Cases

Ioannes Kardassopoulos v. Georgia, award on jurisdiction, 6 July 2007 308
Island of Palmas (US v. Netherlands), award of 4 April 1928 76, 82–3, 96, 97, 157
Lake Lanoux (France v. Spain), award of 16 November 1957 281
Petroleum Development Ltd v. Sheikh of Abu Dhabi, award of September 1951 36
Naulilaa (Portugal v. Germany), Special Arbitral Tribunal, 31 July 1928 182
Rainbow Warrior (New Zealand v. France), 30 April 1990 182
South China Sea Arbitration (Philippines v. China), award of 12 July 2016 268
Texaco Overseas Petroleum Company and California Asiatic Oil Company v. Libya, merits 29
Trail Smelter (USA/Canada), 11 March 1941 281
Yukos v. Russian Federation, award on jurisdiction and admissibility, 30 November
 2009 308

International Court of Justice

*Accordance with International Law of the Unilateral Declaration of Independence in
 Respect of Kosovo*, advisory opinion, [2010] ICJ Rep. 403 81
Admission of a State to the United Nations (Charter, Article 4), advisory opinion, [1948]
 ICJ Rep. 57 93
Aegean Sea Continental Shelf (Greece v. Turkey), jurisdiction, [1978] ICJ Rep. 3 47, 163, 174
Aerial Herbicide Spraying (Ecuador v. Colombia), removal, [2013] ICJ Rep. 278 282
Aerial Incident of October 7th, 1952 (USA v. USSR), Order, [1956] ICJ Rep. 9 207
Aerial Incident of March 10th, 1953 (USA v. Czechoslovakia), Order, [1956] ICJ Rep. 6 207
Aerial Incident of September 4th, 1954 (USA v. USSR), Order [1958] ICJ Rep. 158 207
Aerial Incident of 7 November 1954 (USA v. USSR), Order, [1959] ICJ Rep. 276 207
Aerial Incident of July 27, 1955 (Israel v. Bulgaria), preliminary objections, [1959] ICJ
 Rep. 127 207
Aerial Incident of 27 July 1955 (USA v. Bulgaria), Order, [1960] ICJ Rep. 146 207
Aerial Incident of 27 July 1955 (UK v. Bulgaria), Order, [1959] ICJ Rep. 264 207
Aerial Incident of 3 July 1988 (Iran v. US), Order [1996] ICJ Rep. 9 207
Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of Congo), [2010] ICJ
 Rep. 639 122
Ambatielos (Greece v. United Kingdom), preliminary objections, [1952] ICJ Rep. 28 50
*Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities
 of the United Nations*, [1989] ICJ Rep. 177 177
*Application of the Convention on the Prevention and Punishment of the Crime of
 Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, further requests for the
 indication of provisional measures, [1993] ICJ Rep. 325 66, 173
*Application of the Convention on the Prevention and Punishment of the Crime of
 Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, [2007] ICJ Rep. 43 128,
 142, 212, 248
*Application of the Interim Accord of 13 September 1995 (Former Yugoslav Republic of
 Macedonia v. Greece)*, [2011] ICJ Rep. 644 33

xxi Table of Cases

- Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, preliminary objections, [2011] ICJ Rep. 70 165
- Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya) (Tunisia v. Libya)*, [1985] ICJ Rep. 192 160
- Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Burundi)*, Order, [2001] ICJ Rep. 3 207
- Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Rwanda)*, Order, [2001] ICJ Rep. 6 65–6
- Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Uganda)*, [2005] ICJ Rep. 168 208, 212
- Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of Congo v. Rwanda)*, jurisdiction and admissibility, [2006] ICJ Rep. 6 207
- Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v. Belgium)*, [2002] ICJ Rep. 3 20, 113, 116
- Asylum (Colombia/Peru)*, [1950] ICJ Rep. 266 30
- Avena and Other Mexican Nationals (Mexico v. USA)*, [2004] ICJ Rep. 12 165, 332
- Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, [1970] ICJ Rep. 3 146, 160, 171–2
- Border and Transborder Armed Actions (Nicaragua v. Costa Rica)*, Order, [1987] ICJ Rep. 182 207
- Border and Transborder Armed Actions (Nicaragua v. Honduras)*, Order, [1992] ICJ Rep. 222 207
- Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter)*, advisory opinion, [1962] ICJ Rep. 151 110, 193
- Certain Norwegian Loans (France v. Norway)*, [1957] ICJ Rep. 9 167
- Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*, [2008] ICJ Rep. 177 169, 251
- Competence of the General Assembly for the Admission of a State to the United Nations*, advisory opinion, [1950] ICJ Rep. 4 93
- Continental Shelf (Tunisia/Libya)*, [1982] ICJ Rep. 18 267
- Continental Shelf (Libya/Malta)*, [1985] ICJ Rep. 13 261, 268
- Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, joinder of proceedings, [2013] ICJ Rep. 184 175
- Corfu Channel*, preliminary objections, [1948] ICJ Rep. 15 168
- Corfu Channel*, merits, [1949] ICJ Rep. 4 206, 223
- Corfu Channel*, assessment of the amount of compensation, [1949] ICJ Rep. 244 173
- Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States)*, [1984] ICJ Rep. 246 161, 269
- Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, [1999] ICJ Rep. 62 177

