

International Law

Written by one of the world's leading international lawyers, this is the new and updated edition of Jan 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? And 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. This third edition includes references to new case-law and literature, and features brief discussions on recent topics of general interest, including Brexit and the worldwide outbreak of the Coronavirus.

JAN KLABBERS is Professor of International Law at the University of Helsinki, Finland. He studied international law and political science at the University of Amsterdam. He is a regular consultant to a number of international organizations and has been visiting professor at a number of institutions of higher learning, including the Graduate Institute (Geneva) and Sorbonne (Paris). He directed the Academy of Finland Centre of Excellence in Global Governance Research (2006–2011), and from 2013 to 2018 held the Martti Ahtisaari Chair.

International Law

Third Edition

Jan Klabbers

University of Helsinki

CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom
One Liberty Plaza, 20th Floor, New York, NY 10006, USA
477 Williamstown Road, Port Melbourne, VIC 3207, Australia
314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India
79 Anson Road, #06–04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.

It furthers the university's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781108487245

DOI: 10.1017/9781108766074

© Jan Klabbers 2021

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2021

Printed in the United Kingdom by TJ Books Ltd. Padstow Cornwall

A catalogue record for this publication is available from the British Library.

ISBN 978-1-108-48724-5 Hardback

ISBN 978-1-108-73282-6 Paperback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party Internet Web sites referred to in this publication and does not guarantee that any content on such Web sites is, or will remain, accurate or appropriate.

Contents

<i>Detailed Contents</i>	vii
<i>Preface to the Third Edition</i>	xiii
<i>Preface to the Second Edition</i>	xv
<i>Preface to the First Edition</i>	xvii
<i>Table of Cases</i>	xx
<i>List of Abbreviations</i>	xxxix

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	45
4	The Subjects of International Law	73
5	Jurisdiction, Powers, and Immunities	100
6	The Individual in International Law, Including Human Rights	119
7	The Law of Responsibility	138
8	International Courts and Tribunals	155
9	Sanctions, Countermeasures, and Collective Security	182

PART II THE SUBSTANCE OF INTERNATIONAL LAW

10	Use of Force	205
11	The Law of Armed Conflict	222
12	International Criminal Law	239
13	The Seas, the Air, and Outer Space	257

vi Contents

14 Protecting the Environment 281

15 The Global Economy 299

PART III THE SURROUNDINGS OF INTERNATIONAL LAW

16 Domestic Courts and Their Relationship with International Law 323

17 The Politics and Ethics of International Law and Global Governance 341

18 By Way of Conclusion 353

Index 357

Detailed Contents

<i>Preface to the Third Edition</i>	xiii
<i>Preface to the Second Edition</i>	xv
<i>Preface to the First Edition</i>	xvii
<i>Table of Cases</i>	xx
<i>List of Abbreviations</i>	xxxii

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	19
Ethics and International Law	20
Final Remarks: A Critical Perspective	22
Further Reading	23
2 The Making of International Law	24
Introduction	24
Two Ships (or Perhaps Three): <i>Lotus and 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 Lawbreaking and Lawmaking	35
General Principles of Law	37

viii Detailed Contents

Unilateral Declarations	38
Other Possible Sources and the Renewal of Sources Doctrine	40
Final Remarks	43
Further Reading	44
3 The Law of Treaties	45
Introduction	45
Two Basic Principles	47
The Concept of Treaty	47
The Conclusion of Treaties	49
Reservations	52
Interpretation	57
The Application of Treaties	59
Treaty Revision	62
Validity and Invalidity	64
Termination and Suspension	67
Final Remarks	71
Further Reading	72
4 The Subjects of International Law	73
Introduction	73
States	75
Recognition of States (or Governments)	79
Acquisition of Territory	83
Internationalized Territory	86
Statehood: Continuity and Change	87
International Organizations	91
The United Nations	95
Other Subjects	97
Final Remarks	98
Further Reading	99
5 Jurisdiction, Powers, and Immunities	100
Introduction	100
Five Principles	100
Extraterritorial Jurisdiction	106
Concurrent Jurisdiction	108
The Powers of International Organizations	109
Sovereign Immunities	112
Heads of State and Others	114
Diplomatic Privileges and Immunities	115
Final Remarks	117
Further Reading	118
6 The Individual in International Law, Including Human Rights	119
Introduction	119
From Slavery to Human Rights	120
The Institutionalization of Human Rights	123
The Application of Human Rights	126

ix Detailed Contents

- Group Rights 128
- Self-Determination 130
- Nationality 132
- The Right to Have Rights? Stateless Persons, Refugees, and Migrants 133
- Final Remarks 136
- Further Reading 137

