

C O N C I S E  
H O R N B O O K S



PRINCIPLES OF

# International Law

SECOND EDITION

SEAN D. MURPHY



WEST®

**PRINCIPLES  
OF  
INTERNATIONAL  
LAW**

**Second Edition**

By

**Sean D. Murphy**

*Patricia Roberts Harris Research Professor of Law  
George Washington University  
Member, United Nations International Law Commission*

**CONCISE HORNBOOK SERIES®**

**WEST®**

A Thomson Reuters business

# Summary of Contents

---

	Page
PREFACE .....	v
LIST OF GRAPHICS .....	xvii
LIST OF ABBREVIATIONS .....	xix
<b>PART I. SYSTEMIC ELEMENTS OF INTERNATIONAL LAW</b>	
<b>Chapter</b>	
1. Foundations of International Law .....	3
2. Actors of International Law .....	33
3. International Law Creation .....	77
4. International Law Interpretation and Dispute Resolution .....	125
5. International Law Compliance and Enforcement .....	173
6. Rules on State Responsibility .....	201
<b>PART II. INTER-RELATIONSHIP OF INTERNATIONAL LAW AND NATIONAL LAW</b>	
7. Foreign Relations Law of the United States .....	223
8. National Jurisdiction to Prescribe, Adjudicate, and En- force .....	271
9. Immunity from National Jurisdiction .....	295
<b>PART III. SPECIALIZED AREAS OF INTERNATIONAL LAW</b>	
10. Human Rights .....	333
11. Law of the Sea .....	383
12. International Environmental Law .....	415
13. International Criminal Law .....	453
14. Use of Armed Force and Arms Control .....	491
15. International Legal Research .....	539
CASES INDEX .....	557
TREATIES INDEX .....	563
SUBJECT INDEX .....	569

# Table of Contents

---

	Page
PREFACE .....	v
LIST OF GRAPHICS .....	xvii
LIST OF ABBREVIATIONS .....	xix
<b>PART I. SYSTEMIC ELEMENTS OF INTERNATIONAL LAW</b>	
<b>Chapter 1. Foundations of International Law .....</b>	<b>3</b>
A. Structures of International Law .....	3
Basic Horizontal Structure: Interaction of States .....	3
Vertical Structure: International Organizations .....	6
Vertical Structure: Interface with National Law .....	7
Vertical/Horizontal Structure: Interaction of Persons .....	10
B. Theories of International Law .....	10
International Natural Law .....	10
International Legal Positivism .....	12
International Legal Realism .....	14
New Stream .....	15
International Law/International Relations .....	17
C. History of International Law .....	19
Ancient Times .....	19
Middle Ages in Europe .....	21
The Rise of Nation-States .....	22
The Rise of Positivism .....	24
Post-World War II Trends .....	25
International Law in American History .....	26
Further Reading .....	31
<b>Chapter 2. Actors of International Law .....</b>	<b>33</b>
A. States .....	33
Recognition of States .....	34
Modern Trends in Recognition of States .....	36
Recognition of Governments .....	37
Modern Trends in Recognition of Governments .....	39
Recognition in U.S. Practice .....	41
Rules on State Succession .....	45
Rules on Delimitation of Land Boundaries .....	46



	Page
B. International Organizations .....	47
Formation .....	47
Legal Personality .....	49
Legal Responsibility .....	51
Structure and Powers .....	54
Privileges and Immunities .....	60
Examples of International Organizations .....	62
C. Non-Governmental Organizations .....	69
D. Natural Persons and Groups .....	72
E. Legal Persons (Corporations) .....	73
Further Reading .....	75
<b>Chapter 3. International Law Creation .....</b>	<b>77</b>
A. Treaties .....	77
Introduction .....	77
What is a Treaty? .....	79
Making Treaties .....	80
Reserving to Treaties .....	83
Operation of Treaties .....	89
Withdrawal, Termination or Suspension .....	90
B. Customary International Law .....	92
Introduction .....	92
Uniform and Consistent State Practice .....	93
Opinio Juris .....	94
Persistent Objector Rule .....	95
Concept of Jus Cogens .....	96
Relationship of Treaties and Custom .....	98
Criticisms of Customary International Law .....	100
C. General Principles of Law .....	101
D. Subsidiary Sources: Courts and Scholars .....	103
E. Law-Making by International Organizations .....	104
Introduction .....	104
An Emergent World Legislature? The U.N. Security Council .....	105
Transnational Public Regulation: The ICAO .....	106
F. Non-Legally Binding Norms ("Soft Law") .....	111
Vague or General Treaty Provisions .....	112
Declarations or Political Pacts by States .....	113
Recommendatory Resolutions of International Organizations .....	114
Codes of Behavior for States or Non-State Actors .....	116
Further Reading .....	124
<b>Chapter 4. International Law Interpretation and Dispute Resolution .....</b>	<b>125</b>
A. Negotiation, Notification, and Consultation .....	126
Negotiation .....	126
Duty to Notify .....	129
Duty to Consult .....	129

