
TABLE OF CONTENTS

Foreword by Professor Vaughan Lowe	V
List of Abbreviations	XIII
Introduction	1
1. The Use of Inter-State Conciliation	1
1.1 The distinct identity of conciliation	2
2. Questions on Conciliation	3
2.1 Inter-State disputes	4
2.2 A broader view	4
2.2.1 Non-inter-State conciliation procedures and compliance mechanisms	5
3. Planning	6
 Chapter I	
Diplomatic Dispute Settlement and Inter-State Conciliation	9
<i>Part One</i>	
The Elements and Practice of Diplomatic Dispute Settlement	10
1. What is a Dispute	10
1.1 Differences of opinion, conflicts and situations	10
1.2 Legal, non-legal and political disputes	11
1.2.1 Legal disputes and the means of settlement	14
1.2.2 Political disputes	15
1.3 Justiciable and non-justiciable disputes	16
2. Diplomatic Dispute Settlement Methods	19
2.1 Consultation	19
2.2 Negotiation	21
2.3 Good offices	26
2.4 Inquiry	28
2.4.1 Fact-finding in international organisations	29
2.5 Mediation	31
2.5.1 Mediation and conciliation	35
2.6 Conciliation	37

2.7	The United Nations	39
2.8	Regional arrangements	41
<i>Part Two</i>		
	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	<i>Ad hoc</i> 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 <i>Gorm and Svava</i> Case	60
4.2	Conflated: the <i>Taba</i> 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
<i>Part One</i>		
	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

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
<i>Part Two</i>		
	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
<i>Part One</i>		
	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 <i>Jan Mayen</i> conciliation Case	143
3.4.2	OSCE conciliation	146
<i>Part Two</i>		
	Legal Consequences of Conciliation	148
4.	Impartiality Prejudice and Precedent	148
4.1	The impartiality of the conciliator	148
4.2	Prejudice and the <i>France/Siam</i> Case	150
4.3	Secrecy and records	152

4.4	The no-prejudice clause	153
4.5	The role of the conciliator in later proceedings	156
4.6	The exclusion of evidence	157
4.6.1	An exception	158
4.7	Questions of <i>res judicata</i> and <i>lis pendens</i>	159
4.8	The creation of precedent	161
5.	Conclusions: Inter-State Conciliation and Law	164
Chapter IV		
Conciliation and Specific Norms		167
<i>Part One</i>		
Norms and Conciliation		169
1.	Compulsion and Exclusivity	169
1.1	The case of other treaties	174
2.	Norm Protection	176
2.1	Expertise	176
2.2	Neutral elements	178
2.3	Norms	179
2.4	Third parties	181
<i>Part Two</i>		
Compliance and Conciliation		183
3.	Friendly Settlement and the European Commission of Human Rights	184
3.1	Settlement responsibility	185
3.2	Settlement practice	188
3.3	Settlement and compliance	189
3.4	Attempting settlement post-Commission	195
3.5	Conclusions	198
4.	Settlement from GATT to WTO	199
4.1	Consultations and good offices	200
4.2	Panel procedures and settlement	201
4.3	Settlement practice	203
4.4	Settlement and compliance	204
4.5	WTO: conciliation and judicialisation	205
4.6	Conclusions	210
5.	The World Bank Inspection Panel	212
5.1	The Inspection Panel's role	212
5.2	The Inspection Panel's practice	214

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