

# Contents

Preface to the Fifth Edition .....	vii
Notes on Authors .....	ix
Abbreviations.....	xxiii
Table of Cases.....	xxix
Table of Statutes.....	lvii
<b>Chapter 1: The Nature and History of International Law —</b>	
John Dugard .....	1
<b>DIFFERENCES BETWEEN INTERNATIONAL LAW AND</b>	
<b>    MUNICIPAL LAW .....</b>	<b>3</b>
1 Legislature .....	3
2 Executive authority.....	4
3 International courts.....	5
<b>THE PROBLEM OF SANCTIONS .....</b>	<b>6</b>
<b>IS INTERNATIONAL LAW REALLY LAW?.....</b>	<b>9</b>
<b>THE HISTORY OF INTERNATIONAL LAW (INCLUDING</b>	
<b>    THEORIES OF INTERNATIONAL LAW).....</b>	<b>11</b>
<b>THE FRAGMENTATION OF INTERNATIONAL LAW.....</b>	<b>17</b>
<b>Chapter 2: South Africa and International Law: A Historical</b>	
<b>    Introduction — John Dugard .....</b>	<b>18</b>
<b>Chapter 3: Sources of International Law — John Dugard and</b>	
<b>    Dire Tladi .....</b>	<b>28</b>
<b>INTRODUCTION.....</b>	<b>28</b>
<b>TREATIES OR CONVENTIONS.....</b>	<b>29</b>
1 Contractual.....	29
2 Legislative .....	30
3 Constitutional .....	30
<b>CUSTOMARY INTERNATIONAL LAW.....</b>	<b>30</b>
1 Elements of customary international law .....	31
(a) Settled practice ( <i>usus</i> ).....	31
(b) <i>Opinio juris</i> .....	36
2 Resolutions of international organisations .....	37
3 Soft law.....	41
<b>THE RELATIONSHIP BETWEEN CUSTOMARY INTERNATIONAL</b>	
<b>    LAW AND TREATY LAW.....</b>	<b>42</b>
<b>GENERAL PRINCIPLES OF LAW RECOGNISED BY CIVILISED</b>	
<b>    NATIONS.....</b>	<b>43</b>
<b>JUDICIAL PRECEDENT .....</b>	<b>45</b>
<b>TEXT WRITINGS .....</b>	<b>46</b>
<b>UNILATERAL ACTS OF STATES.....</b>	<b>46</b>
<b>CODIFICATION .....</b>	<b>47</b>
<b><i>JUS COGENS</i>, OBLIGATIONS <i>ERGA OMNES</i> AND A SYSTEM OF</b>	
<b>    HIGHER NORMS.....</b>	<b>49</b>

<b>Chapter 4: The Place of International Law in South African Municipal Law — John Dugard and Andreas Coutsoudis .</b>	<b>57</b>
ROMAN-DUTCH LAW .....	58
ANGLO-AMERICAN LAW.....	60
SOUTH AFRICAN LAW BEFORE 1994.....	61
1 Customary international law.....	62
2 Treaties and municipal courts .....	64
THE NEW CONSTITUTIONAL ORDER.....	65
1 The 1993 and 1996 Constitutions.....	65
2 Customary international law.....	67
3 Proof of customary international law.....	67
4 Treaties .....	72
5 Self-executing treaties.....	81
6 The national executive and the making of treaties.....	86
7 International agreements or treaties.....	87
8 Resolutions of international organisations .....	88
9 Statutory (including constitutional) interpretation with special reference to human rights .....	89
10 Hierarchy of treaties in municipal law.....	99
11 The executive certificate .....	100
12 The justiciability of acts of state.....	104
(a) The justiciability of acts of the South African government in foreign relations .....	105
(b) The justiciability of acts of foreign governments .....	116
13 The extraterritorial application of the Constitution .....	123
<b>Chapter 5: States (Including Recognition and Non-recognition) — John Dugard .....</b>	<b>126</b>
THE CRITERIA FOR STATEHOOD .....	128
1 Permanent population .....	128
2 Defined territory .....	129
3 Government .....	129
4 Capacity to enter into relations with other states.....	130
5 Respect for human rights and self-determination .....	134
RECOGNITION.....	136
UNILATERAL RECOGNITION .....	137
THE METHOD OF RECOGNITION .....	140
COLLECTIVE RECOGNITION BY THE UNITED NATIONS AND DECOLONISATION.....	140
COLLECTIVE NON-RECOGNITION .....	145
SELF-DETERMINATION, TERRITORIAL INTEGRITY AND SECESSION .....	149
1 Self-determination.....	149
(a) Self-determination as the right of colonial peoples only ..	150
(b) External or internal self-determination .....	151
(c) The 'self' in self-determination .....	152
2 Territorial integrity .....	153

