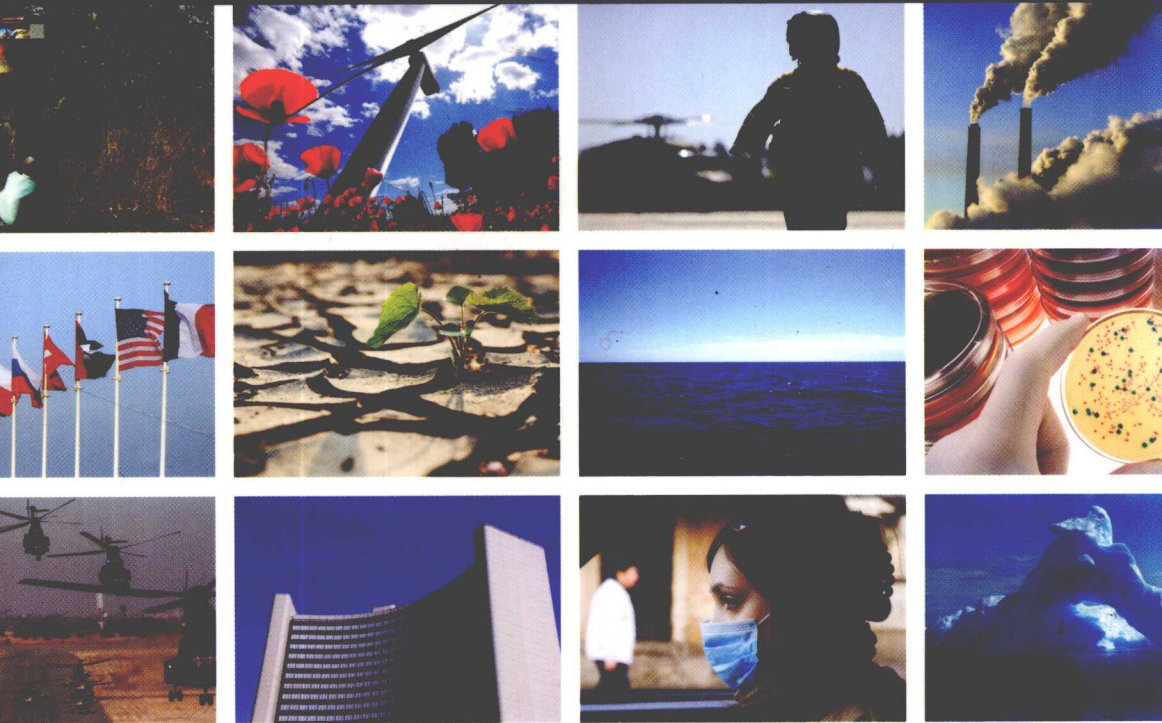


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# International Law

THIRD EDITION



Edited by **Malcolm D. Evans**

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## PREFACE TO THE THIRD EDITION

The second edition of *International Law* appeared in print only three years after the first edition and so changes were, by and large, incremental. This third edition appears four years on from then, and some seven years since the first edition. As a result, the time has come for a degree of change as well as for more general updating.

The aims and objectives, and the basic approach to their realization, are set out in the Editor's Introduction and remain unaltered. All chapters have been thoroughly updated to reflect the many developments in international law which have taken place over the last four years. The chief structural alteration is the addition of a new chapter by Spencer Zifcak on the newly emerging concept of 'the responsibility to protect', or the 'R2P', which is considered within the context of State responsibility rather than of the use of force (as is so often the case) since it is, perhaps, best seen as a means of broadening of the scope of international obligations than merely as a vehicle for intervention. Another structural change is the removal of the opening series of reflections on international law—a regrettable necessity given the need to prevent the book expanding too much in size. It is a fact of editorial life that revisions to chapters tends to make them longer rather than shorter, as new material supplements rather than supplants the old. I am therefore very grateful to all the contributors for updating and developing their chapters in ways which are both concise and comprehensive—and, of course, comprehensible!

