

Table of Contents

<i>Glossary of Latin Phrases</i>	xi
<i>Table of Cases</i>	xiii
<i>Table of Legislation</i>	xix
I. The Nature of International Law and the Concept of Sources	1
1. Introduction	1
2. Formal and material sources	6
3. Enumeration of the recognized formal sources	8
4. Nature and operation of the sources	12
5. Whose law? States and non-State actors	20
6. Are there additional formal sources, not in Article 38?	24
6(a) Unilateral acts	25
6(b) Decisions of international organizations	26
6(c) Agreements between States and international enterprises	28
6(d) Other proposals	29
7. Religious law as a rival or additional source	31
8. Is the theory of sources still sufficient?	34
II. Treaties and Conventions as a Source of Law	37
1. <i>Pacta sunt servanda</i>	37
2. The limits of treaty-law: <i>jus cogens</i> and the relative effect of treaties	41
3. Commitment to the treaty-obligations	44
4. Unilateral acts as inchoate treaties?	51
III. Custom as a Source of International Law	60
1. Introduction	60
2. Constituent elements of custom	64
2(a) Two elements or one?	64
2(b) State practice	71
2(c) The <i>opinio juris</i>	84
2(d) The role of international organizations	92
3. Changes in customary law	94
4. The relevance of ethical and similar principles to customary law	97

5. The extent of application of a rule of customary international law	99
5(a) General customary law and the 'persistent objector'	99
5(b) Particular customary law	103
IV. General Principles of Law as a Source of Law	106
1. What are the 'general principles of law'?	106
2. The role of equity	119
3. General principles of law and <i>non liquet</i>	125
V. The Subsidiary Sources	131
1. Introduction	131
2. Judicial decisions	134
2(a) International tribunals	134
2(b) Municipal courts	140
3. The teachings of publicists	143
VI. Interaction or Hierarchy between Sources	147
1. Simultaneous and identical obligations under treaty and under customary law	148
2. The 'hierarchy of sources'	152
VII. Specialities: <i>jus cogens</i>, Obligations <i>erga omnes</i>, Soft Law	162
1. Superior norms and their sources: <i>jus cogens</i> and obligations <i>erga omnes</i>	162
1(a) The source or sources of obligations <i>erga omnes</i>	166
1(b) The source or sources of norms of <i>jus cogens</i>	173
2. Soft law	186
VIII. Subsystems of International Law	195
1. 'Self-contained regimes' and their limits	195
2. Human rights law	197
2(a) Human rights law under treaty and as custom	198
2(b) Human rights as deriving from general principles	203
2(c) Human rights and Islam	204
3. Humanitarian law	208
3(a) Treaties and conventions	208
3(b) Customary law or an independent source of law?	208
4. WTO, ICSID: trade and investment law dispute settlement	213
5. International environmental issues	218
6. International criminal law	220

Table of Contents

ix

IX. Some Alternative Approaches	223
1. Inadequacy or irrelevance of recognized sources	230
2. The role of ethical principles	232
3. The insufficiencies of the theory of international customary law	235
X. A Brief Note in Conclusion	238
<i>Index</i>	241