## CONTENTS

	EDITOR S INTRODUCTION	XXV11
	Preface to the Second Edition	xxix
	Notes on Contributors	XXX
	Abbreviations	xxxv
	Table of International Instruments and Other Documents	xli
	Table of Statutes by Country	li
	Table of International Cases	liii
	Table of Domestic Cases by Country	lix
	INTRODUCTION: PERSPECTIVES ON INTERNATIONAL I	LAW
	REFLECTIONS FROM THE INTERNATIONAL COURT HE President Rosalyn Higgins, DBE, QC	3
	THE PINOCHET CASE—SOME PERSONAL REFLECTIONS The Rt Hon The Lord Millett	7
	THE PERSPECTIVE OF INTERNATIONAL LAW FROM THE BAR Ian Brownlie, CBE, QC	11
	THE THREAD OF PUBLIC INTERNATIONAL LAW IN THE LIFE OF A SOLICITOR IN PRIVATE PRACTICE  Tim Daniel	15
	A PERSONAL PERSPECTIVE ON INTERNATIONAL LAW Ralph Zacklin, Assistant Secretary-General United Nations	19
	THE PERSPECTIVE OF A FOREIGN MINISTRY LEGAL ADVISER Michael Wood	23
PA	ART I THE HISTORY AND THEORY OF INTERNATIONA	L LAW
1	A SHORT HISTORY OF INTERNATIONAL LAW Stephen C Neff	29
	Summary	29
	I Introduction	29
	II Ancient Worlds	30

		CONTENTS	ix
	III	The Middle Ages: The Natural Law Era	32
	IV	The Classical Age (1600–1815)	34
	V	The Nineteenth Century (1815–1919)	38
		A The Positivist Tradition	38
		B Natural-law Remnants	43
		C The Historicist (or 'Romantic') Tradition	44
	VI	The Twentieth and Twenty-first Centuries (1919– )	46
		A The Inter-war Period	46
		B After 1945	48
	VII	Conclusion	52
	Refe	rences	52
	Furt	ner Reading	54
2	WH	AT IS INTERNATIONAL LAW FOR?	57
		tti Koskenniemi	37
	Sum	mary	57
	I	The Paradox of Objectives	57
	II	Converging Interests?	59
	III	The Significance of Statehood	61
	IV	Into Pragmatism?	64
	V	A Tradition of Anti-formalism	67
	VI	Instrumentalism, Formalism, and the Production of an International Political Community	71
	VII	Beyond Instrumentalism and Formalism	73
		Between Hegemony and Fragmentation: A Mini-history	75
	IX	Legal Formalism and International Justice	77
		rences	78
	TCTC		70
2	****	**************************************	
3		KED HERESIES OR LEGITIMATE PERSPECTIVES? ORY AND INTERNATIONAL LAW	83
		Scobbie Scobbie	0.5
	Sum	mary	83
	Ι	The Prologue: On Decadence, Heresies, and Differing Perceptions	83
	II	What is 'Theory' and What Does it Do?	87
	III	The Legal Structure of the Cold War: Liberal Democracy versus Marxist-Leninism	92
		A. A	24