xxii Table of Cases

- Dispute Regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*, [2009] ICJ Rep. 213 256
- East Timor (Portugal v. Australia)*, [1995] ICJ Rep. 90 129, 146, 176
- Effect of Awards of Compensation made by the United Nations Administrative Tribunal*, advisory opinion, [1954] ICJ Rep. 47 110, 198
- Elektronika Sicula SpA (ELSI) (USA v. Italy)*, [1989] ICJ Rep. 15 309
- Fisheries (United Kingdom v. Norway)*, [1951] ICJ Rep. 116 33–4
- Fisheries Jurisdiction (Germany v. Iceland)*, [1973] ICJ Rep. 49 69, 174
- Fisheries Jurisdiction (Spain v. Canada)*, jurisdiction, [1998] ICJ Rep. 432 166
- Fisheries Jurisdiction (UK v. Iceland)*, jurisdiction, [1973] ICJ Rep. 3 69, 165, 174
- Frontier Dispute (Burkina Faso/Mali)*, [1986] ICJ Rep. 554 130
- Gabcikovo-Nagymaros Project (Hungary/Slovakia)*, [1997] ICJ Rep. 7 144, 173, 184, 282
- Interhandel (Switzerland v. United States)*, preliminary objections, [1959] ICJ Rep. 6 166, 170
- Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, advisory opinion, [1980] ICJ Rep. 73 148
- Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Belgium v. Switzerland)*, removal, [2011] ICJ reports 341 297
- Jurisdictional Immunities of the State (Germany v. Italy, Greece Intervening)*, [2012] ICJ Rep. 99 66, 112, 140
- LaGrand (Germany v. USA)*, [2001] ICJ Rep. 466 172
- Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)*, application by Nicaragua for permission to intervene, [1990] ICJ Rep. 92 175
- Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, application to intervene, Order, [1999] ICJ Rep. 1029 269
- Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria, Equatorial Guinea intervening)*, [2002] ICJ Rep. 303 64, 267
- Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, advisory opinion, [1971] ICJ Rep. 16 178
- Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, advisory opinion, [2004] ICJ Rep. 136 146, 177, 188, 195, 203, 210, 232
- Legality of the Threat or Use of Nuclear Weapons*, advisory opinion, [1996] ICJ Rep. 226 14, 65, 178, 222, 228, 282
- Legality of Use of Force (Serbia and Montenegro v. Belgium)*, [2004] ICJ Rep. 279 161
- Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, advisory opinion, [1996] ICJ Rep. 66 116, 176
- Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, jurisdiction and admissibility, [1994] ICJ Rep. 112 47–8, 156, 163–4
- Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, [2009] ICJ Rep. 61 267
- Minquiers and Ecrehos (France/United Kingdom)*, [1953] ICJ Rep. 47 169
- Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. USA)*, Jurisdiction of the Court and Admissibility of the Application, [1984] ICJ Rep. 392 166, 167, 170

