Public International Law: An Australian Perspective edited by **Sam Blay, Ryszard Piotrowicz** and **B Martin Tsamenyi** [Melbourne, Oxford University Press, 1997, xl + 436 pages, ISBN 0 19 550690 1, ISBN 0 19 553993 1 (pbk)]

This book is another basic textbook on public international law. But this is different. For a number of reasons. First, the book presents an Australian perspective. It is written for Australian students.[1] This is particularly reflected in the discussion on Australian treaty law and practice,[2] the relationship between international law and Australian domestic law,[3] and Australian practice in the recognition of states.[4] The book shows that the Australian Constitution, federal system of government and political expediency have all impacted on the shaping of Australian international law.

Secondly, the book is "a collage of contributions from eminent writers in Australia".[5] This is an unusual textbook format since a collection of contributions is normally reserved for monographs devoted to single themes. By using this approach, the editors have taken advantage of division of labour and more importantly, have ensured that the various chapters are written by people more suited to write them. For those interested, bibliographic notes on the contributors[6] are found in the first few pages of the book.[7]

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[1] Preface at xxxv.

[2] See Chapter 4 on The Law of Treaties.

[3] See Chapter 5 on International Law and Domestic Law. The decision of the High Court in the Teoh case (1995) 128 Australian Law Reports 353, including the reaction and policies of the Labor and Coalition governments following that decision, are worth noting: at 137-138.

[4] See Chapter 8 on The Creation and Recognition of States.

[5] Preface at vi.

[6] The exception is Rosemary Rayfuse who is an academic at the University of New South Wales: see Chapter 14.

[7] At xxviii-xl.

Thirdly, the book's novelty extends to approach, by reflecting the post World War II system and incorporating developments up to 1996.[8] Indeed, several new laws have emerged since 1945. One example is the important development in international obligations *erga omnes*. Although not referred to in the book, in the *Barcelona Traction case*[9] between Belgium and Spain, the International Court of Justice held that obligations *erga omnes* have become part of customary international law,[10] and they are now derived from:

> the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination. Some of the corresponding rights of protection have entered into the body of general international law (Reservations to the Convention on the Prevention and Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951, p. 23); others are conferred by international instruments of a universal or quasi-universal character.[11]

The Court held that obligations *erga omnes* therefore applied to the facts of the *Barcelona Traction case* in these words:

> When a State admits into its territory foreign investments or foreign nationals, whether natural or juristic persons, it is bound to extend to them the protection of the law and assumes obligations concerning the treatment to be afforded them...In view of the

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[8] Preface at xxxvi.

[9] [1970] International Court of Justice Reports 6.

[10] For example see Nuclear Tests case (Australia v France) [1974] International Court of Justice Reports 253; Nicaragua case (Nicaragua v United States) (Merits) [1986] International Court of Justice Reports 14; East Timor case (Portugal v Australia) [1995] International Court of Justice Reports 90; Application of the Genocide Convention case (Bosnia and Herzegovina v Yugoslavia) [1996] Australian International Law Journal 197; Ragazzi M, The Concept of International Obligations *Erga Omnes* (Oxford, Clarendon Press, 1997) 12 note 49.

[11] At 32; Ragazzi note 10 at 1-2.

> importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*.[12]

International obligations *erga omnes* rely on the dual characteristics of universality and solidarity. The former characteristic makes the obligations binding on all states without exception; and as a result of the latter characteristic, every state has an implied legal interest in their protection.[13] According to Dr Maurizio Ragazzi:

> Of these two characteristic elements, the second one (solidarity) is linked with wider issues of enforcement and legal standing in international law. The first one (universality), which has been duly neglected in the international literature (at least in the specific context of obligations *erga omnes)*, raises complex theoretical problems. In particular, it appears difficult to reconcile this element with the structure of international society, which is composed of independent entities giving rise, as a rule, to legal relations on a consensual basis.[14]

It may be said that students (including teachers and legal practitioners) of international law in Australia today have never had it so good (or easy) in terms of international law books written with them in mind. I recall the time when research on the Australian perspective invariably meant a laborious and manual search for primary materials. However, that is not to say that there were never any books on international law materials written for the Australian audience before this book appeared. Indeed, there is the "synoptic, yet comprehensive and realistic picture" [15] that was painted by "two gifted Australian international lawyers...from their own vantage point 'down under'".[16] They were WE Holder and GA Brennan, both of whom

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[12] Ibid.

