

**PUBLIC INTERNATIONAL  
LAW:  
CASES, PROBLEMS, AND  
TEXTS**

## **LexisNexis Law School Publishing Advisory Board**

---

**William D. Araiza**

*Professor of Law*

**Brooklyn Law School**

**Lenni B. Benson**

*Professor of Law & Associate Dean for Professional Development*

**New York Law School**

**Raj Bhala**

*Rice Distinguished Professor*

**University of Kansas, School of Law**

**Ruth Colker**

*Distinguished University Professor & Heck-Faust Memorial Chair in Constitutional Law*

**Ohio State University, Moritz College of Law**

**Richard D. Freer**

*Robert Howell Hall Professor of Law*

**Emory University School of Law**

**David Gamage**

*Assistant Professor of Law*

**University of California, Berkeley School of Law**

**Craig Joyce**

*Andrews Kurth Professor of Law & Co-Director, Institute for Intellectual Property and Information Law*

**University of Houston Law Center**

**Ellen S. Podgor**

*Professor of Law & Associate Dean of Faculty Development and Electronic Education*

**Stetson University College of Law**

**David I. C. Thomson**

*LP Professor & Director, Lawyering Process Program*

**University of Denver, Sturm College of Law**

# PUBLIC INTERNATIONAL LAW: CASES, PROBLEMS, AND TEXTS

---

**Stephen McCaffrey**

*Distinguished Professor and Scholar  
University of the Pacific, McGeorge School of Law*

**Dinah Shelton**

*Manatt/Ahn Professor of International Law  
The George Washington University Law School*

**John Cerone**

*Professor of International Law  
Director of Center for International Law and Policy  
New England Law—Boston*

**Library of Congress Cataloging-in-Publication Data**

McCaffrey, Stephen C.  
Public international law : cases, problems, and texts / Stephen McCaffrey, Dinah Shelton, John Cerone.  
p. cm.  
Includes index.  
ISBN 978-1-4224-7023-7 (hard cover)  
1. International law. I. Shelton, Dinah. II. Cerone, John. III. Title.  
KZ1242.5.M38 2010  
341--dc22

2010036633

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

LexisNexis and the Knowledge Burst logo are registered trademarks and Michie is a trademark of Reed Elsevier Properties Inc., used under license. Matthew Bender and the Matthew Bender Flame Design are registered trademarks of Matthew Bender Properties Inc.

Copyright © 2010 Matthew Bender & Company, Inc., a member of the LexisNexis Group.  
All Rights Reserved.

No copyright is claimed in the text of statutes, regulations, and excerpts from court opinions quoted within this work. Permission to copy material exceeding fair use, 17 U.S.C. § 107, may be licensed for a fee of 25¢ per page per copy from the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, telephone (978) 750-8400.

**NOTE TO USERS**

To ensure that you are using the latest materials available in this area, please be sure to periodically check the LexisNexis Law School web site for downloadable updates and supplements at [www.lexisnexis.com/lawschool](http://www.lexisnexis.com/lawschool).

Editorial Offices  
121 Chanlon Rd., New Providence, NJ 07974 (908) 464-6800  
201 Mission St., San Francisco, CA 94105-1831 (415) 908-3200  
[www.lexisnexis.com](http://www.lexisnexis.com)

MATTHEW  BENDER

# *Dedication*

---

To my students, past, present, and future, from whom I never stop learning

— Stephen McCaffrey

To the memories of my professors and mentors: Iain MacGibbon, Frank Newman, Richard Lillich, and Stefan Riesenfeld, and the living example of Thomas Buergenthal

— Dinah Shelton

To my parents: Joanne Bunnell and Anthony J. Cerone, Sr.

— John Cerone



## *Preface*

---



View of the Earth as seen by the Apollo 17 crew traveling toward the moon, photo taken Dec. 7, 1972. Image Science and Analysis Laboratory, NASA-Johnson Space Center. “The Gateway to Astronaut Photography of Earth.”

<http://eol.jsc.nasa.gov/http://www.nasa.gov/http://earth.jsc.nasa.gov/sseop/efs/credits.htm>  
(08/14/2007 11:21:46)

### **THE STATE OF THE WORLD**

What is the role of international law in the life of the average person, assuming such a being can be identified? What do international lawyers do? An answer to either of these questions necessitates glancing at the modern world and considering the range of human activities that transcend the territory of a single state.

---

## *Preface*

Over the centuries, the transnational dimension of social interaction has vastly increased, to the point where almost no topic remains entirely and exclusively regulated by domestic law. Even such typically local matters as succession and child custody are now the subject of multilateral treaties. All of a nation's problems, from reducing violence and abuses of power, to countering criminal conduct, to protecting the most vulnerable members of society, have a global aspect.

Much of this internationalization is the result of technological change, from high speed aircraft to the communications revolution. Economic globalization, so evident in the latter part of the 20th century, had its counterparts in earlier periods, with the coming of the industrial revolution and the invention of the telephone, telegraph, and radio. In the middle of the 20th century, the development of rockets enabled activities in outer space that were previously unthinkable (except in the minds of writers like Jules Verne and H.G. Wells) and hence were unregulated.

The following paragraphs point out some of the realities that govern life at the beginning of the 21st century. They provide only a snapshot, but they illustrate many of the topics that are and must be of concern to international lawyers, policy-makers, and concerned citizens as they look to the future world in which their children and grandchildren will live.

*The Planet:* From space, the main feature of the earth is the division between land and water. About one-third of the earth is land, but only slightly more than 13% of that is arable. Mountains, deserts, lakes, and rivers are visible, as are some cities and a few human constructions, like the Great Wall of China. Storms can be observed, along with clouds and other indications of climate. Boundaries, borders, and other signs of political divisions are invisible.

*Natural Resources:* Freshwater is less than 3% of the total water on earth, with much of it frozen in ice. The Great Lakes of North America constitute about 20% of the earth's available fresh water. There are 261 international rivers, covering 45.3% of the land-surface of the earth (excluding Antarctica). Twenty-one nations lie entirely within international river basins. Nineteen basins are shared by five or more riparian countries: the Danube has 17 riparian nations; five basins — the Congo, Niger, Nile, Rhine, and Zambezi — are shared between 9 and 11 countries; and 13 others — the Amazon, Ganges-Brahmaputra-Meghna, Lake Chad, Tarim, Aral Sea, Jordan, Kura-Araks, Mekong, Tigris-Euphrates, Volga, La Plata, Neman, and Vistula (Wista) — have between five and eight riparian countries. The great mountain ranges are also shared by states: the Rocky Mountains, the Himalayas, the Alps, the Carpathians, and the Andes among them. There are 1.75 million named and described species of life. Biological resources, like mineral resources, are unevenly distributed: 1.4% of the planet's terrestrial environment harbors more than 44% of all plants and 35% of mammals, birds, reptiles, and amphibians, but coral reefs, not tropical rain forests, are the most biologically rich ecosystems on earth. An estimated 40% of the global economy is based on these biological products and processes, but about 24% (1,130) of mammals and 12% (1,183) of bird species are currently regarded as globally threatened.

*People:* There are approximately 6.6 billion people in the world. More than one-third of all people are located in just two countries: China, as of 2008, is estimated to have 1,329,311,149 inhabitants and India slightly fewer, 1,146,407,701. In contrast, 824 people are citizens of Vatican City. Population density varies enormously, from Monaco's 16,754 per square kilometer to Greenland's 0.03 per square kilometer. Over two-thirds of the world's 800 million illiterate adults are found in only eight countries (India, China, Bangladesh, Pakistan, Nigeria, Ethiopia, Indonesia, and Egypt); two-thirds of all illiterate adults are women. In India, the death rate for children ages one to five is 50% higher for girls than for boys. Over 2.6 billion people, or about half the global population, live on less than two dollars a day and one billion survive on less than a dollar a day. The number of people living on less than two dollars a day in Central and Eastern Europe and the Commonwealth of Independent States rose from 23 million in 1990 to 93 million in 2001, or from 5 to 20%. In 2003, 18



## *Preface*

countries with a combined population of 460 million people registered lower scores on the human development index (HDI) than they did in 1990. Nearly two million children every year do not live to see their fifth birthday.

*Political facts:* There are 192 United Nations Member States and two entities, Taiwan and the Vatican City, which carry on international relations but are not UN members. States range in size from Russia, with its 6,592,735 square miles, to Vatican City, which is 0.17 square mile. Independence is claimed by secession movements in numerous states, including Georgia, Russia, Turkey, Sri Lanka, the Philippines, and Serbia. Since 1990, the share of the world's countries with multiparty electoral systems that meet wider criteria for democracy has risen from 39 to 55%, representing an increase of 1.4 billion people living under multiparty democracy. More than two-thirds of Africans now live in countries with democratic multiparty election systems.

*Economics:* Luxembourg and Lichtenstein have the highest per capita Gross Domestic Product (GDP), at over \$100,000 (estimated in 2008), compared to Burundi and Zimbabwe, at less than \$125 per capita annually. Twenty percent of the world's population lives in developed nations, where they consume 86% of the world's goods. The GDP of the poorest 48 nations is less than the combined wealth (\$180 billion) of the world's three richest people. The world's richest 500 individuals have a combined income greater than that of the poorest 416 million people. Forty percent of the world's population accounts for 5% of global income. The richest 10% accounts for 54%. The world's 1025 billionaires in 2008 registered a combined wealth of \$4.4 trillion, compared to the combined GDP of all the nations of Sub-Saharan Africa (\$630 billion). Approximately 790 million people in the developing world are chronically undernourished, almost two-thirds of whom reside in Asia and the Pacific. Some 1.1 billion people in developing countries have inadequate access to water, and 2.6 billion people lack basic sanitation.

