# TABLE OF CONTENTS

Foreword by Professor Vaughan Lowe

List of Abbreviations

<table>
<thead>
<tr>
<th>Introduction</th>
<th>1</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The Use of Inter-State Conciliation</td>
<td>1</td>
</tr>
<tr>
<td>1.1 The distinct identity of conciliation</td>
<td>2</td>
</tr>
<tr>
<td>2. Questions on Conciliation</td>
<td>3</td>
</tr>
<tr>
<td>2.1 Inter-State disputes</td>
<td>4</td>
</tr>
<tr>
<td>2.2 A broader view</td>
<td>4</td>
</tr>
<tr>
<td>2.2.1 Non-inter-State conciliation procedures and compliance mechanisms</td>
<td>5</td>
</tr>
<tr>
<td>3. Planning</td>
<td>6</td>
</tr>
</tbody>
</table>

Chapter I

**Diplomatic Dispute Settlement and Inter-State Conciliation**

<table>
<thead>
<tr>
<th>Part One</th>
<th>9</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Elements and Practice of Diplomatic Dispute Settlement</td>
<td>10</td>
</tr>
<tr>
<td>1. What is a Dispute</td>
<td>10</td>
</tr>
<tr>
<td>1.1 Differences of opinion, conflicts and situations</td>
<td>10</td>
</tr>
<tr>
<td>1.2 Legal, non-legal and political disputes</td>
<td>11</td>
</tr>
<tr>
<td>1.2.1 Legal disputes and the means of settlement</td>
<td>14</td>
</tr>
<tr>
<td>1.2.2 Political disputes</td>
<td>15</td>
</tr>
<tr>
<td>1.3 Justiciable and non-justiciable disputes</td>
<td>16</td>
</tr>
<tr>
<td>2. Diplomatic Dispute Settlement Methods</td>
<td>19</td>
</tr>
<tr>
<td>2.1 Consultation</td>
<td>19</td>
</tr>
<tr>
<td>2.2 Negotiation</td>
<td>21</td>
</tr>
<tr>
<td>2.3 Good offices</td>
<td>26</td>
</tr>
<tr>
<td>2.4 Inquiry</td>
<td>28</td>
</tr>
<tr>
<td>2.4.1 Fact-finding in international organisations</td>
<td>29</td>
</tr>
<tr>
<td>2.5 Mediation</td>
<td>31</td>
</tr>
<tr>
<td>2.5.1 Mediation and conciliation</td>
<td>35</td>
</tr>
<tr>
<td>2.6 Conciliation</td>
<td>37</td>
</tr>
</tbody>
</table>
2.7 The United Nations 39
2.8 Regional arrangements 41

**Part Two**
The Elements and Practice of Conciliation 44
3. Elements of Conciliation 44
3.1 Elements of a definition of conciliation 45
3.2 Mediation and conciliation revisited 48
3.3 Kinds of conciliation commissions 50
3.3.1 Permanent commissions 50
3.3.2 *Ad hoc* commissions 51
3.3.3 Permanent universal commissions 53
3.4 Optional and compulsory conciliation 55
3.5 The obligation to conciliate 57

4. Case Studies 59
4.1 Classic: the *Gorm and Svava* Case 60
4.2 Conflated: the *Taba* Case 63
4.3 Complex: the East African Community Case 66

5. Conclusions: Diplomatic Dispute Settlement and Inter-State Conciliation 69

**Chapter II**
**The Development of Inter-State Conciliation** 71

**Part One**
The Development of Conciliation 71
1. The Development of Conciliation 71
1.1 Pre-Modern History 71
1.2 Diplomatic settlement in early modern times 74
1.3 The 1899 Hague Peace Conference 75
1.4 Inquiry since 1907 78
1.5 The League of Nations and the propagation of conciliation 79
1.6 The beginning of modern conciliation 82
1.7 The summer of peaceful settlement 84
1.8 The Lauterpacht opposition 86
1.9 Conciliation commissions until 1940 87
1.10 Diplomatic settlement in international organisations since 1945 89
1.11 Conciliation since 1945 91
1.12 Later multilateral treaties and conciliation 94
1.13 Commercial State/non-State conciliation 96
# Table of Contents