[13] Ibid at 17.

[14] Ibid.

[15] Joint statement in the Foreword by Myers S McDougal (Yale University) and Georg Schwarzenberger (University of London) in Holder WE and anor, The International Legal System (1972, Butterworths, Sydney).

[16] Ibid.

later excelled in their chosen professions in the law. In fact, the latter retired recently as Chief Justice of the High Court of Australia and is now the Patron of the Australian Branch of the International Law Association.

There is the earlier collection of articles also, written by "well-qualified and experienced writers".[17] This book, published in 1965, was edited by DP O'Connell (assisted by J Varsanyi) when he was Professor of International Law in the University of Adelaide.[18] In 1971, while still in Adelaide, Professor O'Connell published a text for students[19] but it was never intended for an Australian audience as such.[20] The same may be said of the "old favourite", JG Starke's textbook, *Introduction to International Law* which first appeared in 1947. Its popularity led to several editions and the latest which uses a new title, *Starke's International Law*, is edited by IA Shearer, Challis Professor of International Law in the University of Sydney.[21]

In 1995, a more recent and comprehensive collection[22] appeared as *Australian International Law: Cases and Materials*,[23] edited by Harry Reicher. This casebook is now complemented by the book under review.

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[17] Per GEJ Barwick in the Foreword to O'Connell DP and anor, International Law in Australia (1965, Stevens & Sons, London).

[18] .The second edition appeared some 20 years later as Ryan KW (ed), International Law in Australia (second edition, 1984, Law Book Company Limited, Sydney).

[19] O'Connell DP, International Law for Students (1971, Stevens & Sons, London).

[20] On the contrary, it was intended to complement Bowett D, The Law of International Institutions (second edition, 1970, Stevens & Sons, London); see O'Connell note 18 at vi.

[21] Starke's Introduction to International Law (eleventh edition, 1994, Butterworths, London).

[22] Prior to this collection and approximately 20 years ago, a young international lawyer from Canberra, Jonathan Brown, started a useful collection of materials on Australian practice in international law but it appears that the work was not "formally" published as such. However, he moved on and joined the editorial board of the Australian Yearbook of International Law as editor of the section on Australian Practice.

[23] 1995, LBC Information Services, Sydney.

Together they conveniently provide the international law student today with a duo that explains "the peculiarities of international law in the Australian context."[24]

To facilitate the learning of the subject, every chapter in the book ends with tutorial questions, including suggestions for further reading. Generally, the chapters are traditional looking, with necessary deviations for the Australian perspective. Examples are the discussion on *terra nullius*, the landmark decision of the High Court in the *Mabo case*,[25] and the Antarctica. Of special note is the final chapter, on Current Trends in International Legal Theory. Although this chapter is quite a break from tradition, it does not strike as being out of place. On the contrary, it deals with "the most radical development in jurisprudence this century"[26] and puts the reader on notice that perhaps one should begin to "consider the assumptions [made] about the nature of the international community and the basis of legal obligations within it."[27] More will be said about this later.

The book opens with chapters written by two of the three editors. The first chapter is on the Nature of International Law and written by Sam Blay.[28] The second deals with the Structure of the International Legal System and is written by Ryszard Piotrowicz.[29] These traditional opening chapters lay the foundation for any general course in public international law.

The first chapter addresses the vexed (or cynical) question often asked by law students, "Is international law real law?"[30] The question is usually precipitated by their observation that there is a lack of an international enforcement agency which students equate with an ineffective regime. Professor Blay responds as follows:

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[24] Preface at xxxv.

