

# Table of Contents

<i>Preface</i>	v
<i>List of Abbreviations</i>	xix
<i>Table of Cases</i>	xxi
<i>Table of Legislative and Related Acts</i>	xxxix
<b>I) Initial Observations on the Peaceful Resolution of International Disputes</b>	<b>1</b>
1. Importance and Context	1
a) Disputes are Normal, but Give Rise to Various Dangers	1
b) Ways of Containing Disputes within the Margins of Internationally Acceptable Behaviour	2
c) Nineteenth-Century Mechanisms for Dealing with Disputes	3
d) The Emergence of International Law on the Peaceful Settlement of Disputes	7
e) The Peaceful Settlement of Disputes as a Collective Interest	9
f) Relative Weakness of the Law on the Peaceful Settlement of Disputes	11
g) Consent as a Governing Principle of Dispute Resolution	14
h) Procedures for the Peaceful Settlement of Disputes	17
2. Chapter VI of the United Nations Charter	19
a) Links between the Peaceful Settlement of Disputes and Non-recourse to the Use of Force (Further Examination)	19
b) Types of Dispute Envisaged by the Charter	21
c) A Duty to Seek a Solution to the Dispute?	23
d) The Field to which Chapter VI Applies (Articles 33 <i>et seq</i> )	24
e) Seising the Organs of the UN	28
f) Action by the Security Council or the General Assembly	30
g) Overall Summary	35
<b>II) Origins and Environment of the International Court of Justice at The Hague</b>	<b>39</b>
1. Arbitration and Organised Justice: Creation of the Permanent Court of International Justice in 1920	39
a) From Arbitration to International Justice	39
b) Difference between Arbitration and International Justice	45
2. The Transition in 1945 from the Permanent Court of International Justice to the International Court of Justice	51
a) Reasons for Dissolving the PCIJ	51
b) The Process of Creating the ICJ	53
c) Establishment of the ICJ	58

3. The International Court of Justice as the Principal Judicial Organ of the United Nations and of Public International Law	59
a) The Court as the Principal Judicial Organ of the United Nations	59
b) The Court as Organ of Public International Law	65
4. The Main International Jurisdictions based at The Hague	67
a) Other International Tribunals	67
b) A Digression: Definition of 'International Tribunal'	69
<b>III) The Texts Governing the Court's Activities</b>	<b>77</b>
1. Constitutive Texts: The Statute and the Charter	77
a) The Significance of Constitutive Texts	77
b) Peremptory Character of the Statute	80
c) Revision of the Statute	86
d) Denouncing or Withdrawing from the Statute	88
e) Participation in the Statute by States which are not UN Members	93
2. The Rules: Derivative Provisions	96
a) What are the Rules?	96
b) Peremptory Character and Modification of the Rules	99
c) Subordination to the Statute	101
3. Subordinate Texts: Practice Directions	105
a) Reasons for Issuing Practice Directions	105
b) Content of Practice Directions	106
<b>IV) Composition of the Court</b>	<b>109</b>
1. The Bench	109
a) Fifteen Judges	109
b) Nationalities of the Judges	110
c) Judges from States that are not UN Members	111
d) Personal Qualities of the Judges	111
e) Representation of the Main Forms of Civilization and the Principal Legal Systems of the World	113
f) <i>Ad hoc</i> Judges	118
g) Irremovability, Resignation and Incompatibility of Judges	132
h) Quorum	137
2. Electing the Judges	138
3. Chambers of the Court	142
a) General Observations	142
b) Types of Chambers	143
c) Relations between the Chambers and the Court	145
d) Jurisdiction of Chambers	146
e) Functioning and Procedure	150
4. The Registry	154