	Page
B. Mediation and Conciliation .....	131
Mediation .....	131
Conciliation .....	132
C. Arbitration .....	133
Commencing an Arbitration .....	133
How Arbitration Works .....	136
Selected Arbitral Institutions .....	138
D. World Court .....	140
Permanent Court of International Justice .....	140
International Court of Justice .....	141
E. U.S. Relationship with the World Court .....	151
Jurisdiction Pursuant to Treaties .....	151
Jurisdiction Under the "Optional Clause" .....	153
Some Recent Cases .....	156
Overall U.S. Track Record .....	160
F. Other International Courts .....	162
European Court of Justice .....	162
European Court of Human Rights .....	163
Inter-American Court of Human Rights .....	164
International Criminal Courts .....	165
International Tribunal for the Law of the Sea .....	166
G. National Courts .....	167
Introduction .....	167
Example: U.S. Supreme Court and International Law .....	168
Limits on National Court Jurisdiction .....	169
Further Reading .....	171
<b>Chapter 5. International Law Compliance and Enforcement .....</b>	<b>173</b>
A. Compliance .....	174
Effect of Initial Commitment .....	174
Effect of Reputational Consequences .....	176
Fear of Reciprocity .....	177
Effect of "Compliance Pull" of the Norm .....	178
Techniques for Identifying Non-Compliance .....	179
Capacity-Building .....	182
Compliance Due to National Processes .....	183
B. Non-Forcible and Forcible Coercion of States .....	187
Diplomatic Sanctions .....	187
Economic Sanctions .....	188
Military Enforcement .....	191
C. Non-Forcible and Forcible Coercion of Persons .....	193
Economic Sanctions .....	193
Civil and Criminal Actions to Enforce an International Norm .....	196
Civil Actions to Enforce a Private Transaction .....	197
Further Reading .....	200



	Page
<b>Chapter 6. Rules on State Responsibility</b> .....	<b>201</b>
A. The General Principle of Responsibility .....	202
B. Attribution of Conduct to a State .....	203
C. Concept of Breach .....	205
D. Obligations of a Breaching State .....	207
Restitution .....	208
Compensation .....	208
Satisfaction .....	210
Interest .....	210
E. Rights of an Injured State .....	211
Invocation of Breaching State's Responsibility .....	211
Countermeasures .....	217
Further Reading .....	220

**PART II. INTER-RELATIONSHIP OF  
INTERNATIONAL LAW AND NATIONAL LAW**

<b>Chapter 7. Foreign Relations Law of the United States</b> .....	<b>223</b>
A. Separation of Powers .....	223
Congressional Power .....	223
Executive Power .....	229
Judicial Power .....	245
B. Federal-State Relations .....	249
Reasons for Federal Dominance .....	249
Bases for Striking Down State Laws .....	250
C. International Law as a Part of U.S. Law .....	253
Treaties in U.S. Law .....	253
Statutes and Regulations Implementing Treaties .....	257
Customary International Law in U.S. Law .....	258
Example: Alien Tort Statute .....	260
Judicial Use of International/Foreign Law .....	265
Further Reading .....	270

<b>Chapter 8. National Jurisdiction to Prescribe, Adjudicate, and Enforce</b> .....	<b>271</b>
A. Presumptions Under U.S. Law .....	271
B. Permissible Bases of Jurisdiction under International Law .....	276
General Approach .....	276
Territoriality Principle .....	277
Nationality Principle .....	278
Passive Personality Principle .....	279
Protective Principle .....	281
Universality Principle .....	281
Combinations of Jurisdictional Principles .....	285
Discretion to Exercise Permissible Jurisdiction .....	285
Reasonableness of Exercising Jurisdiction .....	285
Concurrent Jurisdiction .....	288

	Page
C. Jurisdiction to Prescribe, Adjudicate, and Enforce .....	289
Jurisdiction to Prescribe .....	289
Jurisdiction to Adjudicate .....	289
Jurisdiction to Enforce .....	290
Further Reading .....	293
<b>Chapter 9. Immunity from National Jurisdiction</b> .....	<b>295</b>
A. Diplomatic and Consular Immunity .....	295
Purpose of the Immunity .....	295
Diplomatic Immunity .....	296
Consular Immunity .....	298
International Civil Servant Immunity .....	298
U.S. Statutory Law .....	299
B. Head-of-State Immunity .....	300
C. State Immunity .....	302
Customary International Law on State Immunity .....	302
Historical Development in the United States .....	304
Foreign Sovereign Immunities Act (FSIA) Generally .....	306
FSIA Agencies and Instrumentalities .....	307
FSIA General Grant of Immunity .....	311
Waiver Exception .....	311
Commercial Activity Exception .....	312
Expropriation Exception .....	315
Tort Exception .....	316
Arbitration Exception .....	317
Terrorist State Exception .....	318
Counterclaims Exception .....	321
Extent of Liability .....	322
Attachment and Execution .....	322
D. Act of State Doctrine .....	323
Act of State Doctrine Generally .....	323
Sabbatino Case .....	324
Exceptions to the Doctrine .....	325
Further Reading .....	329