A final development is the inclusion of entirely new chapters on a number of topics—by Matthew Craven on the Statehood, Self-determination, and Recognition, by Robert Cryer on International Criminal Law, and by David Turns on International Humanitarian Law (all topics which have come under close scrutiny and undergone significant development in recent times). In addition, Chris Staker has joined Vaughan Lowe in exploring and expounding the central issue of jurisdiction. I am immensely grateful to them all for their willingness to 'join the team'. Another 'new member of the team' is Jennifer Courage of OUP who has been tireless in ensuring that the text was submitted more or less on time and in keeping us all in order. Her work—along with that of all her colleagues at the Press—has been essential to the successful production of this edition.

It remains for me to hope that this new edition finds favour with its readers and continues to provide a means of furthering the education and understanding of students, scholars, and practitioners of international law.

Malcolm D Evans  
April 2010

## FROM THE EDITOR'S INTRODUCTION TO THE FIRST EDITION

International law is a rich and varied subject, bearing upon most of the great issues facing individuals and communities. This work aims to capture something of that breadth and diversity by drawing on the knowledge and experience of a broad range of contributors who are intimately engaged in its teaching and practice. It is designed to present the essential elements of the international legal system in a clear and accessible fashion, but seeks to go further, addressing a number of key questions which challenge many of the assumptions upon which the international legal system is founded. It also seeks to provide a succinct introduction to a range of topics that are subject to increasingly detailed international regulation.

Parts I–VI consider the key building blocks of the subject whilst Part VII provides a series of introductory overviews of particular areas of contemporary interest. The structure, coverage, and level of the book are intended to reflect the requirements of undergraduate courses in public international law, although it will also be of use on general courses at the masters' levels as well as being of interest to academics and practitioners.

Although structured to form a coherent presentation of international law, each chapter can be read as a self-contained unit, balancing exposition with argument and reflecting the distinct perspective of its author(s). No attempt has been made to harmonize the views expressed or to produce a single 'voice'. Even if this had been possible, it would have been undesirable. As any teacher—as any lawyer—knows, opinions are best formed through exposure to competing argument. The chapters in this volume combine to address international law from a variety of perspectives: rather than one voice there is a range of voices and a range of opinions. It is to be hoped that this will be a source of stimulation, since the work as a whole aims to be more than just a compendium of knowledge. It aims to be a resource of value to all those interested in probing and testing the international legal enterprise.

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# ABBREVIATIONS

AALCC	African Asian Legal Consultative Committee
ACHR	American Convention on Human Rights
AFP	Australian Federal Police
AIA	Advanced Informed Agreement
<i>AJIL</i>	<i>American Journal of International Law</i>
ARSIWA	Articles on the Responsibility of States for Internationally Wrongful Acts
ASCOBANS	Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas
ASEAN	Association of Southeast Asian Nations
ATCA	Alien Tort Claims Act (US)
AU	African Union
BCN	biological, chemical, nuclear (weapon)
BITs	Bilateral Investment Treaties
<i>BverfGE</i>	<i>Die Entscheidungen des Bundesverfassungsgerichts</i>
<i>BYIL</i>	<i>British Yearbook of International Law</i>
CAFTA	Central American Free Trade Agreement
CBD	Convention on Conservation of Biological Diversity
CCAMLR	Convention on the Conservation of Antarctic Marine Living Resources
CCSBT	Commission for the Conservation of Southern Bluefin Tuna
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CFC	Convention on Fisheries and Conservation of the Living Resources of the High Seas
CFCs	chlorofluorocarbons
CFI	Court of First Instance
CIS	Commonwealth of Independent States
CITES	Convention on International Trade in Endangered Species
CLC	Convention on Civil Liability for Oil Pollution Damage
<i>CMLR</i>	<i>Common Market Law Review</i>
COP	Conference of the Parties
CSC	Continental Shelf Convention
CSCE	Conference on Security and Cooperation in Europe
DARIO	Draft Articles on the Responsibility of International Organizations
DEA	Drugs Enforcement Agency
DRC	Democratic Republic of the Congo
DSB	Dispute Settlement Body

