

DISCOVER INTERNATIONAL LAW

WITH SPECIAL ATTENTION FOR THE HAGUE, CITY OF PEACE AND JUSTICE



BY PROFESSOR WILLEM VAN GENUGTEN
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PROFESSOR NICO SCHRIJVER

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List of Abbreviations

ASEAN	Association of Southeast Asian Nations
AU	African Union
BRICS countries	Brazil, Russia, India, China, and South Africa
CBDR	Common But Differentiated Responsibility
CC	Creative Commons
CDM	Clean Development Mechanism
CER	Certified Emission Reduction Credits
COP	Conference of the Parties
DSB	WTO's Dispute Settlement Body
EC ₃	European Cybercrime Centre
ECJ	European Court of Justice
ECTC	European Counter Terrorism Center
EEZ	Exclusive Economic Zone
EPO	European Patent Office
EU	European Union
EUROPOL	European Police Office
G7	Group of Seven
GATT	General Agreement on Tariffs and Trade
GCCS	Global Conference on Cyberspace
GHG	Greenhouse gases
HCCH	The Hague Conference on Private International Law
IBRD	International Bank for Reconstruction and Development
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
ICJ	International Court of Justice
ICSID	International Centre for the Settlement of Investment Disputes (World Bank)
ICTR	International Criminal Tribunal for Rwanda

ICTY	International Criminal Tribunal for the former Yugoslavia
IDA	International Development Association
ILO	International Labour Organization
IMF	International Monetary Fund
IOM	International Organization for Migration
IPCC	Intergovernmental Panel on Climate Change
ISFL	International Society of Family Law
ITLOS	International Tribunal for the Law of the Sea
IUU	Illegal, Unreported, and Unregulated (Fishing)
KP	Kyoto Protocol
LRA	Lord's Resistance Army
MFN	Most Favored Nation
MICT	Mechanism for International Criminal Tribunals
NATO	North Atlantic Treaty Organization
NC3A	NATO's consultation, command, and control agency
NCI Agency	NATO Communications and Information Agency
NGO	Non-governmental organization
NIEO	New International Economic Order
NSA	National Security Agency
OAS	Organization of American States
OCTA	European Organized Crime Threat Assessment
OPCW	Organisation for the Prohibition of Chemical Weapons
OSCE	Organisation for Security and Co-operation in Europe
PCA	Permanent Court of Arbitration
PCIJ	Permanent Court of International Justice
PMSC	Private Military and Security Company
R2P	Responsibility to Protect
STL	Special Tribunal for Lebanon
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
TTIP	Transatlantic Trade and Investment Partnership
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNCLOS	United Nations Convention on the Law of the Sea

UNCRC	United Nations Convention on the Rights of the Child
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFCCC	United Nations Framework Convention on Climate Change
UNHCR	United Nations High Commissioner for Refugees
UNIDROIT	International Institute for the Unification of Private Law
UNSC	United Nations Security Council
UPR	Universal Periodic Review
USA	United States of America
WHO	World Health Organization
WMD	Weapons of Mass Destruction
WTO	World Trade Organization





Introduction



Pope Paul VI gives a speech to the U.N. General Assembly, 4 October 1965.

1. Introduction

International law belongs to everyone and influences the lives of all people worldwide, no matter whether they are aware of that or not. It might relate to armed conflicts, natural disasters caused by climate change, the resulting flows of refugees, the realization of human rights, or to international trade. The list is endless. International law in fact covers almost every aspect of life. It matters for ending wars, for water and food security, and for enjoying freedom of speech. What is more, without international law in the form of agreements between states, we would not even, for example, have a common understanding of how long a second is. We could not enjoy watching foreign TV, nor would people be able to choose from a variety of fruits and vegetables knowing where they come from.

Yet explaining what international law actually is and how it comes about in a simple way is not easy. International law takes many forms and is shaped in various ways. For example, private international law is different from and works differently than public international law, as will be explained in the chapters that follow. Generally speaking, international law is made up of rules that govern the international community to ensure peaceful coexistence of all actors and human dignity for everyone and it does so by addressing current needs and taking away the barriers we come across when we move actively across borders. The United Nations (UN) is the organization working for that cause, and international law is just one channel through which these values and visions can be achieved.