[25] (1992) 175 Commonwealth Law Reports 1.

[26] At 413.

[27] At 408.

[28] Chapter 1 at 1-21.

[29] Chapter 2 at 22-57.

[30] At 6.

> While the difficulty of the law-making process and the lack of a central enforcement agency may constitute a weakness of international law as compared to municipal law, it does not follow that international law lacks legal character as a system of law. As Brownlie notes, '[l]aw is relative to the social order of things and the reasons for its effectiveness are not [referred] to a single notion of obedience or of appreciation of the validity of norms according to a central principal.'[31]

Chapter 2 introduces the student to the international legal system. Here, it would be true to say that students often measure the success of the United Nations by the failure of the Security Council in conflict resolution. Professor Piotrowicz addresses this misguided perception by placing blame on the structure of the Security Council and its permanent members. He states:

> By the use, arguably the abuse, of the veto [the permanent members] have prevented the Council from acting on occasions when it might well have been able to achieve something. In the end, the Council will achieve as much as its permanent members will allow. So far it has not even been able to have on call the armed forces that are supposed to be made available to it under Article 43 of the Charter.[32]

When students assess the United Nations, they should not unduly focus on the Security Council and the maintenance of international peace and security. The United Nations is comprised of other five other organs which, arguably, have been more successful in their mandates. For example, the Economic and Social Council ("ECOSOC") works at achieving international economic, social, cultural and humanitarian co-operation. This has resulted in a post World War II world which is not the same as that which existed before. The United Nations has also promoted and encouraged respect for human rights and fundamental freedoms for all people without distinction as to race, sex, language or religion, and has developed friendly relations among nations based on respect for the

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[31] At 11.

[32] At 29. See Ward's article at 82-133 above.

principles of equal rights and self-determination of peoples.[33] These achievements are definitely noteworthy and should not be overshadowed by discussion on just one organ of the United Nations, namely, the Security Council.

Chapter 3, entitled "Sources of International Law, is contributed by Donald W Greig. The sources as enumerated in Article 38(1) of the Statute of the International Court of Justice are discussed, namely, international treaties,[34] international custom,[35] general principles of law,[36] and finally, judicial decisions and the teachings of publicists[37] (albeit not in that order). To this list Professor Greig has added the role of international organisations.[38] The presentation on the creation of customary international law is clear and the discussion on the two requirements in the creation process, namely, (a) state practice and (b) the acceptance of the practice as obligatory by states *(opinio juris sive necessitas)*[39] is easy to follow.

There is an interesting section in this chapter called Soft Law: Soft Rules. Here, a distinction is drawn between soft law and soft rules, even though sometimes the expression is used interchangeably. Professor Greig identifies soft law as "vague and inchoate" obligations[40] that lack binding qualities. They appear as non-binding obligations arising from treaties or as non binding acts of international organisations.[41] They "envisage an additional step to convert them into hard obligations".[42]

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[33] At 26.

[34] At 69-75.

[35] At 62-69.

[36] At 75-79.

[37] At 89-94.

[38] At 79-89.

[39] At 62.

[40] At 86.

[41] At 85-89.

[42] At 86.

To illustrate soft law, the *Tasmanian Dam case*[43] is used. In that case, the High Court had to consider this question: did the 1972 Convention for the Protection of the World Cultural and Natural Heritage impose obligations on contracting states? If so, the Convention would have enabled the Australian parliament to exercise its external affairs power[44] and to legislate for the protection of an area listed in the Convention as a World Heritage Area. Since the Court determined the question in the affirmative, the (Cth) 1983 World Heritage Properties Conservation Act and its Regulations were held to be constitutional.[45]

Soft rules, on the other hand, are "[n]on legal rules" which may arise as "non-binding" obligations in instruments or as non-binding acts of international organisations. An example of the former is the 1975 Final Act of the Helsinki Conference on Security and Co-operation in Europe.[46] Examples of the latter are mainly found in the economic field where they are both regulatory and voluntary. In the words of Professor Greig:

> They are regulatory in that they create the hope or expectation that they will influence conduct and they are voluntary in that they create no legal commitments for the states concerned.[47]

An example is the OECD's 1976 Declaration on Investment and Multi-national Enterprises, and annexed to it are the Guidelines for Multinational Enterprises.

