Contents

Preface to the Eighth Edition xxi

Table of Cases xxii

Table of Treaties and Selected Other International Instruments xlvi

List of Abbreviations | xxxvi

1 The Nature and Development of International Law 1

Law and Politics in the World Community 2

The Role of Force 3

The International System 4

The Function of Politics 8

Historical Development 10

Early Origins 10

The Middle Ages and the Renaissance 14

The Founders of Modern International Law 16

Positivism and Naturalism 18

The Nineteenth Century 20

The Twentieth Century 22

Communist Approaches to International Law 23

The 'Developing Countries' 28

Suggestions for Further Reading 31

2 International Law Today 32

The Expanding Legal Scope of International Concern 32

Modern Theories and Interpretations 36

Positive Law and Natural Law 36

New Approaches 40

The Fragmentation of International Law? 48

Conclusion 49

Suggestions for Further Reading 50

3 Sources 51

Custom 53

Introduction 53

The Material Fact 56

What is State Practice? 60

Opinio Juris 62

Protest, Acquiescence and Change in Customary Law 66

Regional and Local Custom 68

Treaties 69

General Principles of Law 72

Equity and International Law 78

Judicial Decisions 81

Writers 83

Other Possible Sources of International Law 84

The International Law Commission 89

Other Bodies 90

Unilateral Acts 90

Hierarchy of Sources and Jus Cogens 91

Suggestions for Further Reading 95

4 International Law and Municipal Law 96

The Theories 97

The Role of Municipal Rules in International Law 100

International Law before Municipal Courts 103

The United Kingdom 105

Customary International Law 106

Treaties 112

The United States 119

Other Countries 126

- (i) Other Common Law and Related Legal Systems 126
- (ii) Civil Law Systems 130
- (iii) Conclusion 135

Non-Justiciability, Act of State and Related Doctrines 138

Executive Certificates 152

Suggestions for Further Reading 154

5 The Subjects of International Law 155

Legal Personality - Introduction 155

States 156

Creation of Statehood 157

Self-Determination and the Criteria of Statehood 162

Recognition 164

Extinction of Statehood 164

The Fundamental Rights of States 166

Independence 166

Equality 168

Peaceful Co-Existence 169

Protectorates and Protected States 170

Federal States 171

Sui Generis Territorial Entities 176

Mandated and Trust Territories 176

Germany 1945 178

Condominium 179

International Administration of Territories 180

Taiwan 183

The 'Turkish Republic of Northern Cyprus' (TRNC) 184

Europe 255

The Saharan Arab Democratic Republic 185 Kosovo 185 Palestine 186 Various Secessionist Claimants 188 Associations of States Conclusions 193 Special Cases 193 The Sovereign Order of Malta The Holy See and the Vatican City Insurgents and Belligerents 195 National Liberation Movements (NLMs) 195 International Public Companies 196 Transnational Corporations 197 The Right of All Peoples to Self-Determination The Establishment of the Legal Right The Definition of Self-Determination Individuals 204 International Organisations The Acquisition, Nature and Consequences of Legal Personality – Some Conclusions Suggestions for Further Reading 209 6 The International Protection of Human Rights The Nature of Human Rights 210 Ideological Approaches to Human Rights in International Law The Development of International Human Rights Law Some Basic Principles 215 Domestic Jurisdiction 215 The Exhaustion of Domestic or Local Remedies Rule 215 Priorities of Rights 216 Customary International Law and Human Rights The United Nations System – General 217 The Protection of the Collective Rights of Groups and Individuals 221 Prohibition of Discrimination 221 The Principle of Self-Determination as a Human Right The Protection of Minorities 226 The United Nations System - Implementation Political Bodies 231 Expert Bodies Established by UN Organs 234 The International Covenant on Economic, Social and Cultural Rights 234 Expert Bodies Established under Particular Treaties The Committee on the Elimination of Racial Discrimination The Human Rights Committee 238 The Committee on the Elimination of Discrimination against Women 244 The Committee against Torture 246 The Committee on the Rights of the Child 249 The Committee on the Protection of Migrant Workers 251 The Committee on the Rights of Persons with Disabilities 251 The Committee on Enforced Disappearances Conclusions 252 The Regional Protection of Human Rights 255

