

PRINCIPLES OF  
INTERNATIONAL LAW

HANS Kelsen

# PRINCIPLES OF INTERNATIONAL LAW

by HANS Kelsen

PROFESSOR OF POLITICAL SCIENCE

UNIVERSITY OF CALIFORNIA

THE LAWBOOK EXCHANGE, LTD.

Clark, New Jersey

2003

ISBN-13: 978-1-58477-325-2

ISBN-10: 1-58477-325-1

Eleventh printing 2010

*Printed in the United States of America on acid-free paper*

**THE LAWBOOK EXCHANGE, LTD.**

33 Terminal Avenue

Clark, New Jersey 07066-1321

*Please see our website for a selection of our other publications  
and fine facsimile reprints of classic works of legal history:*

[www.lawbookexchange.com](http://www.lawbookexchange.com)

## **Library of Congress Cataloging-in-Publication Data**

Kelsen, Hans, 1881-1973.

Principles of international law / by Hans Kelsen.

p. cm.

Originally published: New York: Rinehart & Co., Inc., c1952.

ISBN 1-58477-325-1 (cloth: alk. paper)

1. International law. I. Title.

KZ3375.K45A37 2003

341—dc2l

2003047462

# PRINCIPLES OF INTERNATIONAL LAW

by HANS Kelsen

PROFESSOR OF POLITICAL SCIENCE

UNIVERSITY OF CALIFORNIA

RINEHART & COMPANY • INC.  
NEW YORK

Third Printing, March, 1959

Copyright, 1952, Hans Kelsen

Printed in the United States of America

Designed by Stefan Salter

All Rights Reserved

*Library of Congress Catalog Card Number: 52-5587*

**To *Josef L. Kunz***

## PREFACE

This book is designed as an introduction to the study of international law. As it shall serve not only law students, but all those who are interested in social and especially in political science, the first part deals with certain legal concepts, the knowledge of which is indispensable for an understanding of the problems of international law.

I have chosen the title *Principles of International Law* because I thought it necessary to present, in addition to the most important norms which form this branch of the law, a theory of international law, that is to say, an examination of its nature and fundamental concepts, an analysis of its structure, and the determination of its position in the world of law.

It is usual to divide international law into two main parts, the law of peace and the law of war. I have abandoned this systematization. For it was justified, if at all, only as long as it was possible to conceive of the state of war as existing on the same legal level as the state of peace. However, in view of the Kellogg-Briand Pact and the Charter of the United Nations, war can be considered legal only if it is a reaction against a violation of international law. Hence the law of war is dealt with in this treatise in connection with the problem of the sanctions provided for in international law.

It is in the first place general international law to which the "*Principles*" refer. Particular international law created by treaties is discussed merely in order to show the possibilities of developing international law in a technically progressive way.

Among the treaties recently concluded, the Charter of the United Nations is of decisive importance. Since it claims to be valid not only for states that are members of the Organization but also for nonmember states, it may be—or is about to be—recognized as general international law. This explains the careful consideration given to the law of the United Nations in this treatise.

It seems to be an empty pleonasm to assert that a treatise on international law deals with the problems concerned only from a juristic, and that means from a legal point of view. If international law is law in the true sense of the term—and this is assumed in this book—which other method, but a juristic one, could be applied in the description and explanation of this object? If, nevertheless, I think it necessary to emphasize the purely juristic character of this book, I do so in opposition to a tendency widespread among writers on international law, who—although they do not dare to deny the legal character and hence the binding force of this social order—advocate another than a legal, namely a political approach as adequate. This view is in my opinion nothing but an attempt to justify the nonapplication of the existing law in case its application is in conflict with some interest, or rather, with what the respective writer considers to be the interest of his state. If he thinks that it is his duty to suggest to his government a power policy, that is to say a policy determined only by the real or assumed interest of his state and restricted only by its actual power, he may do so under his own responsibility. But if he tries to make his readers believe that this policy is in conformity with international law interpreted “politically” he does not present a scientific theory of international law but a political ideology.

As to the formulation of the norms of positive international law and their traditional interpretation I have used the works referred to on page xvii, especially the English standard work by L. Oppenheim and H. Lauterpacht.

I wish to express my sincere gratitude to Professor Erwin N. Griswold, Dean of Harvard Law School, for the permission to use certain parts of my *General Theory of Law and State*, Harvard University Press, 1945, and to Professor H. Lauterpacht for the permission to cite a number of cases presented in the *Annual Digest of Public International Law*. I wish also to thank Professor Leo Gross, Professor Josef L. Kunz, and Professor Robert W. Tucker for their valuable suggestions.

