

Foreword to the Second Edition

Since the publication of the first edition of this book in 2016, many have turned to public international law for guidance on such diverse topics as the international and national armed conflicts in Syria, the plights of refugees at the borders of the European Union and worldwide, the Paris Agreement addressing the threat of climate change, and trade wars impairing the international economic system. New international conventions and declarations were introduced which should reflect these recent events. In addition, international as well as domestic courts rendered significant judgments influencing the interpretation of public international law. The objective of this second edition thus is to update the subject of the book and to discuss the role and importance of public international law in these developments.

Once again, the book could not have been published without the important support by many people. In particular, my thanks go to my assistants Daniel Bötticher and Dario Buschor for their help. I would also like to thank Dorothea Schöll and her colleagues of DIKE Verlag AG for their professional support.

Zurich, February 2020

Patricia Egli

Foreword to the First Edition

This book is the result of research undertaken at the University of St. Gallen for courses in the area of Swiss constitutional law and public international law. It intends to present an accurate and reasonably detailed introduction to public international law for the interested English-speaking student. In a time when global challenges can only be effectively coped with international cooperation, the study of international law as a framework for such cooperation becomes more and more important. Indeed, in a globalized world, very few areas can be regarded as remaining purely national. However, the basic premise underlying this book is that public international law should not be studied as a vast collection of detailed rules, but is better approached by asking some questions about the basic structure of the system. First, there is the question of how international law is made: what are its sources? Second, what are the relations between public international law and national legal systems? Third, to what entities does public international law apply or, in other words, what are its subjects and finally, what does the law actually say? Regarding the last question, the most this introduction can aspire to is to provide a basic description of some of the various branches of international law, without much detail.

After all, public international law covers such diverse topics such as human rights, international trade, international crime and the protection of the environment, just to name a few. For those who are interested in the wider academic debate, references to more detailed public international law textbooks are included in each Chapter.

The book could not have been published without the important support by many people. My thanks go to my assistants Gabriela Bürgi, Milena Holzgang, Kushini Sugathapala and Karin Suter for their help. I would also like to thank Jérôme Voumard and Bénon Eugster of DIKE Verlag AG for their encouragement and professional support.

Zurich, March 2016

Patricia Egli

Summary of Contents

Foreword to the Second Edition	V
Foreword to the First Edition	V
Table of Contents	IX
Abbreviations	XIII
Glossary	XVII
Table of Figures.....	XIX
Selected Bibliography	XXI
 Chapter A: Introduction	1
Chapter B: Sources of International Law	7
Chapter C: International Law and National Law.....	27
Chapter D: Subjects of International Law.....	33
Chapter E: The Charter and the Organs of the United Nations.....	47
Chapter F: International Human Rights Law	71
Chapter G: International Humanitarian Law.....	87
Chapter H: International Criminal Law.....	95
Chapter I: International Economic System	107
Chapter J: International Environmental Law.....	127
Chapter K: State Responsibility and International Dispute Settlement	135
 Index	155

Table of Contents

Foreword to the Second Edition	V
Foreword to the First Edition	V
Summary of Contents	VII
Abbreviations	XIII
Glossary	XVII
Table of Figures	XIX
Selected Bibliography	XXI
Chapter A: Introduction	1
1. DEFINING INTERNATIONAL LAW	1
2. THE NATURE OF THE INTERNATIONAL LEGAL SYSTEM	2
3. HISTORICAL DEVELOPMENT	4
Chapter B: Sources of International Law	7
1. TREATIES	8
1.1 The Law of Treaties	9
1.2 Conclusion and Entry into Force of Treaties	10
1.3 Observation and Application of Treaties	13
1.4 Interpretation of Treaties	14
a) Grammatical Approach	14
b) Systematic Approach	15
c) Teleological Approach	15
d) Historical Approach	16
1.5 Invalid Treaties	16
1.6 Termination of Treaties	17
2. CUSTOMARY INTERNATIONAL LAW	18
2.1 State Practice and <i>opinio iuris</i>	18
2.2 Persistent Objector	20
2.3 Customary International Law and Treaty Law	21
3. GENERAL PRINCIPLES OF LAW	21
4. SUBSIDIARY MEANS: JUDICIAL DECISIONS AND WRITING OF PUBLICISTS	23
5. OTHER POSSIBLE SOURCES	24
Chapter C: International Law and National Law	27
1. DUALIST AND MONIST THEORIES	27
2. THEORIES ABOUT INTERNATIONAL LAW IN THE NATIONAL LEGAL SYSTEM	29
3. DIRECT APPLICABILITY OF INTERNATIONAL LAW IN THE NATIONAL LEGAL SYSTEM	30
Chapter D: Subjects of International Law	33
1. STATES	34
1.1 Legal Criteria	34
1.2 Recognition of States and Governments	36
1.3 Legal Effects of Recognition in International Law	36
1.4 Continuity and Change in Statehood	38
2. INTERNATIONAL ORGANIZATIONS	39
3. INDIVIDUALS	41
4. COMPANIES	42
5. SPECIAL TYPES OF PERSONALITY	44
6. EXCURSUS: NON-GOVERNMENTAL ORGANIZATIONS	45

