CONTENTS

Preface page xxiii

Table of cases xxv

Table of treaties and selected other international instruments lxviii

List of abbreviations cxli

1 The nature and development of international law 1
   Law and politics in the world community 2
   The role of force 4
   The international system 5
   The function of politics 11
   Historical development 13
      Early origins 14
      The Middle Ages and the Renaissance 18
      The founders of modern international law 22
      Positivism and naturalism 24
      The nineteenth century 26
      The twentieth century 30
      Communist approaches to international law 31
      The Third World 38

2 International law today 42
   The expanding legal scope of international concern 42
   Modern theories and interpretations 48
      Positive Law and Natural Law 48
      New approaches 53

3 Sources 65
   Custom 68
      Introduction 68

vii
The material fact 72
What is state practice? 77
Opinio juris 80
Protest, acquiescence and change in customary law 84
Regional and local custom 87
Treaties 88
General principles of law 92
Equity and international law 99
Judicial decisions 103
Writers 105
Other possible sources of international law 107
The International Law Commission 112
Other bodies 114
Unilateral acts 114
Hierarchy of sources and *jus cogens* 115

4 International law and municipal law 120
The theories 121
The role of municipal rules in international law 124
International law before municipal courts 128
   The United Kingdom 128
       Customary international law 129
   Treaties 135
   The United States 143
   Other countries 151
Justiciability, act of state and related doctrines 162
Executive certificates 172

5 The subjects of international law 175
Legal personality – introduction 175
States 177
   Creation of statehood 177
   Self-determination and the criteria of statehood 183
   Recognition 185
   Extinction of statehood 186
   The fundamental rights of states 189
       Independence 189
       Equality 192
       Peaceful co-existence 193
   Protectorates and protected states 194
CONTENTS

Prohibition of genocide 262
Prohibition of discrimination 266
The principle of self-determination as a human right 269
The protection of minorities 273
Other suggested collective rights 280
The United Nations system – implementation 281
Political bodies – general 282
The Commission on Human Rights 283
Expert bodies established by UN organs 285
The Sub-Commission on the Promotion and Protection of Human Rights 285
The International Covenant on Economic, Social and Cultural Rights 286
Expert bodies established under particular treaties 289
The Committee on the Elimination of Racial Discrimination 289
The Human Rights Committee 292
The Committee on the Elimination of Discrimination Against Women 300
The Committee Against Torture 303
The Committee on the Rights of the Child 307
The Committee on the Protection of Migrant Workers 309
Conclusions 310
The specialised agencies 312
The International Labour Organisation 312
The United Nations Educational, Scientific and Cultural Organisation 315

7 The regional protection of human rights 319
Europe 319
The Council of Europe 319
The European Convention on Human Rights 321
The convention system 324
The European Social Charter 334
The European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment 337
CONTENTS

The Council of Europe Framework Convention for the Protection of National Minorities 340
The European Union 344
The OSCE (Organisation for Security and Co-operation in Europe) 346
The CIS Convention on Human Rights and Fundamental Freedoms 352
The Human Rights Chamber of Bosnia and Herzegovina 353
The American Convention on Human Rights 354
The Banjul Charter on Human and Peoples' Rights 363
The Arab Charter on Human Rights 365

8 Recognition 367
Recognition of states 368
Recognition of governments 376
*De facto* and *de jure* recognition 382
Premature recognition 383
Implied recognition 384
Conditional recognition 387
Collective recognition 388
Withdrawal of recognition 388
Non-recognition 390
The legal effects of recognition 393
  Internationally 393
  Internally 393
  The UK 394
  The USA 404

9 Territory 409
The concept of territory in international law 409
Territorial sovereignty 411
New states and title to territory 414
The acquisition of additional territory 417
  Boundary treaties and boundary awards 417
  Accretion 419
  Cession 420
Conquest and the use of force 422
The exercise of effective control 424
  Intertemporal law 429
# CONTENTS