- 7 The Law of Responsibility 138**
 - Introduction 138
 - From Custom to Codification 139
 - State Responsibility: Two Basic Principles 140
 - Responsibility and Private Acts 142
 - Circumstances Precluding Wrongfulness 144
 - Consequences of Responsibility 145
 - Responsible to Whom? 146
 - Responsibility of International Organizations 148
 - Individual Responsibility 151
 - Shared Responsibility? 152
 - Final Remarks 153
 - Further Reading 154

- 8 International Courts and Tribunals 155**
 - Introduction 155
 - Settling Disputes 155
 - Arbitration 158
 - Adjudication and the ICJ 159
 - Jurisdiction 163
 - Admissibility 170
 - Interim Measures of Protection 173
 - Compensation 174
 - Miscellaneous Issues 175
 - Advisory Opinions 177
 - Judicial Review? 179
 - Final Remarks 180
 - Further Reading 181

- 9 Sanctions, Countermeasures, and Collective Security 182**
 - Introduction 182
 - Inadimplenti Non Est Adimplendum* 183
 - Retorsion 184
 - Reprisals and Countermeasures 185
 - Collective Security 187
 - Triggering Collective Action 192
 - The Role of the General Assembly 194
 - Individual Sanctions 196
 - Limits to the Security Council? 199
 - Final Remarks 200
 - Further Reading 201

PART II THE SUBSTANCE OF INTERNATIONAL LAW

- 10 Use of Force** 205
 Introduction 205
 Abolishing War 206
 The UN Charter 207
 Self-Defence 210
 Humanitarian Intervention 215
 Terrorism 217
 The End of Armed Conflict 220
 Final Remarks 221
 Further Reading 221
- 11 The Law of Armed Conflict** 222
 Introduction 222
 International Humanitarian Law 223
 International and Non-international Conflicts 226
 Proportionality and Military Necessity 228
 Arms and Weapons 229
 International Humanitarian Law and International Organizations 232
 International Humanitarian Law and Privatization 233
 Foreign Occupation 234
Jus Post Bellum and Post-conflict Governance 235
 Wars against Phenomena 237
 Final Remarks 237
 Further Reading 238
- 12 International Criminal Law** 239
 Introduction 239
 War Crimes Trials and the ICC 239
 Core Crimes 245
 Individual Responsibility 248
 Transboundary Police Cooperation 250
 Extradition 252
 Deportation and Abduction 254
 Final Remarks 255
 Further Reading 256
- 13 The Seas, the Air, and Outer Space** 257
 Introduction 257
 Outline of the Maritime Regime 258
 Internal Waters 261
 Territorial Sea and Contiguous Zone 261
 Exclusive Economic Zone (EEZ) 263
 Continental Shelf 264
 High Seas 265
 The Deep Seabed 267
 Maritime Delimitation 268

xi Detailed Contents

- Prompt Release, Provisional Measures 272
 Air Law 274
 Space Law 276
 Final Remarks 279
 Further Reading 279
- 14 Protecting the Environment 281**
 Introduction 281
 Early Case Law 282
Pulp Mills 284
 Specific Issues 287
 The Antarctic 294
 Proceduralization and Institutionalization 295
 Compliance Procedures 296
 Final Remarks 297
 Further Reading 297
- 15 The Global Economy 299**
 Introduction 299
 Private International Law 300
 International Taxation 302
 Financial Institutions 303
 World Trade and the WTO 305
 Investment Protection 309
 Economic 'Soft Law' 313
 Development and a New International Economic Order 316
 Debt Relief 318
 Final Remarks 319
 Further Reading 319