B Soviet Theory C New Haven and Soviet Approaches Compared  IV Beyond State Instrumentalism? V The Return of Decadence? VI And in the End References Further Reading  PART II THE STRUCTURE OF INTERNATIONAL LEGAL OBLIGATION  LEGAL OBLIGATION  4 THE SOURCES OF INTERNATIONAL LAW Hugh Thirlway Summary I Introduction: What are Sources of Law? II The Enumeration of the Traditional Sources of International Law: Article 38 of the Statute of the International Court of Justice A Treaties and Conventions in Force B Custom C The General Principles of Law D Subsidiary Sources: Judicial Decisions and Teachings  III The Relationship Between the Sources of International Law A Relationship Between Treaty and Custom B The Hierarchy of Sources  IV Is the Enumeration of Article 38 Exhaustive? Possible New or Additional Sources A How Can New Sources Come into Existence? B Some Additional Sources or Quasi-Sources That Have Been Sugge V Conclusion References Further Reading  5 SOFT LAW IN INTERNATIONAL LAW-MAKING Alan Boyle Summary I The Significance of Soft Law II What is Soft Law?	A The Ne	v Haven School	93
IV Beyond State Instrumentalism? V The Return of Decadence? VI And in the End References Further Reading  PART II THE STRUCTURE OF INTERNATIONAL LEGAL OBLIGATION  4 THE SOURCES OF INTERNATIONAL LAW Hugh Thirlway Summary I Introduction: What are Sources of Law? II The Enumeration of the Traditional Sources of International Law: Article 38 of the Statute of the International Court of Justice A Treaties and Conventions in Force B Custom C The General Principles of Law D Subsidiary Sources: Judicial Decisions and Teachings III The Relationship Between the Sources of International Law A Relationship Between Treaty and Custom B The Hierarchy of Sources IV Is the Enumeration of Article 38 Exhaustive? Possible New or Additional Sources A How Can New Sources Come into Existence? B Some Additional Sources or Quasi-Sources That Have Been Sugge V Conclusion References Further Reading 5 SOFT LAW IN INTERNATIONAL LAW-MAKING Alan Boyle Summary I The Significance of Soft Law	B Soviet	heory	96
V The Return of Decadence? VI And in the End References Further Reading  PART II THE STRUCTURE OF INTERNATIONAL LEGAL OBLIGATION  4 THE SOURCES OF INTERNATIONAL LAW Hugh Thirlway Summary I Introduction: What are Sources of Law? II The Enumeration of the Traditional Sources of International Law: Article 38 of the Statute of the International Court of Justice A Treaties and Conventions in Force B Custom C The General Principles of Law D Subsidiary Sources: Judicial Decisions and Teachings III The Relationship Between the Sources of International Law A Relationship Between Treaty and Custom B The Hierarchy of Sources IV Is the Enumeration of Article 38 Exhaustive? Possible New or Additional Sources A How Can New Sources Come into Existence? B Some Additional Sources or Quasi-Sources That Have Been Sugge V Conclusion References Further Reading  5 SOFT LAW IN INTERNATIONAL LAW-MAKING Alan Boyle Summary I The Significance of Soft Law	C New H	ven and Soviet Approaches Compared	99
VI And in the End References Further Reading  PART II THE STRUCTURE OF INTERNATIONAL LEGAL OBLIGATION  4 THE SOURCES OF INTERNATIONAL LAW Hugh Thirlway  Summary  I Introduction: What are Sources of Law?  II The Enumeration of the Traditional Sources of International Law: Article 38 of the Statute of the International Court of Justice A Treaties and Conventions in Force B Custom C The General Principles of Law D Subsidiary Sources: Judicial Decisions and Teachings  III The Relationship Between the Sources of International Law A Relationship Between Treaty and Custom B The Hierarchy of Sources  IV Is the Enumeration of Article 38 Exhaustive? Possible New or Additional Sources A How Can New Sources Come into Existence? B Some Additional Sources or Quasi-Sources That Have Been Sugge V Conclusion References Further Reading  5 SOFT LAW IN INTERNATIONAL LAW-MAKING Alan Boyle Summary I The Significance of Soft Law	IV Beyond St	te Instrumentalism?	102
PART II THE STRUCTURE OF INTERNATIONAL LEGAL OBLIGATION  4 THE SOURCES OF INTERNATIONAL LAW Hugh Thirlway  Summary  I Introduction: What are Sources of Law?  II The Enumeration of the Traditional Sources of International Law: Article 38 of the Statute of the International Court of Justice  A Treaties and Conventions in Force  B Custom  C The General Principles of Law  D Subsidiary Sources: Judicial Decisions and Teachings  III The Relationship Between the Sources of International Law  A Relationship Between Treaty and Custom  B The Hierarchy of Sources  IV Is the Enumeration of Article 38 Exhaustive? Possible New or Additional Sources  A How Can New Sources Come into Existence?  B Some Additional Sources or Quasi-Sources That Have Been Sugge  V Conclusion  References  Further Reading  5 SOFT LAW IN INTERNATIONAL LAW-MAKING  Alan Boyle  Summary  I The Significance of Soft Law	V The Retur	of Decadence?	105
PART II THE STRUCTURE OF INTERNATIONAL LEGAL OBLIGATION  4 THE SOURCES OF INTERNATIONAL LAW Hugh Thirlway  Summary  I Introduction: What are Sources of Law?  II The Enumeration of the Traditional Sources of International Law: Article 38 of the Statute of the International Court of Justice  A Treaties and Conventions in Force  B Custom  C The General Principles of Law  D Subsidiary Sources: Judicial Decisions and Teachings  III The Relationship Between the Sources of International Law  A Relationship Between Treaty and Custom  B The Hierarchy of Sources  IV Is the Enumeration of Article 38 Exhaustive? Possible New or Additional Sources  A How Can New Sources Come into Existence?  B Some Additional Sources or Quasi-Sources That Have Been Sugge  V Conclusion  References  Further Reading  5 SOFT LAW IN INTERNATIONAL LAW-MAKING  Alan Boyle  Summary  I The Significance of Soft Law	VI And in the	End	107
PART II THE STRUCTURE OF INTERNATIONAL LEGAL OBLIGATION  4 THE SOURCES OF INTERNATIONAL LAW Hugh Thirlway  Summary  I Introduction: What are Sources of Law?  II The Enumeration of the Traditional Sources of International Law: Article 38 of the Statute of the International Court of Justice  A Treaties and Conventions in Force  B Custom  C The General Principles of Law  D Subsidiary Sources: Judicial Decisions and Teachings  III The Relationship Between the Sources of International Law  A Relationship Between Treaty and Custom  B The Hierarchy of Sources  IV Is the Enumeration of Article 38 Exhaustive? Possible New or Additional Sources  A How Can New Sources Come into Existence?  B Some Additional Sources or Quasi-Sources That Have Been Sugge  V Conclusion  References  Further Reading  5 SOFT LAW IN INTERNATIONAL LAW-MAKING  Alan Boyle  Summary  I The Significance of Soft Law	References		107
LEGAL OBLIGATION  4 THE SOURCES OF INTERNATIONAL LAW Hugh Thirlway  Summary  I Introduction: What are Sources of Law? II The Enumeration of the Traditional Sources of International Law: Article 38 of the Statute of the International Court of Justice A Treaties and Conventions in Force B Custom C The General Principles of Law D Subsidiary Sources: Judicial Decisions and Teachings  III The Relationship Between the Sources of International Law A Relationship Between Treaty and Custom B The Hierarchy of Sources  IV Is the Enumeration of Article 38 Exhaustive? Possible New or Additional Sources A How Can New Sources Come into Existence? B Some Additional Sources or Quasi-Sources That Have Been Sugge V Conclusion References Further Reading  5 SOFT LAW IN INTERNATIONAL LAW-MAKING Alan Boyle Summary I The Significance of Soft Law	Further Reading		112
Summary  I Introduction: What are Sources of Law?  II The Enumeration of the Traditional Sources of International Law:     Article 38 of the Statute of the International Court of Justice     A Treaties and Conventions in Force     B Custom     C The General Principles of Law     D Subsidiary Sources: Judicial Decisions and Teachings  III The Relationship Between the Sources of International Law     A Relationship Between Treaty and Custom     B The Hierarchy of Sources  IV Is the Enumeration of Article 38 Exhaustive? Possible New or Additional Sources     A How Can New Sources Come into Existence?     B Some Additional Sources or Quasi-Sources That Have Been Sugge  V Conclusion  References  Further Reading  5 SOFT LAW IN INTERNATIONAL LAW-MAKING  Alan Boyle  Summary  I The Significance of Soft Law	PART	SINGGIONE OF INTERNA	TIONAL
Summary  I Introduction: What are Sources of Law?  II The Enumeration of the Traditional Sources of International Law:     Article 38 of the Statute of the International Court of Justice     A Treaties and Conventions in Force     B Custom     C The General Principles of Law     D Subsidiary Sources: Judicial Decisions and Teachings  III The Relationship Between the Sources of International Law     A Relationship Between Treaty and Custom     B The Hierarchy of Sources  IV Is the Enumeration of Article 38 Exhaustive? Possible New or Additional Sources     A How Can New Sources Come into Existence?     B Some Additional Sources or Quasi-Sources That Have Been Sugge  V Conclusion  References  Further Reading  5 SOFT LAW IN INTERNATIONAL LAW-MAKING  Alan Boyle  Summary  I The Significance of Soft Law	THE COURSE		
<ul> <li>I Introduction: What are Sources of Law?</li> <li>II The Enumeration of the Traditional Sources of International Law: Article 38 of the Statute of the International Court of Justice         <ul> <li>A Treaties and Conventions in Force</li> <li>B Custom</li> <li>C The General Principles of Law</li> <li>D Subsidiary Sources: Judicial Decisions and Teachings</li> </ul> </li> <li>III The Relationship Between the Sources of International Law         <ul> <li>A Relationship Between Treaty and Custom</li> <li>B The Hierarchy of Sources</li> </ul> </li> <li>IV Is the Enumeration of Article 38 Exhaustive? Possible New or Additional Sources</li> <li>A How Can New Sources Come into Existence?</li> <li>B Some Additional Sources or Quasi-Sources That Have Been Sugge</li> <li>V Conclusion</li> <li>References</li> <li>Further Reading</li> <li>SOFT LAW IN INTERNATIONAL LAW-MAKING         <ul> <li>Alan Boyle</li> </ul> </li> <li>Summary</li> <li>I The Significance of Soft Law</li> </ul>		OF INTERNATIONAL LAW	115
II The Enumeration of the Traditional Sources of International Law: Article 38 of the Statute of the International Court of Justice A Treaties and Conventions in Force B Custom C The General Principles of Law D Subsidiary Sources: Judicial Decisions and Teachings III The Relationship Between the Sources of International Law A Relationship Between Treaty and Custom B The Hierarchy of Sources IV Is the Enumeration of Article 38 Exhaustive? Possible New or Additional Sources A How Can New Sources Come into Existence? B Some Additional Sources or Quasi-Sources That Have Been Sugge V Conclusion References Further Reading  5 SOFT LAW IN INTERNATIONAL LAW-MAKING Alan Boyle Summary I The Significance of Soft Law	Summary		115
Article 38 of the Statute of the International Court of Justice  A Treaties and Conventions in Force  B Custom  C The General Principles of Law  D Subsidiary Sources: Judicial Decisions and Teachings  III The Relationship Between the Sources of International Law  A Relationship Between Treaty and Custom  B The Hierarchy of Sources  IV Is the Enumeration of Article 38 Exhaustive? Possible New or Additional Sources  A How Can New Sources Come into Existence?  B Some Additional Sources or Quasi-Sources That Have Been Sugge  V Conclusion  References  Further Reading  5 SOFT LAW IN INTERNATIONAL LAW-MAKING  Alan Boyle  Summary  I The Significance of Soft Law	I Introduction	n: What are Sources of Law?	115
A Treaties and Conventions in Force B Custom C The General Principles of Law D Subsidiary Sources: Judicial Decisions and Teachings III The Relationship Between the Sources of International Law A Relationship Between Treaty and Custom B The Hierarchy of Sources IV Is the Enumeration of Article 38 Exhaustive? Possible New or Additional Sources A How Can New Sources Come into Existence? B Some Additional Sources or Quasi-Sources That Have Been Sugge V Conclusion References Further Reading SOFT LAW IN INTERNATIONAL LAW-MAKING Alan Boyle Summary I The Significance of Soft Law			
B Custom C The General Principles of Law D Subsidiary Sources: Judicial Decisions and Teachings III The Relationship Between the Sources of International Law A Relationship Between Treaty and Custom B The Hierarchy of Sources IV Is the Enumeration of Article 38 Exhaustive? Possible New or Additional Sources A How Can New Sources Come into Existence? B Some Additional Sources or Quasi-Sources That Have Been Sugge V Conclusion References Further Reading SOFT LAW IN INTERNATIONAL LAW-MAKING Alan Boyle Summary I The Significance of Soft Law	Article 38	f the Statute of the International Court of Justic	ce 118
C The General Principles of Law D Subsidiary Sources: Judicial Decisions and Teachings  III The Relationship Between the Sources of International Law A Relationship Between Treaty and Custom B The Hierarchy of Sources  IV Is the Enumeration of Article 38 Exhaustive? Possible New or Additional Sources A How Can New Sources Come into Existence? B Some Additional Sources or Quasi-Sources That Have Been Sugge V Conclusion  References Further Reading  SOFT LAW IN INTERNATIONAL LAW-MAKING  Alan Boyle  Summary I The Significance of Soft Law		and Conventions in Force	119
D Subsidiary Sources: Judicial Decisions and Teachings  III The Relationship Between the Sources of International Law A Relationship Between Treaty and Custom B The Hierarchy of Sources  IV Is the Enumeration of Article 38 Exhaustive? Possible New or Additional Sources A How Can New Sources Come into Existence? B Some Additional Sources or Quasi-Sources That Have Been Sugge  V Conclusion  References Further Reading  SOFT LAW IN INTERNATIONAL LAW-MAKING  Alan Boyle  Summary  I The Significance of Soft Law			121
<ul> <li>III The Relationship Between the Sources of International Law <ul> <li>A Relationship Between Treaty and Custom</li> <li>B The Hierarchy of Sources</li> </ul> </li> <li>IV Is the Enumeration of Article 38 Exhaustive? Possible New or Additional Sources <ul> <li>A How Can New Sources Come into Existence?</li> <li>B Some Additional Sources or Quasi-Sources That Have Been Sugge</li> </ul> </li> <li>V Conclusion <ul> <li>References</li> </ul> </li> <li>Further Reading</li> </ul> <li>SOFT LAW IN INTERNATIONAL LAW-MAKING <ul> <li>Alan Boyle</li> </ul> </li> <li>Summary</li> <li>I The Significance of Soft Law</li>			127
A Relationship Between Treaty and Custom B The Hierarchy of Sources  IV Is the Enumeration of Article 38 Exhaustive? Possible New or Additional Sources A How Can New Sources Come into Existence? B Some Additional Sources or Quasi-Sources That Have Been Sugge V Conclusion  References Further Reading  SOFT LAW IN INTERNATIONAL LAW-MAKING  Alan Boyle  Summary  I The Significance of Soft Law			129
B The Hierarchy of Sources  IV Is the Enumeration of Article 38 Exhaustive? Possible New or Additional Sources  A How Can New Sources Come into Existence?  B Some Additional Sources or Quasi-Sources That Have Been Sugge  V Conclusion  References  Further Reading  SOFT LAW IN INTERNATIONAL LAW-MAKING  Alan Boyle  Summary  I The Significance of Soft Law			v 130
<ul> <li>IV Is the Enumeration of Article 38 Exhaustive? Possible New or Additional Sources</li> <li>A How Can New Sources Come into Existence?</li> <li>B Some Additional Sources or Quasi-Sources That Have Been Sugge</li> <li>V Conclusion</li> <li>References</li> <li>Further Reading</li> <li>SOFT LAW IN INTERNATIONAL LAW-MAKING         Alan Boyle         Summary         I The Significance of Soft Law     </li> </ul>			130
Additional Sources  A How Can New Sources Come into Existence?  B Some Additional Sources or Quasi-Sources That Have Been Sugge V Conclusion References Further Reading  SOFT LAW IN INTERNATIONAL LAW-MAKING Alan Boyle Summary I The Significance of Soft Law			132
A How Can New Sources Come into Existence?  B Some Additional Sources or Quasi-Sources That Have Been Sugge V Conclusion References Further Reading  SOFT LAW IN INTERNATIONAL LAW-MAKING Alan Boyle Summary I The Significance of Soft Law			
B Some Additional Sources or Quasi-Sources That Have Been Sugge V Conclusion References Further Reading  5 SOFT LAW IN INTERNATIONAL LAW-MAKING Alan Boyle Summary I The Significance of Soft Law			134
V Conclusion References Further Reading  5 SOFT LAW IN INTERNATIONAL LAW-MAKING Alan Boyle Summary I The Significance of Soft Law			134
References Further Reading  5 SOFT LAW IN INTERNATIONAL LAW-MAKING Alan Boyle Summary I The Significance of Soft Law		initional Sources or Quasi-Sources That Have Be	en Suggested 135
Further Reading  5 SOFT LAW IN INTERNATIONAL LAW-MAKING Alan Boyle  Summary  I The Significance of Soft Law			139
5 SOFT LAW IN INTERNATIONAL LAW-MAKING Alan Boyle Summary I The Significance of Soft Law			139
Alan Boyle Summary I The Significance of Soft Law	Further Reading		140
I The Significance of Soft Law		NTERNATIONAL LAW-MAKING	141
	Summary		141
II What is Soft Law?	I The Signific	ance of Soft Law	141
	II What is Sof	Law?	142