*Trade:* World merchandise exports accounted for \$10.2 trillion in 2005 and commercial services exports amounted to \$2.4 trillion the same year. The value of global trade in 2005 was two-and-a-half times the amount during 1990. Exports account for more than one-quarter of world income and more than one-third of income in Sub-Saharan Africa. The 350 largest transnational corporations account for almost 40% of the world's merchandise trade. In 2007, McDonald's had 14,000 restaurants in the United States and 17,000 in 117 other countries. Ninety percent of the 1000 restaurants it planned to open in 2008 were located outside the United States. Individual products are increasingly of multinational origin. General Motors gearboxes are assembled in Mexico, radiator caps come from plants in Chennai, India, and upholstery from suppliers in Indonesia, using materials imported from China. Boeing's 777 jet aircraft is assembled in Boeing's plant in Everett, Washington, from a fuselage made in Japan, wingtips coming from Korea, rudders from Australia, dorsal fins from Brazil, the main landing gear from Canada and France, and flight computers from the United Kingdom. Manufacturing of the Microsoft Xbox takes place in a Taiwanese company, but the Intel processors come from any of 11 production sites, including China, Costa Rica, Malaysia, and the Philippines. Graphics processors are manufactured by a U.S. company at a plant in Taiwan. The hard drive is assembled in China from components produced in Ireland. The DVD-ROM is manufactured in Indonesia. Final assembly takes place in China.

*Currency:* Average daily global turnover in foreign exchange market transactions totaled \$3.21 trillion in June 2008. This was more than 10 times the size of the combined daily turnover on all the world's equity markets. Foreign exchange trading increased by 38% between April 2005 and April 2006 and more than doubled since 2001. Going further back, in the 1970s, foreign exchange markets handled between \$10 and \$20 billion daily. Cross-border trade in U.S. Treasury bonds is over \$500 billion a year. International bank lending increased from \$265 billion in 1975 to \$4.2 trillion in 1994.

*Transportation:* In 1927, Charles Lindberg took 33 hours to fly solo across the Atlantic Ocean. In

## *Preface*

2008, some 22,000 commercial flights a month took 5 to 10 hours between the United States and Europe. According to the World Travel and Tourism Council, tourism and its related economic activities generate 11% of Global Domestic Product, employ 200 million people, and transport nearly 700 million international travelers per year. This figure is expected to double by 2020. Tourism also represents one of the top five exports for 83% of all countries and is the main source of foreign currency for 38% of countries. Between 1980 and 1996, international travel more than doubled, from 260 million persons to 590 million.

*Communications:* International telephone calls increased from 33 billion minutes in 1990 to 183 billion minutes in 2006. Between 1960 and 1990, the cost of processing information fell from \$75 per million operations to less than one-hundredth of a cent. The cost of a three-minute telephone call from New York to London was \$245 in 1930 (using 1990 dollars), \$50 in 1960, \$3 in 1990 and \$0.35 in 1999. Trade in cultural communications (literature, music, cinema, radio, and television) almost tripled between 1980 and 1991, from \$67 billion to \$200 billion. The largest U.S. export industry is entertainment, and more than 50% of revenues for Hollywood films come from overseas. An estimated 70% of films shown in Europe in 1987 came from the U.S.. Between 1980 and 1996, it is estimated that the number of television sets in the world grew from 550 million to 1.4 billion in 1996, with Asia showing the highest growth from 100 million to 650 million. Sales of multimedia industries reached \$110 billion in 1993.

*Natural Disasters and Public Health:* Some 260 million people were affected by climate disasters between 2000 and 2004, more than 89% of them located in developing countries. In 2004, the Asian tsunami killed more than 300,000 people. However, the HIV/AIDS pandemic has inflicted the single greatest reversal in recent human development. In 2003, the pandemic claimed three million lives and left another five million people infected, orphaning millions of children. Botswana has suffered a decline in life expectancy of 31 years, while in Zambia life expectancy has fallen by 14 years since the mid-1980s. Diseases transmitted through water or human waste are the second leading cause of death among children worldwide, after respiratory tract infection. The overall death toll is an estimated 3,900 children every day. Vaccine preventable illnesses — like measles, diphtheria, and tetanus — account for another 2 to 3 million childhood deaths. Drug-resistant tuberculosis, malaria, dengue fever, Ebola, and other diseases are spreading with increased human movements and changes in the environment.

*Crime:* Financially, the most important international criminal activities are: drug and human trafficking, illicit arms trade, stolen art and artifacts, illegal wildlife trade, and dumping of hazardous or toxic products and waste. But according to UN crime statistics, the single-most reported crime in the world is rape, although financial (currency counterfeiting and money laundering) and high-tech crimes are increasing. Just one international investment fraud case involved more than 2,000 victims from 60 countries. They were defrauded a total of approximately US \$200 million. Cooperative transnational law enforcement is increasing: On Thursday, September 3, 1998, law enforcement agents in 32 U.S. cities and Australia, Austria, Belgium, Finland, France, Germany, Italy, the Netherlands, Norway, Portugal, Spain, and Sweden raided the homes of suspected internet child pornographers. The Interpol database on child victims holds more than 550,000 images, a 400% increase since its creation in 2001. The database on stolen art logged in more than 400 new cases in 2005 involving close to 1,850 items. In total, the stolen art database contained more than 28,500 records from 112 countries. Interpol's automated database known as the International DNA Gateway contains over 55,000 records from 41 countries. In December 2005, Interpol created the Interpol-United Nations Security Council Special Notice for individuals associated with Al Qaeda and the Taliban, as listed by the "1267 Committee" of the UN Security Council and subject to the freezing of assets, travel bans, and arms embargoes.

## *Preface*

*Conflict:* There have been some 127 internal and international wars since the end of World War II. Since 1990, more than three million people have died in armed conflict and about 25 million people remain internally displaced because of conflict or human rights violations. The Rwandan genocide in 1994 killed almost one million people. The civil war in the Democratic Republic of the Congo has killed some 7% of the population. In Sudan a two-decade-long civil war between the north and the south claimed more than two million lives and displaced six million people. Infectious disease, hunger, and environmental degradation remain far deadlier than armed conflict but each of them is both a cause and an effect of violent conflict. Of the 32 countries in the low human development category as measured by the UN's Human Development Index, 22 have experienced conflict at some point during the past 15 years, including 9 of the 10 at the bottom. Small arms claim more than 500,000 lives a year, the majority of them in the world's poorest countries. More lawyers are involved: during the 1991 Gulf War, the U.S. army deployed some 200 lawyers to the Gulf region. The first reservists called up were six lawyers of the 46th International Law Detachment.

Statistics sources: WORLD TRADE ORGANIZATION, WORLD TRADE STATISTICS 2006; UNCTAD, TRADE AND DEVELOPMENT REPORT, 2006; UNDP, HUMAN DEVELOPMENT REPORTS 1999, 2004, 2005, and 2007; WORLD FACT BOOK; International Financial Services, London; Aaron Wolf et al., *International River Basins of the World*, 15 INT'L J. WATER RES. DEVELOPMENT (1999); Interpol, *Annual Report*, 2005; George Will, *Lovin' It all Over*, WASH. POST, Dec. 27, 2007.



# Table of Contents

|   |   |    |
|---|---|----|
| Preface .....   | v   |    |
| <hr/>   |   |    |
| <b>PART I</b>   | <b>THE STRUCTURE OF THE INTERNATIONAL LEGAL SYSTEM .. 1</b>     |    |
| <hr/>   |   |    |
| <b>Chapter 1</b>  | <b>WHAT IS INTERNATIONAL LAW? ..... 3</b>                       |    |
| <hr/>   |   |    |
| Introduction .....  | 3   |    |
| § 1.1   | THE PROBLEM: IS IRAN'S NUCLEAR PROGRAM LEGAL? ..... 4           |    |
| § 1.2   | STATE SOVEREIGNTY AND THE BASIS OF OBLIGATION ..... 7           |    |
| § 1.2.1   | State Consent .....   | 8  |
| <i>The Case of the S.S. Lotus (France v. Turkey)</i> .....  | 9   |    |
| Questions and Comments .....  | 15  |    |
| <i>Legality of the Threat or Use of Nuclear Weapons</i> .....   | 16  |    |
| Questions and Comments .....  | 18  |    |
| <i>Declaration on Principles of International Law, Friendly Relations and Co-Operation among States in Accordance with the Charter of the United Nations</i> .. | 19  |    |
| Questions and Comments .....  | 23  |    |
| § 1.2.2   | Non-Consensual Bases of Obligation .....                        | 23 |
| J.L. Brierly, <i>The Law of Nations</i> .....   | 24  |    |
| <i>Corfu Channel Case (U.K. v. Albania)</i> .....   | 27  |    |
| Questions and Comments .....  | 27  |    |
| § 1.3   | IDENTIFYING INTERNATIONAL LAW: AN INTRODUCTION TO SOURCES .. 28 |    |
| <i>Statute of the International Court of Justice, Article 38</i> .....  | 29  |    |
| <i>Restatement (Third) of the Foreign Relations Law of the United States</i> .....  | 30  |    |
| Questions and Comments .....  | 30  |    |
| <i>ICJ Statute, Article 36</i> .....  | 31  |    |
| <i>Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)</i> .....  | 32  |    |
| Questions and Comments .....  | 47  |    |
| § 1.4   | TREATIES: EXPRESS CONSENT TO LEGAL OBLIGATIONS ..... 48         |    |
| <i>Peace Treaty Between Rameses II And Hattusili III</i> .....  | 48  |    |
| Questions and Comments .....  | 51  |    |
| § 1.4.1   | The Law of Treaties .....                                       | 51 |
| <i>Vienna Convention on the Law of Treaties</i> .....   | 52  |    |
| Questions and Comments .....  | 52  |    |
| <i>Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide</i> .....   | 53  |    |
| Questions and Comments .....  | 59  |    |
| <i>Case Concerning The Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)</i> ....   | 60  |    |
| § 1.4.2   | Treaties on Nuclear Materials .....                             | 70 |