Chapter 4 deals with "The Law of Treaties" and its author, Jan Linehan, provides a detailed analysis of the 1969 Vienna Convention on the Law of Treaties. The Australian perspective is mainly dealt with in a section called

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[43] (1982) 158 Commonwealth Law Reports 1.

[44] Refer Australian Constitution section 51(xxix).

[45] In this case, Tasmania had launched a constitutional challenge to the Act, an act which was to give effect to the Convention.

[46] At 88.

[47] Ibid.

Australian Treaty Practice,[48] which includes the *de rigeur* discussion on the *Teoh case,*[49] *Toonen case,*[50] and the federal dimension.[51] In the discussion on the treaty making process, reference is made to public consultation involving "interested NGOs",[52] of which the International Law Association is one.

Chapter 5, entitled "International Law and Domestic Law", is by Rosalie Balkin. Her discussion centres on the two main sources of international law, customary international law and treaties, and on how they operate within the Australian municipal system. Dr Balkin prefaces her comment on customary international law in the following terms:

> In the absence of a definitive exposition by the Australian judiciary on the relationship between customary international law and Australian domestic law, the matter must still be regarded as unsettled. This is not to say that the courts have been silent on the issue but merely that the full parameters of the relationship have yet to be explored.[53]

On treaties, Dr Balkin states:

> A completely different set of considerations applies with respect to treaties. ...A specific act of incorporation, namely legislation, is required to transform the international obligation assumed by the treaty into one operating at the domestic level. This was made clear by the High Court in the *Dietrich* case[54]... .[55]

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[48] At 111-117.

[49] (1995) 128 Australian Law Reports 353.

[50] Doc CCPR/C/50/D/488/1992, 8 April 1994.

[51] At 113-116.

[52] At 116.

[53] At 121.

[54] (1992) 177 Commonwealth Law Reports 292.

[55] At 127.

On treaties and administrative discretion,[56] Dr Balkin states:

> The High Court in the *Teoh* case[57] held by a majority that entry into a treaty by the executive government, even if not subsequently incorporated into domestic law, created a 'legitimate expectation' in administrative law that the executive government and its agencies would act in accordance with the treaty provisions.[58]

Owing to the practical ramifications of the *Teoh case*, it was no wonder that immediately after the decision, the Minister for Foreign Affairs and the Attorney-General issued a Joint Statement, purportedly "to set aside any 'legitimate expectation' arising out of unincorporated treaties."[59] This was reiterated in more explicit terms in 1996 when there was a change in government.[60]

Chapter 6 deals with the Pacific Settlement of Disputes in International Law. This chapter causes one to pause and wonder why it appears so early in the textbook, seemingly contrary to logical sequence. The chapter is written by Stuart Kaye and deals with the judicial and non-judicial methods of dispute settlement. On judicial settlement, Mr Kaye discusses the effect of Article 36 of the Statute of the International Court of Justice (the optional clause). He mentions the *Monetary Gold case*[61] and explains its special significance for Australia. Generally speaking, the effect of that case is as follows:

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[56] At 136-139.

[57] (1995) 128 Australian Law Reports 353.

[58] At 137.

[59] At 138.

[60] At 138-139.

[61] For several years, the Monetary Gold case [1954] International Court of Justice Reports 19 left unresolved the issue of the ownership of gold which had been seized by Nazi Germany. In late 1997, a conference was held in London to address this issue: "London Conference on Nazi Gold" (August 1997) 27:8 Survey of Current Affairs 315, 316.