V) Contentious Procedure: Inter-State Disputes	159
1. First Steps in a Case	159
a) Seising the Court	159
b) Conditions for the Validity of the Document Initiating the Proceedings	164
c) The Court's Non-formalist Attitude to the Requirements for Starting a Case	165
d) Cases Brought by Non-parties to the Statute	171
e) Recommencing a Case	174
f) Striking from the Court's List	177
g) Effects of Starting Proceedings	179
h) Amendment of Initial Claims/Requests	180
i) The Court's Inherent Power to Decide the True Scope of a Claim	188
2. Discontinuing a Case	190
a) The Object of Discontinuance and the Provisions of the Rules	190
b) Formal Requirements for Discontinuance	193
c) The Court's Practice	193
d) Effects of Bilateral Character of Discontinuance	195
e) The 'Final' Nature of a Discontinuance	196
f) The Parties' Agreement to a Discontinuance is Binding on the Court	197
g) Discontinuance by Virtue of Argument or Pleading?	197
3. Validity of Seising the Court, Jurisdiction of the Court and Admissibility of an Application	199
a) Is the Court Validly Seised? ( <i>renvoi</i> )	200
b) The Distinction between Jurisdiction and Admissibility	200
c) The Distinction between Competence and Jurisdiction	211
d) The Distinction between General and Special Competence and General and Special Admissibility	212
e) The Personal, Material, Temporal and Spatial Spheres of Competence and Admissibility	214
f) Questions relating to Competence	215
g) Questions of Admissibility	219
4. Preliminary Objections	224
a) Definition of a Preliminary Objection	224
b) Preliminary Objections and Substantive Defences	226
c) Formalities for Presenting Preliminary Objections	228
d) Effects of Preliminary Objections: Scope of Decisions	235
e) The Not-exclusively-preliminary Character of an Objection (the Old 'Joining to the Merits')	240
f) The Priority of Preliminary Objections to Jurisdiction over those relating to Admissibility and the Priority of Preliminary Objections of a Peremptory Nature over Other Ones	247
g) The Principle that the Court is Free to Choose the Order in which it examines Objections in the Same Category	251
h) Objections that are Necessarily 'Pre-preliminary'?	252
i) Objections necessarily 'post-preliminary' (ie objections which in reality are by their very nature defences on the merits)?	256

5. Personal Jurisdiction ( <i>ratione personae</i> ): Who can Appear before the Court as a Party?	259
a) General Aspects	259
b) 'Only states . . .', Article 34, Paragraph 1 of the Statute	263
c) Participation by International Organisations in Exchanges of Information: Paragraphs 2 and 3 of Article 34	276
d) Member States of the United Nations which are <i>ipso facto</i> Parties to the Statute, Article 93, Paragraph 1 of the Charter and Article 35, Paragraph 1 of the Statute	280
e) States which are not UN Members but are parties to the Statute, Article 93, Paragraph 2 of the Charter and Article 35, Paragraph 1 of the Statute	285
f) States which are not Parties to the Statute, Article 35, Paragraphs 2 and 3 of the Statute	285
g) Effect of Non-recognition of a State	295
6. Subject-matter Jurisdiction ( <i>ratione materiae</i> ): Which Cases can the Court Decide?	297
a) The Concept of Subject-matter Jurisdiction	297
b) Existence of a Dispute	300
c) Legal nature of a Dispute	319
d) <i>Digression</i> : The Old Distinction between Justiciable Disputes (Legal) and Non-justiciable Ones (Political)	332
e) The Application of Public International Law to Disputes	336
f) Judgment <i>ex aequo et bono</i>	360
7. Consensual Jurisdiction ( <i>ratione consensus</i> ): When can the Court decide a Case?	370
a) The Concept and Place of Consensual Jurisdiction	370
b) Consent through Bilateral or Unilateral Acts. Optional and Compulsory Jurisdiction. Consent Prior to or After the Start of a Dispute	375
c) The Absence of Formalism	380
d) Exceptions to the Principle of Consent?	382
e) First Head of Jurisdiction: Treaties for the Peaceful Resolution of Disputes	395
f) Second Head of Jurisdiction: Compromissory Clauses	409
g) Third Head of Jurisdiction: The Optional Clause of Compulsory Jurisdiction	447
h) Fourth Head of Jurisdiction: Special Agreements	530
i) Fifth Head of Jurisdiction: The <i>forum prorogatum</i>	546
j) The Overall Position	559
8. Freedom to use Some Other Mode of Dispute Resolution even where there is 'Compulsory Jurisdiction'	562
9. Limitation of the Court's Jurisdiction if the Subject of the Dispute affects the Rights and Obligations of Third States which have not Consented to it	565
a) General Aspects	565
b) Exercise of Jurisdiction Generally Prevented: the <i>Monetary Gold</i> Principle	567
c) Inadmissibility of Applications affecting the Legal Interests of Third Parties?	576
d) Specific Duty to take account of the Rights and Obligations of Third Parties: Jurisprudence on Boundary Delimitation	577
10. Concurrent Titles of Jurisdiction	583