3	State practice and judicial decisions on secession. . . . .	154
	(a) Kosovo opinion . . . . .	158
	(b) Post-Kosovo developments . . . . .	160
4	Conclusion . . . . .	162
5	A South African postscript. . . . .	163
	FAILED STATES. . . . .	163
	<b>Chapter 6: Recognition of Governments — John Dugard</b> . . . . .	165
	<i>DE FACTO AND DE JURE</i> RECOGNITION. . . . .	169
	<b>Chapter 7: Recognition in Municipal Law — John Dugard</b> . . . . .	171
	PROOF OF RECOGNITION . . . . .	171
	LEGAL EFFECT OF ACTS OF UNRECOGNISED STATES AND GOVERNMENTS . . . . .	174
	<b>Chapter 8: Territory — John Dugard and Rosalind Elphick</b> . . . . .	180
	BACKGROUND CONCEPTS . . . . .	182
1	Intertemporal law . . . . .	182
2	<i>Uti possidetis</i> . . . . .	186
3	Original versus derivative title . . . . .	188
	THE MODES OF ACQUISITION OF TERRITORY . . . . .	188
1	Discovery . . . . .	188
2	Occupation . . . . .	188
3	Accretion. . . . .	193
4	Cession . . . . .	194
5	Conquest. . . . .	196
6	Prescription. . . . .	199
7	Estoppel . . . . .	201
8	Territorial claims based on the right of self-determination. . . . .	202
	(a) Legal ties of a historical nature . . . . .	202
	(b) Colonial enclaves. . . . .	203
9	Concluding comments . . . . .	204
	TERRITORIAL DISPUTES IN AFRICA . . . . .	205
	ANTARCTICA . . . . .	208
	<b>Chapter 9: Jurisdiction and International Crimes — John Dugard, Max du Plessis and Eshed Cohen</b> . . . . .	210
	JURISDICTION . . . . .	210
1	Territoriality . . . . .	214
2	Subjective and objective territoriality. . . . .	216
3	Protection of the state . . . . .	218
4	Nationality . . . . .	219
5	Passive personality . . . . .	221
6	Universal jurisdiction and international crimes . . . . .	222
	INTERNATIONAL CRIMES . . . . .	227
1	Customary international law crimes . . . . .	227
2	International treaty crimes. . . . .	228
	(a) Genocide. . . . .	228
	(b) Apartheid . . . . .	228

