

Contents

<i>List of Contributors</i>	xiii
-----------------------------------	------

1. Introduction	1
<i>Math Noortmann, Cedric Ryngaert, August Reinisch</i>	

Part I

2. Non-State Actors and the Social Practice of International Law	11
<i>Jean d'Aspremont</i>	
2.1 Epistemological Considerations: Non-State Actors and the Argumentative Practice of International Law	12
2.2 Two Types of Social Practice and Two Types of Engagement by Non-State Actors	14
2.3 Social Practice of Non-State Actors for the Sake of Law-Ascertainment.....	16
2.4 The Social Practice by Non-State Actors in General Legal Theory	18
2.5 Which Non-State Actors for which Social Practice in International Law?	20
2.6 Concluding Remarks: the Politics of Definition and the Definition of Politics.....	30
3. Non-State Actors in International Law in Policy Perspective	33
<i>Eisuke Suzuki</i>	
3.1 Introduction	33
3.2 Non-State Actors in Context: Multiple Affiliations and Complex Layers of Decision Processes	35
3.3 Non-State Actors and Specialised Agencies of the United Nations	37
3.4 Non-State Actors and Civil Society.....	39
3.5 Non-State Actors' Activities in the Major Value Processes.....	40
Power	40
Wealth	42
Enlightenment	42
Skills.....	43

	Affection.....	43
	Rectitude.....	43
	Wellbeing.....	44
	Respect.....	44
3.6	Policy for Non-State Actors' Participation in Decision-Making.....	44
3.7	Recent Trends of Non-State Actors as Authoritative Decision-Makers.....	46
3.7.1	General Framework for Participation.....	46
3.7.2	The Need for Functional Analysis.....	47
	The Intelligence Function.....	48
	The Promotion Function.....	49
	The Prescribing Function.....	50
	The Invoking Function.....	51
	The Application Function.....	52
	The Terminating Function.....	53
	The Appraising Function.....	53
3.8	For the Future.....	53
3.8.1	Bridging the Gap Between Vertical Internal Processes of Decision with the Horizontal International Process of Decision.....	54
3.8.2	Civil Society's Access to Official International Decision-making Processes.....	55
4.	Transnational Law: Philip Jessup's Legacy and Beyond.....	57
	<i>Math Noortmann</i>	
4.1	Introduction.....	57
4.2	Jessup's Understanding of Transnational Law and the Non-State Actor in It.....	60
4.2.1	Jessup's Conception of 'International Law'.....	60
4.2.2	Jessup and Non-State Actors.....	63
4.3	'Transnationalized Legal Traditionalism'.....	64
4.4	The Transnational Legal Process Approach.....	66
4.5	Transnational Law: What it is and How it Works.....	68
4.5.1	Transnational Agreements.....	70
4.5.2	Transnational Custom.....	71
4.5.3	Transnational Jurisprudence.....	72
4.6	Concluding Reflections.....	73

Part II

5.	Non-State Actors and the Use of Force.....	77
	<i>Christian Henderson</i>	
5.1	Introduction.....	77
5.2	Non-State Actors and the Regulation of the Internal Use of Force.....	78