		CONTENTS	xi
	III	Treaties or Soft Law?	143
	IV	Soft Law as Part of the Multilateral Treaty-making Process	145
	V	Treaties as Soft Law	149
	VI	Soft Law General Principles	151
	VII	Soft Law and Customary Law	153
	VIII	Conclusion	156
	Refe	rences	157
	Furt	her Reading	158
6		ERNATIONAL LAW AND 'RELATIVE NORMATIVITY'	159
	Sum	mary	159
	I	Introduction: The Concept of Relative Normativity	159
	II	The Assertion of Peremptory Norms	164
	III	Hierarchy Among Conflicting Norms and Procedures	173
		A Hierarchy Within a Single Treaty	174
		B Hierarchy Among Treaties Governing the Same Topic	177
		C Hierarchy Among Regimes	177
	IV	'Soft Law'	180
	V	Conclusion	183
	Refer	rences	184
	Furtl	ner Reading	185
7		PRACTICAL WORKING OF THE LAW OF TREATIES tosia Fitzmaurice	187
	Sum	mary	187
	Ι	Introduction	187
	II	Basic Concepts and Structures	188
		A What is a Treaty?	188
		B The Vienna Conventions	189
	III	The Anatomy of a Treaty	190
		A The Making of Treaties	190
		B Authority to Conclude Treaties	191
		C Expression of Consent to be Bound	191
		D Invalidity of Treaties	193
		E Amendment and Modification	195
		F Termination and Suspension of the Operation of Treaties	195

