

439

2024



ACADEMIE DE DROIT INTERNATIONAL

FONDÉE EN 1923 AVEC LE CONCOURS DE LA
DOTATION CARNEGIE POUR LA PAIX INTERNATIONALE

RECUEIL DES COURS

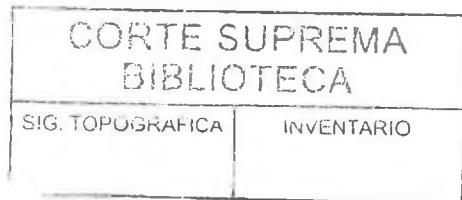
COLLECTED COURSES OF THE HAGUE
ACADEMY OF INTERNATIONAL LAW

2024

Tome 439 de la collection

BRILL | NIJHOFF

Leiden/Boston



GENERAL TABLE OF CONTENTS
TABLE GÉNÉRALE DES MATIÈRES

Making Sense of Soft Law, by E. HEY, Professor at the Erasmus University Rotterdam	9-114
The Inviolabilities of the Diplomatic Mission, by G. R. B. GALINDO, Associate Professor at the University of Brasilia	115-288
Le droit international du désarmement: entre idéalisme et réalisme, par J. M. GOMEZ-ROBLEDO, juge à la Cour internationale de Justice . .	289-397



TABLE OF CONTENTS

Chapter I. Introduction	23
A. Soft law instruments	23
B. Identifying soft law instruments	24
1. Soft law instruments and Article 38 (1) of the ICJ Statute	25
2. Soft law instruments and policy documents	28
C. Theoretical and methodological framework	30
1. Theoretical framework	30
2. Methodological framework	32
D. Terminology	33
E. Why soft law instruments?	35
F. Soft law as a fact of international or transnational relations	36
G. Categorising soft law instruments	38
Chapter II. Soft law instruments as input for developing legally relevant infrastructure	40
A. Foreword	40
B. Vignette 1: Environmental impact assessment	40
C. Vignette 2: IUCN and development of international environmental law	42
D. Vignette 3: Stabilising baselines and maritime zones	44
E. Vignette 4: Climate change and State responsibility	47
F. Vignette 5: Amending the ICC Statute to include ecocide	50
G. Soft law instruments in the development of legally relevant infrastructure	52
1. <i>De lege ferenda</i> character	52
2. Normative effect	53
Chapter III. Soft law instruments as part of legally relevant infrastructure	54
A. Foreword	54
B. Vignette 6: Self-determination and territorial integrity in the context of decolonisation	54
C. Vignette 7: Uniting for Peace	58
D. Vignette 8: The competence of ITLOS to deliver advisory opinions	61
E. Vignette 9: The United Nations Guiding Principles on Business and Human Rights	64
F. Vignette 10: The Universal Periodic Review, the UNGP and the SDGs	67
G. Soft law instruments as legal infrastructure	70
1. International administrative systems	71
2. Normative effect	73
Chapter IV. Soft law instruments as part of regulation	75
A. Foreword	75
B. Vignette 11: Regulating development projects by the World Bank	75
C. Vignette 12: Regulating transnational business sector actors by way of human rights treaty bodies	80
D. Vignette 13: Regulating the protection of the environment	85
E. Vignette 14: Regulating the distribution of COVID-19 pharmaceuticals	89

F. Vignette 15: Regulating the combating of terrorist financing	91
G. Vignette 16: Regulating ship safety	95
H. Soft law instruments as regulation	97
1. Transnational administrative systems	98
2. Normative effect	99
Chapter V. Conclusions	102
Bibliography	107

TABLE OF CONTENTS

Foreword	125
Chapter I. Introduction	127
A. Inviolabilities as applied to diplomatic missions	127
B. Structure and aim of the lectures	131
C. One hundred years of diplomatic law at The Hague Academy of International Law	135
1. The interwar period	136
2. After the Second World War	141
D. Conceptual and historical aspects relating to the inviolabilities of the diplomatic mission	144
1. The three main theories that explain the granting of diplomatic immunities	145
2. Privileges, immunities and inviolabilities	151
3. A definition of inviolability?	154
Chapter II. The inviolability of the premises	160
A. Introduction	160
B. When does the inviolability of the premises begin?	165
C. Article 22 (1) and the duty of abstention	172
1. The question of exceptions to the inviolability of the premises	175
D. Article 22 (2) and the duty of protection	178
1. A "special duty"	178
2. "All appropriate steps"	181
3. "Intrusion or damage"	185
4. "Any disturbance of the peace of the mission or impairment of its dignity"	187
E. Article 22 (3) and the immunities of the diplomatic mission	190
F. The duty to "respect and protect" and the inviolability of the premises of the mission	195
Chapter III. The inviolability of the archives and the documents	199
A. Introduction	199
B. "At any time and wherever they may be"	204
Chapter IV. The inviolability of the official correspondence	213
A. General remarks	213
B. Diplomatic documents in transit	215
Chapter V. Freedom of communication	219
A. General remarks	219
B. The recipients of the diplomatic communication	222
C. Wireless transmitters	224
Chapter VI. The protection of the diplomatic bag	227
A. Introduction	227
B. The "inviolability" of the diplomatic bag	229
C. Can the diplomatic bag be returned or opened?	231
D. Contents and identification of the diplomatic bag	234
E. Scanning	236

Chapter VII. Circumstances precluding wrongfulness and the inviolabilities of the diplomatic mission	240
A. Introduction	240
B. Consent	242
C. Self-defense	243
D. Countermeasures	247
E. Force majeure	252
F. Distress	254
G. Necessity	257
Chapter VIII. Diplomatic asylum and the inviolability of the premises	260
A. Introduction	260
B. Diplomatic asylum in Latin America	260
C. Diplomatic asylum in general international law	262
D. The inviolability of the premises of the diplomatic mission and diplomatic asylum	265
Concluding remarks	272
Bibliography	274