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International Law Documents

EDITED BY **JAN KLABBERS**



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Editor's preface

International law is a curious and highly elusive phenomenon. On the one hand, it seems to move from crisis to crisis, from incident to incident, from major political event to major political event. Some of the most well-known treaties tend to be concluded as settlements after bloody conflicts: think of the Westphalia treaties after the Thirty Years War, the Versailles Treaty after the First World War, or the United Nations Charter after the Second World War. By the same token, some treaties are seen as marking great human progress and therewith heralding a new phase in global politics: this might apply to the Treaty establishing the European Union, or the Statute of the International Criminal Court, or the Genocide Convention. In fact, this can also apply to instruments that involve the common agreement or desires of states but are not considered treaties: it would be difficult to overstate the impact of the Universal Declaration of Human Rights.

And yet, at the same time, international law also manifests itself in the mundane and banal. Every time an airplane completes an international flight, every time a criminal is extradited, every time a taxpayer gets money back from a foreign country – they all mark international law in action. Several thousands of bilateral treaties exist protecting against double taxation; several more thousands exist protecting foreign investors and their investments; there are impressive numbers of treaties also when it comes to such topics as air services, or extradition and assistance in police matters.

International lawyers (lawyers generally, really) must learn how to work with these documents and must have some basic idea as to what these documents say. This applies to the major political treaties (the Charters, the Covenants), but also to the everyday treaties in the field of air services or extradition: chances are that the future lawyer may more often be confronted by issues concerning such everyday matters than by questions concerning the proper interpretation of, say, the Genocide Convention. Then again, a highly visible and unique instrument such as the Refugee Convention is thought to be the treaty most often applied in practice.

This volume aims to provide the reader with a taste of international law both in the exceptional and in the mundane. It contains the text of a large number of classic, political treaties, but also provides samples of treaties on more everyday matters. In addition, it contains samples of documents that are of relevance but are not generally considered treaties. This applies to the ILC's articles on state responsibility, but also to resolutions adopted by the two major political organs of the United Nations (the Security Council and the General Assembly) and even to documents of highly uncertain provenance and pedigree. It is a sign of the times that international law has shed some of its formal aspects and has taken on unashamedly normative colours: it can come in the form of

treaties and resolutions, but also in the shape of summit declarations, or in the form of a meeting of the minds of industry and employer representatives. Moreover, the volume contains a few samples of unilateral instruments, as these too can play an important role.

The precise selection of instruments and documents was informed by a number of guiding criteria. First, the volume should not grow too big, with the result that some instruments have been excluded, and that a few others have been excerpted. Second, the volume should be a useful companion to undergraduate courses on international law. Thus, it should contain the major relevant instruments that might be discussed in such courses, ranging from the UN Charter to the WTO Agreement or the Rome Statute of the ICC, and including a multitude of human rights instruments. Third, the volume should be of reasonably comprehensive geographical scope: if regional instruments are to be included, these should not stem from Europe alone. Fourth, it should ideally be a useful companion to undergraduate textbooks on international law, including my own.¹ And fifth, it should try to provide a glimpse into the broad field that is international law, which covers such widely diverging topics as arms control and investment protection, global trade and regulation of the seas.

The volume is divided into five parts. Part I contains a number of instruments which together, one might say, form the structure and process of international law. These instruments do not contain many substantive obligations of the 'thou shalt not do X' variety, but tend to set up mechanisms and procedures which make coexistence and cooperation between states possible. Perhaps the most surprising inclusion here is a communiqué adopted by the G20, on the basis of the thought that even if the legal status of the G20 and its decisions are far from clear, what is abundantly clear is that decisions of the G20 form prime examples of global governance.

Part II contains a number of instruments relating to the protection of the individual. As such, it includes a number of general human rights treaties (universal, European, American and African, and the non-binding ASEAN declaration of 2012) and the Genocide Convention. Still, the protection of the individual goes beyond human rights protection: it also covers individuals in other capacities – for example, as refugees or as employees. Hence the inclusion of the refugee convention and accompanying protocol, of the ILO Declaration, and of the highly intriguing Bangladesh accord to improve conditions in the garment industry. Obviously, many more instruments could have been included: there are dozens of universal human rights treaties in existence, and the ILO alone has sponsored some 200 treaties on the protection of labour.