(c)	Torture . . . . .	230
(d)	Hijacking . . . . .	231
(e)	Offences against the safety of maritime navigation . . . . .	233
(f)	Drug-trafficking . . . . .	234
(g)	International terrorism . . . . .	234
3	The Protection of Constitutional Democracy against Terrorist and Related Activities Act 33 of 2004 . . . . .	238
<b>Chapter 10: International Criminal Courts, the International Criminal Court, and South Africa's Implementation of the Rome Statute — Max du Plessis and Eshed Cohen . . .</b>		
	<b>INTERNATIONAL CRIMINAL COURTS . . . . .</b>	<b>245</b>
	<b>THE INTERNATIONAL CRIMINAL COURT . . . . .</b>	<b>249</b>
	<b>ICC CRIMES . . . . .</b>	<b>250</b>
1	Genocide . . . . .	251
2	Crimes against humanity . . . . .	254
3	War crimes . . . . .	258
(a)	War crimes in times of international armed conflict . . . . .	260
(b)	War crimes in times of non-international armed conflict . . . . .	262
4	Aggression . . . . .	265
(a)	The definition of the crime . . . . .	266
(b)	Jurisdiction for the crime of aggression . . . . .	268
	<b>JURISDICTION . . . . .</b>	<b>270</b>
	<b>ADMISSIBILITY . . . . .</b>	<b>272</b>
	<b>SITUATIONS BEFORE THE ICC . . . . .</b>	<b>276</b>
1	An international criminal court for the 'usual suspects' . . . . .	227
	<b>SOUTH AFRICA'S IMPLEMENTATION OF THE ROME STATUTE . . .</b>	<b>280</b>
1	Incorporation of ICC crimes . . . . .	281
2	Grounds of jurisdiction . . . . .	282
3	Complementarity . . . . .	284
4	Co-operation with the International Criminal Court . . . . .	285
(a)	Arrest and surrender . . . . .	285
(b)	Forms of assistance offered to the Court in fulfilment of article 93 of the Rome Statute . . . . .	287
(c)	Specialised units . . . . .	288
(d)	Discretionary measures of assistance . . . . .	289
(e)	Enforcement of sentences . . . . .	290
	<b>IMMUNITIES . . . . .</b>	<b>292</b>
1	Immunity from arrest and surrender to the ICC . . . . .	293
2	Immunity from domestic prosecution . . . . .	295
3	Immunity from international prosecution before the ICC . . . . .	297
4	South Africa's obligations regarding senior officials . . . . .	298
	<b>SOUTH AFRICA AND THE ICC . . . . .</b>	<b>299</b>
<b>Chapter 11: Extradition — Anton Katz, Max du Plessis, Eshed Cohen and John Dugard . . . . .</b>		
	<b>THE IMPACT OF THE CONSTITUTION . . . . .</b>	<b>307</b>
1	Human rights . . . . .	307



2	The relationship between international and municipal law . . .	313
3	The rule of law . . . . .	315
<b>EXTRADITION DISTINGUISHED FROM OTHER FORMS OF</b>		
	<b>REMOVAL . . . . .</b>	<b>316</b>
1	Deportation (disguised extradition) from and to South Africa.	316
2	Abduction . . . . .	318
3	Surrender to international criminal tribunals . . . . .	323
<b>EXTRADITION FROM SOUTH AFRICA TO FOREIGN STATES . . . . .</b>		
1	The administrative phase . . . . .	324
2	The judicial phase . . . . .	326
	(a) Extraditable offences and double criminality . . . . .	329
	(b) Within the jurisdiction of the foreign state . . . . .	331
3	The executive phase . . . . .	333
	(a) Offences of a political character . . . . .	336
<b>EXTRADITION FROM SOUTH AFRICA TO ASSOCIATED STATES ..</b>		
<b>342</b>		
<b>INTERNATIONAL CO-OPERATION IN THE SUPPRESSION OF</b>		
<b>CRIME BY MEANS OTHER THAN EXTRADITION . . . . .</b>		
<b>342</b>		
<b>Chapter 12: Immunity from Jurisdiction — John Dugard . . . . .</b>		
<b>346</b>		
<b>SOVEREIGN OR STATE IMMUNITY . . . . .</b>		
<b>347</b>		
1	Foreign States Immunities Act 87 of 1981 . . . . .	350
	(a) Waiver . . . . .	351
	(b) Commercial transactions . . . . .	351
	(c) Contracts of employment . . . . .	353
	(d) Personal injury and damage to property . . . . .	354
	(e) Miscellaneous . . . . .	355
2	Enforcement . . . . .	356
3	The state, the government and separate entities . . . . .	357
4	Indirect impleading and state immunity . . . . .	359
<b>IMMUNITY, HUMAN RIGHTS AND INTERNATIONAL CRIMES. . . . .</b>		
<b>360</b>		
1	Criminal proceedings . . . . .	361
2	Civil proceedings . . . . .	370
<b>DIPLOMATIC AND CONSULAR IMMUNITY . . . . .</b>		
<b>375</b>		
1	The Diplomatic Immunities and Privileges Act (excluding the Conventions in the schedules) . . . . .	376
2	The Vienna Convention on Diplomatic Relations 1961 (Schedule 1) . . . . .	379
	(a) Inviolability . . . . .	380
	(b) Extraterritoriality of missions . . . . .	381
	(c) Diplomatic immunities . . . . .	382
3	The Vienna Convention on Consular Relations 1963 (Schedule 2) . . . . .	384
<b>ASYLUM IN DIPLOMATIC AND CONSULAR PREMISES . . . . .</b>		
<b>385</b>		
<b>Chapter 13: State Responsibility, Diplomatic Protection and the</b>		
<b>Treatment of Aliens — John Dugard . . . . .</b>		
<b>389</b>		
<b>THE DRAFT ARTICLES ON STATE RESPONSIBILITY . . . . .</b>		
<b>392</b>		
1	Attribution of conduct to a state . . . . .	393