---

*Table of Contents*

|         |  |     |
|---------|--|-----|
|         | <i>Background Information on the IAEA Agreements</i> . . . . .   | 70  |
|         | Study Note . . . . .   | 73  |
|         | <i>Statute of the International Atomic Energy Agency</i> . . . . .   | 74  |
|         | <i>The Treaty on the Non-Proliferation of Nuclear Weapons</i> . . . . .  | 83  |
|         | Questions and Comments . . . . .   | 88  |
| § 1.5   | CUSTOMARY INTERNATIONAL LAW: TACIT CONSENT? . . . . .  | 88  |
| § 1.5.1 | The Formation of Custom . . . . .  | 89  |
|         | <i>The Paquete Habana, The Lola</i> . . . . .  | 89  |
|         | Questions and Comments . . . . .   | 97  |
| § 1.5.2 | Treaties and Custom . . . . .  | 98  |
|         | <i>North Sea Continental Shelf Cases</i> . . . . .   | 98  |
|         | Questions and Comments . . . . .   | 109 |
| § 1.5.3 | Customary Law on Nuclear Weapons? . . . . .  | 110 |
|         | <i>Legality of the Threat or Use of Nuclear Weapons</i> . . . . .  | 110 |
|         | Questions and Comments . . . . .   | 129 |
| § 1.6   | OTHER SOURCES . . . . .  | 129 |
| § 1.6.1 | General Principles of Law . . . . .  | 129 |
|         | Hersch Lauterpacht, 1 <i>International Law</i> . . . . .   | 129 |
|         | Oscar Schachter, <i>International Law in Theory and in Practice</i> . . . . .  | 130 |
|         | <i>Chorzów Factory (Ger. v. Pol.)</i> . . . . .  | 130 |
|         | INTERNATIONAL STATUS OF SOUTH-WEST AFRICA . . . . .  | 131 |
|         | <i>Case of Aloeboetoe et al. v. Suriname (Reparations and Costs)</i> . . . . .   | 131 |
|         | Questions . . . . .  | 131 |
| § 1.6.2 | Equity . . . . .   | 132 |
|         | <i>Continental Shelf Case (Tunisia v. Libya)</i> . . . . .   | 132 |
| § 1.6.3 | Jurisprudence and Publicists . . . . .   | 133 |
|         | <i>Flores v. Southern Peru Copper Corp.</i> . . . . .  | 133 |
| § 1.6.4 | Unilateral Commitments . . . . .   | 136 |
|         | <i>Nuclear Tests Cases</i> . . . . .   | 136 |
|         | Note on Unilateral Commitments . . . . .   | 141 |
| § 1.7   | LAW AND POLITICAL COMMITMENTS . . . . .  | 143 |
|         | <i>Texaco Overseas Petroleum v. Libyan Arab Republic</i> . . . . .   | 147 |
|         | <i>Large-Scale Pelagic Driftnet Fishing and its Impact on the Living Marine Resources of the World's Oceans and Seas</i> . . . . . | 152 |
|         | <i>Large-Scale Pelagic Driftnet Fishing and its Impact on the Living Marine Resources of the World's Oceans and Seas</i> . . . . . | 154 |
| § 1.8   | PROBLEMS OF HIERARCHY AND CHOICE OF LAW . . . . .  | 157 |
|         | Vienna Convention on the Law of Treaties, Art. 53. . . . .   | 158 |
|         | Dinah Shelton, <i>Normative Hierarchy in International Law</i> . . . . .   | 158 |
|         | <i>Prosecutor v. Furundzija</i> . . . . .  | 161 |
|         | Questions and Comments . . . . .   | 162 |

---

*Table of Contents*

§ 1.9 MAKING USE OF ALL THE SOURCES . . . . . 164  
     *Case of Demir and Baykara v. Turkey* . . . . . 164  
     Questions and Comments . . . . . 178  
     Questions and Concluding Comments . . . . . 178

**Chapter 2                   INTERNATIONAL LAW AND THE INTERNAL LAW OF STATES . . . . . 181**

---

§ 2.1 U.S. PRISONERS AND THE CONSULAR RELATIONS TREATY . . . . . 181  
     The Case of Medellín . . . . . 181

§ 2.2 THE RELEVANT INTERNATIONAL LAW . . . . . 183

    § 2.2.1 Treaties . . . . . 183  
         *Vienna Convention on Consular Relations* . . . . . 183  
         *Optional Protocol to the Vienna Convention on Consular Relations Concerning the Compulsory Settlement of Disputes* . . . . . 184  
         *U.N. Charter* . . . . . 185

    § 2.2.2 The Avena Judgment and its Aftermath . . . . . 185  
         *Case Concerning Avena and other Mexican Nationals (Mexico v. United States of America)* . . . . . 185  
         Questions and Comments . . . . . 200  
         *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law* . . . . . 201  
         Questions and Comments . . . . . 205  
         Questions and Comments . . . . . 206

§ 2.3 INTERNATIONAL LAW IN THE U.S. AND OTHER LEGAL SYSTEMS . . . . . 206

    § 2.3.1 In Theory: Monism and Dualism . . . . . 206  
         Eileen Denza, *The Relationship Between International and National Law* . . . . . 206

    § 2.3.2 Constitutional Provisions and Their Interpretation . . . . . 208  
         *Constitution of the United States of America* . . . . . 208  
         *The Federalist* . . . . . 209  
         *1 Op. Att’y Gen. 26, 27 (June 26, 1792) (Randolph, Att’y Gen.)* . . . . . 211  
         *Ware v. Hylton* . . . . . 211  
         Questions and Comments . . . . . 212

    § 2.3.3 Treaties and Executive Agreements . . . . . 213  
         § 2.3.3.1 The Scope of the Treaty-Making Power . . . . . 213  
             *Missouri v. Holland* . . . . . 213  
             Questions and Comments . . . . . 216  
             Note on the Presidential Treaty-Making Power . . . . . 216  
             *Reid v. Covert* . . . . . 219  
             Questions . . . . . 222  
             *United States v. Belmont* . . . . . 222  
             *Dames & Moore v. Regan* . . . . . 224

---

*Table of Contents*

|                  |   |            |
|------------------|---|------------|
|                  | Questions and Comments . . . . .  | 232        |
|                  | <i>The Case Act</i> . . . . .   | 232        |
|                  | <i>Dos Circular 175, 22 C.F.R. 181.1–181.7 Foreign Relations</i> . . . . .  | 234        |
| § 2.3.3.2        | Treaties as Federal Law . . . . .   | 237        |
|                  | <i>Whitney v. Robertson</i> . . . . .   | 237        |
|                  | <i>Alexander Murray v. Schooner Charming Betsy</i> . . . . .  | 238        |
|                  | <i>United States of America v. The Palestine Liberation Organization</i> . . . . .  | 239        |
|                  | Questions and Comments . . . . .  | 248        |
| § 2.3.3.3        | Justiciability: The Doctrine of Self-Executing Treaties . . . . .   | 250        |
|                  | <i>United States v. Percheman</i> . . . . .   | 251        |
|                  | <i>Asakura v. City of Seattle</i> . . . . .   | 252        |
|                  | Questions and Comments . . . . .  | 254        |
| § 2.3.3.4        | Treaty Interpretation . . . . .   | 255        |
|                  | <i>Zicherman v. Korean Air Lines Co., Ltd.</i> . . . . .  | 255        |
|                  | Questions and Comments . . . . .  | 262        |
|                  | <i>Medellín v. Texas</i> . . . . .  | 263        |
|                  | <i>Osbaldo Torres v. The State of Oklahoma</i> . . . . .  | 281        |
| § 2.3.3.5        | Terminating Treaty Obligations . . . . .  | 286        |
|                  | <i>Denunciation of Consular Relations Dispute Settlement Protocol</i> . . . . .   | 286        |
|                  | Questions and Comments . . . . .  | 287        |
|                  | <i>Goldwater v. Carter</i> . . . . .  | 287        |
| § 2.4            | CUSTOMARY INTERNATIONAL LAW . . . . .   | 293        |
|                  | <i>Filartiga v. Pena-Irala</i> . . . . .  | 294        |
|                  | Note on Later Proceedings in the Case . . . . .   | 305        |
|                  | <i>Sosa v. Alvarez-Machain</i> . . . . .  | 306        |
| § 2.5            | USING INTERNATIONAL LAW TO LEGISLATE OR INTERPRET DOMESTIC<br>LAW . . . . .   | 320        |
|                  | <i>Roper v. Simmons</i> . . . . .   | 321        |
|                  | Final Comments . . . . .  | 325        |
| <b>Chapter 3</b> | <b>DISPUTE SETTLEMENT AND COMPLIANCE . . . . .</b>  | <b>327</b> |
|                  | Introduction . . . . .  | 327        |
| § 3.1            | FOUR CASE STUDIES . . . . .   | 328        |
| § 3.1.1          | Case Study 1: The Gabíkovo-Nagymaros Dispute . . . . .  | 328        |
|                  | <i>Special Agreement between the Republic of Hungary and the Slovak Republic<br/>for Submission to the International Court of Justice of the Differences<br/>between Them Concerning the Gabíkovo-Nagymaros Project</i> . . . . . | 328        |
| § 3.1.2          | Case Study 2: <i>Nicaragua v. United States</i> . . . . .   | 329        |
|                  | <i>Case Concerning Military and Paramilitary Activities in and Against Nicaragua<br/>(Nicaragua v. United States of America)</i> . . . . .  | 330        |
|                  | <i>ICJ Hears U.S. Argument against Nicaraguan Claim — International Court of</i>  |            |