xxiii Table of Cases

- Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. USA)*, merits, [1986] ICJ Rep. 14 28, 34–5, 142, 208, 212
- Monetary Gold Removed from Rome in 1943 (Italy v. France, UK and USA)*, preliminary questions, [1954] ICJ Rep. 19 168
- North Sea Continental Shelf (Germany/Denmark; Germany/Netherlands)*, joinder of proceedings, [1968] ICJ Rep. 9 175
- North Sea Continental Shelf (Germany/Denmark; Germany/Netherlands)*, [1969] ICJ Rep. 3 30, 36, 52, 174, 267
- Nottebohm (Second Phase) (Liechtenstein v. Guatemala)*, [1955] ICJ Rep. 4 131, 171
- Nuclear Tests (Australia v. France)*, [1974] ICJ Rep. 253 38–9, 173, 174
- Nuclear Tests (New Zealand v. France)*, [1974] ICJ Rep. 457 38, 173, 174
- Oil Platforms (Iran v. USA)*, [2003] ICJ Rep. 161 208, 210
- Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, [2010] ICJ Rep. 14 47, 282–3, 309
- Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v. USA)*, Order, [1992] ICJ Rep. 114 173, 178, 273
- Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v. USA)*, Order, [2003] ICJ Rep. 152 273
- Reparation for Injuries Suffered in the Service of the United Nations*, advisory opinion, [1949] ICJ Rep. 174 61, 109, 177
- Request for Interpretation of the Judgment of 15 June 1962 in the Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand)*, [2013] ICJ Rep. 281 58, 162
- Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, advisory opinion, [1951] ICJ Rep. 15 52–3
- Right of Passage over Indian Territory (Portugal v. India)*, [1960] ICJ Rep. 6 30
- South West Africa (Ethiopia v. South Africa; Liberia v. South Africa)*, preliminary objections, [1962] ICJ Rep. 319 175
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- Temple of Preah Vihear (Cambodia v. Thailand)*, [1962] ICJ Rep. 6 168
- United States Diplomatic and Consular Staff in Tehran (USA v. Iran)*, [1980] ICJ Rep. 3 141, 174
- Vienna Convention on Consular Relations (Paraguay v. USA)*, Order, [1998] ICJ Rep. 248 172
- Western Sahara*, advisory opinion, [1975] ICJ Rep. 12 96, 177
- Whaling in the Antarctic (Australia v. Japan, New Zealand intervening)*, [2014] ICJ Rep. 226 282, 289

International Criminal Court (ICC)

- Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01705-01/08 241, 247
- Prosecutor v. Germain Katanga*, ICC-01/04/01-07 241
- Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06 241
- Prosecutor v. William Ruto and Joshua Sang*, ICC-01/09-01/11 240

International Criminal Tribunal for the former Yugoslavia (ICTY)

- Prosecutor v. Dusko Tadic*, Case IT-94-1 186
Prosecutor v. Dusko Tadic, Case IT-94-1-A 142, 212
Prosecutor v. Radislav Krstic, Case IT-98-33-T 244

International Tribunal for the Law of the Sea (ITLOS)

- 'Arctic Sunrise' (*Netherlands v. Russian Federation*), Case No. 22, provisional measures, 22 November 2013 270-1
Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar), Case No. 16, 14 March 2012 266, 268
'Hoshinmaru' (Japan v. Russian Federation), Case No. 14, 6 August 2007 270
Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission, advisory opinion, Case No. 21, 2 April 2015 259, 288
Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area, advisory opinion, Case No. 17, 1 February 2011 42, 266
'Tomimaru' (Japan v. Russian Federation), Case No. 15, 6 August 2007 270

Permanent Court of International Justice (PCIJ)

- Diversion of Water from the Meuse*, [1937] Publ. PCIJ, Series A/B, no. 70 12, 67, 181
Factory at Chorzów (Claim for Indemnity) (Germany v. Poland), merits, [1928] Publ. PCIJ, Series A, no. 17 137, 144
Interpretation of the Greco-Turkish Agreement of December 1st, 1926, advisory opinion, [1928] Publ. PCIJ, Series B, no. 16 109
Jurisdiction of the Courts of Danzig, advisory opinion, [1928] Publ. PCIJ, Series B, no. 15 324
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Mavrommatis Palestine Concessions, [1924] Publ. PCIJ, Series A, no. 2 170, 306, 320
Nationality Decrees Issued in Tunis and Morocco (French Zone), advisory opinion, [1923] Publ. PCIJ, Series B, no. 4 116, 131
Oscar Chinn, [1934] Publ. PCIJ, Series A/B, no. 63 59
Payment in Gold of the Brazilian Federal Loans Issued in France, [1929] Publ. PCIJ, Series A, no. 21 296
Payment of Various Serbian Loans Issued in France, [1929] Publ. PCIJ, Series A, no. 20 296
SS Lotus, [1927] Publ. PCIJ, Series A, no. 10 25-6, 27, 46
SS Wimbledon, [1923] Publ. PCIJ, Series A, no. 1 26-7, 46, 173
Status of Eastern Carelia, [1923] Publ. PCIJ, Series B, no. 5 176
Territorial Jurisdiction of the International Commission of the River Oder (UK and others v. Poland), [1929] Publ. PCIJ, Series A, no. 23 50, 280