2	Circumstances precluding wrongfulness. . . . .	398
3	Legal consequences of internationally wrongful acts . . . . .	400
4	Serious breaches of peremptory norms . . . . .	402
5	Invocation of the responsibility of a state . . . . .	402
6	Countermeasures. . . . .	403
	DIPLOMATIC PROTECTION. . . . .	405
	NATIONALITY . . . . .	407
1	Nationality of natural persons. . . . .	408
2	Nationality of corporations and shareholders. . . . .	412
3	Continuous nationality . . . . .	417
4	Is there a right to diplomatic protection? . . . . .	417
	EXHAUSTION OF LOCAL REMEDIES. . . . .	422
1	Calvo Clause. . . . .	426
	THE IMPLEMENTATION OF DIPLOMATIC PROTECTION . . . . .	426
	THE TREATMENT OF ALIENS . . . . .	427
1	The personal rights of aliens . . . . .	430
2	Diplomatic protection and human rights. . . . .	432
3	The property rights of aliens—with special reference to expropriation of property. . . . .	432
4	State contracts . . . . .	436
5	Unlawful nationalisations before foreign municipal courts . . .	438
6	Alternative procedures for the protection of investment and the settlement of investment disputes . . . . .	439
	<b>Chapter 14: Responsibility of International Organisations — Arnold Pronto . . . . .</b>	<b>442</b>
	INTERNATIONAL LEGAL PERSONALITY. . . . .	443
	DEFINITION OF AN INTERNATIONAL ORGANISATION. . . . .	444
1	By analysing their composition. . . . .	444
2	By reference to the method of establishment. . . . .	445
3	By implication from the existence of separate legal personality . . . . .	445
	APPLICABLE LAW AND CONCEPT OF THE 'RULES OF THE ORGANISATION' . . . . .	446
	CIRCUMSTANCES UNDER WHICH RESPONSIBILITY MAY ARISE FOR AN INTERNATIONAL ORGANISATION. . . . .	447
1	Attribution of conduct to the international organisation . . . . .	447
2	Responsibility in connection with an act of a state or other international organisation . . . . .	451
	THE RESPONSIBILITY OF STATES MEMBERS OF AN INTERNATIONAL ORGANISATION FOR THE ACTS OF AN ORGANISATION . . . . .	451
	THE FUTURE OF THE DRAFT ARTICLES ON RESPONSIBILITY OF INTERNATIONAL ORGANISATIONS. . . . .	453
	<b>Chapter 15: Human Rights — John Dugard and Jackie Dugard . . . . .</b>	<b>454</b>
	THE NUREMBERG TRIAL . . . . .	455
	THE CHARTER OF THE UNITED NATIONS . . . . .	456