H. K.

Berkeley, California  
March, 1952



LIST OF  
COMPREHENSIVE WORKS  
ON INTERNATIONAL LAW

- Oppenheim, L. *International Law*. 6th ed., edited by H. Lauterpacht, Vol. I (1947), Vol. II (1944).
- Hyde, Charles Cheney. *International Law, chiefly as interpreted and applied by the United States*. 3 vols., 2d ed. (1945).
- Fauchille, Paul. *Traité de droit international public*. 2 vols., 8th ed. (1921–1926).
- Scelle, George. *Précis de droit des gens* (1932–1934).
- Verdross, Alfred von. *Völkerrecht* (1937).
- Guggenheim, Paul. *Lehrbuch des Völkerrechts*. Vol. I (1947), Vol. II (1951).
- Anzilotti, Dionisio. *Corso di diritto internazionale*. 3d ed. (1923).
- Pallieri, Balladore. *Diritto internazionale pubblico* (1937).
- Sanchez de Bustamante y Sirven, Antonio. *Derecho internacional publico*. 5 vols. (1933–1938).

# TABLE OF CONTENTS

Preface	vii
Table of Cases	xiii
List of Comprehensive Works on International Law	xvii
I. The Nature of International Law: International Delicts and International Sanctions	
A. The Concept of Law	3
1. The Two Kinds of Social Order	3
2. Sanctions: Criminal and Civil	5
3. Legal Norm and Rule of Law: The "Ought"	6
4. The Delict	7
5. Obligation (Duty) and Right	7
6. Responsibility: Individual and Collective	9
7. Culpability and Absolute Responsibility	11
8. The Force Monopoly of the Community	13
9. Self-help and Collective Security	15
10. Retribution and Prevention	17
11. Law and Peace	17
B. Is International Law "Law" in the True Sense of the Term?	18
1. Meaning of the Question	18
2. International Delicts	19
3. International Sanctions	20
4. Reprisals	23
5. War: Its Concept	25
6. War: Its Legal Interpretation	33

7. War (Use of Force) under the Charter of the United Nations	44
8. War: Regulation of Its Conduct	64
II. The Spheres of Validity of International Law	
A. The Spheres of Validity of a Legal Order	93
B. The Territorial and Temporal Spheres of Validity of International Law	94
C. The Personal Sphere of Validity of International Law: The Subjects of International Law	96
1. Juristic Persons as Subjects of Law	96
2. The State as Subject of International Law	100
3. The Subjects of Obligation and Responsibility in International Law	114
4. The Subjects of Rights in International Law	139
5. The So-Called Fundamental Rights of the State	148
6. Communities Not Having the Character of States as Subjects of International Law	158
7. General and Particular International Law	188
D. The Material Sphere of Validity of International Law	190
1. International and National (Domestic) Jurisdiction	191
2. Implementation of International Law by National Law	192
3. Transformation of International Law into National Law	194
4. Article 2, Paragraph 7, of the Charter of the United Nations	196
5. Definition of International Law	201
6. Exclusive International Jurisdiction	202
III. The Essential Function of International Law: The Determination of the Spheres of Validity of the National Legal Orders (Legal Existence of the State) by the International Legal Order	
A. Determination of the Territorial Sphere of Validity of the National Legal Order (Territory of the State) by International Law	207

<i>Table of Contents</i>	<b>xi</b>
1. The Territory of the State as the Territorial Sphere of Validity of the National Legal Order	<b>207</b>
2. The Restriction of the Territorial Sphere of Validity of the National Legal Order	<b>209</b>
3. The Territory of the State in a Narrower and in a Wider Sense	<b>212</b>
B. Determination of the Personal Sphere of Validity of the National Legal Order (the People of the State) by International Law	<b>227</b>
1. The People of the State as the Personal Sphere of Validity of the National Legal Order	<b>227</b>
2. Exterritoriality	<b>228</b>
3. No State Has Jurisdiction over Another State	<b>235</b>
C. Determination of the Material Sphere of Validity of the National Legal Order (Competence of the State) by International Law	<b>240</b>
1. No Natural Limits to the Competence of the State	<b>240</b>
2. Protection of Organs and Citizens of Foreign States	<b>242</b>
3. Citizenship (Nationality)	<b>248</b>
4. Conflict of Laws (Private International Law)	<b>254</b>
D. Determination of the Temporal Sphere of Validity of the National Legal Order (Existence of the State in Time) by International Law	<b>257</b>
1. Time as Element of the State	<b>257</b>
2. Birth and Death of the State	<b>258</b>
3. The Identity of the State	<b>259</b>
4. Recognition of a Community as a State	<b>264</b>
5. Recognition of a Government	<b>279</b>
6. So-Called Governments in Exile	<b>288</b>
7. Recognition of Insurgents as a Belligerent Power	<b>291</b>
8. Recognition and Nonrecognition of Illegally Established Situations (Stimson Doctrine)	<b>293</b>
9. Succession of States	<b>295</b>
IV. Creation and Application of International Law	
A. The Creation (Sources) of International Law	<b>303</b>
1. The Concept of "Source" of Law	<b>303</b>