PART III THE SURROUNDINGS OF INTERNATIONAL LAW

- 16 Domestic Courts and Their Relationship with International Law 323**
 Introduction 323
 Monism and Dualism 324
 Direct Effect 327
 Incorporating International Law 331
 The Special Case of the European Union 333
 Towards a New Dualism? 335
 Avoidance Strategies 338
 Final Remarks 339
 Further Reading 340
- 17 The Politics and Ethics of International Law and Global Governance 341**
 Introduction 341
 Global Governance 341
 The Politics of International Law 345
 Global Ethics 347

xii Detailed Contents

Towards Virtue? 349

Final Remarks 352

Further Reading 352

18 By Way of Conclusion 353

Index 357

Preface to the Third Edition

This third edition is prepared when the world is the grip of the Covid-19 (corona) crisis, killing people in large numbers, turning entire cities into ghost towns, and threatening to cripple the global economy. The crisis presents in a nutshell much of what characterizes international law. On the one hand, the global economy being a strongly interdependent whole, based on a sophisticated legal framework, has made it ever so easy for the virus to spread. On the other hand, the only meaningful and sustainable way to combat the crisis is by concerted action, through agreements between states or through international organizations, in other words, through international law.

This third edition has left the structure of the first two editions intact, and consists mostly of an update of the relevant materials: court decisions, treaties, newly published literature. There is some attention for headline grabbing events such as Brexit, but no detailed discussion: the Brexit saga creates much more complications under EU law and the constitutional law of the United Kingdom than it does under international law. And generally, as in the previous editions, I have tried to resist the temptation to comment on current events. Such comments might be helpful but are equally often a distraction, and run the risk of painting a distorted picture. After all, there is far more to diplomatic and consular law than the murder of Saudi Arabian author Jamal Khashoggi in the Saudi consulate in Istanbul in 2018. There is far more to armed conflict law than the targeted killing of Iranian General Soleimani by an American air strike in 2020. And there is far more to international economic law than the imposition of a single tariff on a single product by a single state. This is not to belittle any of these incidents; but it is to say that the choice of possible current events to discuss is sheer inexhaustible.

I am indebted to Guilherme Vasconcelos Vilaça for sharing with me his experiences teaching from this book and for pointing out one or two infelicities; to my students for telling me when things do not make sense (or inadvertently making this clear during exams); to Marianne Nield and Caitlin Lisle at Cambridge University Press, and to Margareta, Johan, and Gilda for bringing joy to my life on an everyday basis. I dedicate this edition to my teachers, past, present, and future.

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 Cambridge University Press, 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 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.

xviii Preface to the First Edition

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

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, *Methodologie du droit international public* (Brussels: Editions ULB, 2009).

² Jose 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).

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

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.

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

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 83

Opinion no. 3, 11 January 1992 83

Conciliation Commission

Jan Mayen Conciliation Commission, 19–20 May 1981 157

Court of Justice of the European Union (CJEU)

A. Racke GmbH & Co. v. Hauptzollamt Mainz, Case C-162/96, [1998] ECR I-3655 70, 71, 331

Ahlstrom and others v. Commission, Joined cases 89, 104, 114, 116, 117 and 125–129/85, [1988] ECR 5193 (*Woodpulp*) 107

Air Transport Association of America v. Secretary of State for Energy and Climate Change, Case C-366/10, ECLI:EU:C:2011:864 289

Bosphorus Queen v. Rajavartiolaitos, Case C-15/17, ECLI:EU:C:2018:557 290

Criminal Proceedings against Jean-Claude Levy, Case C-158/91, [1993] ECR I-4287 330

Defrenne v. Sabena, Case 43/75, [1976] ECR 455 63

France v. Commission, Case C-233/02, [2004] ECRI-2759 43

Kadi and Al Barakaat v. Council and Commission, Joined cases C-402/05 P and C-415/05 P, [2008] ECR I-6351 198, 336–7, 339

Van Gend & Loos v. Netherlands Internal Revenue Administration, Case 26/62, [1963] ECR 1 333–4

European Court of Human Rights (ECTHR)

Al-Skeini and Others v. United Kingdom (Application no. 55721/07), 7 July 2011 108