	1 V	The Scope of Legal Obligations	196
		A The Principle Pacta Sunt Servanda	196
		B Treaties and Third States	197
	V	General Principles of Interpretation	198
		A General Issues	198
		B Practice	199
		C Travaux Préparatoires	201
		D The Object and Purpose of a Treaty	202
		E The Principle of Effectiveness	202
		F Plurilingual Treaties	202
	VI	Reservations to Treaties	204
		A The Genocide Convention Case	204
		B The Regime of the 1969 Vienna Convention	205
		C The Problem of Reservations to Human Rights Treaties	206
		D Interpretative Declarations	208
	VII	Problems Concerning the Grounds for Termination	209
		A Material Breach	209
		B Supervening Impossibility of Performance	210
		C Fundamental Change of Circumstances	210
	VIII	Conclusion	212
	Refe	rences	212
	Furt	her Reading	213
		PART III THE SUBJECTS OF THE INTERNATION LEGAL ORDER	AL
8		TES AND RECOGNITION IN INTERNATIONAL LAW  1 Warbrick	217
	Sum	mary	217
	I	States	218
		A Introduction	218
		B History	221
		C Self-determination	224
		D Personality—What it Means to be a Legal Person	228
		E Statehood as Personality—What it Takes to be a State	231
		F The Rights and Duties of States—What it Means to be a State	242
		G The 'Juridical' State	243