1.13.1 ICSID 98
1.14 The proliferation of conciliation options through the OSCE 100
1.15 The Belize/Guatemala differendum 102
1.16 Lauterpacht revisited: a measure of success 105

**Part Two**

The Development of Model Rules 106
2. The Development of Recent Model Rules 106
2.1 The framework of the UN and PCA Conciliation Rules 110
2.2 The aim of the proceedings 112
2.3 The offer of organisational assistance 114
2.4 The composition of the commission 117
2.5 Conclusion 119
3. Conclusions: The Development of Inter-State Conciliation 120

Chapter III

**Conciliation and the Law** 123

**Part One**

The Role of Law in Conciliation 123
1. Conciliation and Practice 123
1.1 The role of the parties 123
1.2 The role of the conciliators 125
1.3 The role of the dispute 126
2. Two Conceptions of Conciliation 127
2.1 Political conciliation 128
2.2 Legal conciliation 131
3. The Central Debate 134
3.1 The debate 135
3.2 The legal conception and multilateral treaties 138
3.3 The supremacy of the law? 141
3.4 Some alternatives 143
3.4.1 The *Jan Maven* conciliation Case 143
3.4.2 OSCE conciliation 146

**Part Two**

Legal Consequences of Conciliation 148
4. Impartiality Prejudice and Precedent 148
4.1 The impartiality of the conciliator 148
4.2 Prejudice and the *France/Siam* Case 150
4.3 Secrecy and records 152
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.4</td>
<td>The no-prejudice clause</td>
<td>153</td>
</tr>
<tr>
<td>4.5</td>
<td>The role of the conciliator in later proceedings</td>
<td>156</td>
</tr>
<tr>
<td>4.6</td>
<td>The exclusion of evidence</td>
<td>157</td>
</tr>
<tr>
<td>4.6.1</td>
<td>An exception</td>
<td>158</td>
</tr>
<tr>
<td>4.7</td>
<td>Questions of <em>res judicata</em> and <em>lis pendens</em></td>
<td>159</td>
</tr>
<tr>
<td>4.8</td>
<td>The creation of precedent</td>
<td>161</td>
</tr>
<tr>
<td>5.</td>
<td>Conclusions: Inter-State Conciliation and Law</td>
<td>164</td>
</tr>
</tbody>
</table>

Chapter IV

**Conciliation and Specific Norms**

*Part One*

Norms and Conciliation

1. Compulsion and Exclusivity
2. Norm Protection
2.1 Expertise
2.2 Neutral elements
2.3 Norms
2.4 Third parties

*Part Two*

Compliance and Conciliation

3. Friendly Settlement and the European Commission of Human Rights
3.1 Settlement responsibility
3.2 Settlement practice
3.3 Settlement and compliance
3.4 Attempting settlement post-Commission
3.5 Conclusions
4. Settlement from GATT to WTO
4.1 Consultations and good offices
4.2 Panel procedures and settlement
4.3 Settlement practice
4.4 Settlement and compliance
4.5 WTO: conciliation and judicialisation
4.6 Conclusions
5. The World Bank Inspection Panel
5.1 The Inspection Panel’s role
5.2 The Inspection Panel’s practice
6. Non-compliance Procedures 217
6.1 Law, non-law and soft law 217
6.2 The Montreal Protocol NCP 220
6.3 Settlement practice 225
6.4 Compliance and responsibility 227
6.5 Prejudice 230
7. Conclusions: Inter-State Conciliation and Specific Norms 233
7.1 Conciliation or variation 234
7.2 Norm protection 236

Chapter V
The Use of Inter-State Conciliation 239
1. The Use of Diplomatic Dispute Settlement 239
2. Finding the Identity of Conciliation 240
2.1 Two ideas of conciliation 242
2.2 Legal and political conciliation 243
3. The Practice of Conciliation 244
3.1 The founding ideas in practice 247
3.2 The judicialisation of conciliation 250
3.3 The development of new procedures for conciliation 251
4. The Future Use of Inter-State Conciliation 254
4.1 When to use political conciliation 254
4.2 When to use legal conciliation 257
4.3 Other conciliation options 259
4.4 Use of conciliation and norms 260

Selected Bibliography 265
Table of Cases 293
Table of International Agreements 297
Index 301