---

*Table of Contents*

|           |   |     |
|-----------|---|-----|
|           | <i>Justice</i> . . . . .  | 331 |
| § 3.1.3   | Case Study 3: Albania and the Montreal Protocol . . . . .   | 331 |
|           | <i>Decisions of the Parties Related to the Non-Compliance Procedure of the Montreal Protocol on Substances that Deplete the Ozone Layer</i> . . . . . | 331 |
| § 3.1.4   | Case Study 4: Coal-Fired Plants: A NAAEC Submission . . . . .   | 332 |
|           | <i>Submission to the Commission for Environmental Cooperation</i> . . . . .   | 332 |
|           | Questions and Comments . . . . .  | 333 |
| § 3.2     | THE DUTY TO COMPLY WITH INTERNATIONAL OBLIGATIONS . . . . .   | 334 |
|           | <i>Draft Articles on Responsibility of States for Internationally Wrongful Acts</i> . . . . .   | 334 |
|           | Note . . . . .  | 334 |
|           | <i>The Rainbow Warrior Arbitration (New Zealand/France)</i> . . . . .   | 335 |
|           | Questions and Comments . . . . .  | 352 |
| § 3.3     | DISPUTE SETTLEMENT . . . . .  | 354 |
| § 3.3.1   | The Basic Obligation: Peaceful Settlement . . . . .   | 354 |
|           | <i>Charter of the United Nations</i> . . . . .  | 354 |
|           | Question And Comment . . . . .  | 354 |
| § 3.3.2   | Public International Dispute Resolution Generally . . . . .   | 355 |
|           | Stephen C. McCaffrey, <i>Special Rapporteur, Sixth Report on the Law of the Non-Navigational Uses of International Watercourses</i> . . . . .         | 355 |
|           | Questions and Comments . . . . .  | 358 |
| § 3.3.3   | Judicial Settlement . . . . .   | 361 |
|           | <i>Charter of the United Nations</i> . . . . .  | 361 |
|           | <i>Statute of the International Court of Justice</i> . . . . .  | 361 |
|           | Questions and Comments . . . . .  | 362 |
|           | <i>Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)</i> . . . . .                                | 364 |
|           | Questions and Comments . . . . .  | 378 |
|           | Shelton, <i>Form, Function, and the Powers of International Courts</i> . . . . .  | 379 |
| § 3.3.4   | Arbitration and Private Litigation . . . . .  | 389 |
|           | <i>Trail Smelter Arbitration</i> . . . . .  | 389 |
|           | Questions and Comments . . . . .  | 397 |
|           | <i>Pakootas v. Teck Cominco Metals, Ltd.</i> . . . . .  | 399 |
|           | Questions and Comments . . . . .  | 404 |
| § 3.3.5   | Fact-Finding . . . . .  | 406 |
|           | <i>United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses</i> . . . . .                                      | 406 |
|           | Questions and Comments . . . . .  | 407 |
| § 3.4     | INNOVATIVE COMPLIANCE MECHANISMS . . . . .  | 408 |
| § 3.4.1   | Within the Westphalian Model . . . . .  | 409 |
| § 3.4.1.1 | Non-Compliance Procedures Under the Montreal Protocol . . . . .   | 409 |
|           | <i>Report of the Tenth Meeting of the Parties to the Montreal Protocol on</i>   |     |

---

*Table of Contents*

|                  |   |            |
|------------------|---|------------|
|                  | <i>Substances that Deplete the Ozone Layer</i> . . . . .                              | 409        |
|                  | Questions and Comments . . . . .  | 412        |
| § 3.4.2          | Beyond the Westphalian Model: Involving Citizens and Civil Society . . . . .          | 413        |
| § 3.4.2.1        | The Citizen Submission Process Under NAAEC Articles 14 and 15 . . . . .               | 414        |
|                  | Stephen C. McCaffrey, <i>International Organization and the Environment</i> . . . . . | 414        |
|                  | <i>North American Agreement on Environmental Cooperation</i> . . . . .                | 415        |
|                  | <i>Migratory Birds</i> . . . . .  | 417        |
|                  | <i>North American Commission for Environmental Cooperation — Secretariat</i>          |            |
|                  | <i>Article 15(1) Notification to Council that Development of a Factual</i>            |            |
|                  | <i>Record is Warranted</i> . . . . .  | 419        |
|                  | <i>Council Resolution 01–10</i> . . . . .   | 420        |
|                  | <i>Final Factual Record for Submission Sem-99-002 (Migratory Birds)</i>               |            |
|                  | <i>Prepared in Accordance with Article 15 of the North American</i>                   |            |
|                  | <i>Agreement on Environmental Cooperation</i> . . . . .                               | 421        |
|                  | Questions and Comments . . . . .  | 426        |
|                  | Final Comments . . . . .  | 427        |
| <hr/>            |   |            |
| <b>PART II</b>   | <b>PARTICIPANTS IN THE INTERNATIONAL LEGAL SYSTEM . . . . .</b>                       | <b>429</b> |
| <b>Chapter 4</b> | <b>STATES AND GOVERNMENTS . . . . .</b>   | <b>431</b> |
|                  | Introduction: International Legal Personality . . . . .                               | 431        |
| § 4.1            | A TALE OF TWO TERRITORIES: TAIWAN AND SOMALIA . . . . .                               | 432        |
| § 4.1.1          | Taiwan . . . . .  | 432        |
|                  | <i>Taiwan</i> . . . . .   | 432        |
|                  | Note on Historical Documents Relevant to the Status of Taiwan . . . . .               | 434        |
|                  | <i>Peoples Republic of China White Paper — The One-China Principle and the</i>        |            |
|                  | <i>Taiwan Issue</i> . . . . .   | 435        |
|                  | <i>Statement of the Ministry of Foreign Affairs of the Republic of China</i>          |            |
|                  | <i>Responding to the PRC White Paper Entitled “The One China Principle</i>            |            |
|                  | <i>and the Taiwan Question”</i> . . . . .   | 437        |
|                  | Questions and Comments . . . . .  | 437        |
| § 4.1.2          | Somalia . . . . .   | 438        |
| § 4.2            | THE TRADITIONAL TESTS OF STATEHOOD . . . . .  | 439        |
|                  | <i>Convention on the Rights and Duties of States</i> . . . . .                        | 439        |
| § 4.2.1          | Territory . . . . .   | 441        |
|                  | <i>Island of Palmas (Miangas) Case</i> . . . . .                                      | 442        |
|                  | Questions and Comments . . . . .  | 447        |
| § 4.2.2          | Population . . . . .  | 448        |
|                  | <i>Katangese Peoples’ Congress v. Zaire</i> . . . . .                                 | 449        |
|                  | <i>Reference Re Secession of Quebec</i> . . . . .                                     | 450        |
|                  | Questions and Comments . . . . .  | 459        |

---

## Table of Contents

|           |  |     |
|-----------|--|-----|
| § 4.2.3   | Government . . . . .   | 459 |
|           | <i>Bank of China v. Wells Fargo Bank &amp; Union Trust Co.</i> . . . . .   | 460 |
|           | Questions and Comments . . . . .   | 464 |
| § 4.2.4   | Sovereignty Revisited . . . . .  | 465 |
|           | <i>Lease to the United States by the Government of Cuba of Certain Areas of Land<br/>    and Water for Naval or Coaling Stations in Guantanamo and Bahia Honda</i> . . . . . | 466 |
|           | Note . . . . .   | 467 |
|           | <i>Boumediene v. Bush</i> . . . . .  | 468 |
|           | Questions and Comments . . . . .   | 469 |
|           | <i>Andorra</i> . . . . .   | 470 |
|           | <i>Case of Drozd and Janousek v. France and Spain</i> . . . . .  | 470 |
|           | Questions and Comments . . . . .   | 476 |
|           | <i>Knox v. PLO</i> . . . . .   | 477 |
|           | Question . . . . .   | 489 |
| § 4.2.5   | The Problem of “Failed” States . . . . .   | 490 |
|           | <i>The Responsibility to Protect</i> . . . . .   | 490 |
|           | Questions . . . . .  | 499 |
| § 4.3     | RECOGNITION . . . . .  | 500 |
| § 4.3.1   | Recognition in Theory . . . . .  | 500 |
|           | Charter of the Organization of American States . . . . .   | 501 |
|           | Questions . . . . .  | 502 |
| § 4.3.2   | Recognition in Practice . . . . .  | 502 |
| § 4.3.2.1 | Recognition of States . . . . .  | 502 |
|           | <i>Kosovo’s Declaration of Independence</i> . . . . .  | 502 |
|           | Note . . . . .   | 504 |
|           | <i>Security Council Meets in Emergency Session following Kosovo’s<br/>        Declaration of Independence, with Members Sharply Divided on Issue</i> . . . . .               | 505 |
|           | Notes . . . . .  | 507 |
|           | Questions and Comments . . . . .   | 509 |
| § 4.3.2.2 | Recognition of Governments . . . . .   | 509 |
|           | <i>The Tinoco Arbitration</i> . . . . .  | 509 |
|           | Questions and Comments . . . . .   | 515 |
|           | <i>Joint Communique of the United States of America and the People’s<br/>        Republic of China</i> . . . . .   | 515 |
|           | Note . . . . .   | 516 |
|           | <i>Taiwan Relations Act</i> . . . . .  | 516 |
|           | Questions . . . . .  | 519 |
| § 4.3.3   | Collective Decisions on Recognition . . . . .  | 519 |
| § 4.3.3.1 | Southern Africa . . . . .  | 520 |
|           | <i>OAU Resolution on Non-Recognition of South African Bantustans</i> . . . . .   | 522 |
|           | Questions . . . . .  | 522 |

---

*Table of Contents*

|                  |   |            |
|------------------|---|------------|
| § 4.3.3.2        | European States . . . . .   | 522        |
|                  | <i>Loizidou v. Turkey</i> . . . . .   | 523        |
|                  | Questions and Comments . . . . .  | 528        |
|                  | <i>Declaration on the Guidelines on Recognition of New States in Eastern Europe and in the Soviet Union</i> . . . . . | 528        |
| § 4.3.3.3        | Taiwan and International Organizations . . . . .  | 529        |
|                  | <i>Recognition by the United Nations of the Representation of a Member State</i> . . . . .                            | 529        |
|                  | <i>Restoration of the Lawful Rights of the People’s Republic of China in the United Nations</i> . . . . .             | 530        |
|                  | <i>United Nations General Assembly Debates</i> . . . . .  | 531        |
|                  | Note . . . . .  | 536        |
| § 4.4            | STATE SUCCESSION . . . . .  | 537        |
|                  | <i>Repertoire of Practice of the United Nations</i> . . . . .   | 538        |
|                  | Questions and Comments . . . . .  | 543        |
|                  | Hailbronner, <i>Legal Aspects of the Unification of the Two German States</i> . . . . .                               | 543        |
|                  | Concluding Comments . . . . .   | 550        |
| <b>Chapter 5</b> | <b>INDIVIDUALS IN THE INTERNATIONAL LEGAL SYSTEM . . . .</b>  | <b>551</b> |
|                  | Introduction . . . . .  | 551        |
| § 5.1            | INTERNATIONAL LAW AND ALBERTO FUJIMORI . . . . .  | 553        |
|                  | Benjamin Witte, <i>Chile: Torture Victims File Criminal Suit Against Fujimori</i> . . . . .                           | 555        |
|                  | Note . . . . .  | 556        |
| § 5.2            | NATIONALITY . . . . .   | 556        |
| § 5.2.1          | Acquisition of Nationality . . . . .  | 557        |
|                  | <i>Tunis and Morocco Nationality Decrees</i> . . . . .  | 557        |
|                  | Questions and Comments . . . . .  | 559        |
|                  | <i>Hague Convention of 1930</i> . . . . .   | 559        |
|                  | <i>The Political Constitution of the Republic of Peru</i> . . . . .   | 560        |
|                  | <i>The Nationality Law of Peru</i> . . . . .  | 560        |
|                  | <i>The Constitution of Japan</i> . . . . .  | 561        |
|                  | <i>The Nationality Law of Japan</i> . . . . .   | 562        |
|                  | Düker, <i>The Extradition of Nationals: Comments on the Extradition Request for Alberto Fujimori</i> . . . . .        | 563        |
|                  | Questions . . . . .   | 563        |
| § 5.2.2          | Loss of Nationality . . . . .   | 564        |
|                  | <i>The Case of John Demjanjuk</i> . . . . .   | 564        |
|                  | <i>United States v. John Demjanjuk</i> . . . . .  | 564        |
|                  | Questions and Comments . . . . .  | 566        |
|                  | <i>Ivcher Bronstein Case</i> . . . . .  | 567        |
| § 5.2.3          | The Right to a Nationality and Reduction of Statelessness . . . . .   | 570        |
|                  | <i>International Convention on the Elimination of all Forms of</i>  |            |