		CONTENTS	xiii
	H Con	clusion	247
	II Recogn	ition	247
		oduction	247
		Tinoco Arbitration	248
	C Lega	l Nature, Legal Consequences of the Recognition Decision	249
	D Reco	gnizing, Not Recognizing, Non-recognition	252
	E Reco	ognition of Governments	253
	F Inter	rnational and Domestic Legal Consequences	257
	G The	Declaratory/Constitutive Debate	258
	H Inter	rnational Organizations—Membership and Credentials	259
	I Prac	tice—The Soviet Union and Yugoslavia After 1989	263
	J Cons	stituting States—State-building	268
	III Conclu	sion	269
	References		270
	Further Read	ling	274
9	INTERNAT Dapo Akand	IONAL ORGANIZATIONS	277
	Summary		277
	I Introdu	action	277
	A Histo	ory and Role of International Organizations	277
		nition, Distinctions, and Differences	278
	C Is the	ere a Common Law of International Organizations?	280
	II Legal Po	ersonality	280
	A Perso	onality in International Law	281
		ective Legal Personality and Relations with Non-member States	284
		onality in Domestic Law	285
	III Interpre	etation of Constituent Instruments	286
	A Who	is Empowered to Interpret?	286
		t are the Relevant Principles of Interpretation to be Applied?	287
		of International Organizations	290
		ied Powers	290
	-	sion-making Powers	290
		a Vires Decisions of International Organizations	292
		ges and Immunities	294
	_	ces of Privileges and Immunities	294
		e of Privileges and Immunities	295

	VI	The United Nations System	298
		A The Structure of the United Nations	298
		B Principal Organs of the United Nations	300
	VII	Conclusion	302
	Refe	erences	303
		ther Reading	304
10		E INDIVIDUAL AND THE INTERNATIONAL LEGAL SYSTEM ert McCorquodale	307
	Sun	nmary	307
	I	Introduction	307
		A The Individual	308
		B Individuals in the International Legal System	308
	II	International Rights and Responsibilities	312
		A Individual Rights	312
		B Individual Responsibility	314
	III	International Claims	315
		A Bringing International Claims	315
		B International Human Rights Law	317
		C International Economic Law	319
		D Immunities	321
	IV	Creation, Development, and Enforcement of International Law	322
		A Right of Self-Determination	322
		B Indigenous Peoples	323
		C Non-governmental Organizations	324
		D Jurists	326
	V	Conclusion	328
	Ref	Gerences	329
	Fu	rther Reading	332
_		PART IV THE SCOPE OF SOVEREIGNTY	
			225
11		RISDICTION ughan Lowe	335
	Su	mmary	335
	I	Introduction	335
		A The Meaning of 'Jurisdiction'	335