11. 'Transitional' Jurisdiction under Article 36, paragraph 5, and Article 37 of the Statute	589
a) General Considerations	589
b) Article 36, paragraph 5	591
c) Article 37	597
12. Jurisdiction as to Jurisdiction	601
13. The Principle of the <i>Forum Perpetuum</i> or <i>Perpetuatio Fori</i>	606
14. Provisional Measures of Protection	611
a) General Aspects	611
b) Historical Aspects	614
c) The Purpose of Provisional Measures	616
d) Material Conditions for the Indication of Provisional Measures	621
e) Procedure for the Indication of Provisional Measures	633
f) Effects of Provisional Measures	638
g) Provisional Measures in Advisory Opinion Cases	650
h) The Role of the Security Council in the Context of Provisional Measures	652
i) 'Positive' or 'Negative' Derogation from the Power under Article 41 of the Statute?	657
15. Counterclaims	658
a) Concept and General Aspects	658
b) Conditions for the Acceptance of a Counterclaim	663
c) Procedural Aspects	673
d) Compatibility with the Statute of the Rules and Judicial Practice	676
16. Default Procedure	677
a) General Features	677
b) Field of, and Conditions for, the Application of Article 53	681
c) Particular Obligations under Article 53, Paragraph 2 of the Statute	685
d) Particular Aspects	690
17. Intervention by Third States	694
a) General Features	694
b) Intervention under Article 62 of the Statute	703
c) Intervention under Article 63 of the Statute	730
18. The Power to Pronounce a <i>non liquet</i>	743
19. Judgments and Orders by Consent	751
20. Declaratory Judgments	755
21. Effects of the Decision	760
a) Definitions and Conceptual Features: The Force of <i>res judicata</i> , Binding Character of the Judgment and its Execution	760
b) Legal Scope of Article 59 of the Statute	763
22. Interpretation of the Judgment	776
a) General Features	776
b) Conditions for Interpretation	778
c) Procedure	792
d) Imperative Character of Article 60	798

23. Revision of a Judgment	802
a) General Features	802
b) Requirements for Revision	807
c) Procedure	819
d) Imperative Character of Article 61	826
24. Implementation of the Judgment	828
a) General Observations	828
b) The Parties' Obligation to Execute the Judgment (Article 94, paragraph 1 of the Charter)	835
c) Mechanisms for Forcing Compliance with a Judgment (Article 94, paragraph 2 of the Charter)	839
d) Overview and Perspectives	860
25. The Court's Competence as an 'Appellate' Body (Supervisory Jurisdiction)	863
a) General Points, including Typology	863
b) Value and Dangers of the Court's 'Appellate' Proceedings	870
c) Jurisdiction and Procedure	871
d) Degree of Cognisance	875
e) Overview	878
26. Jurisdiction to Review the Legality of Acts of Other United Nations Organs, particularly the Security Council	879
a) General Aspects	879
b) History of the Question	882
c) Arguments for and against Judicial Review	892
d) Competences within the UN System	896
e) Modalities of Review by the Court	897
f) Effects of the Court's Pronouncement	910
g) Perspectives	912
27. The Competence of the Security Council to order a Party not to Seise the Court	913
<b>VI) General Principles applicable to Contentious Proceedings</b>	<b>917</b>
1. The Principle ' <i>ne eat iudex ultra petita partium</i> '	919
a) Definition, Nature and Scope of the Principle	919
b) Limitations of the Principle	923
c) Action <i>infra petita</i>	926
2. Questions concerned with Establishing the Facts, in particular the Burden of Proof	928
a) General Aspects	928
b) The Principle of Free Assessment of the Evidence	930
c) The General Rule ' <i>onus probandi incumbit actori</i> '	931
d) Limitations to the General Rule on Burden of Proof	933
e) The Principle that the Parties must Cooperate with the Court to establish the Relevant Facts	942
f) Standard of Proof	944