---

## Table of Contents

|           |   |     |
|-----------|---|-----|
|           | <i>Racial Discrimination</i> . . . . .  | 570 |
|           | <i>International Covenant on Civil and Political Rights</i> . . . . .                       | 570 |
|           | <i>Convention on the Elimination of all Forms of Discrimination Against Women</i> . . . . . | 570 |
|           | Questions and Comments . . . . .  | 571 |
| § 5.2.4   | Legal Consequences of Nationality . . . . .   | 571 |
| § 5.2.4.1 | Rights of Nationals and Aliens . . . . .  | 571 |
|           | <i>International Covenant on Civil and Political Rights</i> . . . . .                       | 572 |
|           | <i>American Convention on Human Rights</i> . . . . .  | 572 |
| § 5.2.4.2 | Diplomatic Protection . . . . .   | 573 |
|           | <i>Mavrommatis Palestine Concessions (Jurisdiction) (GR. v. G.B.)</i> . . . . .             | 574 |
|           | <i>Int'l Law Commission, Report of the Working Group on</i>                                 |     |
|           | <i>Diplomatic Protection</i> . . . . .  | 574 |
|           | Note . . . . .  | 575 |
|           | <i>The Nottebohm Case (Liechtenstein v. Guatemala)</i> . . . . .                            | 575 |
|           | Questions and Comments . . . . .  | 583 |
|           | <i>Case Concerning Ahmadou Sadio Diallo (Guinea v. DRC) Preliminary</i>                     |     |
|           | <i>Objections</i> . . . . .   | 584 |
|           | Questions and Comments . . . . .  | 588 |
|           | <i>Mergé Case</i> . . . . .   | 589 |
|           | <i>Decision Concerning Jurisdiction Over Claims of Persons with</i>                         |     |
|           | <i>Dual Nationality</i> . . . . .   | 592 |
|           | Questions . . . . .   | 595 |
| § 5.3     | INTERNATIONAL HUMAN RIGHTS LAW . . . . .  | 595 |
| § 5.3.1   | Historical Overview . . . . .   | 595 |
|           | Louis B. Sohn, <i>The New International Law: Protection of the Rights of</i>                |     |
|           | <i>Individuals Rather than States</i> . . . . .   | 595 |
| § 5.3.2   | The UN Charter and Human Rights Treaties . . . . .  | 608 |
| § 5.3.2.1 | Charter-Based Obligations, Institutions, and Procedures . . . . .                           | 609 |
| § 5.3.2.2 | UN Human Rights Treaties . . . . .  | 610 |
|           | <i>International Covenant on Civil and Political Rights</i> . . . . .                       | 610 |
|           | <i>Concluding Observations by the Human Rights Committee: Peru</i> . . . . .                | 611 |
|           | Questions and Comments . . . . .  | 614 |
| § 5.3.3   | Regional Norms, Institutions, and Procedures . . . . .                                      | 615 |
|           | <i>The European System</i> . . . . .  | 615 |
|           | <i>The African System</i> . . . . .   | 616 |
|           | <i>The Inter-American System</i> . . . . .  | 616 |
|           | <i>Second Report on the Situation of Human Rights in Peru</i> . . . . .                     | 618 |
|           | Questions and Comments . . . . .  | 630 |
|           | <i>Barrios Altos Case (Chumbipuma Aguirre v. Peru)</i> . . . . .                            | 631 |
|           | <i>La Cantuta Case</i> . . . . .  | 633 |
|           | Questions and Comments . . . . .  | 659 |

---

## Table of Contents

|           |  |     |
|-----------|--|-----|
| § 5.4     | INTERNATIONAL CRIMINAL LAW   | 663 |
| § 5.4.1   | Historical Overview  | 664 |
|           | <i>International Military Tribunal (Nuremberg) Judgment and Sentences</i>  | 664 |
| § 5.4.2   | International Crimes   | 671 |
| § 5.4.3   | International Tribunals: Ad Hoc, Mixed and the ICC   | 672 |
|           | <i>Rome Statute of the International Criminal Court</i>  | 674 |
|           | President Clinton, <i>Statement on Signature of the International Criminal Court Treaty</i>  | 682 |
|           | <i>Letter from Under-Secretary of State John R. Bolton to the Secretary-General of the United Nations</i>  | 683 |
|           | <i>Under Secretary of State of Political Affairs Marc Grossman, American Foreign Policy and the International Criminal Court</i>   | 684 |
|           | <i>Statute of the International Criminal Court</i>   | 686 |
|           | Questions and Comments   | 686 |
| § 5.4.4   | Universal Jurisdiction   | 686 |
|           | <i>Regina v. Bartle and the Commissioner of Police for the Metropolis and Others (Appellants) Ex Parte Pinochet (Respondent); Regina v. Evans and another and the Commissioner of Police for the Metropolis and Others (Appellants) Ex Parte Pinochet (Respondent)</i> | 687 |
|           | Note   | 694 |
| § 5.4.5   | Transnational Criminal Cooperation   | 694 |
| § 5.4.5.1 | Mutual Legal Assistance  | 694 |
| § 5.4.5.2 | Extradition  | 694 |
|           | <i>Summary of Criminal Proceedings Filed against Alberto Fujimori in Peru</i>  | 694 |
|           | <i>Japan, Ministry of Foreign Affairs, Press Conference of March 23, 2007</i>  | 697 |
|           | <i>Peru, Official Statement Re/No 022-03, Request of Extradition of the Former President Alberto Fujimori</i>  | 697 |
|           | <i>Peru, Official Statement Re/024-03, The Japanese Government Acknowledges Receipt of the Request for the Extradition of Former President Alberto Fujimori</i>  | 699 |
|           | <i>Düker, The Extradition of Nationals: Comments on the Extradition Request for Alberto Fujimori</i>   | 700 |
|           | Note   | 700 |
|           | <i>Inter-American Convention on Extradition</i>  | 701 |
|           | Questions and Comments   | 706 |
|           | <i>Inter-American Commission on Human Rights, Recommendation on Asylum and International Crimes</i>  | 707 |
| § 5.4.6   | Individual Immunities  | 708 |
|           | <i>Regina v. Bartle and the Commissioner of Police for the Metropolis and Others (Appellants) Ex Parte Pinochet (Respondent); Regina v. Evans and another and the Commissioner of Police for the Metropolis and Others (Appellants)</i>                                |     |

---

*Table of Contents*

*Ex Parte Pinochet (Respondent)* . . . . . 708  
*Case Concerning the Arrest Warrant of 11 April 2000 (D.R.C. v. Bel.)* . . . . . 719  
 Note: The Republic of the Congo Seizes the International Court of Justice of a  
 Dispute with France . . . . . 730  
 § 5.5 Concluding Note . . . . . 731

**Chapter 6 INTERNATIONAL ORGANIZATIONS AND OTHER ENTITIES . . 733**

---

Introduction . . . . . 733

§ 6.1 THE PROBLEM: IS THE SPECIAL COURT FOR SIERRA LEONE A SUBJECT OF  
 INTERNATIONAL LAW? DOES IT HAVE OBJECTIVE INTERNATIONAL LEGAL  
 PERSONALITY? . . . . . 734

§ 6.2 INTERGOVERNMENTAL ORGANIZATIONS . . . . . 735

    § 6.2.1 IGOs as International Legal Persons, in General . . . . . 736

*Reparation for Injuries Suffered in the Service of the United Nations* . . . . . 737

        Questions and Comments . . . . . 746

*Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter),  
 Advisory Opinion* . . . . . 750

        Questions and Comments . . . . . 762

*Prosecutor v. Dusko Tadic a/k/a “Dule”* . . . . . 762

        Questions and Comments . . . . . 774

    § 6.2.2 The United Nations . . . . . 774

        § 6.2.2.1 Structure, Functions, and Law-Making Power . . . . . 774

*ICJ Advisory Opinion on Legal Consequences for States of the Continued  
 Presence of South Africa in Namibia (South West Africa) Notwithstanding  
 Security Council Resolution 276 (1970)* . . . . . 776

            Questions and Comments . . . . . 783

*Resolution 1306 S/Res/1306 (2000), 5 July 2000* . . . . . 783

            Questions and Comments . . . . . 786

*Resolution 1373 (2001)* . . . . . 787

            Questions and Comments . . . . . 789

        § 6.2.2.2 Privileges and Immunities . . . . . 790

*Permanent Mission of India to the United Nations v. City of New York* . . . . . 791

            Questions and Comments . . . . . 796

*Difference Relating to Immunity from Legal Process of a Special Rapporteur  
 of the Commission on Human Rights* . . . . . 797

            Questions and Comments . . . . . 803

        § 6.2.2.3 International Legal Responsibility . . . . . 804

            Corinna Kuhl, *The Evolution of Peace Operations, from Interposition to  
 Integrated Missions* . . . . . 805