Special Tribunal for Lebanon

Prosecutor v. Ayyash et al., STL-11-01 242

Prosecutor v. Akhbar Beirut S.A.L. and Ibrahim Al Amin, STL-14-06/T/CJ 242

UN Human Rights Committee

Sandra Lovelace v. Canada, Communication no. 24/1977, 30 July 1981 129

DOMESTIC COURTS**Australia**

Mabo and Others v. Queensland (no. 2), High Court, 3 June 1992 96

Austria

Public Prosecutor v. Jean O., Supreme Court, 15 October 1981 107

Belgium

Lo Yin Ling and Man Kin Ping, Court of Cassation, 16 April 1980 107–8

Canada

Re Secession of Quebec, Supreme Court, 20 August 1998 130

France

Re Gadois Deceased, Paris Court of Appeal, 14 December 1953 108

Germany (West Germany)

In re Duchy of Sealand, Administrative Court Cologne, 3 May 1978 75

Italy

Ferrini v. Federal Republic of Germany, Court of Cassation, 11 March 2004 112

Judgment No. 238, Constitutional Court, 22 October 2014 333–4

Japan

Crown v. Yerizano, Saghalien District Court, September 1926 102

Shimoda et al. v. The State, Tokyo District Court, 1963 228

Mexico

In re González, Supreme Court, 21 July 1932 102

Netherlands

- Netherlands v. Nuhanovic*, Supreme Court, 6 September 2013 192
Mothers of Srebrenica v. Netherlands and United Nations, The Hague District Court, 16 July 2014 192
Russian Federation v. Veteran Petroleum et al., The Hague District Court, 20 April 2016 308

South Africa

- Government of the Republic of South Africa and others v. Irene Grootboom and others*, Constitutional Court, 4 October 2000 122, 127

United Kingdom

- R. v. Page*, Courts-martial Appeal Court, 10 November 1953 101
Re Augusto Pinochet Ugarte, Divisional Court, Queen's Bench Division, 28 October 1998 102
Regina v. Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (no. 3), House of Lords, 24 March 1999 113
Regina v. Horseferry Road Magistrates Court, ex parte Bennett, House of Lords, 24 June 1993 253

United States

- Banco Nacional de Cuba v. Sabbatino*, 376 US 398, US Supreme Court, 23 March 1964 334–5
Boumediene v. Bush, 553 US 723, US Supreme Court, 12 June 2008 235
Filártiga v. Peña-Irala, 630 F.2d 876, Second Circuit Court of Appeals, 30 June 1980 103
Foster v. Neilson, 27 US 253, US Supreme Court, January 1829 324
Kiobel et al. v. Royal Dutch Petroleum Co. et al., 569 US ___, US Supreme Court, 17 April 2013 103–4
Hamdan v. Rumsfeld, 548 US 557, US Supreme Court, 29 June 2006 234–5
Medellin v. Texas, 552 US 1, US Supreme Court, 25 March 2008 332
Paquete Habana, 175 US 677, US Supreme Court, 8 January 1900 32–3
Princz v. Federal Republic of Germany, 26 F.3d 1166, US DC Circuit Court of Appeals, 1 July 1994 112
Siderman de Blake v. Argentina, 965 F.2d 669, US Ninth Circuit Court of Appeals, 22 May 1992 112
Sosa v. Humberto Alvarez-Machain, 542 US 692, US Supreme Court, June 29, 2004 103
Tel-Oren v. Libyan Arab Republic, 726 F.2d 774, US DC Circuit Court of Appeals, 3 February 1984 329, 334
United States v. Alvarez-Machain, 504 US 655, US Supreme Court, 15 June 1992 253
In re Yamashita, US Military Commission, 7 December 1945 247
In re Yamashita, US Supreme Court, 4 February 1946 247