CONTENTS	XV
COLLIE	21. 7

	B The Significance of the Principles of Jurisdiction	330
	C The Doctrinal Analysis of Jurisdiction	337
II	Prescriptive Jurisdiction	340
	A The Territorial Principle	342
	B The National Principle	345
	C The Protective Principle	347
	D The Universal Principle	348
	E Treaty-based Extensions of Jurisdiction	349
	F Controversial Bases of Prescriptive Jurisdiction	35
	G Inadequacies of the Traditional Approach	353
II	The Fundamental Principle Governing Enforcement Jurisdiction	356
IV	Conclusion	358
Re	eferences	359
Fu	arther Reading	359
12 IN	TERNATIONAL LAW AND RESTRAINTS ON THE EXERCISE OF	
	URISDICTION BY NATIONAL COURTS OF STATES	361
Н	azel Fox	
Su	nmmary	361
I	Introduction	361
	A Introduction	361
	B State Immunity, Act of State, and Non-justiciability as	
	Avoidance Techniques	363
II	State Immunity	365
	A Origins of the Plea of State Immunity	365
	B Development of the Common Law Relating to State Immunity	365
	C Development in Civil Courts and the USA	366
	D Present Day Sources of the International Law of State Immunity	367
	E The Elements Constituting the Plea of State Immunity	369
	F Definition of the Foreign State for the Purpose of State Immunity	372
	G Exceptions to Adjudication Jurisdiction	373
	H Immunity from Execution	378
III	The Other Two Avoidance Techniques	383
	A Act of State	383
	B Non-justiciability	384
IV	The Three Avoidance Techniques Compared	386
V	The Arguments For and Against the Use of Avoidance Techniques	388
VI	Challenges to Immunity and Judicial Restraint	388

	VII	Conclusion	392
	Refe	erences	392
	Furt	her Reading	393
13	IMN	MUNITIES ENJOYED BY OFFICIALS OF STATES AND	
		ERNATIONAL ORGANIZATIONS naka Wickremasinghe	395
		imary	395
	I	Introduction	395
	II	Diplomatic Relations	399
	**	A The Scheme of the Vienna Convention on Diplomatic Relations	399
		B Jurisdictional Immunities	402
		C Remedies in Cases of Abuse	403
	III	Consular Relations	404
	IV	Special Missions	405
	V	Holders of High-ranking Offices, such as Heads of State, Heads of Government, and Ministers for Foreign Affairs	407
		A Heads of State	407
		B Heads of Government and Ministers for Foreign Affairs	408
	VI	The Immunities of Other State Officials	409
	VII	Officials of International Organizations	411
	VIII	The Scope of Immunities for Serious Crimes under International	
		Law—Immunity and Impunity Distinguished	413
		A Immunities Ratione Personae	413
		B Immunities Ratione Materiae	415
		C Immunities Before International Criminal Courts	417
	IX	Conclusion	418
	Refe	rences	419
	Furtl	ner Reading	420
14		RELATIONSHIP BETWEEN INTERNATIONAL AND	
		IONAL LAW n Denza	423
		mary	423
	I	Introduction	423
	II	The Approach of International Courts and Tribunals	424
		A Where National Law Causes Breach of International Law	425

	CONTENTS	xvi
	B International Law Looks Mainly to the Result	427
III	The Approach of National Parliaments and National Courts	428
IV	The Spectrum of Constitutional Rules	429
	A The Netherlands	429
	B Germany	430
	C France	431
	D Russia	432
	E The United States	432
	F The United Kingdom	433
V	Some Problems Which Arise in National Courts	435
	A Does a Rule of Customary International Law Prevail Over Conflicting National Law?	435
	B What is the Meaning of an International Law Rule in the Context of Domestic Law?	436
	C Is the International Rule Directly Applicable and Directly Effective?	437
	D Does a Treaty Prevail Over Inconsistent National Law?	439
	E Can a Treaty Prevail Over a National Constitutional Norm?	440
	F Should the Executive Direct or Guide the National Court?	441
	G Should a National Court Apply a Foreign Law which Conflicts with International Law?	442
	H Are there Questions of International Law which National Courts should Decline to Answer?	
VI	Conclusion: Elements of a Happy Relationship	444
	erences	445
		446
	ther Reading	448
Pos	tscript	448
564	PART V RESPONSIBILITY	
	E NATURE AND FORMS OF INTERNATIONAL RESPONSIBILITY es Crawford and Simon Olleson	451
Sun	nmary	451
I	The Scope of International Responsibility: Introduction and Overview	452
II	State Responsibility: Issues of Classification and Characterization	454
	A Responsibility under International or National Law?	455
	B The Typology of State Responsibility	456
III	The Elements of State Responsibility	459
	A Attribution of Conduct to the State	460
	B Breach of an International Obligation of the State	463

	C Circumstances Precluding Wrongfulness: Defences or Excuses for Breaches of International Law	467
** *	The Content of International Responsibility	470
IV	Invocation of Responsibility: Responses by the Injured State and	
V	Other States	473
VI	Conclusion: Further Development of the Law of International Responsibility?	475
Refe	erences	475
	ther Reading	476
16 199	UES OF ADMISSIBILITY AND THE LAW ON	
IN	TERNATIONAL RESPONSIBILITY	479
	pebe Okowa	479
	mmary	480
Ι	Introduction	480
II	Legal Interest as a Pre-requisite to Admissibility of Claims	481
	A Rationale of International Law Rules on Locus Standi	482
	B Modalities of Establishing of Legal Interest	483
III		483
	A Nationality as the Basis of Legal Interest in Indirect Claims	485
	B Establishing Nationality for Purposes of Diplomatic Protection	488
	C The Nationality of Corporations	490
	D Applying the Nationality Rule	
IV		494
	of States	494
	A Introduction B Treaty Instruments Protecting Collective Interests	495
	C Litigation in the Public Interest and the Enforcement of  Erga Omnes Obligations	496
V	Admissibility of Claims and the Rule on Exhaustion of Local Remedies	498
(	A Introduction	498
	B The Content of the Rule	499
	C The Application of the Rule in the Context of Mixed Claims	499
	D Nature of the Rule	501
	E Which View Represents the Law?	502
	F The Exclusion of the Local Remedies Rule	50
7	VI Conclusion	50