            Resolution 1244 (1999) . . . . . 808

            Questions and Comments . . . . . 810

---

*Table of Contents*

|         |  |     |
|---------|--|-----|
|         | John Cerone, <i>Reasonable Measures in Unreasonable Circumstances: A Legal Accountability Framework for Human Rights Violations in Post-Conflict Territories under UN Administration</i> . . . . . | 811 |
|         | Agim Behrami and Bekir Behrami, <i>Against France Andruzhdhi Saramati against France, Germany and Norway</i> . . . . .   | 815 |
|         | Questions and Comments . . . . .   | 826 |
|         | <i>Second Report on Responsibility of International Organizations by Mr. Giorgio Gaja, Special Rapporteur</i> . . . . .  | 826 |
|         | Questions and Comments . . . . .   | 832 |
|         | <i>Resolution 62/63. Criminal Accountability of United Nations Officials and Experts on Mission</i> . . . . .  | 833 |
|         | Questions and Comments . . . . .   | 836 |
| § 6.2.3 | Other Global IGOs . . . . .  | 836 |
| § 6.2.4 | Regional IGOs . . . . .  | 838 |
|         | <i>Yassin Abdullah Kadi v. Council of the European Union and Commission of the European Communities</i> . . . . .  | 839 |
|         | Questions and Comments . . . . .   | 849 |
| § 6.2.5 | The Special Court for Sierra Leone . . . . .   | 850 |
|         | <i>Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone</i> . . . . .  | 850 |
|         | <i>Prosecutor v. Charles Taylor</i> . . . . .  | 858 |
|         | Questions and Comments . . . . .   | 866 |
| § 6.3   | INTERNATIONAL NGOS AND OTHER TRANSNATIONAL, NONGOVERNMENTAL ENTITIES . . . . .   | 867 |
| § 6.3.1 | The Question of International Legal Personality of Nongovernmental Entities . . . .  | 868 |
| § 6.3.2 | NGOs and International Law . . . . .   | 868 |
|         | Note On NGO “Secondment” to States and IGOs . . . . .  | 870 |
|         | <i>NPWJ Sierra Leone Mission</i> . . . . .   | 871 |
|         | Questions and Comments . . . . .   | 877 |
| § 6.3.3 | Non-State Organized, Armed Groups and International Humanitarian Law . . . . .   | 877 |
|         | <i>Common Article 3 of the 1949 Geneva Conventions</i> . . . . .   | 878 |
|         | <i>ICRC Commentary to Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field</i> . . . . .  | 878 |
|         | Questions and Comments . . . . .   | 885 |
| § 6.3.4 | Transnational Corporations and International Law . . . . .   | 886 |
|         | <i>Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights</i> . . . . .  | 888 |
|         | Note . . . . .   | 894 |
|         | <i>Responsibilities of Transnational Corporations and Related Business Enterprises with Regard to Human Rights</i> . . . . .   | 894 |
|         | <i>Human Rights and Transnational Corporations: The Way Forward</i> . . . . .  | 895 |
|         | Questions and Comments . . . . .   | 899 |



---

*Table of Contents*

|                  |   |            |
|------------------|---|------------|
|                  | Concluding Questions and Comments . . . . .   | 900        |
| <hr/>            |   |            |
| <b>PART III</b>  | <b>REGULATING TRANSNATIONAL PROBLEMS . . . . .</b>  | <b>901</b> |
| <b>Chapter 7</b> | <b>THE ALLOCATION OF COMPETENCE AMONG STATES:<br/>JURISDICTION . . . . .</b>                            | <b>903</b> |
|                  | Introduction . . . . .  | 903        |
| § 7.1            | BASES OF STATE JURISDICTION . . . . .   | 904        |
| § 7.1.1          | General Considerations . . . . .  | 905        |
|                  | <i>The Case of the S.S. “Lotus”</i> . . . . .   | 905        |
|                  | Questions and Comments . . . . .  | 915        |
| § 7.1.2          | Territoriality and the Effects Principle . . . . .  | 916        |
| § 7.1.2.1        | Conduct and Other Matters Within a State’s Territory . . . . .  | 917        |
| § 7.1.2.2        | Effects Within a State’s Territory . . . . .  | 917        |
|                  | <i>Hartford Fire Insurance Co. v. California</i> . . . . .  | 918        |
|                  | Questions and Comments . . . . .  | 928        |
| § 7.1.3          | Nationality . . . . .   | 930        |
|                  | Stephen C. McCaffrey, <i>Understanding International Law</i> . . . . .                                  | 930        |
|                  | Questions and Comments . . . . .  | 931        |
| § 7.1.4          | The Protective Principle . . . . .  | 933        |
|                  | Stephen C. McCaffrey, <i>Understanding International Law</i> . . . . .                                  | 933        |
|                  | Questions and Comments . . . . .  | 933        |
| § 7.1.5          | The Universality Principle . . . . .  | 934        |
|                  | <i>The Case of the S.S. “Lotus”</i> . . . . .   | 935        |
|                  | Questions and Comments . . . . .  | 935        |
| § 7.2            | IMMUNITY OF STATES FROM JURISDICTION TO ADJUDICATE AND<br>ENFORCE: FOREIGN SOVEREIGN IMMUNITY . . . . . | 936        |
| § 7.2.1          | Historical Development . . . . .  | 936        |
|                  | Stephen C. McCaffrey, <i>Understanding International Law</i> . . . . .                                  | 936        |
| § 7.2.2          | The Restrictive Theory . . . . .  | 938        |
|                  | <i>Claim Against the Empire of Iran</i> . . . . .   | 938        |
|                  | Questions and Comments . . . . .  | 949        |
| § 7.2.3          | The Commercial Activities Exception . . . . .   | 951        |
|                  | <i>Republic o Argentina v. Weltover, Inc.</i> . . . . .   | 951        |
|                  | Questions and Comments . . . . .  | 956        |
|                  | <i>Saudi Arabia v. Nelson</i> . . . . .   | 956        |
|                  | Questions and Comments . . . . .  | 966        |
|                  | <i>Mol, Inc. v. Peoples Republic of Bangladesh</i> . . . . .  | 967        |
|                  | Questions and Comments . . . . .  | 969        |
| § 7.2.4          | The Non-Commercial Tort Exception . . . . .   | 970        |
|                  | <i>Collision with a Foreign Government-Owned Motor Car</i> . . . . .                                    | 970        |

---

*Table of Contents*

|                  |  |             |
|------------------|--|-------------|
|                  | Questions and Comments . . . . .   | 973         |
|                  | <i>In Re Complaint of Sedco, Inc.</i> . . . . .  | 973         |
|                  | Questions and Comments . . . . .   | 976         |
|                  | <i>Olsen v. Government of Mexico</i> . . . . .   | 977         |
|                  | Questions and Comments . . . . .   | 982         |
| § 7.2.5          | A <i>Jus Cogens</i> Exception? . . . . .   | 983         |
|                  | <i>The Distomo Massacre Case (Greek Citizens v. Federal Republic of Germany)</i> . . . . .           | 983         |
|                  | Questions and Comments . . . . .   | 987         |
| § 7.2.6          | Enforcement of Judgments . . . . .   | 989         |
|                  | <i>X v. Republic of the Philippines</i> . . . . .  | 989         |
|                  | Questions and Comments . . . . .   | 1002        |
|                  | <i>Letelier v. Republic of Chile</i> . . . . .   | 1003        |
|                  | Questions and Comments . . . . .   | 1011        |
|                  | <i>United Nations Convention on Jurisdictional Immunities of States and their Property</i> . . . . . | 1012        |
| § 7.3            | THE ACT OF STATE DOCTRINE . . . . .  | 1014        |
|                  | Stephen C. McCaffrey, <i>Understanding International Law</i> . . . . .                               | 1014        |
|                  | Questions . . . . .  | 1016        |
|                  | <i>W.S. Kirkpatrick &amp; Co., Inc. v. Environmental Tectonics Corp., Int'l</i> . . . . .            | 1016        |
|                  | Questions and Comments . . . . .   | 1020        |
|                  | Concluding Questions and Comments . . . . .  | 1021        |
| <b>Chapter 8</b> | <b>REGULATION OF SPACES AND SHARED RESOURCES . . . . .</b>   | <b>1023</b> |
|                  | Introduction . . . . .   | 1023        |
|                  | Case Study: The Thawing Arctic and an Underwater Land Rush . . . . .                                 | 1023        |
|                  | Questions and Comments . . . . .   | 1025        |
| § 8.1            | AREAS OF SOVEREIGNTY . . . . .   | 1026        |
| § 8.1.1          | State Territory . . . . .  | 1026        |
| § 8.1.2          | Boundaries . . . . .   | 1027        |
| § 8.1.2.1        | Land Boundaries . . . . .  | 1027        |
|                  | <i>Oppenheim's International Law</i> . . . . .   | 1027        |
|                  | <i>Case Concerning The Frontier Dispute</i> . . . . .  | 1027        |
|                  | Questions and Comments . . . . .   | 1031        |
| § 8.1.2.2        | Maritime Boundaries . . . . .  | 1032        |
| § 8.1.2.3        | Airspace . . . . .   | 1033        |
|                  | <i>1944 Chicago Convention on International Civil Aviation</i> . . . . .                             | 1033        |
|                  | Questions and Comments . . . . .   | 1036        |
|                  | Oliver J. Lissitzyn, <i>Some Legal Implications of the U-2 and RB-47 Incidents</i> . . . . .         | 1037        |
|                  | Questions and Comments . . . . .   | 1037        |
|                  | <i>The Downing of KAL 007</i> . . . . .  | 1038        |