5.3	The Regulation of the International Use of Force Against Non-State Actors.....	80
5.3.1	Action Taken or Authorised by the UN Security Council.....	81
5.3.2	Unilateral Action by States and Regional Organisations	83
	Overcoming the Sovereignty Barrier:	
	Attribution to the Host State	88
	The Sovereignty Barrier and Self-defence Restricted to the Targeting of Non-State Actors Located Upon a Host State's Territory	90
5.4	Conclusion	96
6.	Non-State Actors Under International Humanitarian Law	97
	<i>Hans-Joachim Heintze and Charlotte Lülff</i>	
6.1	Introduction	97
6.2	The Red Cross and Red Crescent Movement	98
6.2.1	The International Committee of the Red Cross	98
	Status of the International Committee of the Red Cross	99
	General Role of the ICRC During Armed Conflicts.....	100
	Special Focus of the ICRC.....	101
6.2.2	The International Federation of the Red Cross	104
6.2.3	National Societies of the Red Cross and Red Crescent.....	105
6.3	Aid Outside of the Movement—Other Non-Governmental Organisations and their Status Under International Humanitarian Law	106
6.3.1	Humanitarian Aid Organisations	106
	Humanitarian Aid Organisations and Armed Conflicts	106
	Humanitarian Aid Organisations Under International Humanitarian Law	108
6.3.2	Human Rights Organisations	110
6.4	Conclusion	111
7.	Non-State Actors and Human Rights	113
	<i>Manfred Nowak and Karolina Miriam Januszewski</i>	
7.1	Reassessing Some Myths about International Law and Human Rights.....	113
7.1.1	Dismantling Obstacle No 1—International Law is All About States—The Subject of International Law as a Haunting Phantom	118
7.1.2	Dismantling Obstacle No 2—The Axiomatic State-Centrism in Human Rights Law	124

7.2	The Significance of Human Rights as a Reaction to Real Life Challenges.....	125
7.2.1	The Meaning of Human Rights—A Quest for Human Dignity, Equality and Justice.....	125
7.2.2	Human Rights as ‘All-round’ Protection	129
7.3	The Public/Private Divide as a Bête Noire	132
7.4	David vs Goliath—The Issue of Power Imbalance and Human Rights.....	135
7.5	The Reluctance to Enforce Human Rights Against Non-State Actors	137
7.5.1	International Law Addressing Threats to Human Rights from Non-State Actors	137
7.5.2	The State as the Primary Guardian of Human Rights; or How Locke’s Wish Came True	140
7.5.3	Enforcing Human Rights Against Non-State Actors on the National Level.....	147
7.6	The Rarity of Direct Horizontal Human Rights Obligations Under International Law.....	151
7.7	Human Rights in the Corporate World	154
7.8	Holding International Organisations Accountable for Human Rights Violations	156
7.9	Conclusion: How can Non-State Actors be Held Accountable for their Violation of International Human Rights?.....	159
8.	State Responsibility and Non-State Actors.....	163
	<i>Cedric Ryngaert</i>	
8.1	Introduction	163
8.2	Attribution of Conduct on the Basis of the Exercise of Elements of Governmental Authority by Non-State Actors.....	165
8.3	Attribution of Conduct on the Basis of Instructions or Control	168
8.4	Attribution of Conduct of an Insurrectional or Other Movement to the State	174
8.5	Due Diligence/Failure to Prevent	177
8.6	Concluding Observations	181

Part III

9.	International Governmental Organisations as Non-State Actors	185
	<i>Ramses A Wessel</i>	
9.1	Introduction	185
9.2	The Changing Nature of International Organisations: From State Actors to Non-State Actors?	187

9.3	International Decisions and Law-Making.....	191
9.4	Autonomy of International Organisations: The Role of 'Independent' Organs	195
9.5	Conclusion: From 'State Actors' to Non-State Actors?	201
Non-Governmental Organisations: Recognition, Roles, Rights and Responsibilities.....		205
<i>Math Noortmann</i>		
10.1	Introduction.....	205
10.2	NGOs' International Legal Personality: the Politics of Recognition.....	207
10.3	NGO Roles: A Socio-Political-Legal Approach.....	212
10.4	Institutional, Conventional and Human Rights.....	216
10.5	NGO Responsibility and Accountability.....	219
10.6	Conclusion	223
Multinational Corporations in International Law		225
<i>Jan Wouters and Anna-Luise Chané</i>		
11.1	Introduction	225
11.2	Definition	226
11.3	International Legal Personality	228
11.4	Rights Under International Law	230
11.4.1	International Human Rights Law	230
11.4.2	International Investment Law.....	234
11.5	Obligations Under International Law.....	236
11.5.1	International Human Rights Law	236
	UN Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises With Regard to Human Rights	239
	Guiding Principles on Business and Human Rights.....	240
	Human Rights Council Resolution 26/9	242
	OECD Guidelines for Multinational Enterprises	243
	ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy	244
	Global Compact.....	245
	Self-regulation	245
	Enforcement.....	246
11.5.2	International Environmental Law	248
11.5.3	International Criminal Law.....	249
11.6	Conclusion	250