DSU	Dispute Settlement Understanding
EAC	East African Community
EBRD	European Bank for Reconstruction and Development
EC	European Community
ECE	(United Nations) Economic Commission for Europe
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECOMOG	Economic Community of West African States Monitoring Group
ECOSOC	Economic and Social Council
ECOWAS	Economic Community of West African States
ECSI	European Convention on State Immunity
ECtHR	European Court of Human Rights
EEC	European Economic Community
EEZ	Exclusive Economic Zone
EFZ	Exclusive Fishing Zone
<i>EHRR</i>	<i>European Human Rights Review</i>
<i>EJIL</i>	<i>European Journal of International Law</i>
EU	European Union
EUROFIMA	European Company for the Financing of Railroad Rolling Stock
FAO	Food and Agriculture Organization
FATF	Financial Action Task Force
FCCC	Framework Convention on Climate Change
FCN	Friendship, Commerce and Navigation (Treaties)
FCO	Foreign and Commonwealth Office
FGM	Female Genital Mutilation
FRY	Federal Republic of Yugoslavia
FSIA	Foreign Sovereign Immunities Act (US)
GA	General Assembly
GAB	General Agreements to Borrow
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GEF	Global Environmental Facility
HCHR	High Commissioner for Human Rights
HIPC	Heavily Indebted Poor Countries
HRC	Human Rights Committee
<i>HRLJ</i>	<i>Human Rights Law Journal</i>
HSC	High Seas Convention
IAC	Iraqi Airways Company
IACHR	Inter-American Commission on Human Rights
IAEA	International Atomic Energy Authority
IBRD	International Bank for Reconstruction and Development (World Bank)
ICAO	International Civil Aviation Organization
ICBP	International Council for Bird Preservation
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights

ICISS	International Commission on Intervention and State Sovereignty
ICJ	International Court of Justice
<i>ICLQ</i>	<i>International and Comparative Law Quarterly</i>
ICOMOS	International Council on Monuments and Sites
ICRC	International Committee of the Red Cross
ICSID	International Centre for the Settlement of Investment Disputes
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IDA	International Development Agency
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation
IGAD	Intergovernmental Authority on Development
IGO	Inter-Governmental Organization
IHL	International Humanitarian Law
<i>IHRR</i>	<i>International Human Rights Reports</i>
ILA	International Law Association
ILC	International Law Commission
ILM	International Legal Materials
ILO	International Labour Organization
ILR	International Law Reports
IMF	International Monetary Fund
IMO	International Maritime Organization
IMT	International Military Tribunal
IPCC	Intergovernmental Panel on Climate Change
Iran-USCTR	Iran-US Claims Tribunal Reports
ISA	International Seabed Authority
ITC	International Tin Council
ITLOS	International Tribunal for the Law of the Sea
ITO	International Trade Organization
ITTA	International Tropical Timber Agreement
ITU	International Telecommunications Union
IUCN	International Union for the Conservation of Nature
IWRB	International Waterfowl and Wetlands Research Bureau
KAC	Kuwait Airways Corporation
LMO	Living Modified Organism
LNTS	League of Nations Treaty Series
LOAC	Law of Armed Conflict
LOSC	Law of the Sea Convention
LRTAP	Long-Range Transboundary Air Pollution
MAI	Multilateral Agreement on Investment
MARPOL	International Convention for the Prevention of Pollution from Ships
MERCOSUR	Mercado Común del Sur or Mercado Común del Cono Sur
MIGA	Multilateral Investment Guarantee Agency
NAB	New Arrangements to Borrow
NAFO	North Atlantic Fisheries Organization
NAFTA	North American Free Trade Agreement