1	South Africa's racial policies and the human rights clauses of the UN Charter 1949–1994 . . . . .	457
	UNIVERSAL DECLARATION OF HUMAN RIGHTS . . . . .	460
	THE INTERNATIONAL COVENANTS AND CONVENTIONS. . . . .	462
	THE TWO CORNERSTONE INTERNATIONAL COVENANTS . . . . .	465
1	The International Covenant on Civil and Political Rights (ICCPR) . . . . .	465
	(a) State reports . . . . .	467
	(b) General comments. . . . .	467
	(c) Individual complaints. . . . .	468
2	The International Covenant on Economic, Social and Cultural Rights (ICESCR). . . . .	469
	(a) State reports . . . . .	472
	(b) General comments. . . . .	473
	(c) Individual complaints. . . . .	473
	THE OTHER SEVEN INTERNATIONAL CONVENTIONS . . . . .	474
1	International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) . . . . .	474
2	Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) . . . . .	476
3	Torture (CAT) . . . . .	478
4	Convention on the Rights of the Child (CRC). . . . .	480
5	Migrant workers (CMW) . . . . .	481
6	Enforced disappearance (CED) . . . . .	481
7	Disabled people (CRPD). . . . .	482
	EMERGING RIGHTS . . . . .	482
1	Business and human rights . . . . .	483
2	UN human rights bodies . . . . .	484
	(a) Human Rights Council. . . . .	484
	(b) The Office of the UN High Commissioner for Human Rights. . . . .	487
	CONVENTIONS, DECLARATIONS, AND STANDARDS. . . . .	488
1	ILO standards. . . . .	489
2	Standard Minimum Rules for the Treatment of Prisoners. . . . .	489
	REGIONAL HUMAN RIGHTS CONVENTIONS . . . . .	489
1	The European Convention on Human Rights. . . . .	490
2	The Inter-American system . . . . .	493
3	The African Charter on Human and Peoples' Rights. . . . .	495
	INTERNATIONAL HUMAN RIGHTS INSTRUMENTS AND SOUTH AFRICAN LAW . . . . .	495
	<b>Chapter 16: Refugees and Stateless Persons — Anton Katz and Tiyanjana Maluwa . . . . .</b>	<b>502</b>
	INTRODUCTION . . . . .	502
	REFUGEES . . . . .	502
1	The genesis of international refugee law . . . . .	505
2	The definition of a refugee . . . . .	507
	(a) Well-founded fear of persecution . . . . .	509

(b)	Political opinion . . . . .	511
(c)	Membership of a particular social group . . . . .	513
(d)	The expanded refugee definition in the 1969 OAU Convention . . . . .	515
(e)	'Bootstrap' refugees or refugees sur place . . . . .	516
	<b>SOUTH AFRICAN PROCEDURE BEFORE THE REFUGEES ACT . . . . .</b>	<b>517</b>
	<b>THE REFUGEES ACT . . . . .</b>	<b>519</b>
1	<i>Non-refoulement</i> and access to South African territory . . . . .	520
2	Procedure for application for refugee status . . . . .	522
3	Asylum-seekers . . . . .	523
(a)	Decisions on asylum applications . . . . .	523
(b)	Detention of failed asylum-seekers . . . . .	525
(c)	Exclusion from refugee status . . . . .	526
(d)	Cessation of refugee status . . . . .	526
4	Amendments to the Refugees Act: New procedures . . . . .	527
5	Refugee law and immigration law . . . . .	531
6	Application for residence or immigration status . . . . .	531
7	Failed asylum-seekers and their eligibility for deportation under immigration law . . . . .	532
	<b>INEFFECTIVE PROTECTION IN SOUTH AFRICA . . . . .</b>	<b>533</b>
	<b>STATELESSNESS (Rosalind Elphick) . . . . .</b>	<b>535</b>
	<b>Chapter 17: Law of the Sea — John Dugard and Dire Tladi . . . . .</b>	<b>539</b>
	<b>INTRODUCTION . . . . .</b>	<b>539</b>
	<b>MARITIME ZONES . . . . .</b>	<b>542</b>
1	Internal waters . . . . .	542
2	Territorial sea . . . . .	546
3	Straits . . . . .	550
4	Contiguous zone . . . . .	551
5	Exclusive economic zone . . . . .	551
6	The high seas . . . . .	554
(a)	Jurisdiction over ships on the high seas . . . . .	556
(b)	Piracy . . . . .	559
(c)	Hot pursuit . . . . .	560
(d)	Rescue powers of South African ships . . . . .	561
7	Continental shelf . . . . .	561
8	The deep seabed . . . . .	569
	<b>THE MARINE ENVIRONMENT . . . . .</b>	<b>573</b>
1	General . . . . .	573
2	Pollution . . . . .	574
3	Conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction . . . . .	575
	<b>SETTLEMENT OF DISPUTES . . . . .</b>	<b>576</b>
	<b>Chapter 18: Air and Space Law — John Dugard and Rosalind     Elphick . . . . .</b>	<b>578</b>
	<b>AIR LAW . . . . .</b>	<b>578</b>
1	Distress . . . . .	581