Amuur v. France (Application No. 19776/92), 25 June 1996 108

xxi Table of Cases

- Bankovic and others v. Belgium and others*, admissibility (Application no. 52207/99), decision of 12 December 2001 107
- Behrami and Behrami v. France* (Application no. 71412/01), and *Saramati v. France and others* (Application no. 78166/01), decision of 2 May 2007 21, 149, 233
- Belilos v. Switzerland* (Application no. 10328/83), 29 April 1988 55
- El Masri v. Former Yugoslav Republic of Macedonia* (Application No. 39630/09), December 2012 108
- Golder v. United Kingdom* (Application no. 4451/70), 21 February 1975 124–5
- Hanan v. Germany* (Application No. 4871/16) pending 111
- Handyside v. United Kingdom* (Application no. 5493/72), 7 December 1976 127
- Hirsi Jamaa v. Italy* (Application No. 27765), 23 February 2012 108
- Husayn (Aby Zubaydah) v. Poland* (Application No. 7511/13), 24 July 2014 108
- Ilascu v. Moldova and Russia* (Application No. 48787/99), 8 July 2004 108
- Jaloud v. Netherlands* (Application No. 47708/08), 20 November 2014 108
- Kishengenga case (Pakistan v. India)*, partial award, 18 February 2013 293
- Lautsi and others v. Italy* (Application No. 30814/06), 18 March 2011 354
- Loizidou v. Turkey*, preliminary objections (Application no. 15318/89), 23 February 1995 55, 107
- McCann and others v. United Kingdom* (Application no. 18984/91), 27 September 1995 128
- Perincek v. Switzerland* (Application No. 27510/08), 7 December 2013, 15 December 2015 127, 246
- Saramati v. France* see *Behrami and Behrami v. France*
- Soering v. United Kingdom* (Application No. 14038/88), 7 July 1989 253
- Streletz, Kessler and Krenz v. Germany* (Application nos. 34044/96, 35532/97 and 44801/98), 22 March 2001 236, 249
- Streletz, Kessler and Krenz v. Germany* (Application nos. 34044/96, 35532/97 and 44801/98), 22 March 2001 (*German Border Guards*) 236, 249
- Ukraine v. Russia* (Application No. 20958/14), pending 15

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 308
- United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products*, WTO, DS381, panel report circulated 15 September 2011 43
- United States – Restrictions on Import of Tuna*, DS21 R-39S155 306

General Court (EU, formerly Court of First Instance)

- Kadi v. Council*, Case T-315/01, [2005] ECR II-3649 67, 198–200
- Opel Austria GmbH v. Council*, Case T-115/94, [1997] ECR II-39 51

International Arbitral Awards

- Abyei Arbitration*, award of 22 July 2009 86

xxii Table of Cases

- Air Services Agreement of 27 March 1946*, award of 9 December 1978 186
Alabama Claims 1872 158
Anglo-French Continental Shelf, award of 30 June 1977 54
Arctic Sunrise Arbitration (Kingdom of the Netherlands v. Russian Federation), award on jurisdiction, 26 November 2014 274
Arctic Sunrise Arbitration (Kingdom of the Netherlands v. Russian Federation), final award, August 2015 274
Arctic Sunrise Arbitration (Kingdom of the Netherlands v. Russian Federation), award on compensation, 10 July 2017 274
Bering's Sea (USA/UK), award of 15 August 1893 283, 287
The 'Enrica Lexie' Incident (Italy v. India), provisional measures, 29 April 2016 102
Ioannes Kardassopoulos v. Georgia, award on jurisdiction, 6 July 2007 312
Island of Palmas (US v. Netherlands), award of 4 April 1928 77, 84, 98–9, 158, 206
Lake Lanoux (France v. Spain), award of 16 November 1957 284
Petroleum Development Ltd v. Sheikh of Abu Dhabi, award of September 1951 36
Naulilaa (Portugal v. Germany), Special Arbitral Tribunal, 31 July 1928 185–6
Rainbow Warrior (New Zealand v. France), 30 April 1990 184
South China Sea Arbitration (Philippines v. China), award of 12 July 2016 271
Texaco Overseas Petroleum Company and California Asiatic Oil Company v. Libya, merits 29
Trail Smelter (USA/Canada), 11 March 1941 284
Ukraine v. Russia, preliminary objections, 21 February 2020 15
Yukos v. Russian Federation, award on jurisdiction and admissibility, 30 November 2009 159, 312