The European Convention on Human Rights 255

The Convention System 259

The European Social Charter 266

The European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or

Punishment 267

The Council of Europe Framework Convention for the Protection of National Minorities 269

The European Union 271

The OSCE (Organization for Security and Co-operation in Europe) 273

The CIS Convention on Human Rights and Fundamental Freedoms 276

The Inter-American Convention on Human Rights 277

The Banjul Charter on Human and Peoples' Rights 283

Suggestions for Further Reading 287

7 Individual Criminal Responsibility in International Law 288

International Criminal Courts and Tribunals 289

The International Criminal Tribunal for the Former Yugoslavia (ICTY) 292

The International Criminal Tribunal for Rwanda (ICTR) 295

The Mechanism for International Criminal Tribunals 297

The International Criminal Court (ICC) 298

Hybrid Courts and Other Internationalised Domestic Courts and Tribunals 305

The Special Court for Sierra Leone 305

Extraordinary Chambers in the Courts of Cambodia 308

Kosovo Regulation 64 Panels 309

East Timor Special Panels for Serious Crimes 311

The Bosnia War Crimes Chamber 312

The Special Tribunal for Lebanon 313

The Iraqi High Tribunal 314

The Serbian War Crimes Chamber 315

International Crimes 315

Genocide 316

Prohibition of Genocide 316

War Crimes 322

Crimes against Humanity 324

Aggression 326

Suggestions for Further Reading 328

8 Recognition 329

Recognition of States 330

Recognition of Governments 336

De Facto and de Jure Recognition 341

Premature Recognition 341

Implied Recognition 343

Conditional Recognition 345

Collective Recognition 345

Withdrawal of Recognition 345

Non-Recognition 347

The Legal Effects of Recognition 349

Internationally 349

Internally 349

The UK 350

The USA 357
Suggestions for Further Reading 360

9 Territory 361

The Concept of Territory in International Law 361

Territorial Sovereignty 363

New States and Title to Territory 365

The Acquisition of Additional Territory 367

Boundary Treaties and Boundary Awards 367

Accretion 369

Cession 369

Conquest and the Use of Force 371

The Exercise of Effective Control 372

Intertemporal Law 377

Critical Date 378

Sovereign Activities (Effectivités) 379

The Role of Subsequent Conduct: Recognition, Acquiescence and Estoppel 382

Conclusions 386

Territorial Integrity, Self-Determination and Sundry Claims 387

The Doctrine of Uti Possidetis 391

Beyond Uti Possidetis 394

International Boundary Rivers 396

'The Common Heritage of Mankind' 396

The Polar Regions 397

Leases and Servitudes 401

The Law of Outer Space 403

The Definition and Delimitation of Outer Space 404

The Regime of Outer Space 405

Suggestions for Further Reading 409

10 The Law of the Sea 410

The Territorial Sea 412

Internal Waters 412

Baselines 414

Bays 417

Islands 419

Archipelagic States 420

The Width of the Territorial Sea 422

The Juridical Nature of the Territorial Sea 422

The Right of Innocent Passage 423

Jurisdiction over Foreign Ships 426

International Straits 427

The Contiguous Zone 429

The Exclusive Economic Zone 431

The Continental Shelf 434

Definition 436

The Rights and Duties of the Coastal State 438

Maritime Delimitation 439

Conclusion 451

Landlocked States 452

The High Seas 453

Jurisdiction on the High Seas 455

Exceptions to the Exclusivity of Flag-State Jurisdiction 457

Right of Visit 457

Piracy 458

The Slave Trade 459

Unauthorised Broadcasting 460

Hot Pursuit 460

Collisions 461

Treaty Rights and Agreements 461

Pollution 463

Straddling Stocks 466

The International Seabed 469

Introduction 469

The 1982 Law of the Sea Convention (Part XI) 470

The Reciprocating States Regime 471

The 1994 Agreement on Implementation of the Seabed Provisions of the Convention

on the Law of the Sea 472

The International Seabed Authority 473

Settlement of Disputes 474

The International Tribunal for the Law of the Sea 476

Suggestions for Further Reading 482

11 Jurisdiction 483

The Principle of Domestic Jurisdiction 485

Legislative, Executive and Judicial Jurisdiction 486

Civil Jurisdiction 487

Criminal Jurisdiction 488