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Critical date</td>
<td>431</td>
</tr>
<tr>
<td>Sovereign activities <em>(effectivités)</em></td>
<td>432</td>
</tr>
<tr>
<td>The role of subsequent conduct: recognition, acquiescence and estoppel</td>
<td>436</td>
</tr>
<tr>
<td>Conclusions</td>
<td>441</td>
</tr>
<tr>
<td>Territorial integrity, self-determination and sundry claims</td>
<td>443</td>
</tr>
<tr>
<td>The doctrine of <em>uti possidetis</em></td>
<td>446</td>
</tr>
<tr>
<td>Beyond <em>uti possidetis</em></td>
<td>449</td>
</tr>
<tr>
<td>International boundary rivers</td>
<td>451</td>
</tr>
<tr>
<td>The Falkland Islands</td>
<td>452</td>
</tr>
<tr>
<td>'The common heritage of mankind'</td>
<td>453</td>
</tr>
<tr>
<td>The polar regions</td>
<td>455</td>
</tr>
<tr>
<td>Leases and servitudes</td>
<td>459</td>
</tr>
<tr>
<td>10 Air law and space law</td>
<td>463</td>
</tr>
<tr>
<td>Air law</td>
<td>463</td>
</tr>
<tr>
<td>Theories</td>
<td>463</td>
</tr>
<tr>
<td>The structure</td>
<td>465</td>
</tr>
<tr>
<td>The Warsaw Convention system</td>
<td>469</td>
</tr>
<tr>
<td>Unauthorised aerial intrusion and the downing of civilian airliners</td>
<td>473</td>
</tr>
<tr>
<td>The law of outer space</td>
<td>479</td>
</tr>
<tr>
<td>The definition and delimitation of outer space</td>
<td>480</td>
</tr>
<tr>
<td>The regime of outer space</td>
<td>481</td>
</tr>
<tr>
<td>Telecommunications</td>
<td>486</td>
</tr>
<tr>
<td>11 The law of the sea</td>
<td>490</td>
</tr>
<tr>
<td>The territorial sea</td>
<td>493</td>
</tr>
<tr>
<td>Internal waters</td>
<td>493</td>
</tr>
<tr>
<td>Baselines</td>
<td>495</td>
</tr>
<tr>
<td>Bays</td>
<td>499</td>
</tr>
<tr>
<td>Islands</td>
<td>501</td>
</tr>
<tr>
<td>Archipelagic states</td>
<td>502</td>
</tr>
<tr>
<td>The width of the territorial sea</td>
<td>505</td>
</tr>
<tr>
<td>Delimitation of the territorial sea between states with</td>
<td></td>
</tr>
<tr>
<td>opposite or adjacent coasts</td>
<td>506</td>
</tr>
<tr>
<td>The juridical nature of the territorial sea</td>
<td>506</td>
</tr>
<tr>
<td>The right of innocent passage</td>
<td>507</td>
</tr>
<tr>
<td>Jurisdiction over foreign ships</td>
<td>511</td>
</tr>
</tbody>
</table>
CONTENTS

International straits 512
The contiguous zone 515
The exclusive economic zone 517
The continental shelf 521
Definition 523
The rights and duties of the coastal state 525
Maritime delimitation 527
Landlocked states 541
The high seas 542
Jurisdiction on the high seas 545
Exceptions to the exclusivity of flag-state jurisdiction 548
Right of visit 548
Piracy 549
The slave trade 550
Unauthorised broadcasting 550
Hot pursuit 551
Collisions 552
Treaty rights 552
Pollution 553
Straddling stocks 556
The international seabed 560
Introduction 560
The 1982 Law of the Sea Convention (Part XI) 561
The Reciprocating States Regime 563
The International Seabed Authority 566
Settlement of disputes 568

12 Jurisdiction 572
The principle of domestic jurisdiction 574
Legislative, executive and judicial jurisdiction 576
Civil jurisdiction 578
Criminal jurisdiction 579
The territorial principle 579
The nationality principle 584
The passive personality principle 589
The protective principle 591
The universality principle 592
Piracy 593
War crimes, crimes against peace and crimes against humanity 594
Treaties providing for jurisdiction 597
Illegal apprehension of suspects and the exercise of jurisdiction 604
The US Alien Tort Claims Act 607
Extradition 610
Extraterritorial jurisdiction 611

13 Immunities from jurisdiction 621
Sovereign immunity 621
The absolute immunity approach 625
The restrictive approach 628
Sovereign and non-sovereign acts 631
State immunity and violations of human rights 638
Commercial acts 640
Contracts of employment 646
Other non-immunity areas 648
The personality issue – instrumentalities and parts of the state 649
The personality issue – immunity for government figures 655
Waiver of immunity 659
Pre-judgment attachment 661
Immunity from execution 662
The burden and standard of proof 666
Conclusion 667

Diplomatic law 668
The Vienna Convention on Diplomatic Relations, 1961 669
The inviolability of the premises of the mission 671
The diplomatic bag 676
Diplomatic immunities – property 679
Diplomatic immunities – personal 681
Waiver of immunity 687