	C	CONTENTS	xix
References			505
Further Reading			506

## PART VI RESPONDING TO BREACHES OF INTERNATIONAL OBLIGATIONS

17		UNTERMEASURES AND SANCTIONS Il White and Ademola Abass		509
	Sum	mary		509
	I	Introduction: Self-help in International Law		509
	II	Countermeasures		512
		A Definition of Countermeasures		512
		B Reprisals and Retorsion		513
		C Limitations upon Countermeasures and other Non-forcible Measures taken by States		515
		D Countermeasures and Third States		517
	III	Economic Coercion		521
	IV	Sanctions		524
		A Definition of Sanctions		524
		B Limitations upon Sanctions		527
	V	Conclusion		530
	Refe	rences		531
		her Reading		532
				-
18		E MEANS OF DISPUTE SETTLEMENT  Merrills		533
	Sum	mary		533
	Ι	Introduction		533
	II	Diplomatic Methods		535
		A Negotiation		535
		B Mediation		537
		C Inquiry		538
		D Conciliation		540
	III	Legal Methods		542
		A Arbitration		542
		B The International Court of Justice		544
		C Other Courts and Tribunals		545

		D The Place of Legal Methods		547
	IV	International Organizations and Dispute Settlement		549
		A Regional Organizations		549
		B The United Nations		550
		C The Charter System in Practice		552
		D The Value and Limitations of Organizations		553
	V	Conclusion		555
	Refer	rences		556
	Furtl	ner Reading		559
19		INTERNATIONAL COURT OF JUSTICE In Thirlway		561
	Sum	mary		561
	Ι	Introduction		561
	II	History		562
	III	Structure and Composition		563
	IV	Procedure		565
	V	The Court's Jurisdiction		567
		A Jurisdiction: Structural Limitations		568
		B Jurisdiction in Particular Cases		569
		C Jurisdiction and its Exercise		573
		D Verification of Jurisdiction and Admissibility: Preliminary Objections		573
	VI	Other Incidental Proceedings		575
		A Requests for the Indication of Provisional Measures		575
		B Parties: Joinder of Cases; Intervention by Third States		577
		C Interpretation and Revision of Judgments		579
	VII	Effect of the Decisions of the Court		580
	VIII	Advisory Proceedings		582
	IX	The Court Past and Present: An Assessment		585
	Refe	rences		588
	Furt	her Reading		588
20	TH	E USE OF FORCE AND THE INTERNATIONAL		500
		GAL ORDER istine Gray		589
	Sum	nmary		589
	I	Introduction		589

	CONTENTS	xxi
	A The UN Charter Scheme	590
II	The Prohibition of the Use of Force in Article 2(4) UN Charter	591
623	A The Use of Force in 'International Relations'	591
	B The Meaning of 'Threat or Use of Force'	592
	C The Use of Force 'Against the Territorial Integrity and Political Independence of Any State, or in Any Other Manner Inconsisten with the Purposes of the United Nations'	
	D Humanitarian Intervention	594
III	Intervention, Civil Wars, and Invitation	597
IV	Self-defence	598
ÃSA	A The Scope of Self-defence: Necessity and Proportionality	
	B The Meaning of 'Armed Attack'	599 599
	C The Use of Force in Protection of Nationals	600
	D Anticipatory or Pre-emptive Self-defence	601
	E Self-defence Against Terrorism	602
	F A 'Bush Doctrine' of Pre-emptive Self-defence?	603
	G Collective Self-defence	604
	H The Role of the Security Council	605
V	The Use of Force Under Chapter VII UN Charter	605
	A Measures Under Article 41	606
	B The Use of Force Under Chapter VII UN Charter	607
	C Implied Authorization of Force?	608
VI	UN Peace-keeping	610
	A The Inception of Peace-keeping	610
	B Peace-keeping After the End of the Cold War	611
	C The Transformation of Peace-keeping: Yugoslavia and Somalia	
	1991–95	612
	D Peace-keeping in Africa	612
910	E Peace-keeping After the Brahimi Report	613
VII	Regional Action Under Chapter VIII UN Charter	614
	A A Greater Role for Regional Organizations	614
	B Controversy as to the Interpretation of Chapter VIII	615
	C The OECS Intervention in Grenada (1983)	615
	D Regional Peace-keeping After the Cold War	616
	Conclusion	617
	erences	617
Furt	her Reading	618

DADE	<b>T</b> /TT	mir	ADDITO	ATTONI	OF	TATEDALATIONIAL LAW
PART	VII	THE	APPLIC.	ATTON	OF	INTERNATIONAL LAW

21		LAW OF THE SEA olm D Evans	623
	Sumi	mary	623
		Introduction	623
	II	Constructing Baselines	625
		A Introduction: The Normal Rule	625
		B Straight Baselines	626
		C Bays	627
		D Archipelagoes	628
	III	The Internal Waters, Territorial Sea, and Contiguous Zone	629
		A Introduction	629
		B Jurisdiction of the Coastal State	629
		C Navigation in the Territorial Sea	631
	IV	The High Seas	636
		A The Freedoms of the Seas	636
		B The Exceptions to Flag State Jurisdiction	637
		C Conclusion	641
	V	Resource Jurisdiction	641
		A The Continental Shelf	641
		B The Exclusive Fishing Zone	643
		C The Exclusive Economic Zone	643
		D The Deep Seabed	645
	VI	Delimitation of Maritime Zones between Opposite or Adjacent States	646
		A Equidistance or Equitable Principles?	647
		B Factors Affecting Delimitation	648
	VII	Fisheries	649
		A The Basic Scheme of Regulation	649
		B Managing Fisheries	650
	VIII	Conclusion	652
	Refe	rences	653
	Furt	her Reading	655
22		ERNATIONAL ENVIRONMENTAL LAW	657
	Sum	mary	657
	Ι	Introduction: What is International Environmental Law?	657