Chapter E: The Charter and the Organs of the United Nations.....	47
1. HISTORICAL DEVELOPMENT	47
2. OVERVIEW	47
3. AIMS OF THE ORGANIZATION	50
3.1 Basic Purposes	50
3.2 Basic Principles	50
4. MEMBERS	53
5. ORGANS	55
5.1 The Security Council	55
5.2 The General Assembly	57
5.3 The Secretariat	58
5.4 The Economic and Social Council	59
5.5 The International Court of Justice	59
6. THE USE OF FORCE, COLLECTIVE SECURITY AND PEACEKEEPING	60
6.1 The Prohibition of the Use of Force	60
a) Historical Development	60
b) Prohibition of Force Under Art. 2 para. 4 UN Charter	61
c) Legal Effects	63
6.2 Self-Defense	63
6.3 Collective Security	64
6.4 Use of Force to Protect Nationals Abroad and Humanitarian Intervention	67
6.5 UN Peacekeeping	68
7. CONCLUDING REMARKS	69
Chapter F: International Human Rights Law	71
1. THE CONCEPT OF HUMAN RIGHTS	71
2. HUMAN RIGHTS ON THE UNIVERSAL LEVEL	72
2.1 The United Nations Charter	72
2.2 The Universal Declaration of Human Rights	73
2.3 The UN Human Rights Covenants	74
2.4 Other Human Rights Instruments on the Universal Level	77
3. HUMAN RIGHTS ON THE REGIONAL LEVEL	77
3.1 The European Convention on Human Rights	78
3.2 Enforcement Mechanism	78
3.3 Specific Human Rights	79
a) Right to Respect for Private and Family Life	80
b) Freedom of Thought, Conscience and Religion	81
c) Freedom of Expression	83
d) Freedom of Assembly and Association	84
Chapter G: International Humanitarian Law	87
1. HISTORICAL DEVELOPMENT	88
2. THE LAW OF THE HAGUE	89
3. GENEVA CONVENTIONS OF 1949 AND THE ADDITIONAL PROTOCOLS	89
4. BASIC PRINCIPLES	92
5. NEUTRALITY	93
Chapter H: International Criminal Law	95
1. OVERVIEW	95
2. DEVELOPMENT OF INTERNATIONAL CRIMINAL INSTITUTIONS	95
2.1 Nuremberg and Tokyo Tribunals	95
2.2 <i>Ad hoc</i> Criminal Tribunals	96
2.3 Hybrid Tribunals	96
2.4 International Criminal Court	97

3. SOURCES	99
4. SUBSTANTIVE INTERNATIONAL CRIMES.....	99
4.1 Genocide.....	99
4.2 Crimes Against Humanity	100
4.3 War Crimes.....	101
4.4 Aggression.....	102
5. PROSECUTION OF INTERNATIONAL CRIMES	103
6. EVALUATION OF THE ICC	104
Chapter I: International Economic System	107
1. OVERVIEW	107
2. THE BRETTON WOODS SYSTEM.....	108
2.1 History of the Bretton Woods System.....	108
2.2 The IMF and the World Bank Today	110
a) The IMF and the International Monetary System	110
b) The World Bank Group	111
c) Final Observations	114
3. THE WORLD TRADE ORGANIZATION.....	114
3.1 Overview	115
3.2 Key Functions.....	115
3.3 Decision Making.....	116
3.4 Organs.....	116
3.5 Membership	117
3.6 GATT 1994.....	118
a) Most-Favored-Nation Treatment	119
b) National Treatment Obligation	120
c) General Elimination of Quantitative Restrictions	120
d) Exceptions	121
3.7 Dispute Settlement.....	123
4. REGIONAL ECONOMIC ORGANIZATIONS	126
Chapter J: International Environmental Law.....	127
1. OVERVIEW	127
2. HISTORICAL DEVELOPMENT.....	128
2.1 First Period and the <i>Trail Smelter</i> Dispute	128
2.2 Second Period and the Stockholm Conference 1972.....	128
2.3 Third Period and the Rio Conference 1992	129
2.4 Further Developments	130
3. BASIC PRINCIPLES.....	132
3.1 No Harm Principle.....	132
3.2 Environmental Impact Assessment	133
3.3 Precautionary Principle.....	133
3.4 Polluter Pays Principle.....	133
Chapter K: State Responsibility and International Dispute Settlement	135
1. STATE RESPONSIBILITY	135
1.1 Overview	135
1.2 Draft Articles on State Responsibility	136
1.3 Attribution	136
1.4 Breach of an International Obligation of the State.....	138
1.5 Defenses.....	138
1.6 Consequences of a Breach.....	139
1.7 Implementing State Responsibility.....	141
2. DIPLOMATIC METHODS OF DISPUTE SETTLEMENT	142
2.1 General Procedures.....	142
2.2 United Nations Procedures	144

3. LEGAL METHODS OF DISPUTE SETTLEMENT	145
3.1 Terms	146
3.2 International Arbitration	146
3.3 International Court of Justice	147
a) Composition	148
b) Access to the Court	149
c) Jurisdiction	149
d) Proceedings and Judgments	151
e) Advisory Opinion	152
3.4 Specific International Tribunals	153
Index	155