2. The So-Called "Gaps" in the Law	304
3. Custom	307
4. Treaties	317
5. Decisions of International Agencies	365
B. The Application of International Law	367
1. Settlement of International Disputes by Agreement	367
2. Settlement of International Disputes by Organs of the League of Nations and of the United Nations	368
3. Settlement of International Disputes by International Tribunals	377
V. International and National Law	
A. The Differences between International and National Law	401
B. The Relationship between International and National Law (Monism and Pluralism)	403
1. The Monistic and the Pluralistic Theory	403
2. The Subject Matter of National and of International Law	404
3. The "Source" of National and of International Law	406
4. The Reason of Validity of National and of Interna- tional Law	408
5. Conflicts between National and International Law	419
6. The Unity of National and International Law as a Postulate of Legal Theory	424
7. Primacy of National Law or Primacy of International Law	428
8. Sovereignty	438
9. The Philosophical and Juristic Significance of the Two Monistic Interpretations	444
Index	451

# TABLE OF CASES

Admission to the United Nations	177	Buron v. Denman	118
Adriaenssens v. Ministère Public	74	Canevaro	252
Alabama Claims	82	Carinthia	74
Altman & Co. v. United States	318	Caroline, The	59, 236
Anna, The	220	Cherokee Tobacco	421
Antelope, The	310, 425	Chung Chi Cheung v. The King	233 f., 421, 433
Appam, The	83	Civilian War Claimants Association Ltd. v. The King	142
Attorney-General for Canada v. Attorney-General for Ontario	354	Clipperton Island Arbitration	215, 225
Austrian Empire (Succession)	299	Colombian-Peruvian Asylum	266
Austrian Pension	261	Competence of the General Assembly regarding Admission to the United Nations	177
Baja California, The	234	Corfu Channel	219 f., 222
Bayot, <i>In re</i>	211	Cristina, The	228
Beamten Abkommen	143	Cutting	211
Bermuda, The	82	Czechoslovak Agrarian Reform (Swiss Subject)	351
Bernstein v. Van Heyghen Frères S.A.	239 f., 257		
Bigelow v. Zizianoff	237	De Brabant and Gosselin v. T. and A. Florent	73
Blonde, The	148 f.	Dickinson v. Del Solar	229 f.
Blumhardt v. Mexico	247	Dickson Car Wheel Co. v. Mexico	247 f.
Bochart v. Committee of Supplies of Corneux	73	Dougherty v. Equitable Life Assurance Society	240, 280 f.
Born, Baron F. de, v. Yugoslavia	252	Drummond Wren, <i>In re</i>	144
Brown, Robert E., Claims	298		