International Court of Justice

- Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, advisory opinion, [2010] ICJ Rep. 403 82
Admission of a State to the United Nations (Charter, Article 4), advisory opinion, [1948] ICJ Rep. 57 94
Aegean Sea Continental Shelf (Greece v. Turkey), jurisdiction, [1978] ICJ Rep. 3 48–9, 164, 175–6
Aerial Herbicide Spraying (Ecuador v. Colombia), removal, [2013] ICJ Rep. 278 285
Aerial Incident of October 7th, 1952 (USA v. USSR), Order, [1956] ICJ Rep. 9 209
Aerial Incident of March 10th, 1953 (USA v. Czechoslovakia), Order, [1956] ICJ Rep. 6 209
Aerial Incident of September 4th, 1954 (USA v. USSR), Order [1958] ICJ Rep. 158 209
Aerial Incident of 7 November 1954 (USA v. USSR), Order, [1959] ICJ Rep. 276 209
Aerial Incident of July 27, 1955 (Israel v. Bulgaria), preliminary objections, [1959] ICJ Rep. 127 209
Aerial Incident of 27 July 1955 (USA v. Bulgaria), Order, [1960] ICJ Rep. 146 209
Aerial Incident of 27 July 1955 (UK v. Bulgaria), Order, [1959] ICJ Rep. 264 209

xxiii Table of Cases

- Aerial Incident of 3 July 1988 (Iran v. US)*, Order [1996] ICJ Rep. 9 209
- Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of Congo)*, [2010] ICJ Rep. 639 123
- Ambatielos (Greece v. United Kingdom)*, preliminary objections, [1952] ICJ Rep. 28 51
- Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)*, [1972] ICJ Rep. 46 180
- Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*, [1989] ICJ Rep. 177 179
- 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. 192 162
- 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 67, 174
- Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, [2007] ICJ Rep. 43 129, 143, 214, 246, 249–50
- Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, [2015] ICJ Rep. 3 246
- Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, order, 20 January 2020 129, 174
- Application of the Interim Accord of 13 September 1995 (Former Yugoslav Republic of Macedonia v. Greece)*, [2011] ICJ Rep. 644 95
- Application of the International Convention for the Suppression of the Financing of Terrorism and the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, preliminary objections, 8 November 2019 15, 166
- Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, preliminary objections, [2011] ICJ Rep. 70 166
- Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Burundi)*, Order, [2001] ICJ Rep. 3 209
- Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Rwanda)*, Order, [2001] ICJ Rep. 6 67, 209
- Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Uganda)*, [2005] ICJ Rep. 168 210
- Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of Congo v. Rwanda)*, jurisdiction and admissibility, [2006] ICJ Rep. 6 214
- Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v. Belgium)*, [2002] ICJ Rep. 3 21, 114, 117
- Asylum (Colombia/Peru)*, [1950] ICJ Rep. 266 30
- Avena and Other Mexican Nationals (Mexico v. USA)*, [2004] ICJ Rep. 12 166, 336
- Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, [1970] ICJ Rep. 3 147, 161, 173

xxiv Table of Cases

- Border and Transborder Armed Actions (Nicaragua v. Costa Rica)*, Order, [1987] ICJ Rep. 182 209
- Border and Transborder Armed Actions (Nicaragua v. Honduras)*, Order, [1992] ICJ Rep. 222 209
- Certain Activities and Construction of a Road (Costa Rica v. Nicaragua)*, [2015] ICJ Rep. 665 286
- Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, compensation, [2018] ICJ Rep. 15 146, 175, 286
- Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter)*, advisory opinion, [1962] ICJ Rep. 151 111, 195
- Certain Iranian Assets (Iran v. USA)*, preliminary objections, [2019] ICJ Rep. 7 106, 210
- Certain Norwegian Loans (France v. Norway)*, [1957] ICJ Rep. 9 168
- Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*, [2008] ICJ Rep. 177 170, 252
- Competence of the General Assembly for the Admission of a State to the United Nations*, advisory opinion, [1950] ICJ Rep. 4 94
- Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, joinder of proceedings, [2013] ICJ Rep. 184 177
- Continental Shelf (Libya/Malta)*, [1985] ICJ Rep. 13 263, 271
- Continental Shelf (Tunisia/Libya)*, [1982] ICJ Rep. 18 270–1
- Corfu Channel*, preliminary objections, [1948] ICJ Rep. 15 170
- Corfu Channel*, merits, [1949] ICJ Rep. 4 208, 225
- Corfu Channel*, assessment of the amount of compensation, [1949] ICJ Rep. 244 175
- Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States)*, [1984] ICJ Rep. 246 162, 272
- Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, [1999] ICJ Rep. 62 179
- Dispute Regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*, [2009] ICJ Rep. 213 258
- East Timor (Portugal v. Australia)*, [1995] ICJ Rep. 90 130, 147, 177
- Effect of Awards of Compensation made by the United Nations Administrative Tribunal*, advisory opinion, [1954] ICJ Rep. 47 111, 199
- Elettronica Sicula SpA (ELSI) (USA v. Italy)*, [1989] ICJ Rep. 15 313
- Fisheries (United Kingdom v. Norway)*, [1951] ICJ Rep. 116 33–4
- Fisheries Jurisdiction (Germany v. Iceland)*, [1973] ICJ Rep. 49 70
- Fisheries Jurisdiction (Spain v. Canada)*, jurisdiction, [1998] ICJ Rep. 432 168
- Fisheries Jurisdiction (UK v. Iceland)*, jurisdiction, [1973] ICJ Rep. 3 70, 166
- Frontier Dispute (Burkina Faso/Mali)*, [1986] ICJ Rep. 554 131
- Gabcikovo-Nagymaros Project (Hungary/Slovakia)*, [1997] ICJ Rep. 7 70, 145, 175, 186, 284
- Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, preliminary objections, [2018] ICJ Rep. 292 115
- Interhandel (Switzerland v. United States)*, preliminary objections, [1959] ICJ Rep. 6 167

