Foreword

The illustration chosen to introduce this book is "Guns and Roses" (2007) by Shepard Fairey also known as Obey. The poster is a form of tribute to the communist agitprop imagery of China's cultural revolution and it makes a stark statement about the ambivalence of international law. The roses decorating the gun barrels are an aspiration to peace with the weapons metaphorically transformed into flowers; and yet a martial atmosphere persists underscoring the utopian character of the abolition of war – a utopian character that no one can deny, given the number and intensity of ongoing conflicts. The pursuit of a universal ideal of peace and justice must find a working compromise with power politics which will sporadically and contingently limit or vary the contents and effects of that ideal. This head-to-head between ethics and politics is central to international law and to the way it is represented in popular culture, especially in the many song lyrics and film dialogues that will be referred to regularly here when examining more specific topics and principles.

It is by highlighting this ambivalence that this book sets out to provide an introduction to international law and to promote a better understanding of it. The book has been developed from a course taught for several decades now at the *Université libre de Bruxelles*. It owes a great deal to former teachers of the course to whom we are sincerely grateful: Charles Chaumont (1961–1968), Jean Salmon (1968–1996), Eric David (1996–2009) and Pierre Klein (2009–2015). Indeed Pierre Klein participated actively in developing the structure and content of several chapters of this book and we are particularly thankful to him. This legacy, which in turn goes back to what is referred to in the French-speaking world as the *école de Reims*, accounts for the word "critical" in the title of our textbook. But the "critical" tag also refers to a strand of thought no longer of Marxist but of structuralist inspiration and embodied among others by Martti Koskenniemi, especially in *From Apology to Utopia. The Structure of International Legal Argument* (1989), and by Emmanuelle Tourme-Jouannet in *The Liberal-Welfarist Law of Nations. A History of International Law* (2012)[1]. This strand of thought acknowledges that legal interpretation is relative and indeterminate, and it emphasizes the tensions both between different norms and principles and among diverse conceptions of international law.

[1] Selected reading for each chapter is included at the end of the book. To make this *Critical Introduction* easy to read we have kept scholarly references in the main text to the bare minimum.

The ambivalence we have pointed out between universalist ethics and particularist politics follows this line of thought directly to which we are committed from the outset.

As to the term 'introduction', it signals that any encyclopaedic ambition has been set aside. This book is not a summary or even an outline of all the rules of international law, from commercial law to environmental law, from human rights law to the law of war, from health law to tax law. The focus instead is on three major overlapping features - the subjects, the sources and the implementation of international law -, the aim being to provide what we hope will be an operational analytical framework for addressing the most varied of problems. After an introductory chapter setting out the ambivalences of the international legal order (Chapter I), Part I will expound on the subjects of international law beginning with the state, the ways in which it is formed (Chapter II), the delimitation of its territory (Chapter III), and its sovereign powers (Chapter IV) before dealing with international organizations (Chapter V) and then private persons (Chapter VI). Part II will examine questions relating to custom (Chapter VII), treaties (Chapter VIII) and other sources of international law (Chapter IX). Finally Part III will cover the implementation of international law, which will relate to the problems of the use of armed force, traditionally assimilated to a specific form of sanction for violation of rules (Chapter X), responsibility (Chapter XI) and the peaceful settlement of disputes (Chapter XII); this final chapter will provide an opportunity to conclude by addressing the issue of what is generally termed the 'fragmentation' of international law.

Before embarking on these various chapters, three points must first be made about the method employed. First, we feel that our chosen plan is consistent with the critical approach we have opted for. The introductory chapter aims to set the teaching of international law in a historical perspective by showing that the ambivalences characterizing it have always been around, even if the terms used have been and still are being continually redefined, especially as and when changes occur in the balance of power and political contexts. We have preferred not to begin with sources, which would have suggested that the rules of international law could be established by a deductive process on the basis of abstract ideas and general principles, whereas we see those rules instead as the outcome of specific and contingent struggles for power played out among the actors of international law in particular. This explains why we have chosen to deal in Part I with actors (and therefore with the subjects of the international legal order), whose wills and interactions dictate both the creation of international law (a process that then logically is the topic of Part II on sources) and its implementation (examined in Part III). Second, we are fully aware that this division may give

rise to regret and frustration inasmuch as it sometimes involves addressing the same idea in different places. The concept of "peremptory norms" (*jus cogens*), for example, occurs in the chapter on human rights, in the chapter on custom (more particularly in the section on relations among the various sources of international law) as well as in the chapter on responsibility. Like all outlines, the one we have settled on presupposes that things are to be grouped and subdivided, and sometimes artificially so. The somewhat static distinction between the actors, the formation and the implementation of international law might seem to overlook the dialectical relations between legal rules and power relationships, the latter determining and in turn being influenced by the former. The essential point, we argue, is that the whole should be coherent. We hope that the coherence just set out will be confirmed upon reading. Third, and again in line with the critical perspective running through this book, we do not claim to determine and even less to "discover" the (only) "correct" interpretation of international law. Whether it be questions as different as the right to self-determination, the limits of State immunities, the powers of the United Nations Security Council, the definition of genocide or the scope of self-defence, we shall provide a glimpse of the main debates that divide scholars, states and the other actors in the international arena. It is our hope that readers will be able to determine their own positions by selecting and defending those arguments they find most convincing and more fundamentally to understand the legal and political issues in contention.

Summary

PART TWO

The Sources of International Law

PART THREE

The Implementation of International Law