---

## Table of Contents

|           |  |      |
|-----------|--|------|
|           | Questions and Comments . . . . .   | 1039 |
| § 8.2     | INTERNATIONALLY-SHARED FRESH WATER . . . . .                                       | 1041 |
|           | Intergovernmental Panel on Climate Change, Fourth Assessment Report, 2007 . .      | 1042 |
|           | Questions and Comments . . . . .   | 1043 |
|           | <i>United Nations Convention on the Law of the Non-Navigational Uses of</i>        |      |
|           | <i>International Watercourses</i> . . . . .  | 1044 |
|           | <i>Gabčíkovo-Nagymaros Project Case</i> . . . . .                                  | 1045 |
|           | Questions and Comments . . . . .   | 1050 |
| § 8.3     | OCEANS . . . . .   | 1052 |
|           | <i>The 1982 United Nations Convention on the Law of the Sea</i> . . . . .          | 1052 |
|           | <i>United States Oceans Policy, Statement by the President</i> . . . . .           | 1053 |
|           | Questions and Comments . . . . .   | 1054 |
| § 8.3.1   | The Territorial Sea . . . . .  | 1055 |
| § 8.3.1.1 | Delimitation of the Territorial Sea . . . . .                                      | 1055 |
|           | <i>Anglo-Norwegian Fisheries Case</i> . . . . .                                    | 1055 |
|           | Questions and Comments . . . . .   | 1066 |
|           | <i>United Nations Convention on the Law of the Sea</i> . . . . .                   | 1067 |
|           | Questions and Comments . . . . .   | 1070 |
| § 8.3.1.2 | Innocent Passage . . . . .   | 1073 |
|           | <i>United Nations Convention on the Law of the Sea</i> . . . . .                   | 1073 |
|           | Questions and Comments . . . . .   | 1079 |
| § 8.3.2   | The Contiguous Zone . . . . .  | 1079 |
| § 8.3.2.1 | The Pueblo Incident . . . . .  | 1079 |
|           | <i>Telegram from Secretary of State Dean Rusk to all U.S. Diplomatic Posts</i> . . | 1079 |
|           | Questions and Comments . . . . .   | 1080 |
| § 8.3.2.2 | 1982 United Nations Convention on the Law of the Sea . . . . .                     | 1081 |
|           | Questions and Comments . . . . .   | 1081 |
| § 8.3.2.3 | Hot Pursuit . . . . .  | 1082 |
|           | <i>The I'm Alone Case</i> . . . . .  | 1082 |
|           | <i>United Nations Convention on the Law of the Sea</i> . . . . .                   | 1084 |
|           | Questions and Comments . . . . .   | 1085 |
| § 8.3.3   | The High Seas . . . . .  | 1086 |
| § 8.3.3.1 | Freedom of the High Seas . . . . .   | 1086 |
|           | <i>United Nations Convention on the Law of the Sea</i> . . . . .                   | 1086 |
|           | Questions and Comments . . . . .   | 1087 |
| § 8.3.3.2 | Ships . . . . .  | 1088 |
|           | <i>United Nations Convention on the Law of the Sea</i> . . . . .                   | 1088 |
|           | Questions and Comments . . . . .   | 1092 |
| § 8.3.4   | The Continental Shelf . . . . .  | 1093 |
|           | <i>The Truman Proclamation on the Continental Shelf</i> . . . . .                  | 1093 |
|           | Questions and Comments . . . . .   | 1094 |

---

*Table of Contents*

|                  |  |             |
|------------------|--|-------------|
|                  | <i>United Nations Convention on the Law of the Sea</i> . . . . .   | 1095        |
|                  | <i>North Sea Continental Shelf Cases</i> . . . . .   | 1098        |
|                  | Questions and Comments . . . . .   | 1106        |
| § 8.3.5          | The Exclusive Economic Zone . . . . .  | 1107        |
|                  | <i>United Nations Convention on the Law of the Sea</i> . . . . .   | 1108        |
|                  | Questions and Comments . . . . .   | 1114        |
| § 8.3.6          | The Deep Sea-Bed . . . . .   | 1115        |
|                  | <i>Statement of Ambassador Arvid Pardo of Malta to the First Committee of the</i><br><i>United Nations General Assembly</i> . . . . .                                    | 1116        |
|                  | <i>U.N. Moratorium Resolution</i> . . . . .  | 1117        |
|                  | <i>1970 Declaration of Principles Governing the Sea-Bed and the Ocean Floor,</i><br><i>and the Subsoil Thereof, Beyond the Limits of National Jurisdiction</i> . . . . . | 1117        |
|                  | <i>United Nations Convention on the Law of the Sea</i> . . . . .   | 1119        |
|                  | <i>The 1994 Agreement Relating to the Implementation of Part XI of the</i><br><i>United Nations Convention on the Law of the Sea of 10 December 1982</i> . . . . .       | 1122        |
|                  | <i>The 1994 Implementation Agreement: Introduction</i> . . . . .   | 1123        |
|                  | Questions and Comments . . . . .   | 1124        |
| § 8.4            | POLAR REGIONS . . . . .  | 1127        |
| § 8.4.1          | The Arctic . . . . .   | 1127        |
|                  | <i>Directive on Arctic Region Policy</i> . . . . .   | 1128        |
|                  | Questions and Comments . . . . .   | 1136        |
| § 8.4.2          | Antarctica . . . . .   | 1139        |
|                  | <i>The Antarctic Treaty</i> . . . . .  | 1141        |
|                  | Questions and Comments . . . . .   | 1144        |
| § 8.5            | OUTER SPACE . . . . .  | 1145        |
|                  | <i>The Cosmos 954 Incident</i> . . . . .   | 1145        |
|                  | Questions and Comments . . . . .   | 1145        |
|                  | Note on the Legal Regime of Outer Space . . . . .  | 1147        |
|                  | <i>Agreement Governing the Activities of States on the Moon and Other</i><br><i>Celestial Bodies (The “Moon Treaty”)</i> . . . . .                                       | 1147        |
|                  | Questions and Comments . . . . .   | 1148        |
| § 8.6            | ECOSYSTEMS AND THE GLOBAL ENVIRONMENT . . . . .  | 1149        |
|                  | Questions and Comments . . . . .   | 1153        |
|                  | Concluding Notes and Questions . . . . .   | 1154        |
| <b>Chapter 9</b> | <b>THE USE OF FORCE</b> . . . . .  | <b>1155</b> |
|                  | Introduction . . . . .   | 1155        |
| § 9.1            | THE PROBLEM — WAS THE 2001 U.S. INVASION OF AFGHANISTAN<br>LEGAL? . . . . .  | 1156        |
| § 9.2            | THE JUS AD BELLUM — PRE-CHARTER . . . . .  | 1156        |
| § 9.2.1          | “Just War” Theory . . . . .  | 1157        |

---

## Table of Contents

|           |  |      |
|-----------|--|------|
|           | P.P. Remec, <i>The Position of the Individual in International Law According to Grotius and Vattel</i> . . . . .                               | 1157 |
|           | Hugo Grotius, <i>The Rights of War and Peace, Including the Law of Nature and of Nations</i> . . . . .   | 1159 |
|           | Questions and Comments . . . . .   | 1162 |
| § 9.2.2   | Toward Comprehensive Regulation . . . . .  | 1162 |
|           | <i>Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties</i> . . . . .                                    | 1163 |
|           | Questions and Comments . . . . .   | 1169 |
|           | <i>Treaty between the United States and other Powers Providing for the Renunciation of War as an Instrument of National Policy</i> . . . . .   | 1170 |
|           | Questions and Comments . . . . .   | 1171 |
|           | <i>Opinion and Judgment of the International Military Tribunal</i> . . . . .   | 1171 |
|           | Questions and Comments . . . . .   | 1174 |
| § 9.3     | THE UN CHARTER REGIME . . . . .  | 1175 |
|           | <i>Behrami and Behrami v. France</i> . . . . .   | 1175 |
| § 9.3.1   | The Prohibition on the Threat or Use of Force . . . . .  | 1176 |
| § 9.3.1.1 | Article 2(4) . . . . .   | 1176 |
|           | <i>Charter of the United Nations</i> . . . . .   | 1176 |
|           | Questions and Comments . . . . .   | 1177 |
|           | <i>Military and Paramilitary Activities in and against Nicaragua</i> . . . . .   | 1177 |
|           | Questions and Comments . . . . .   | 1181 |
|           | <i>Case Concerning East Timor</i> . . . . .  | 1182 |
| § 9.3.1.2 | Threat of force . . . . .  | 1184 |
|           | <i>In the Matter of an Arbitration Between: Guyana and Suriname</i> . . . . .  | 1184 |
|           | Questions and Comments . . . . .   | 1189 |
| § 9.3.1.3 | Defining Aggression . . . . .  | 1189 |
|           | <i>Second Report on a Draft Code of Offences Against the Peace and Security of Mankind by Mr. J. Spiropoulos, Special Rapporteur</i> . . . . . | 1190 |
|           | Questions and Comments . . . . .   | 1195 |
|           | <i>Definition of Aggression</i> . . . . .  | 1196 |
|           | Questions and Comments . . . . .   | 1199 |
|           | <i>Statute of the International Criminal Court</i> . . . . .   | 1200 |
|           | <i>Discussion Paper on the Crime of Aggression Proposed by the Chairman</i> . . . . .  | 1201 |
|           | Questions and Comments . . . . .   | 1204 |
| § 9.3.1.4 | The Use of Force Against Non-State Actors . . . . .  | 1204 |
|           | <i>Security Council Res. 1846 (2008)</i> . . . . .   | 1205 |
|           | Questions and Comments . . . . .   | 1209 |
| § 9.3.2   | Self-Defense . . . . .   | 1209 |
|           | Hugo Grotius, <i>The Rights of War and Peace, Including the Law of Nature and of Nations</i> . . . . .   | 1209 |