The Territorial Principle 488

The Nationality Principle 493

The Passive Personality Principle 497

The Protective Principle 499

The Universality Principle 500

War Crimes, Crimes against Peace and Crimes against Humanity 500

Treaties Providing for Jurisdiction 504

Illegal Apprehension of Suspects and the Exercise of Jurisdiction 509

The US Alien Tort Statute 511

Extradition 514

Extraterritorial Jurisdiction 515

Suggestions for Further Reading 522

12 Immunities from Jurisdiction 523

Sovereign Immunity 523

The Absolute Immunity Approach 526

The Restrictive Approach 529

Sovereign and Non-Sovereign Acts 532

State Immunity and Violations of Human Rights 537

Commercial Acts 540

Contracts of Employment 546

Other Non-Immunity Areas 548

The Personality Issue – Instrumentalities and Parts of the State 549

The Personality Issue – Immunity for Senior Government Figures 554

Waiver of Immunity 559

Pre-Judgment Attachment 561

Immunity from Execution 562

The Burden and Standard of Proof 566

Diplomatic Law 567

The Vienna Convention on Diplomatic Relations, 1961 568

The Inviolability of the Premises of the Mission 569

The Diplomatic Bag 573

Diplomatic Immunities – Property 576

Diplomatic Immunities - Personal 577

Waiver of Immunity 582

Consular Privileges and Immunities: The Vienna Convention on Consular Relations, 1963 583

The Convention on Special Missions, 1969 585

The Vienna Convention on the Representation of States in their Relations with International

Organisations of a Universal Character, 1975 587

Suggestions for Further Reading 588

13 State Responsibility 589

The Nature of State Responsibility 591

The Question of Fault 593

Attribution 594

Ultra vires acts 597

State Control and Responsibility 598

Mob Violence, Insurrections and Civil Wars 599

Circumstances Precluding Wrongfulness 601

Invocation of State Responsibility 605

The Consequences of Internationally Wrongful Acts 606

Cessation 606

Reparation 606

Serious Breaches of Peremptory Norms (Jus Cogens) 611

Diplomatic Protection and Nationality of Claims 612

The Exhaustion of Local Remedies 620

The Treatment of Aliens 622

The Relevant Standard of Treatment 623

The Protection of Foreign Property and Investments 626

The Property Question 628

The Nature of Expropriation 629

Public Purposes 631

Non-Discrimination 632

Compensation 632

Bilateral Investment Treaties 635

Lump-Sum Agreements 638

The Multilateral Investment Guarantee Agency 639

Suggestions for Further Reading 639

14 International Environmental Law 640

State Responsibility and the Environment 645

The Basic Duty of States 645

The Appropriate Standard 647

Damage Caused 648

Liability for Damage Caused by Private Persons 650

Prevention of Transboundary Harm from Hazardous Activities 651

The Problems of the State Responsibility Approach 652

International Co-operation - Relevant Principles 653

Use of Territory 653

Environmental Impact Assessments 655

The Precautionary Principle 657

Sustainable Development 658

The Polluter Pays 659

Atmospheric Pollution 660

Ozone Depletion and Climate Change 663

Outer Space 668

International Watercourses 670

Ultra-Hazardous Activities 67

Nuclear Activities 674

The Provision of Information 675

The Provision of Assistance 676

Nuclear Safety 677

Civil Liability 677

Hazardous Wastes 679

Marine Pollution 680

Pollution from Ships 681

Suggestions for Further Reading 683

15 The Law of Treaties 684

The Making of Treaties 688

Formalities 688

Consent 689

Consent by Signature 690

Consent by Exchange of Instruments 691

Consent by Ratification 691

Consent by Accession 692

Reservations to Treaties 693

Entry into Force of Treaties 701

The Application of Treaties 702

Third States 703

The Amendment and Modification of Treaties 705

Treaty Interpretation 706

Invalidity, Termination and Suspension of the Operation of Treaties 711

General Provisions 711

Invalidity of Treaties 712

Municipal Law 712

Error 713

Fraud and Corruption 713

Coercion 714

Jus Cogens 715

Consequences of Invalidity 716

The Termination of Treaties 716

Termination by Treaty Provision or Consent 716 Material Breach 717 Supervening Impossibility of Performance 719