xxv Table of Cases

- Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, advisory opinion, [1980] ICJ Rep. 73 149
- Jadhav Case (India v. Pakistan)*, 17 July 2019 350
- Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Belgium v. Switzerland)*, removal, [2011] ICJ Rep. 341 301
- Jurisdictional Immunities of the State (Germany v. Italy, Greece Intervening)*, [2012] ICJ Rep. 99 67, 114, 141
- LaGrand (Germany v. USA)*, [2001] ICJ Rep. 466 174
- Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)*, application by Nicaragua for permission to intervene, [1990] ICJ Rep. 92 176
- Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, application to intervene, Order, [1999] ICJ Rep. 1029 271
- Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria, Equatorial Guinea intervening)*, [2002] ICJ Rep. 303 65, 270
- 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. 16 179, 190, 197
- Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, advisory opinion, [2004] ICJ Rep. 136 147, 179, 205, 212, 235
- Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, advisory opinion, 25 February 2019 131, 179
- Legality of the Threat or Use of Nuclear Weapons*, advisory opinion, [1996] ICJ Rep. 226 14, 66, 180, 224, 230, 285
- Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, advisory opinion, [1996] ICJ Rep. 66 117, 178
- Legality of Use of Force (Serbia and Montenegro v. Belgium)*, [2004] ICJ Rep. 279 163
- Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, jurisdiction and admissibility, [1994] ICJ Rep. 112 49, 157, 165
- Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, [2009] ICJ Rep. 61 270
- Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)*, [2018] ICJ Rep. 139 270, 272
- Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. USA)*, Jurisdiction of the Court and Admissibility of the Application, [1984] ICJ Rep. 392 167–8, 170–1, 214–5
- Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. USA)*, merits, [1986] ICJ Rep. 14 28, 34–5, 143, 210, 250, 286
- Minquiers and Ecrehos (France/United Kingdom)*, [1953] ICJ Rep. 47 170
- Monetary Gold Removed from Rome in 1943 (Italy v. France, UK and USA)*, preliminary questions, [1954] ICJ Rep. 19 169–70, 177
- North Sea Continental Shelf (Germany/Denmark; Germany/Netherlands)*, joinder of proceedings, [1968] ICJ Rep. 9 36, 52, 176
- North Sea Continental Shelf (Germany/Denmark; Germany/Netherlands)*, [1969] ICJ Rep. 3 30, 36, 52, 175, 269