Part III zooms in on the sort of thing that is often ignored in law school, and contains samples of bilateral treaties and unilateral statements. It is important to underline that these are merely samples: the Air Services agreement between New Zealand and Turkey is not included because of its particular relevance for air traffic, but simply because it provides a decent example of a standard type of treaty, the type that lawyers working at a Ministry of Transport or Aviation Authority may well be confronted with. Much the same applies to the other two sample bilateral agreements included, dealing with extradition and with investment protection. In addition, this part contains a few examples of unilateral declarations: a speech by US President Obama recognizing South

¹ Jan Klabbers, *International Law* (Cambridge University Press, 2013).

Sudan; the United Kingdom's recently submitted 'Optional Clause' Declaration by which it accepts – with a handful of caveats – the jurisdiction of the International Court of Justice; and the US ratification of the International Covenant on Civil and Political Rights, as well as Denmark's formal objection thereto. Again, the thing to remember is that these are samples.

Part IV contains a few instruments relevant to international organization. Its first section includes the 1946 Convention on Privileges and Immunities of the United Nations and the 1947 Headquarters Agreement concluded between the United Nations and the United States. Both have inspired many later treaties, and are thus of more than incidental significance. They are followed by two constituent instruments: the Charter establishing the Basel Committee on Banking Supervision (little known, but highly influential), and the Constitutive Act of the African Union. Again, these instruments merely serve as samples: the aim here is to provide possible models of constitutive instruments, a headquarters agreement, and a privileges and immunities convention. Part IV also contains a number of resolutions adopted by the Security Council and the General Assembly of the United Nations. Here in particular the choices could have been radically different, and with regard to both the most one can hope for is that they give a little flavour of the sort of work in which the two organs are engaged.

Finally, Part V contains a number of instruments of general scope illustrating the richness and comprehensive nature of international law. Some of these documents are very lengthy and detailed: the ICC Statute, the UN Convention on the Law of the Sea, and international trade law in particular take up a huge amount of space. Some instruments, moreover, are already so widely disseminated and available that their inclusion was hardly necessary: this applies to the Geneva Conventions from which, accordingly, only the first three common articles are reproduced. In the end, this part follows roughly the structure of the textbook I published a few years ago.²

Either way, any selection of instruments is, ultimately, personal, and thus contestable. Some of the instruments selected would have no doubt made it into the collections of many of my colleagues, but I have omitted some that are dear to people, and included some others that may well be considered somewhat eccentric choices. So be it. That said, I am open to suggestions for improvements.

Thanks to thank the staff at Cambridge University Press (Finola O'Sullivan, Marta Walkowiak and Valerie Appleby in particular) for the confidence they place in me, and thanks to Margareta, Johan and Gilda for being there.

² See Klabbers, *International Law*, especially Part II.

A note on documentation

Article 102 of the UN Charter suggests that, ideally, all treaties are registered with the United Nations and will be published by the Secretariat. While this was no doubt a good idea, it proved not to be entirely reliable: some treaties remain secret (and are thus never registered); the obligation to register is non-retroactive, and thus does not cover agreements concluded before 1945; Article 102 UN does not specify on whom the obligation to register rests; and (something the drafters could not foresee) the use of instruments other than treaties has become highly popular among statesmen and diplomats – by their very nature as something-other-than-treaties (such instruments need not be registered).

The net result is that not all instruments reproduced in this volume are included in the UN Treaty Series. Fortunately, though, the emergence of the internet over the last two decades has made them all widely available. With most of them, a Google search of a few seconds is far more fruitful than trying to navigate the somewhat unwieldy UN Treaty Series; hence, I do not feel particularly bad that with many instruments I have provided an internet source rather than a formal UN Treaty Series reference. In addition to these, marked as UNTS, it is worth noting that LNTS stands for League of Nations Treaty Series, and ETS stands for European Treaty Series, the series in which agreements concluded under auspices of the Council of Europe are published.

Chronological Table

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General Assembly Resolution 1803 (XVII) <i>Permanent Sovereignty over Natural Resources</i>	1962
ECHR, Fourth Protocol	1963
International Covenant on Civil and Political Rights	1966
International Covenant on Economic, Social and Cultural Rights	1966
Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies	1967

Protocol Relating to the Status of Refugees	1967
Treaty on the Non-proliferation of Nuclear Weapons	1968
Vienna Convention on the Law of Treaties	1969
American Convention on Human Rights	1969
General Assembly Resolution 2625 (XXV) <i>Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations</i>	1970
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ECHR, Seventh Protocol	1984
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Protocol on the Rights of Women in Africa	2003
Security Council Resolution 1540	2004
United Nations Convention on Jurisdictional Immunities of States and their Property	2005

Articles on Diplomatic Protection	2007
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ECHR, Sixteenth Protocol	2013
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United Kingdom Optional Clause Declaration	2014