2	Aerial intrusion .....	582
3	Drones .....	583
4	Air defence identification zones .....	583
	OUTER SPACE .....	584
	<b>Chapter 19: International Environmental Law — John Dugard and Dire Tladi</b> .....	586
	INTRODUCTION .....	586
	STATE RESPONSIBILITY AND THE ENVIRONMENT .....	588
	LIABILITY FOR ACTS NOT PROHIBITED BY INTERNATIONAL LAW .....	591
	PRINCIPLES OF INTERNATIONAL CO-OPERATION .....	592
1	Sustainable development .....	593
2	Notification .....	595
3	Environmental impact assessment .....	596
4	Precautionary principle .....	597
5	'Polluter pays' principle .....	597
	TRADE AND THE ENVIRONMENT .....	598
	ENVIRONMENTAL TREATIES .....	600
1	Flora, fauna and biological diversity .....	600
2	Conservation of marine living resources .....	602
3	Ozone depletion, global warming and climate change .....	603
4	Nuclear activities .....	605
5	Hazardous waste .....	606
6	International watercourses .....	607
	<b>Chapter 20: Treaties — John Dugard</b> .....	608
	INTRODUCTION .....	608
	SOUTH AFRICA'S TREATY-MAKING CAPACITY .....	610
	THE MAKING OF TREATIES .....	610
	RESERVATIONS .....	612
	INVALIDITY OF TREATIES .....	618
	TERMINATION OF TREATIES .....	619
	INTERPRETATION OF TREATIES .....	622
	SUCCESSION TO TREATIES .....	625
	<b>Chapter 21: International Economic Relations — Max du Plessis and Kholofelo Kugler</b> .....	632
	INTRODUCTION .....	632
	THE SOURCES OF SOUTH AFRICA'S INTERNATIONAL ECONOMIC LAW COMMITMENTS AND THE KEY OBLIGATIONS .....	635
1	International financial agreements .....	636
2	International trade agreements .....	638
3	International investment agreements .....	641
4	Conclusion on sources and key principles .....	644
	THE SIGNIFICANCE OF SOUTH AFRICA'S INTERNATIONAL OBLIGATIONS IN SOUTH AFRICAN MUNICIPAL LAW .....	645

THE WORLD TRADE ORGANIZATION AND THE FUNDAMENTAL PRINCIPLES OF INTERNATIONAL TRADE ..	648
1 Overview .....	648
2 The object, structure and operation of the World Trade Organization. ....	649
3 Dispute settlement. ....	650
4 The fundamental principles of international trade. ....	651
5 The operation of the dispute settlement system and South Africa's participation in World Trade Organization's disputes. ....	652
6 Anti-dumping legislation and investigations under the World Trade Organization Anti-Dumping Agreement .....	654
GENERAL PRINCIPLES OF INTERNATIONAL INVESTMENT LAW .	656
1 Overview .....	656
2 South Africa's international investment regime .....	658
3 The Protection of Investment Act .....	662
<b>Chapter 22: International Adjudication — John Dugard and Rosalind Elphick .....</b>	<b>665</b>
INTRODUCTION .....	665
A BRIEF HISTORY OF INTERNATIONAL ADJUDICATION .....	666
THE INTERNATIONAL COURT OF JUSTICE. ....	669
CONTENTIOUS PROCEEDINGS .....	671
1 Jurisdiction .....	672
(a) Cases which parties refer to the Court (special agreement) .....	673
(b) Cases provided for in treaties or conventions in force (compromissory clause) .....	674
(c) Matters specially provided for in UN Charter .....	675
(d) Optional clause .....	675
(e) Third parties. ....	681
2 Admissibility .....	682
3 Proceedings .....	684
4 Non-appearance. ....	685
5 Judgment and its enforcement. ....	686
6 The limits of international adjudication. ....	689
ADVISORY OPINIONS .....	691
THE PERMANENT COURT OF ARBITRATION (Jennifer Nettleton-Brom) .....	696
<b>Chapter 23: The United Nations and the Maintenance of International Peace and Security — John Dugard and Tiyanjana Maluwa .....</b>	<b>701</b>
INTRODUCTION .....	701
GENERAL ASSEMBLY .....	702
SECURITY COUNCIL .....	708
1 Chapter VI .....	710
2 Chapter VII. ....	712