Logo of the United Nations

International law is in many ways different from national law. It's important to understand this. Legal systems within countries are shaped by parliaments or other legislative bodies and based on constitutions, and usually have one central authority that enforces the law. This is not true of international law. No international parliament exists, nor a central executive power and enforcement authority, nor an international constitution, unless you would see the UN Charter that way. However, that “mother document of modern public international law” – as rich and relevant it is – is at best only the beginning of such a global constitution. In fact, states together shape the law they agree to be bound by (the consent to be bound). They do so for the most part voluntarily, as a starting point at least.

That said, two points are important to bear in mind. First is that some parts of international law are binding on states even if they do not consent to be bound. These include the basic rules on genocide, crimes against humanity, war crimes and aggression, and of Chapter VII resolutions on peace and security adopted by the UN Security Council. The latter are also binding for the states that might disagree. Second is that international law is no longer solely the domain of states, even if they are still the first actors to be at the “steering wheel.” Making and enforcing international law are increasingly influenced by international and regional organizations, nongovernmental organizations (NGOs), expert bodies, and private parties such as transnational enterprises. These entities also see themselves more and more as co-owners or co-constituents of the international legal order, and as having corresponding rights and obligations. States and the UN cannot do without them. The previous UN Secretary-General Ban Ki-moon recently said in a speech on countering violent terrorism, “governments cannot do it alone. We need to engage all of society – religious leaders, women leaders, leaders in the arts, music and sports.” Other actors are needed to fulfil the high ambitions of the UN in domains such as peace and security, social and economic development, the environment, and human rights.

The purpose and goal of this book is to contribute to the understanding of the state of the art of public and private international law, including

trends and highlights. It consists of ten chapters on international peace and security, dispute settlement, private international law, family law, international economic law, international law and technology, international criminal law, human rights, climate law and the law of the sea. Some readers will at first sight miss some topics, maybe even their favourites. These might relate to the rights of indigenous peoples, refugee law, international humanitarian law, or the fight against terrorism. Such topics could have been added as separate chapters, but the authors decided instead to integrate them into other chapters.

In each chapter, the book introduces basic concepts of international law, as well as international organizations and historical events that may be relevant for the development of the correspondent field. The book thus provides the reader with a basis for understanding and studying any of the raised issues in more detail. The reader will also develop an understanding of the interconnectedness of the different legal topics and developments. To make reading easier, a glossary explains common terms of international law. The glasses  behind a word indicate that the word can be found in the glossary. With cross references in the margins links between various chapters are indicated . Finally, the most important issues discussed in the texts are being highlighted in color.

A second goal of this book is to present the unique and long-standing relationship between international law and the city of The Hague, “the

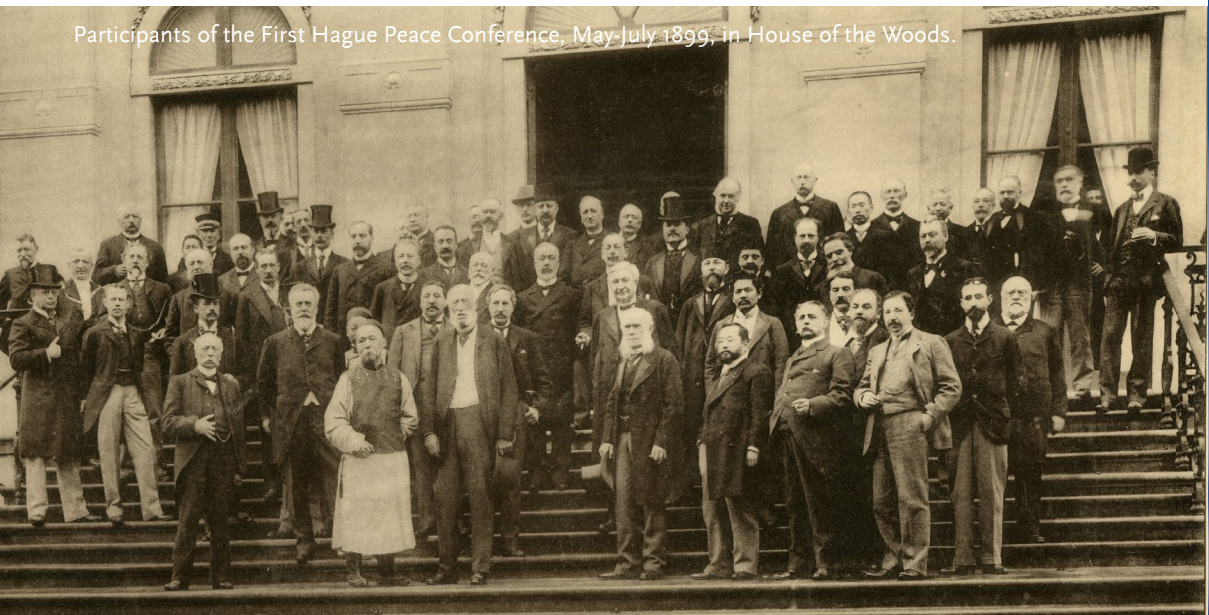


U.N. Secretary General Ban Ki-moon at the 100th anniversary of the Peace Palace in The Hague (28 August 2013) calling the city of The Hague: an epicentre of international justice and accountability.