xxvi | Table of Cases

- Nottebohm (Second Phase), (Liechtenstein v. Guatemala)*, [1955] ICJ Rep. 4 132, 172
Nuclear Tests (Australia v. France), Order, [1973] ICJ Rep. 99 174
Nuclear Tests (Australia v. France), [1974] ICJ Rep. 253 38–9, 175
Nuclear Tests (New Zealand v. France), [1974] ICJ Rep. 457 38–9
Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile), [2018] ICJ Rep. 507 39, 264
Oil Platforms (Iran v. USA), [2003] ICJ Rep. 161 210, 212
Pulp Mills on the River Uruguay (Argentina v. Uruguay), [2010] ICJ Rep. 14 49, 284–6, 312
Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v. USA), Order, [1992] ICJ Rep. 114 174, 179
Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v. USA), Order, [2003] ICJ Rep. 152 276
Relocation of the US Embassy to Jerusalem (Palestine v. USA), application instituting proceedings
Reparation for Injuries Suffered in the Service of the United Nations, advisory opinion, [1949] ICJ Rep. 174 8, 62, 110, 178
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, 163
Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, advisory opinion, [1951] ICJ Rep. 15 26, 53
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. 319 177
South West Africa (Ethiopia v. South Africa; Liberia v. South Africa), Second Phase, [1966] ICJ Rep. 6 177
Temple of Preah Vihear (Cambodia v. Thailand), [1962] ICJ Rep. 6 170
United States Diplomatic and Consular Staff in Tehran (USA v. Iran), [1980] ICJ Rep. 3 142–3, 175
Vienna Convention on Consular Relations (Paraguay v. USA), Order, [1998] ICJ Rep. 248 173
Western Sahara, advisory opinion, [1975] ICJ Rep. 12 97, 178
Whaling in the Antarctic (Australia v. Japan, New Zealand intervening), [2014] ICJ Rep. 226 285, 292

International Criminal Court (ICC)

- Prosecutor v. Ahmad Al Faqi Al Mahdi*, ICC 01/12–01/15 243
Prosecutor v. Germain Katanga, ICC–01/04/01–07 243
Prosecutor v. Jean-Pierre Bemba Gombo, ICC–01/05–01/08 242, 249
Prosecutor v. Jean-Pierre Bemba Gombo et al., ICC 01/05–01/13 243, 249
Prosecutor v. Thomas Lubanga Dyilo, ICC–01/04–01/06 243

Prosecutor v. William Ruto and Joshua Sang, ICC-01/09-01/11 242
Situation in the Islamic Republic of Afghanistan, ICC 02-/17 242

International Criminal Tribunal for the Former Yugoslavia (ICTY)

Prosecutor v. Dusko Tadic, Case IT-94-1 188
Prosecutor v. Dusko Tadic, Case IT-94-1-A 143, 214
Prosecutor v. Radislav Krstic, Case IT-98-33-T 246
Situation in Georgia, ICC 01/15 243

International Tribunal for the Law of the Sea (ITLOS)

'Arctic Sunrise' (Netherlands v. Russian Federation), Case No. 22, provisional measures, 22 November 2013 273
Case Concerning the Detention of Three Ukrainian Naval Vessels (Ukraine v. Russian Federation), provisional measures, Order, 25 May 2019 273
Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar), Case No. 16, 14 March 2012 269–70
'Hoshinmaru' (Japan v. Russian Federation), Case No. 14, 6 August 2007 273
MV Norstar Case (Panama v. Italy), Case No. 25, 10 April 2019 266–7
Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission, advisory opinion, Case No. 21, 2 April 2015 261, 263, 291
Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area, advisory opinion, Case No. 17, 1 February 2011 43, 268
'Tomimaru' (Japan v. Russian Federation), Case No. 15, 6 August 2007 272–3

Permanent Court of International Justice (PCIJ)

Diversion of Water from the Meuse, [1937] Publ. PCIJ, Series A/B, no. 70 12, 183
Factory at Chorzow (Claim for Indemnity) (Germany v. Poland), merits, [1928] Publ. PCIJ, Series A, no. 17 138, 145
Interpretation of the Greco-Turkish Agreement of December 1st, 1926, advisory opinion, [1928] Publ. PCIJ, Series B, no. 16 110
Jurisdiction of the Courts of Danzig, advisory opinion, [1928] Publ. PCIJ, Series B, no. 15 327–9, 331
Legal Status of Eastern Greenland, [1933] Publ. PCIJ, Series A/B, no. 53 38, 50
Mavrommatis Palestine Concessions, [1924] Publ. PCIJ, Series A, no. 2 172, 310, 325
Nationality Decrees Issued in Tunis and Morocco (French Zone), advisory opinion, [1923] Publ. PCIJ, Series B, no. 4 117, 132
Oscar Chinn, [1934] Publ. PCIJ, Series A/B, no. 63 60
Payment in Gold of the Brazilian Federal Loans Issued in France, [1929] Publ. PCIJ, Series A, no. 21 300