

Introduction to

International Law

J.G. Starke



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Introduction to International Law

Tenth edition

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Preface

There have been numerous developments of significance for international law in the interval of five years since 1983 when the previous edition of this book, the ninth (1984), was written. Yet there has in this period been no advance so fundamental and far-reaching as the United Nations Convention of December 1982 on the Law of the Sea, which made it necessary to recast two chapters and add a new chapter in the process of revision of the text for the ninth edition. The post-1983 developments have been of two kinds: on the one hand, changes to, or confirmations with added emphasis, of existing rules; and, on the other hand, events or practices pointing to possible changes. In the preparation of the present edition, every effort has been made to update the text so as to take account of these, as it has always been sought to encompass within a single volume a study of all main aspects of international law (the law of peace, the law of war and armed conflict, the law of neutrality and the law of international institutions). However, at the same time, one has to be mindful of the principal object of this book, which is not to present a complete or exhaustive treatment of the subject, but to set out the fundamentals needed by those who (a) are preparing to deal with international law in actual practice, or (b) whether as law students or otherwise, may have to acquire a working knowledge of this branch of the law.

By way of a perspective of the current landscape of international law, some only of the changes or advances covered in the present edition may be briefly noted. The United Nations trusteeship system is on the verge of coming to an end, although the Trusteeship Council still meets and receives reports from the United States as the Administering Authority of the sole remaining trust territory, the Pacific Islands, of which the future of Palau has remained unresolved. In 1986 the European Communities became enlarged with the addition of Spain and Portugal so as to have a membership now of twelve states, while the *Single European Act* for radically amending the Treaty of Rome of 25 March 1957 came into force in 1987. Implementation of the above-mentioned Law of the Sea Convention of 1982 has been proceeding in due manner by way of the labours of the Preparatory Commission for the Establishment of the International Sea-Bed Authority and of the International Tribunal for the Law of the Sea. The much publicised incident of the sinking by French agents in July 1985 of the vessel, the *Rainbow Warrior*, in New Zealand

internal waters (an incident known in France as 'l'Affaire Greenpeace') and the subsequent trial and conviction of the agents by a New Zealand court served to prove the untenability of the alleged doctrine of 'immunity of attribution' as exempting a state's subordinate agents from criminal process by way of exception to the duty of all states not to carry out in peacetime by their agents or servants police or security activities on the territory of another state. The Anglo-Chinese Agreement of December 1984 under which mainland China is, inter alia, to recover territorial sovereignty of Hong Kong in 1997 provided a significant precedent for the reversion to a lessor state of part of its territory that had been the subject of a long-term lease. Following the lead given by the United States in 1977 and the United Kingdom in 1980, several states (eg Australia in January 1988) formally announced that they would de-emphasise the process of the recognition of, or the withholding of the recognition of new governments (formed by revolution or otherwise) in favour of a practice of conducting formal or informal relations with such governments, thereby signifying a portent for the future obsolescence of the institution of *de facto* recognition. The United Nations Committee on the Peaceful Uses of Outer Space (COPUOS) and its Legal Sub-Committee have continued to be the focus for the elaboration of new principles of international space law, such as those related to remote sensing, to the avoidance of injury caused by the multitude of objects in outer space and to communication by artificial satellites. The bombing of Libyan territory by United States military aircraft in April 1986 as a form of reprisal for alleged terrorist activities directed against American citizens raised controversial issues as to the scope of the right of self-defence under international law and as to the applicability of the doctrine of due 'proportionality' of retaliatory action, assuming such action were otherwise legitimate under the provisions of the United Nations Charter.

Perhaps more important for mankind in general were the notable advances in the international law of nuclear safety, so far as concerns installations employed for peaceful purposes, following the serious accident in April 1986 to the Chernobyl nuclear power plant in the Soviet Union. That led to the adoption at Vienna on 26 September 1986 of two pioneering international legislative instruments, namely the Convention on Early Notification of a Nuclear Accident or Radiological Emergency and the Convention on Assistance in the Event of a Nuclear Accident or Radiological Emergency. The adoption of these Conventions was followed by the holding in March-April 1987 of the United Nations Conference for the Promotion of International Co-operation in the Peaceful Uses of Nuclear Energy, in which Conference no less than 106 states participated. A new section, section 5, to deal with this subject, has been added to Chapter 14 on Development and the environment.