Abbreviations

ADIZ	Air Defense Identification Zone
AIB	Asian Infrastructure Investment Bank
ASP	Assembly of States Parties
BEPS	Base Erosion and Profit Shifting
BIT	bilateral investment treaty
CAR	Central African Republic
CARU	Comision Administradora del Rio Uruguay (Executive Commission on the River Uruguay)
CCAMLR	Convention for the Conservation of Antarctic Marine Living Resources
CISG	Convention on Contracts for the International Sale of Goods
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CJAC	Central American Court of Justice
CJEU	Court of Justice of the European Union
COP	conference of the parties
COPUOS	Committee on the Peaceful Uses of Outer Space
DSB	dispute settlement body (WTO)
DSU	dispute settlement understanding (WTO)
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECHR	European Convention on Human Rights
ECT	Energy Charter Treaty
ECtHR	European Court of Human Rights
EEZ	exclusive economic zone
EFTA	European Free Trade Agreement
ENMOD	Environmental Modification Convention
ETS	European Treaty Series
EU	European Union
EULEX	European Union Rule of Law Mission in Kosovo
FATF	Financial Action Task Force
FRG	Federal Republic of Germany (former West Germany)
FYROM	Former Yugoslav Republic of Macedonia

xxviii Abbreviations

FSIA	Foreign Sovereign Immunities Act
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDR	German Democratic Republic (former East Germany)
IATA	International Air Transport Association
ICAO	International Civil Aviation Organization
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICISS	International Commission on Intervention and State Sovereignty
ICJ	International Court of Justice (World Court)
ICRW	International Convention for the Regulation of Whaling
ICSID	International Centre for the Settlement of Investment Disputes
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDA	International Development Agency
IFC	International Finance Corporation
ILA	International Law Association
ILC	International Law Commission
ILO	International Labour Organization
IMCO	International Maritime Consultative Organization
IMF	International Monetary Fund
IMO	International Maritime Organization
IMT	International Military Tribunal (Nuremberg Tribunal)
INBAR	Organization for the Management of the Global Trade in Bamboo and Rattan Products
IOSCO	International Organization of Securities Commissions
ITC	International Tin Council
ITLOS	International Tribunal for the Law of the Sea
ITU	International Telecommunications Union
IWC	International Whaling Commission
MARPOL	International Convention for the Prevention of Pollution from Ships
MFN	most favoured nation
MIGA	Multilateral Investment Guarantee Agency
MOP	meeting of the parties
MoU	memorandum of understanding
NAFO	Northwest Atlantic Fisheries Organization
NATO	North Atlantic Treaty Organization
NGO	non-governmental organization
OECD	Organization for Economic Cooperation and Development
OSPAR	Convention for the Protection of the Marine Environment of the North-east Atlantic

xxix Abbreviations

PCA	Permanent Court of Arbitration
PCIJ	Permanent Court of International Justice
PISA	Programme on International Student Assessment
PLO	Palestine Liberation Organization
POP	persistent organic pollutant
R2P	responsibility to protect
SDR	special drawing right
SEC	US Securities Commission
SFRY	Socialist Federal Republic of Yugoslavia
SOLAS	International Convention for the Safety of Life at Sea
STL	Special Tribunal for Lebanon
STSL	Special Tribunal for Sierra Leone
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TRIPs	trade-related aspects of intellectual property rights
UN	United Nations
UNCLOS	United Nations Conference on the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
UNEF	United Nations Emergency Force
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHRC	United Nations Human Rights Committee
UNITA	Uniao Nacional para a Independencia Total de Angola (Angolan rebel movement)
UNMIK	United Nations Mission in Kosovo
UNTAET	United Nations Administration in East Timor
UNTS	United Nations Treaty Series
VCLT	Vienna Convention on the Law of Treaties
VOC	Verenigde Oost-Indische Compagnie (United East India Company)
WHO	World Health Organization
WTO	World Trade Organization