	CONTENTS	xxiii
II	Defining 'The Environment'	658
III	The Development of International Environmental Law	659
IV	Key Environmental Actors	662
V	Sources of International Environmental Law	663
	A Customary International Law	663
	B Treaty Law	664
VI	Enforcement of International Environmental Law	665
VI	I Substantive International Environmental Law	667
	A Protection of the Marine Environment	667
	B Protection of the Atmosphere	669
	C Nuclear Risks	673
	D Other Hazardous Substances and Activities	674
	E Conservation of Nature	677
	F Conservation of Marine Living Resources	683
VI	II Conclusion	684
Re	ferences	685
Fu	rther Reading	687
	TTERNATIONAL ECONOMIC LAW	689
Su	mmary	689
I	Introduction	689
II	International Finance Law	691
	A The International Monetary Fund (IMF)	691
	B The World Bank Group	694
	C Regional Development Banks	698
	D Concluding Remarks	698
III	International Trade Law	699
	A The General Agreement on Tariffs and Trade (GATT) and the World	600
	Trade Organization (WTO)  B The World Trade Organization	699
	C International Commodity Agreements	699 706
IV	, 0	708
1 4	A Introduction	
	B Definition of Investment	708 709
	C Bilateral Investment Treaties	709
	D Is there a Need for a Multilateral Investment Agreement?	710
	E Investment Insurance Schemes at the National Level	712

	G Investment Dispute Settlement Mechanisms	713
V	Regional Economic Integration Arrangements	714
VI	Concluding Remarks	715
Refe	erences	715
Fur	ther Reading	717
INT	ERNATIONAL CRIMINAL LAW	719
Ant	onio Cassese	
Sum	nmary	719
Ι	Introduction: The Notion of International Criminal Law	719
II	General Features of International Criminal Law	720
	A Recent Origins	720
	B The Relationship with International Human Rights and National Criminal Law	721
	C The Relationship with Public International Law	722
III	The Establishment of International Criminal Tribunals	723
	A Post-Cold War 'New World Order' and the Development of Ad Hoc Tribunals (1993–94)	724
	B The International Criminal Court	727
	C The Establishment of so-called Internationalized or Mixed Criminal Courts or Tribunals	731
IV	Individual Criminal Responsibility in International Law	732
V	Categories of International Crimes	735
	A War Crimes	735
	B Crimes Against Humanity	737
	C Genocide	738
	D Other International Crimes (Aggression, Torture, Terrorism)	741
VI	Conclusion	750
Refe	rences	751
Furt	her Reading	752
		753
Sum	mary	753
Ι	Introduction	754
II	The Kinds of Protection Provided by International Organizations	755
	VI Refe Furt  INT Anto Sum I II  IV V  VI Refe Furt  INT Hen Sum I	V Regional Economic Integration Arrangements VI Concluding Remarks References Further Reading  INTERNATIONAL CRIMINAL LAW Antonio Cassese Summary I Introduction: The Notion of International Criminal Law II General Features of International Criminal Law A Recent Origins B The Relationship with International Human Rights and National Criminal Law C The Relationship with Public International Law  III The Establishment of International Criminal Tribunals A Post-Cold War 'New World Order' and the Development of Ad Hoc Tribunals (1993–94) B The International Criminal Court C The Establishment of so-called Internationalized or Mixed Criminal Courts or Tribunals IV Individual Criminal Responsibility in International Law V Categories of International Crimes A War Crimes B Crimes Against Humanity C Genocide D Other International Crimes (Aggression, Torture, Terrorism) VI Conclusion References Further Reading  INTERNATIONAL PROTECTION OF HUMAN RIGHTS Henry J Steiner Summary I Introduction

4	0	1	N	717	7	T	-	0
ч					H			•

XXV

		A Why Create International Organizations?  B IGOs and NGOs	755
		B IGOs and NGOs C Interaction Among Institutions and Systems in Exerting Pressure on	758
		Delinquent States	766
	III	Characteristics of International Human Rights Relevant to the Nature of Protection	768
		A Human Rights Violations Generally Occur Within and Affect Only People Within a Single State	769
		B Human Rights Violations Often have a Systemic Character and Reflect Deep Aspects of a State's Political Structure	770
		C The Extensive Reach of Human Rights Duties to Non-State (Private) Actors	772
		D The Progressive Realization of Civil and Political Rights	773
		E The State's Duty to Promote and Transform: Cultural Obstacles	775
	IV	Conclusion: Perspectives and Voices	780
	Refe	erences	781
	Fur	ther Reading	782
26		E LAW OF WAR (INTERNATIONAL HUMANITARIAN LAW) istopher Greenwood	783
	Sum	nmary	783
	I	Introduction	783
	II	When Does the Law of War Apply?	785
	III	Who Is Entitled to Take Part in Hostilities?	787
	IV	What Is a Lawful Target and How May it Be Attacked?	790
	V	What Are the Limitations on the Weapons with Which States May	
		Conduct Hostilities?	795
		A Nuclear Weapons	798
	VI	What Protection Does the Law Afford the Victims of Hostilities?	801
		A Prisoners of War	801
		B The Wounded and Sick	803
		C Civilians	804
	VII	How Much If Any of this Law Applies in Civil War?	806
		How Can the Law Be Enforced?	808
		rences	813
		her Reading	815
	Inde:	x	817