(a) Provisional measures .....	715
(b) Non-forcible measures .....	715
(c) Forcible measures .....	718
(d) Legislation .....	720
3 Article 24 .....	721
4 Review of Security Council action .....	722
PEACEKEEPING FORCES .....	723
SECRETARY-GENERAL .....	727
REGIONAL ARRANGEMENTS .....	727
<b>Chapter 24: The Use of Force by States — Dire Tladi and John Dugard</b> .....	<b>730</b>
INTRODUCTION .....	730
THE PROHIBITION ON THE USE OF FORCE .....	731
1 The forms of force prohibited .....	732
(a) Economic force .....	733
(b) Indirect force .....	734
CIRCUMSTANCES IN WHICH FORCE IS PERMITTED WITHOUT THE AUTHORISATION OF THE UNITED NATIONS .....	736
1 Self-defence .....	736
(a) General .....	736
(b) Anticipatory self-defence and pre-emptive action .....	739
(c) Self-defence and accumulation of events .....	742
(d) Collective self-defence .....	743
2 Hot pursuit .....	745
3 Defence of nationals .....	745
4 Humanitarian intervention .....	747
5 The invasion of Iraq in 2003 .....	751
6 Intervention in civil strife and civil wars .....	753
(a) Intervention where the rebels are not externally assisted .....	753
(b) Intervention where the rebels are externally assisted .....	754
7 Wars of national liberation .....	757
8 Self-defence against non-state actors: the case of terrorism .....	759
<b>Chapter 25: Humanitarian Law — John Dugard</b> .....	<b>765</b>
INTRODUCTION .....	765
THE SOURCES AND SCOPE OF HUMANITARIAN LAW .....	765
1 Law of The Hague .....	766
2 The prohibition of weapons that cause unnecessary suffering .....	767
3 Law of Geneva .....	772
4 Principles of humanitarian law .....	773
(a) Combatants and prisoners of war .....	773
(b) Occupation and protection of civilians .....	775
(c) Distinction and proportionality .....	777
(d) International and non-international armed conflicts .....	778
(e) Human rights and international humanitarian law .....	782
(f) Enforcement of international humanitarian law .....	782

HUMANITARIAN LAW AND SOUTH AFRICAN MUNICIPAL LAW.	784
1 The Anglo-Boer War .....	784
2 The status of humanitarian treaties .....	785
3 Mercenaries (Shannon Bosch) .....	786
4 The treatment of members of national liberation movements .	790
5 The Truth and Reconciliation Commission Report and international humanitarian law .....	792
<b>Chapter 26: The African Union — Max du Plessis and Tiyanjana     Maluwa .....</b>	<b>794</b>
INTRODUCTION .....	794
THE ORGANIZATION OF AFRICAN UNITY .....	794
FROM THE OAU TO THE AFRICAN UNION .....	798
1 The objectives, principles and organs of the AU .....	800
2 The New Partnership for Africa's Development and the African Peer Review Mechanism .....	806
THE AFRICAN UNION AND PEACE AND SECURITY IN AFRICA ..	809
(a) The African Mission in Burundi (AMIB) .....	812
(b) Peace Operation in Burundi (ONUB) .....	813
(c) The African Mission in Sudan (AMIS) .....	814
(d) The African Mission in Somalia (AMISOM) .....	815
THE AFRICAN UNION AND HUMAN RIGHTS .....	816
1 African Charter on Human and Peoples' Rights .....	818
2 African Commission on Human and Peoples' Rights .....	822
3 African Court on Human and Peoples' Rights .....	826
4 Tension between African states, the UN Security Council and the International Criminal Court .....	833
THE QUEST FOR A PERMANENT SEAT FOR AFRICA ON THE UN SECURITY COUNCIL .....	836
INDEX .....	839