12. Investors	253
<i>August Reinisch</i>	
12.1 Introduction	253
12.2 The Specific Nature of Investment Arbitration.....	253
12.2.1 Diplomatic Protection.....	254
12.2.2 Investment Disputes Espoused by Home States	255
12.2.3 The Evolution of Modern ISDS—From Contract to Treaty Arbitration.....	256
12.2.4 Modern ISDS.....	258
12.3 The Impact of ISDS on the Position of the Investor in International Law.....	259
12.4 The Contribution of Investors to the Development of General International Law and of International Investment Law in Particular	262
12.4.1 Investors as Driving Forces of the Shaping of Investment Law	264
12.4.2 States Reshaping Investment Law	268
12.5 Conclusion.....	271
13. Armed Opposition Groups.....	273
<i>Jordan J Paust</i>	
13.1 Introduction	273
13.2 Non-State Armed Opposition Groups with Formal Status	274
13.2.1 Types of Status	274
Nation.....	274
Peoples	275
Tribe	278
Belligerent	279
Insurgent.....	280
13.3 Types of Armed Conflict in which they Participate.....	283
13.3.1 Armed Conflicts of an International Character	283
13.3.2 Armed Conflicts not of an International Character	284
The Nature of Such an Armed Conflict.....	284
War Against al Qaeda as Such is not Legally Possible.....	285
13.4 Non-State Armed Opposition Groups Lacking Formal Acceptable Status.....	286
13.4.1 Terrorist Groups	286
13.4.2 Mercenaries.....	287

13.4.3	Pirates	288
13.4.4	Brigands and Banditti.....	288
13.4.5	Organised Criminal Groups	289
13.4.6	Self-Defence and Organised Armed Groups.....	291
	Defence Against Non-State Actor	
	Armed Attacks	291
	Defence Against State Complicitors in	
	Non-State Actor Armed Attacks.....	292
13.5	Conclusion.....	292

Part IV

14.	Non-State Actors in International Relations: Actors, Processes, and an Agenda for Multifaceted Dialogue	295
	<i>Markus Kornprobst</i>	
14.1	Introduction	295
14.2	Intra-State War	297
14.3	International Terrorism.....	301
14.4	Arms Control	303
14.5	Global Economy	306
14.6	Human Rights.....	311
14.7	Global Environment.....	314
14.8	Global Polity.....	317
14.9	Conclusion.....	320
15.	Non-State Actors and Soft Power	323
	<i>Alan Chong</i>	
15.1	Introduction	323
15.2	Non-State Actors Vis-à-Vis the Nation-State.....	324
15.3	Non-State Actors Lean Towards Soft Power	327
15.4	Non-State Actors Operate within Global Information Space	330
15.5	The Soft Power of Publicising Unethical Practices.....	331
15.6	The Soft Power of Legal Manoeuvres	336
15.7	The Soft Power of Developmental and Grassroots Disaster Relief.....	339
15.8	Conclusion: Non-State Actor Soft Power, Its Foibles, and Acting in Spite of the Nation-State.....	342
16.	Non-State Actors and Globalisation: A Paradigm for a Decentred World?.....	345
	<i>Barrie Axford</i>	
16.1	Introduction	345
16.2	Exemplifying 'New' Geographies of Governance.....	346
16.3	Globalisation as a Transformative Motif.....	350

xii *Contents*

16.4	NSAs in the Vertebrate Global System.....	354
16.5	NSAs in the Mixed Global System: A Pause for Breath.....	361
16.6	NSAs in the Cellular Global System.....	363
16.7	Conclusion.....	366
17.	Concluding Observations	369
	<i>Cedric Ryngaert, Math Noortmann and August Reinisch</i>	
	<i>Select Bibliography</i>	377
	<i>Index</i>	399