NAM	Non-Aligned Movement
NATO	North Atlantic Treaty Organization
NGOs	Non-Governmental Organizations
NLM	National Liberation Movement
<i>NYBIL</i>	<i>Netherlands Yearbook of International Law</i>
nyr	not yet reported
OAPEC	Organization of Arab Petroleum Exporting Countries
OAS	Organization of American States
OASTS	Organization of American States Treaty Series
OAU	Organization of African Unity
<i>ODIL</i>	<i>Ocean Development and International Law</i>
OECD	Organization for Economic Cooperation and Development
OECS	Organization of East Caribbean States
OEEC	Organization for European Economic Cooperation
ONUC	United Nations Operation in the Congo (Organisation des Nations Unies au Congo)
ONUCA	United Nations Observer Group in Central America
OPEC	Organization of Petroleum Exporting Countries
OSCE	Organization for Security and Cooperation in Europe
OSPAR	Convention for the Protection of the Marine Environment of the North-East Atlantic
PCIJ	Permanent Court of International Justice
PLO	Palestine Liberation Organization
PMSC	Private Military Security Company
POPs	Persistent Organic Pollutants
POW	Prisoner of War
PSI	Proliferation Security Initiative
R2P	Responsibility to Protect
<i>Recueil des Cours</i>	<i>Recueil des cours de l'Académie de droit international</i>
RFB	Regional Fisheries Body
RFMO	Regional Fisheries Management Organisation
<i>RGDIP</i>	<i>Revue General de Droit International Public</i>
<i>RIAA</i>	<i>Reports of International Arbitral Awards</i>
RSC	Rules of the Supreme Court (UK)
SADC	South African Development Community
SBDC	Sea-Bed Disputes Chamber
SC	Security Council
SCSL	Special Court for Sierra Leone
SDR	Special Drawing Rights
SFRY	Socialist Federal Republic of Yugoslavia
SIA	State Immunity Act 1978 (UK)
SPS	Sanitary and Phytosanitary Measures
SSC	UN Agreement on Straddling Stocks and Highly Migratory Species
STL	Special Tribunal for Lebanon
SUA Convention	Rome Convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation

TAC	Total Allowable Catch
TNCs	Transnational Corporations
TPRM	Trade Policy Review Mechanism
TRAFFIC	Trade Records Analysis of Flora and Fauna in Commerce
TRIMs	Trade-Related Investment Measures
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
TSC	Territorial Sea and Contiguous Zone Convention
UAE	United Arab Emirates
UEMO	Union Economique de Monétaire Ouest-Africaine
UKTS	United Kingdom Treaty Series
UN	United Nations
UNAMIR	United Nations Assistance Mission for Rwanda
UNCC	United Nations Compensation Commission
UNCITRAL	United Nations Commission on International Trade Law
UNCLOS	United Nations Conference on the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNEF	United Nations Emergency Force
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations International Children's Economic Foundation
UNIDO	United Nations Industrial Development Organization
UNITA	União Nacional para a Independência Total de Angola
UNMIK	United Nations Mission in Kosovo
UNOSOM	United Nations Operation in Somalia
UNPROFOR	United Nations Protection Force
UNSCR	UN Security Council Resolution
UNTAET	United Nations Transitional Administration in East Timor
UNTS	United Nations Treaty Series
UNYB	<i>United Nations Yearbook</i>
UPU	Universal Postal Union
VCCR	Vienna Convention on Consular Relations
VCDR	Vienna Convention on Diplomatic Relations
VCLT	Vienna Convention on the Law of Treaties
WEOG	Western Europe and Others Group (Nations)
WHC	World Heritage Convention
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WMO	World Meteorological Organization
WTO	World Trade Organization
WWF	World Wildlife Fund
YBIEL	<i>Yearbook of International Environmental Law</i>
YBILC	<i>Yearbook of the International Law Commission</i>
YIHL	<i>Yearbook of International Humanitarian Law</i>

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