---

*Table of Contents*

|           |   |      |
|-----------|---|------|
|           | Questions and Comments . . . . .  | 1213 |
|           | <i>Letter from Mr. Webster to Lord Ashburton</i> . . . . .  | 1214 |
|           | Questions and Comments . . . . .  | 1219 |
|           | <i>Charter of the United Nations</i> . . . . .  | 1220 |
|           | Questions and Comments . . . . .  | 1221 |
| § 9.3.2.1 | The Existence of an Armed Attack . . . . .  | 1221 |
|           | <i>Military and Paramilitary Activities in and Against Nicaragua</i> . . . . .  | 1221 |
|           | Questions and Comments . . . . .  | 1229 |
|           | <i>Case Concerning Oil Platforms</i> . . . . .  | 1231 |
|           | Questions and Comments . . . . .  | 1243 |
|           | <i>UN Security Council Res. 573: Israel Raid on PLO Base in Tunis</i> . . . . .   | 1244 |
|           | <i>Yearbook of the United Nations 287</i> . . . . .   | 1245 |
|           | <i>Threats to International Peace and Security Caused by Terrorist Acts</i> . . . . .   | 1245 |
|           | <i>Press Release, North Atlantic Treaty Organization, Statement by the</i><br><i>North Atlantic Council</i> . . . . .   | 1246 |
|           | <i>Terrorist threat to the Americas</i> . . . . .   | 1247 |
|           | <i>Threats to International Peace and Security Caused by Terrorist Acts</i> . . . . .   | 1248 |
|           | <i>Statement by NATO Secretary General</i> . . . . .  | 1251 |
|           | <i>Letter Dated 7 October 2001 from the Permanent Representative of the</i><br><i>United States of America to the United Nations Addressed to the</i><br><i>President of the Security Council</i> . . . . . | 1252 |
|           | Questions and Comments . . . . .  | 1253 |
| § 9.3.2.2 | Anticipatory Self-Defense . . . . .   | 1255 |
|           | <i>The “Bush Doctrine”</i> . . . . .  | 1255 |
|           | Questions and Comments . . . . .  | 1258 |
| § 9.3.2.3 | Necessity and Proportionality . . . . .   | 1259 |
|           | <i>Military Activities in or against Nicaragua</i> . . . . .  | 1260 |
|           | <i>Oil Platforms Case</i> . . . . .   | 1260 |
|           | Questions and Comments . . . . .  | 1262 |
| § 9.3.3   | Security Council Authorization . . . . .  | 1264 |
|           | Bruno Simma, <i>The Charter of the United Nations: A Commentary</i> . . . . .   | 1264 |
|           | Comment . . . . .   | 1266 |
|           | <i>UN Security Council Res. 678 (1990) on Iraq</i> . . . . .  | 1266 |
|           | Questions and Comments . . . . .  | 1267 |
|           | <i>UN Security Council Res. 687 (1991)</i> . . . . .  | 1267 |
|           | <i>UN Security Council Res. 1441 (2002)</i> . . . . .   | 1275 |
|           | Questions and Comments . . . . .  | 1279 |
|           | <i>Memorandum by the Foreign and Commonwealth Office Iraq: Legal Basis</i><br><i>for the Use of Force</i> . . . . .   | 1280 |
|           | Questions and Comments . . . . .  | 1283 |
| § 9.3.4   | Other Possible Permissible Uses of Force . . . . .  | 1284 |

---

## Table of Contents

|           |  |      |
|-----------|--|------|
| § 9.3.4.1 | Rescue of Nationals . . . . .  | 1284 |
|           | <i>Restatement (Third) of Foreign Relations Law of the U.S.: Unilateral Remedies § 905 Cmt. G (1987)</i> . . . . .   | 1284 |
|           | Questions and Comments . . . . .   | 1284 |
| § 9.3.4.2 | Humanitarian Intervention . . . . .  | 1285 |
|           | <i>Military Activities in and Against Nicaragua</i> . . . . .  | 1285 |
|           | <i>Restatement (Third) of Foreign Relations Law of the U.S.: Remedies for Violation of Human Rights Obligations</i> . . . . .                              | 1292 |
|           | Comment: Rwanda and Kosovo . . . . .   | 1292 |
|           | <i>Resolution 60/1. 2005 World Summit Outcome</i> . . . . .  | 1294 |
|           | Lousie Arbour, <i>The Responsibility to Protect as a Duty of Carein International Law and Practice</i> . . . . .   | 1297 |
|           | <i>Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)</i> . . . . . | 1301 |
|           | Questions and Comments . . . . .   | 1303 |
| § 9.4     | UN PEACEKEEPING . . . . .  | 1304 |
|           | Bruno Simma, <i>Commentary on the Charter of the United Nations</i> . . . . .  | 1304 |
|           | Corinna Kuhl, <i>The Evolution of Peace Operations, from Interposition to Integrated Missions</i> . . . . .  | 1306 |
|           | <i>UN Security Council Res 1244 (1999) on the Situation Relating to Kosovo</i> . . . . .   | 1308 |
|           | Questions and Comments . . . . .   | 1312 |
|           | <i>UN Security Council Res. 1386 (2001) on the Situation in Afghanistan</i> . . . . .  | 1313 |
|           | Questions and Comments . . . . .   | 1315 |
| § 9.5     | THE <i>JUS IN BELLO</i> . . . . .  | 1316 |
|           | Hugo Grotius, <i>The Rights of War and Peace, Including the Law of Nature and of Nations</i> . . . . .   | 1316 |
|           | Comments . . . . .   | 1318 |
| § 9.5.1   | Pre-codification . . . . .   | 1318 |
| § 9.5.2   | Principal IHL Treaties . . . . .   | 1319 |
| § 9.5.2.1 | The Hague Conventions of 1899 & 1907 . . . . .   | 1320 |
|           | <i>Convention (IV) Respecting the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land</i> . . . . .  | 1320 |
|           | Questions and Comments . . . . .   | 1324 |
| § 9.5.2.2 | The Geneva Conventions of 1949 . . . . .   | 1325 |
|           | <i>Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949</i> . . . . .  | 1325 |
|           | Questions and Comments . . . . .   | 1335 |
|           | Note: The Status of Detainees in the “War on Terror” . . . . .   | 1338 |
|           | <i>Geneva Convention Relative to the Treatment of Prisoners of War</i> . . . . .   | 1338 |
|           | Questions and Comments . . . . .   | 1340 |

---

*Table of Contents*

|           |   |      |
|-----------|---|------|
| § 9.5.2.3 | Customary Law of Armed Conflict . . . . .   | 1340 |
|           | <i>Legality of the Threat or use of Nuclear Weapons</i> . . . . .   | 1340 |
|           | Questions and Comments . . . . .  | 1341 |
|           | <i>Protocol Additional to the Geneva Conventions of 12 August 1949, and<br/>    Relating to the Protection of Victims of International Armed Conflicts</i> . . . . .  | 1343 |
|           | Questions and Comments . . . . .  | 1344 |
| § 9.5.3   | The Law of Occupation . . . . .   | 1344 |
|           | <i>Convention (IV) Respecting the Laws and Customs of War on Land and its<br/>    Annex: Regulations Concerning the Laws and Customs of War on Land</i> . . . . .   | 1344 |
|           | <i>Geneva Convention Relative to the Protection of Civilian Persons in<br/>    Time of War (Fourth Geneva Convention), Aug. 12, 1949</i> . . . . .  | 1346 |
|           | Questions and Comments . . . . .  | 1351 |
|           | <i>Armed Activities on the Territory of the Congo (Democratic Republic of<br/>    Congo v. Uganda)</i> . . . . .  | 1352 |
|           | Questions and Comments . . . . .  | 1354 |
|           | <i>Prosecutor v. Naletilic</i> . . . . .  | 1355 |
|           | Questions and Comments . . . . .  | 1358 |
| § 9.5.4   | The Application of Humanitarian Law to Other Armed Conflicts . . . . .  | 1358 |
|           | <i>Hamdan v. Rumsfeld</i> . . . . .   | 1359 |
|           | Questions and Comments . . . . .  | 1363 |
|           | Note on the Military Commissions Act of 2006 from Asil Insight: “The Military<br>Commissions Act of 2006: Examining the Relationship between the<br>International Law of Armed Conflict and U.S. Law” . . . . . | 1363 |
| § 9.5.5   | Relationship Between the <i>Jus in Bello</i> and International Criminal Law . . . . .   | 1367 |
|           | <i>Opinion and Judgment of the International Military Tribunal at Nuremberg</i> . . . . .   | 1367 |
|           | Questions and Comments . . . . .  | 1368 |
|           | <i>Prosecutor v. Tadic</i> . . . . .  | 1370 |
|           | Questions and Comments . . . . .  | 1373 |
| § 9.6     | WEAPONS AND DISARMAMENT . . . . .   | 1378 |
| § 9.6.1   | Regulation of Weapons, in General . . . . .   | 1378 |
|           | Hugo Grotius, <i>The Rights of War and Peace, Including the Law of Nature<br/>    and of Nations</i> . . . . .  | 1378 |
|           | <i>Advisory Opinion on the Threat or Use of Nuclear Weapons</i> . . . . .   | 1379 |
|           | <i>Charter of the United Nations</i> . . . . .  | 1381 |
|           | <i>Legality of the Threat or Use of Nuclear Weapons</i> . . . . .   | 1381 |
| § 9.6.2   | Weapons of Mass Destruction . . . . .   | 1383 |
|           | <i>Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or<br/>    Other Gases, and of Bacteriological Methods of Warfare</i> . . . . .  | 1383 |
|           | Questions and Comments . . . . .  | 1384 |
|           | <i>Convention on the Prohibition of the Development, Production and<br/>    Stockpiling of Bacteriological (Biological) and Toxin Weapons and</i>   |      |



---

*Table of Contents*

|                  |  |             |
|------------------|--|-------------|
|                  | <i>on their Destruction</i> . . . . .  | 1384        |
|                  | Questions and Comments . . . . .   | 1387        |
|                  | <i>Convention on the Prohibition of the Development, Production,<br/>Stockpiling and Use of Chemical Weapons and their Destruction</i> . . . . .   | 1388        |
|                  | Questions and Comments . . . . .   | 1395        |
| § 9.6.3          | Conventional Weapons . . . . .   | 1397        |
|                  | <i>Convention on Prohibitions or Restrictions on the Use of Certain Conventional<br/>Weapons which may be Deemed to be Excessively Injurious or to have<br/>Indiscriminate Effects and Protocols</i> . . . . . | 1397        |
|                  | Comments . . . . .   | 1400        |
|                  | <i>Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons<br/>(Protocol III)</i> . . . . .  | 1401        |
|                  | Concluding Questions and Comments . . . . .  | 1402        |
| <b>Annex A-1</b> | <b>CHARTER OF THE UNITED NATIONS</b> . . . . .   | <b>1405</b> |
| <b>Annex A-2</b> | <b>STATUTE OF THE INTERNATIONAL COURT OF JUSTICE</b> . . . . .   | <b>1427</b> |
| <b>Annex A-3</b> | <b>VIENNA CONVENTION ON THE LAW OF TREATIES</b> . . . . .  | <b>1437</b> |
|                  | <b>Table of Cases</b> . . . . .  | <b>TC-1</b> |
|                  | <b>Index</b> . . . . .   | <b>I-1</b>  |

---