Consular privileges and immunities: the Vienna Convention on Consular Relations, 1963 688
The Convention on Special Missions, 1969 690
<table>
<thead>
<tr>
<th>CONTENTS</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>The Vienna Convention on the Representation of States in their Relations with International Organisations of a Universal Character, 1975</td>
<td>691</td>
</tr>
<tr>
<td>The immunities of international organisations</td>
<td>692</td>
</tr>
<tr>
<td>Internationally protected persons</td>
<td>692</td>
</tr>
<tr>
<td>14 State responsibility</td>
<td>694</td>
</tr>
<tr>
<td>The nature of state responsibility</td>
<td>696</td>
</tr>
<tr>
<td>The question of fault</td>
<td>698</td>
</tr>
<tr>
<td>Imputability</td>
<td>700</td>
</tr>
<tr>
<td>Ultra vires acts</td>
<td>702</td>
</tr>
<tr>
<td>State control and responsibility</td>
<td>704</td>
</tr>
<tr>
<td>Mob violence, insurrections and civil wars</td>
<td>705</td>
</tr>
<tr>
<td>Circumstances precluding wrongfulness</td>
<td>707</td>
</tr>
<tr>
<td>Invocation of state responsibility</td>
<td>713</td>
</tr>
<tr>
<td>The consequences of internationally wrongful acts</td>
<td>714</td>
</tr>
<tr>
<td>Cessation</td>
<td>714</td>
</tr>
<tr>
<td>Reparation</td>
<td>715</td>
</tr>
<tr>
<td>Serious breaches of peremptory norms (jus cogens)</td>
<td>720</td>
</tr>
<tr>
<td>Diplomatic protection and nationality of claims</td>
<td>721</td>
</tr>
<tr>
<td>The exhaustion of local remedies</td>
<td>730</td>
</tr>
<tr>
<td>The treatment of aliens</td>
<td>733</td>
</tr>
<tr>
<td>The relevant standard of treatment</td>
<td>734</td>
</tr>
<tr>
<td>The expropriation of foreign property</td>
<td>737</td>
</tr>
<tr>
<td>The property question</td>
<td>740</td>
</tr>
<tr>
<td>The nature of expropriation</td>
<td>740</td>
</tr>
<tr>
<td>Public purposes</td>
<td>742</td>
</tr>
<tr>
<td>Compensation</td>
<td>743</td>
</tr>
<tr>
<td>Bilateral investment treaties</td>
<td>747</td>
</tr>
<tr>
<td>Lump-sum agreements</td>
<td>749</td>
</tr>
<tr>
<td>Non-discrimination</td>
<td>751</td>
</tr>
<tr>
<td>The Multilateral Investment Guarantee Agency</td>
<td>751</td>
</tr>
<tr>
<td>15 International environmental law</td>
<td>753</td>
</tr>
<tr>
<td>State responsibility and the environment</td>
<td>760</td>
</tr>
<tr>
<td>The basic duty of states</td>
<td>760</td>
</tr>
<tr>
<td>The appropriate standard</td>
<td>762</td>
</tr>
<tr>
<td>Damage caused</td>
<td>765</td>
</tr>
<tr>
<td>Liability for damage caused by private persons</td>
<td>768</td>
</tr>
</tbody>
</table>
Prevention of transboundary harm from hazardous activities 768

The problems of the state responsibility approach 771

International co-operation 771

Atmospheric pollution 780

Ozone depletion and global warming 784

Outer space 790

International watercourses 791

Ultra-hazardous activities 795

Nuclear activities 796

The provision of information 798

The provision of assistance 799

Nuclear safety 801

Civil liability 801

Hazardous wastes 803

Marine pollution 806

Pollution from ships 806

16 The law of treaties 810

The making of treaties 815

Formalities 815

Consent 816

Consent by signature 817

Consent by exchange of instruments 818

Consent by ratification 819

Consent by accession 820

Reservations to treaties 821

Entry into force of treaties 831

The application of treaties 832

Third states 834

The amendment and modification of treaties 837

Treaty interpretation 838

Invalidity, termination and suspension of the operation of treaties 845

General provisions 845

Invalidity of treaties 846

Municipal law 846

Error 847

Fraud and corruption 848

Coercion 848
CONTENTS xvii

Jus cogens  850
Consequences of invalidity  850
The termination of treaties  851
Termination by treaty provision or consent  851
Material breach  853
Supervening impossibility of performance  855
Fundamental change of circumstances  855
Consequences of the termination or suspension of a treaty  857
Dispute settlement  858
Treaties between states and international organisations  858

17 State succession  861
Continuity and succession  865
Succession to treaties  871
Categories of treaties: territorial, political and other treaties  871
Succession to treaties generally  875
Absorption and merger  875
Cession of territory from one state to another  878
Secession from an existing state to form a new state or states  878
‘Newly independent states’  881
Dissolution of states  884
International human rights treaties  885
Succession with respect to matters other than treaties  889
Membership of international organisations  889
Succession to assets and debts  890
State property  891
State archives  897
Public debt  900
Private rights  905
State succession and nationality  907
Hong Kong  912

