Contents

Table of Cases		xi
Ta	able of Abbreviations	xxiii
1	Prologue	1
т.	General Observations	1
		1
	Scope of this Work	5
	Important Sources and References A Basic Premise	6
	A Dasic Piemise	O
2.	History and Development of Diplomatic Protection	8
	The Early Beginnings	10
	The Nineteenth and Early Twentieth Centuries	13
	The Late Twentieth Century and Thereafter	16
3.	Diplomatic Protection in Context	21
	Definition	21
	Basic Content of the Concept	25
	The Use of Force	27
	Alternative Arrangements	32
4.	The International Law Violated	37
5.	Arrangements Excluded from the Concept of	
	Diplomatic Protection	45
	A Critical Distinction—Diplomatic and Consular Action	45
	Protection by States of Diplomatic and Consular	
	Officers and Other Agents	46
	Rights of International Organizations in Regard to their Staff	47
	Protection of Individuals under Treaties	54
6.	Codification of the Law of Diplomatic Protection	55
	The Earliest Attempt	55
	Consideration by the ILC	58

viii Contents

7.	The Clash of Interests in Diplomatic Protection	63
	The State of Nationality	66
	The Defendant State	67
	The Injured Alien	68
	Choices Among Competing Interests	70
	The International Community	72
8.	The Human Rights Factor—The Claimed Obsolescence of	
	Diplomatic Protection	73
9.	A Duty to Protect?	79
10.	The Relevance of Nationality	91
	Natural Persons: Determination of Nationality	92
	Natural Persons: Continuous Nationality	96
	Natural Persons: Dual and Multiple Nationality	106
	Dual Nationality Including the Respondent State 106	
	Dual or Multiple Nationality—Not Including the	
	Respondent State 112	
	Multiple Nationality Including That of the Respondent State 113 Natural Persons: The Effective Link Theory	113
	Natural Persons: Stateless Persons and Refugees	117
	Natural Persons: Crews of Ships	117
	Legal or Juridical Persons	122
	Corporations 122	122
	Other Legal (or Juridical) Persons 138	
11.	Exhausting Local Remedies	142
	Scope of the Rule	143
	Exceptions to or Limitations on the Rule	149
	Waiver of Rule	161
	Inapplicability of the Rule	172
	Perspectives	187
12.	The Effect of a Calvo Clause	191
	Origin and Forms of the Calvo Clause	191
	State Practice	193
	Legal Commentators	194
	Attempts at Codification	196
	The Case Law	201
	The Impact of Recent Developments	206

13

	Conclusion	209
13.	The 'Clean Hands' Doctrine	212
	Direct Inter-State Relations	213
	Diplomatic Protection by a State with Unclean Hands	216
	Diplomatic Protection of an Alien with 'Unclean Hands'	217
	Conclusion	221
14.	Attribution of Conduct as the Act of the State	225
	Introduction	225
	The Primary Principles	229
	The Organs of the State 229	
	Exclusion of Attribution—Ultra Vires Conduct 241	
	Conduct of an Insurrectional or Other Movement	248
	Other Situations	252
	Conduct of Individuals and Other Entities as Such	270
	Attribution to a State of Conduct of Another State	270
15.	Remedies	282
	Continuing Duty of Performance, Cessation,	
	and Non-repetition	283
	Reparation	285
	Restitutio in Integrum 290	
	Compensation 294	
	Satisfaction 323 Contribution to the Injury 325	
	Countermeasures	327
	Odditellicasares	
16.	Influence of the Law of Human Rights Protection—Parallels	329
17	The Effect of Investment Treaties and of	
11/0	International Investment Law	334
18.	Concluding Observations	342
Index		347