Nuclear weapons involve questions of a nature different from those affecting nuclear installations and nuclear materials used for peaceful

purposes, and here the Intermediate-Range Nuclear Forces Treaty, concluded by the United States and the Soviet Union in December 1987, although a bilateral arrangement, has been hailed as an important advance of general significance for the international law of arms control and disarmament.

Other matters which have received attention or reference in the present edition include the following: (a) the rights of indigenous minorities; (b) the problems created by the trans-border flow on a large scale in Asia and Africa of refugee-type civilians; (c) the development of new concepts in international monetary law, eg 'target zones' and 'structural adjustment'; (d) the impact on the rules concerning naval warfare of such tactical changes as the employment of new kinds of weaponry (eg missiles launched at great distances from targeted vessels), the use of submarines for covert intelligence and surveillance activities and the conduct of anti-submarine warfare by overhead-based systems located in outer space; and (e) the enforcement by the United States, the United Kingdom and other States of the right of the vessels of neutral countries to enter and leave the Persian Gulf in the course of the Iraq-Iran War, notwithstanding any claim that the Gulf constituted a 'war zone'.

In their appropriate place, decisions of the European Court of Justice of the European Communities and of the European Court of Human Rights have been cited or examined, while decisions of national courts have not been overlooked; eg the three notable decisions on extradition law of the English House of Lords in *Re Nielsen* (1984), *Government of the United States of America v McCaffery* (1984) and *Belgian Government v Postlethwaite* (1987). Moreover, the contribution of the International Court of Justice to both the procedure and the law has received consideration. First, the Court has continued the practice begun by it in 1982 of forming five-member special chambers under art 26, para 2 of its Statute to deal with particular disputes. This it did in 1985 in the *Frontier Dispute Case* (Burkina Faso/Republic of Mali), in March 1987 in the *Elettronica Sicular Spa Case* (United States/Italy) and in May 1987 in the *Land, Island and Maritime Frontier Dispute Case* (El Salvador/Honduras). Second, as recently as March-April 1988 the Court adopted an accelerated procedure, where an early answer to a request for an opinion was thought desirable, in its Advisory Opinion on the *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*. Third, in its landmark decision of 1986 in *Nicaragua v The United States (Merits)* (more correctly the *Case concerning Military and Paramilitary Activities in and against Nicaragua*) the Court made valuable and authoritative pronouncements concerning the international law as to intervention, and as to the legality of the use of force, in particular where the justification is declared to be the need for the protection of human rights in the territory of the state against which force is directed. Indeed, the decision ranges beyond these

questions over a wide field of international legal principles.

Chapter 20 of the book on the law of international institutions has been updated to take account, *inter alia*, of new developments in respect to the co-ordination of international organisations, which include the restructuring of the United Nations Committee for Programme and Co-ordination (CPC) and the 1986 Report of the Group of High-Level Intergovernmental Experts to Review the Efficiency of the Administrative and Financial Functioning of the United Nations. Proposals to expand the role of the United Nations Secretary-General, eg through a system under his control for fact-finding, and by providing him with the assistance of military advisers, have been noted, while in the sphere of United Nations peacekeeping, reference was made to the establishment in August 1988 of the United Nations Iran-Iraq Military Observer Group (UNIIMOG) to monitor the ceasefire in the Iran-Iraq War along the 1,200-kilometre frontier between the two countries.

Certain new and notable international multilateral Conventions are the subject of treatment or reference throughout the text of this book. These include the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, opened for signature on 10 December 1984, the Convention of 11 October 1985 establishing the Multilateral Investment Guarantee Agency, the Convention of March 1985 for the Protection of the Ozone Layer and the Protocol thereto signed on 16 September 1987 and the Convention of 2 June 1988 for the Regulation of Antarctic Mineral Resource Activities.

Some opinions expressed in previous editions of this book have been revised or reformulated.

The candle of international law is far from burning low; indeed the international legal system as it exists today is one of extreme complexity, reaching into almost every corner of the activities of the human race, and even into the universe beyond Earth.

The author is grateful for the unfailing assistance received from the publishers.

November 1988

J.G. STARKE

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