legal capital of the world,” as former UN Secretary-General Boutros Boutros-Ghali once called it, to which former UN Secretary-General Ban Ki-moon added in 2013, “an epicentre of international justice and accountability.” Since the first and second Hague Peace Conferences in 1899 and 1907, The Hague has developed and become recognized as a forum for knowledge, research, and experience in the field of international law. The city hosts a range of key legal institutions vital to the international legal system. In each chapter, those Hague institutions are presented that have a particular meaning for the development of that particular aspect of international law and that have their official headquarters in the city.

The Hague also maintains, apart from the institutions and organizations formally working in private and public international law, a tradition of staging major international conferences, including the Climate Conference in 2006, the International Conference on Afghanistan in 2009, the Nuclear Security Summit in 2014, and the Cyber Security Conference in 2015. The city’s tradition of connecting states and other international actors is more visible than ever today. In 2012, the Supreme Court of the Nobility officially granted the city the right to include the maxim “Peace and Justice” into its coat of arms. To more closely tie the book to the city of The Hague, the authors also decided to interview key players in the field of international law who are active in The Hague.

Participants of the First Hague Peace Conference, May-July 1899, in House of the Woods.



The Kingdom of the Netherlands in general is a vital player in the field of international law. According to Article 90 of the Dutch Constitution, the government of the Netherlands is obliged to “promote the development of the international legal order.” The city of The Hague, which is the seat of the Dutch government, has taken this constitutional duty to heart. Within the past decade, the number of international governmental and nongovernmental organizations working jointly for a safer and just world by actively promoting the development of international law and the rule of law has more than doubled.

This book does not claim to be a complete collection of public and private international law issues. It rather reflects on current global challenges and their connection to international law in selected domains. It was finalized in the Spring of 2017, with only minor corrections and additions later on. Nevertheless, this book should provide the reader with a general understanding of what international law is all about, which is timeless knowledge.

António Manuel de Oliveira Guterres , Secretary-General of the United Nations.



Many people probably don't realize it, but international law plays a major role in everyday life. For example in armed conflicts, in natural disasters due to climate change and subsequent refugee flows, in safeguarding human rights and in conducting international trade. International law helps to end wars and to secure water and food for everyone, and it protects freedom of expression, to name but a few.

The purpose of this book is to contribute to a better understanding of public international law and private international law, including the latest trends and highlights. The conclusions of the authors of this book are mostly optimistic. A positive look is sometimes needed to notice the progress and not to go too fast in negative hypes. In order to move forward with international law, we need to understand the state of affairs and the trends, per jurisdiction and in a broader sense, taking into account historical developments and ever-changing geopolitical contexts. The authors note that states are increasingly being forced to accept human rights as a guideline for their actions. Little by little, human rights are conquering a place in all areas of international law and in international relations, where it is ultimately a question of pure power policy coming to its knees for law. In addition, they see a new social contract between states, civil society (NGOs, trade unions, churches) and companies, with support and critical reflection from science and they observe a combination of clarity and diversity. When developing international law, it is very important not to neglect global cultural and political diversity in theory and practice. The book is written in such a way that it is accessible to anyone interested in these topics. Per chapter the reader is introduced to basic concepts from international law, and to international organizations and historical events that were important for the development of that part of international law. The book aims to impart basic knowledge to each of the topics discussed, and offers all kinds of options for further study where this is necessary and desirable depending on the needs of the reader. The reader will gradually understand that the various legal areas and developments within them are interconnected.

The book also tells the story of the unique and historical link between international law and the city of The Hague. The city was described by former UN Secretary General Ban Ki-moon as "Epicenter of international justice and accountability."

The authors are professors (Willem van Genugten and Nico Schrijver) and a Ph.D. student (Daniela Heerdt) in the field of international law. They have extensive experience with rule of law projects around the globe.