Duff Development Co. v. Government of Kelantan	112	Hoogstraten v. Low Lum Seng	162
Eastern Carelia	380	Interpretation of Peace Treaties	200
Eastern Extension Telegraph Co. Claim	306	Invincible, The	236 f.
Eastern Greenland	325 f.	Island of Palmas	96, 215
Eheleute K. v. Deutsche Reichsbahngesellschaft	351, 353	Janes, Laura M. B.	121
Elida, The	220 f.	Jessie, The	123
Eliza Ann, The	28, 331 f.	John, The	68
État Russe v. Cie Ropit	240	Jones v. Garcia del Rio	281
Exchange, The, v. McFad- don	232 f.	Jurisdiction of the Courts of Danzig	195
Factory of Chorzow	20	Kalisyndikat Gesellschaft, Deutsche	237 f.
Foster v. Neilson	353 f.	Kandiliotes v. The Common- wealth	245
Four Packages of Cut Dia- monds v. United States	318	Katz and Klump v. Yugo- slavia	261
Free Zones of Upper Savoy and District of Gex	325	Kennett v. Chambers	271
French National Railway Company v. Chavannes	421	Kontinental-Gasgesellschaft, Deutsche	267
Gagara, The	272	Kotzias v. Tyser	68
Geipel v. Smith	81	La Jeune Eugénie	310
Gelbtrunk Claim	121	Lazard Bros. v. Midland Bank Ltd.	256
German Interests in Polish Upper Silesia	329, 348	Lehigh Valley Railroad Co. v. State of Russia	280
German Major War Criminals (Nuremberg Trial)	138, 239	Llandovery Castle, The	135
German Settlers in Poland	298	Lotos, The	211
Government of Spain v. The Chancery Lane Safe De- posit Ltd.	281	Lusitania, The	80
Governor Collot	236	Luther v. Sagor & Co.	239, 257, 287
Greco-Bulgarian "Communi- ties"	421	Macintosh v. United States	44
Gschwind v. Swiss Confedera- tion	246	Mathot v. Longué	74
Hawaiian Claims	298	Mavrommatis Palestine Con- cessions	245
Helena, The	124 f.	Megalidis v. Turkey	329
High Command Trial	137	Menge v. Polish Railway Ad- ministration	143

# Table of Cases

xv

Mexican Union Railway	244	Reparation for Injuries suffered in the Service of the United Nations	184
Military Decoration Pension	261 f.	Republic of Panama (Compania de Navigacion Nacional) v. United States of America	221
Mortensen v. Peters	420	Reservations to the Convention on Genocide	334
Naulilaa, The	24	Rhineland Ordinances	351
Nayade, The	28	Riera et al., <i>In re</i>	421
Nishimura Ekiu	242	Roberts, H., v. Mexico	243
North American Dredging Co.	244 f.	Romano v. Comma	250
North Atlantic Coast Fisheries Arbitration	345 f.	Rothschild & Sons v. Egyptian Government	360
Oder Commission	332	Roy, R.T., The	247
Ottoman Debt Arbitration	261	Russian Socialist Federated Soviet Republic v. Cibrario	280, 286
Over the Top, The	421, 433		
Pablo Najera	339	Salem	252 f.
Papadopoulos v. Koninglijke Nederlandsche Stoomboot Maatschappij	353	Salimoff & Co. v. Standard Oil Co.	287
Paquete Habana, The	435	Santissima Trinidad, The	82
Parlement Belge, The	222, 234	Sei Fujii v. State of California	144
Pearson v. Allis Chalmers Co.	82	Serbian Loans	318
Pearson v. Parson	82	Sigwald, Charles, v. Germany	141 f.
Pesaro, The	234	Sokoloff v. National City Bank	280, 283, 287
Petrogradsky M.K. Bank v. National City Bank	287	South-West Africa, International Status	164
Philippine Sugar Estates Development Co. v. United States	297	Soviet Government v. Ericsson	286 f.
Pinson, Georges	420	State of Spain v. The Chancery Lane Safe Deposit Ltd.	281
Piracy <i>jure gentium</i>	125	Steiner and Gross v. Polish State	142 f.
Polites v. The Commonwealth	245	Stoeck v. Public Trustee	250
Prometheus, The	23	Switzerland-France Arbitration	325
Queen v. Keyn	23		
Quirin et al., <i>Ex parte</i>	129 f.		
R. v. Bottril, <i>ex parte</i> Kuechenmeister	76		
R. v. Gordon-Finlayson	223		
Railway Traffic between Lithuania and Poland	342 f.		



Tellech v. Austria and Hungary	251	United States-Norway Arbitration	305 f.
Thomas v. Gay	421		
Three Friends, The	292 f.	West Rand Central Gold Mining Co. Ltd. v. The King	315 f., 435
Tinoco Arbitration	282	Wimbledon, The	346
Totus et al. v. United States et al.	421	Wulfsohn v. Russian Socialist Federated Soviet Republic	280, 286
Treatment of Polish Nationals in the Danzig Territory	195, 423		
Tunis-Morocco Nationality Decrees	197	Youmans Claim	120
Underhill v. Hernandez	236		
United States v. Bank of New York & Trust Co.	256	Zamora, The	237, 420
United States v. Germany (Nationality of Claims)	246	Zoppot Street-Crossing	350