**PART III. SPECIALIZED AREAS OF  
INTERNATIONAL LAW**

<b>Chapter 10. Human Rights</b> .....	<b>333</b>
A. Introduction .....	333
B. State Responsibility for Injury to Aliens .....	336
C. Global Human Rights Instruments .....	340
U.N. Charter and Human Rights .....	340
Universal Declaration of Human Rights .....	343
Human Rights Covenants (ICCPR and ICESCR) .....	345
Other Key Human Rights Treaties .....	350
U.S. Adherence to Human Rights Treaties .....	360
D. Global Human Rights Institutions .....	362
Human Rights Committees .....	363
U.N. Human Rights Commission and Council .....	366
U.N. High Commissioner for Refugees .....	369



	Page
E. Regional Human Rights Instruments/Institutions .....	369
Europe .....	369
Americas .....	372
Africa .....	377
F. Immigration and Refugees .....	379
Further Reading .....	382
<b>Chapter 11. Law of the Sea .....</b>	<b>383</b>
A. Introduction .....	383
B. Major Maritime Zones .....	384
Baselines and Internal Waters .....	384
Territorial Sea .....	387
Contiguous Zone .....	389
Continental Shelf .....	391
High Seas .....	394
Deep Sea-Bed Area .....	397
Straits and Archipelagos .....	398
Delimitation of Maritime Boundaries .....	400
Hot Pursuit Across Maritime Zones .....	401
C. Regulation of Certain Uses of the Sea .....	402
Maritime Pollution .....	402
Fishing .....	403
Protection of Whales .....	406
Recovery of Underwater Artifacts .....	407
D. Dispute Settlement .....	408
E. Should the United States Ratify the LOSC? .....	410
Further Reading .....	414
<b>Chapter 12. International Environmental Law .....</b>	<b>415</b>
A. Structural Overview .....	415
Historical Background .....	415
Recent Developments .....	419
International and Non-governmental Organizations .....	422
Key Principles .....	425
Techniques of Legal Regulation .....	427
Techniques for Imposing Liability .....	428
B. Regulation in Important Sectors .....	436
Ozone Depletion .....	436
Global Climate Change .....	438
Biological Diversity .....	442
C. Cross-Sectoral Issues .....	444
Trade and Environment .....	444
Extraterritorial Application of Environmental Law .....	447
Further Reading .....	451
<b>Chapter 13. International Criminal Law .....</b>	<b>453</b>
A. Introduction .....	453
B. General Transnational Cooperation .....	453
Mutual Legal Assistance (Evidence Gathering) .....	453
Extradition .....	456

	Page
C. Transnational Cooperation Concerning Important Sectors .....	459
Terrorism .....	459
Narcotics .....	461
Corruption .....	462
Organized Crime .....	463
Cybercrime .....	464
D. International Crimes .....	465
General Elements of International Crimes .....	465
Crime of Aggression .....	466
War Crimes .....	468
Crimes Against Humanity .....	470
Genocide .....	471
E. International Criminal Tribunals .....	472
Ad Hoc U.N. Tribunals for Yugoslavia and Rwanda .....	472
Permanent International Criminal Court .....	475
F. Hybrid Courts .....	481
Cambodia Extraordinary Chambers .....	482
East Timor Special Panels .....	483
Supreme Iraqi Criminal Tribunal .....	484
Kosovar Special Panels .....	485
Sierra Leone Special Court .....	486
Special Tribunal for Lebanon .....	487
Further Reading .....	490
<b>Chapter 14. Use of Armed Force and Arms Control .....</b>	<b>491</b>
A. <i>Jus Ad Bellum</i> .....	491
General Prohibition on the Use of Force .....	491
Inherent Right of Self-Defense .....	496
Peace Enforcement by the Security Council .....	507
Peace Enforcement by Regional Organizations .....	509
Mixed Bases for the Use of Force .....	511
U.N. Peacekeeping .....	512
Example: 2003 Intervention in Iraq .....	514
B. <i>Jus In Bello</i> .....	515
Restrictions on Methods of Warfare .....	516
Protections for Victims of Warfare .....	519
Example: 2003 Intervention in Iraq .....	527
C. Arms Control .....	529
Background .....	529
Conventional Weapons .....	529
Chemical and Biological Weapons .....	531
Nuclear Weapons .....	532
Confidence-Building .....	536
Further Reading .....	537

	Page
<b>Chapter 15. International Legal Research</b> .....	<b>539</b>
A. Treatises and Other Scholarly Material .....	539
B. International Agreements .....	543
International Agreements Generally .....	543
International Agreements of the United States .....	544
International Agreements on Electronic Databases .....	546
C. State Practice .....	546
Contemporary Practice of Governments .....	546
Practice of the United States.....	548
D. International Organization Practice .....	549
Practice of International Organizations Generally.....	549
Practice of the United Nations .....	549
International Law Commission.....	550
E. Judicial and Arbitral Decisions .....	551
F. General Internet Research .....	554
G. Further Reference Works .....	555
CASES INDEX.....	557
TREATIES INDEX.....	563
SUBJECT INDEX.....	569