Fundamental Change of Circumstances 720

Dispute Settlement 722

Treaties between States and International Organisations 722

Suggestions for Further Reading 724

16 State Succession 725

Continuity and Succession 727

Succession to Treaties 732

Categories of Treaties: Territorial, Political and Other Treaties 733

Succession to Treaties Generally 735

Absorption and Merger 736

Cession of Territory from One State to Another 737

Separation from an Existing State to Form a New State or States 738

'Newly Independent States' 740

Dissolution of States 742

International Human Rights Treaties 743

Succession with Respect to Matters Other Than Treaties 745

Membership of International Organisations 745

Succession to Assets and Debts 746

State Property 747

State Archives 751

Public Debt 753

Private Rights 757

State Succession and Nationality 759

State Succession and Responsibility 762

Coda: Hong Kong 763

Suggestions for Further Reading 763

17 The Settlement of Disputes by Peaceful Means 764

Diplomatic Methods of Dispute Settlement 767

Negotiation 767

Good Offices and Mediation 770

Inquiry 771

Conciliation 773

International Institutions and Dispute Settlement 775

Regional Organisations 775

The African Union (Formerly the Organisation of African Unity) 776

The Organization of American States 779

The Arab League 780

Europe 780

Specialised Agencies 782

The Settlement of International Economic Disputes 782

Binding Methods of Inter-State Dispute Settlement 794

Arbitration 795

Suggestions for Further Reading 802

18 The International Court of Justice 803

The Organisation of the Court 804

The Jurisdiction of the Court 8

General 808

The Nature of a Legal Dispute 810

Contentious Jurisdiction 812

Article 36(1) 816

Article 36(2) 821

Sources of Law, Propriety and Legal Interest 825

Evidence 827

Provisional Measures 830

Joinder of Cases 833

Counter-Claims 834

Third-Party Intervention 835

Remedies 838

Enforcement 840

Application for Interpretation of a Judgment 841

Application for Revision of a Judgment 841

Examination of a Situation after the Judgment 842

The Advisory Jurisdiction of the Court 843

The Role of the Court 847

Proliferation of Courts and Tribunals 848

Suggestions for Further Reading 850

19 International Law and the Use of Force by States 851

Law and Force from the 'Just War' to the United Nations 851

The UN Charter 854

'Force' 855

'Against the Territorial Integrity or Political Independence of Any State' 857

Categories of Force 859

Retorsion 859

Reprisals 859

The Right of Self-Defence 861

The Protection of Nationals Abroad 870

Conclusions 872

Collective Self-Defence 872

Intervention 874

Civil Wars 874

Aid to the Authorities of a State 876

Aid to Rebels 878

Humanitarian Intervention 880

Terrorism and International Law 884

Suggestions for Further Reading 890

20 International Humanitarian Law 891

Development 892

The Scope of Protection under International Humanitarian Law 894

The Wounded and Sick 894

Prisoners of War 895

Protection of Civilians and Occupation 898

International Humanitarian Law and International Human Rights Law 903

The Conduct of Hostilities 906

Armed Conflicts: International and Internal
Non-International Armed Conflict
Enforcement of Humanitarian Law
919
Conclusion
922
Suggestions for Further Reading
923

21 The United Nations 924

The UN System 924
The Security Council 925
The General Assembly 928
Other Principal Organs 930
The Peaceful Settlement of Disputes 933
The League of Nations 933
The United Nations System 933
The Security Council 934
The General Assembly 937
The Secretary-General 937

Peacekeeping and Observer Missions 938

Conclusion 945

The Collective Security System 946

The Security Council 947

Determination of the Situation 947

Chapter VII Measures 951

Measures Not Involving the Use of Force 951

Measures Involving the Use of Force 958

The Use of Force in Non-Enforcement Situations 963

The Range of UN Actions from Humanitarian Assistance to Enforcement – Conclusions 970

The Security Council, International Law and the International Court of Justice 971

The Role of the General Assembly 973

The UN and Regional Arrangements and Agencies 975

Suggestions for Further Reading 981

22 International Organisations 982

Introduction 982

Some Legal Aspects of International Organisations 989

Personality 991

The Constituent Instruments 995

The Powers of International Organisations 998

The Applicable Law 1000

The Responsibility of International Organisations 1001

Liability of Member States 1004

The Accountability of International Organisations 1006

Privileges and Immunities 1007

Dissolution 1016

Succession 1017

Suggestions for Further Reading 1018

Index 1019