3. The Parties' 'Duty of Loyalty' <i>inter se</i>	945
a) General Aspects	945
b) The Duty of Loyalty derived from the Principle of Good Faith	946
c) Prohibition of Abuse of Process	947
d) Estoppel	949
e) The Maxim ' <i>nemo ex propria turpitudine commodum capere potest</i> ' (No-one can profit from his own wrongdoing)	951
<b>VII) Procedural Aspects of Contentious Cases</b>	<b>953</b>
1. The Concept and Purpose of 'Procedure'	953
2. The Various Stages of the Procedure, from the Application to the Decision (Seising the Court, Written Phase, Oral Phase, Deliberation, Judgment)	956
3. The Agents of the Parties	983
4. Orders of the Court	987
5. The Languages of the Court	990
6. Public Character of the Proceedings	993
7. Joinder or Consolidation of Cases	997
8. Costs	1002
9. The Process of Judicial Decision-making	1006
10. Individual and Dissenting Opinions	1011
<b>VIII) Advisory Opinion Procedure: Opinions given to certain Organs of, or Affiliated to, the United Nations</b>	<b>1019</b>
1. What is an Advisory Opinion?	1019
a) Concept and Function of an Advisory Opinion	1019
b) Texts Governing the Advisory Function	1022
c) Origins of the Advisory Function in the Days of the PCIJ	1026
d) From the PCIJ to the ICJ	1030
e) Questions of Jurisdiction and Admissibility in the Context of Advisory Opinion Cases	1032
2. Seising the Court: Who can Request an Advisory Opinion?	1037
a) Authorised Organs	1037
b) Organs which have not been Authorised: the Secretary-General	1049
c) Entities that are not Authorised: States	1050
d) Persons not Authorised: Individuals	1057
3. The Court's Jurisdiction: When can the Court give an Advisory Opinion?	1057
a) General Aspects	1057
b) Authorisation of the Requesting Organ	1058
c) The 'Legal Question'	1061
d) Consent of the Parties when a Request is made for an Advisory Opinion on a Currently Pending Dispute between Them	1069
e) Interpretation and Reformulation of the Question by the Court	1077
4. Admissibility of the Request: What Conditions must it Satisfy?	1081
5. The Non-existent Discretionary Character of the Opinion: Is the Court Bound to Render One?	1083

a) State of the Jurisprudence	1083
b) <i>Travaux Préparatoires</i> and Texts	1083
c) Legal Doctrine	1084
d) The Concept of a 'Discretionary Power'	1086
e) Critique of the Idea that the Court has a Discretionary Power	1091
6. Legal and Political Effects of Advisory Opinions	1094
a) General Effects of Advisory Opinions	1094
b) Binding and Executory Advisory Opinions	1100
7. Procedure for Advisory Opinions	1102
a) General Aspects	1102
b) Steps in the Procedural Process	1103
c) Miscellaneous Questions	1112
8. Overall Assessment	1116
<b>IX) General Principles governing the Court's Contentious and Advisory Procedures</b>	<b>1119</b>
1. The Fundamental Principle of Equality as between the Parties	1119
a) General Considerations	1119
b) Equality as a Constitutional Principle	1121
c) Equality as a Principle of Reciprocity	1123
d) Equality as a Procedural Principle	1124
2. The Maxim concerning the 'Proper Administration of Justice'	1127
a) General Observations	1127
b) Specific Functions of the Principle	1128
c) General Function of the Principle: Limits of Judicial Integrity (Negative Aspect) and Balancing of Interests (Positive Aspect)	1136
<b>X) The Court's Jurisprudence and its Current Trends</b>	<b>1139</b>
1. The Court's Contribution: The Development of a 'Jurisprudence'	1139
2. General Overview: Jurisprudential Phases and Major Decisions	1144
a) Particular Features of the PCIJ's Jurisprudence	1144
b) The ICJ: General Considerations	1147
c) First Phase of the ICJ's Activities: Dynamism and Internationalism (1947–62)	1149
d) The ICJ's Second Phase: Proceduralist Jurisprudence and a Trend towards Stagnation (1966–86)	1152
e) Third Phase of the ICJ: Renaissance and Hyperactivity (1986–the Present Day)	1155
3. The Handling of Precedents and the Technique of Distinguishing Them	1162
4. Techniques of Judicial Activism and Judicial Restraint	1174
<b>XI) Miscellaneous Questions</b>	<b>1183</b>
1. The Court's Publications	1183
2. The Court's Finances	1187



3. Diplomatic Privileges and Immunities of Members of the Court	1191
4. The Court's Extra-judicial Activities	1193
5. The Court and the Wider Public	1197
6. Relations between the Court and Other International Courts and Tribunals	1199
7. The Question of Reforming the Court	1204
XII) Conclusion: The Future of the International Court of Justice	1211
Annex to the Conclusion	1218
Annex I: The Statute	1223
Annex II: The Rules	1237
Annex III: Practice Directions	1269
Select Bibliography	1275
<i>Index</i>	1283