18 The settlement of disputes by peaceful means  914
Diplomatic methods of dispute settlement  918
Negotiation  918
Good offices and mediation  921
Inquiry  923
<table>
<thead>
<tr>
<th>Contents</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conciliation</td>
<td>925</td>
</tr>
<tr>
<td>International institutions and dispute settlement</td>
<td>928</td>
</tr>
<tr>
<td>Regional organisations and the United Nations</td>
<td>928</td>
</tr>
<tr>
<td>The African Union (Organisation of African Unity)</td>
<td>930</td>
</tr>
<tr>
<td>The Organisation of American States</td>
<td>934</td>
</tr>
<tr>
<td>The Arab League</td>
<td>935</td>
</tr>
<tr>
<td>Europe</td>
<td>936</td>
</tr>
<tr>
<td>International organisations and facilities of limited competence</td>
<td>938</td>
</tr>
<tr>
<td>19 Inter-state courts and tribunals</td>
<td>951</td>
</tr>
<tr>
<td>Arbitration</td>
<td>951</td>
</tr>
<tr>
<td>Judicial settlement</td>
<td>959</td>
</tr>
<tr>
<td>The International Court of Justice</td>
<td>959</td>
</tr>
<tr>
<td>The organisation of the Court</td>
<td>961</td>
</tr>
<tr>
<td>The jurisdiction of the Court</td>
<td>966</td>
</tr>
<tr>
<td>General</td>
<td>966</td>
</tr>
<tr>
<td>The nature of a legal dispute</td>
<td>969</td>
</tr>
<tr>
<td>Contentious jurisdiction</td>
<td>972</td>
</tr>
<tr>
<td>Article 36(1)</td>
<td>973</td>
</tr>
<tr>
<td>Article 36(2)</td>
<td>978</td>
</tr>
<tr>
<td>Sources of law, propriety and legal interest</td>
<td>983</td>
</tr>
<tr>
<td>Evidence</td>
<td>984</td>
</tr>
<tr>
<td>Provisional measures</td>
<td>987</td>
</tr>
<tr>
<td>Counter-claims</td>
<td>990</td>
</tr>
<tr>
<td>Third-party intervention</td>
<td>991</td>
</tr>
<tr>
<td>Remedies</td>
<td>994</td>
</tr>
<tr>
<td>Enforcement</td>
<td>996</td>
</tr>
<tr>
<td>Application for interpretation of a judgment</td>
<td>997</td>
</tr>
<tr>
<td>Application for revision of a judgment</td>
<td>997</td>
</tr>
<tr>
<td>Examination of a situation after the judgment</td>
<td>998</td>
</tr>
<tr>
<td>Non-appearance</td>
<td>999</td>
</tr>
<tr>
<td>The advisory jurisdiction of the Court</td>
<td>1000</td>
</tr>
<tr>
<td>The role of the Court</td>
<td>1004</td>
</tr>
<tr>
<td>The International Tribunal for the Law of the Sea</td>
<td>1005</td>
</tr>
<tr>
<td>Proliferation of courts and tribunals</td>
<td>1011</td>
</tr>
<tr>
<td>20 International law and the use of force by states</td>
<td>1013</td>
</tr>
<tr>
<td>Law and force from the 'just war' to the United Nations</td>
<td>1013</td>
</tr>
</tbody>
</table>
## CONTENTS

The peaceful settlement of disputes 1099
The League of Nations 1099
The United Nations system 1100
   The Security Council 1101
   The General Assembly 1105
   The Secretary-General 1106
   Peacekeeping and observer missions 1107
Conclusion 1117
The collective security system 1119
The Security Council 1119
   Determination of the situation 1120
   Chapter VII measures 1124
      Measures not involving the use of force 1124
      Measures involving the use of force 1133
   The Use of force in non-enforcement situations 1138
      Former Yugoslavia 1139
      Somalia 1142
      Rwanda 1144
      Sierra Leone 1145
      The Democratic Republic of the Congo 1146
   The range of UN actions from humanitarian assistance to enforcement – conclusions 1147
   The Security Council, international law and the International Court of Justice 1148
   The role of the General Assembly 1151
   The UN and regional arrangements and agencies 1154
23 International institutions 1161
   Historical development 1161
   Approaches to international institutions 1164
   Institutions of a universal character 1166
      The League of Nations 1166
      The United Nations 1166
   International economic organisations 1167
   Regional institutions 1168
      Europe 1168
         The North Atlantic Treaty Organisation 1168
         The Western European Union 1170
         The Council of Europe 1171
The Organisation for Economic Co-operation and Development 1172
The European Union 1172
The Organisation for Security and Co-operation in Europe (OSCE) 1179
The Commonwealth of Independent States 1181
The American Continent 1182
The Arab League 1183
Africa 1183
Eastern Europe 1185
Asia 1185
Some legal aspects of international organisations 1186
Personality 1187
The constituent instruments 1193
The Powers of international institutions 1195
The applicable law 1198
The responsibility of international institutions 1199
Liability of member states 1201
The accountability of international institutions 1204
Privileges and immunity 1205
Dissolution 1213
Succession 1214

Some useful international law websites 1216

Index 1225