> [I]t is open to the Court to refuse jurisdiction if it concludes the presence of a third party is essential to the successful conduct of proceedings...This principle was laid down in the *Monetary Gold case*...[62]

However, in two recent cases involving Australia, the *Phosphate Lands case*[63] and *East Timor case*,[64] the International Court of Justice provided seemingly "different results in relatively similar fact situations".[65] This inconsistency was rationalised by Mr Kaye in the following way:

> The Court's view that a decision on validity of the Timor Gap Treaty necessarily required consideration of Indonesia's actions in East Timor, whereas the Court felt that it would rule on Australia's actions in respect of Nauru without simultaneously considering the potential liability of either the UK or New Zealand.[66]

The topic on Jurisdiction is written by Ivan Shearer and appears as Chapter 7. A straightforward presentation, it is based on five jurisdictional principles, namely, the territorial principle, the nationality principle, the protective principle, the universal principle and the passive personality principle.[67]

The exceptions to jurisdiction begin with the section on extradition[68] where one is reminded of Professor Shearer's original work on this topic.[69] The

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[62] At 157.

[63] [1992] International Court of Justice Reports 240.

[64] [1995] International Court of Justice Reports 90.

[65] At 157.

[66] At 158-159.

[67] At 165-175.

[68] At 175-179.

[69] Shearer IA, Extradition in International Law (1971, Manchester University Press, Manchester).

other sections deal with conflict in jurisdiction, immunities from jurisdiction and admiralty jurisdiction.[70]

The fact that "[t]he international community is in a constant state of flux"[71] makes Chapter 8 an interesting chapter. Written by Gerald McGinley, it addresses "The Creation and Recognition of States". The chapter begins with discussion on the characteristics of states,[72] followed by the traditional criteria for statehood and the "new" criterion of self-determination.[73] Discussion on the last is small, and the same applies to that on aboriginal people.[74]

When borders or governments change, the question of diplomatic recognition at two different levels becomes relevant. On the recognition of states, Mr McGinley addresses the two questions often asked: (a) is there a duty to recognise a state that satisfies the criteria of statehood?[75] and (b) is there a duty not to recognise a state?[76] Here, some discussion is devoted to the controversial (and on-going) issue of Australia's position on East Timor.[77]

The author makes clear from the outset that there is no duty in international law to recognise governments. Indeed, the practice of many states is to adopt the Estrada doctrine of non-recognition of governments. Australia is included in this list and its acceptance of the Estrada doctrine is presented in the following context:

> The [acceptance] was probably precipitated by the Hawke Government's ineffectual attempt to influence Fijian politics by

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[70] At 179-188.

[71] At 193.

[72] At 193-195.

[73] At 195-200.

[74] At 201-202.

[75] At 203-204.

[76] At 204.

[77] Ibid.

> initially refusing to recognise the military regime of Colonel Rabuka in Fiji in 1987. [Consequently,] the Australian Government would no longer accord formal recognition, *de jure* or *de facto,* to new governments. This policy would provide the government with greater flexibility in dealing with fluid situations...[78]

Chapter 9 is on State Responsibility, a topic which has been most resistant to codification owing to the inability of states to agree on the meaning and scope of the expression. This chapter is written by Nii Lante Wallace-Bruce and discussion is illustrated by a number of cases, including the key cases of *Phosphates Lands*[79] and *Rainbow Warrior Arbitration.*[80]

Chapter 10, on The Use of Force, is by Timothy McCormack. It deals with Australia's position on the use of force and its various aspects, such as Australia's consistent rejection of the use of force under Article 2(4) of the United Nations Charter[81] and Australia's important role in arms control, disarmament and the banning of chemical weapons.[82]

Chapter 11 deals with Human Rights. The author Penelope Mathew opens her contribution with a statement that "[i]nternational human-rights law is a revolutionary addition to the international legal order".[83] She then moves on to discuss the development of standards and politico-philosophical controversies in human rights.[84] This is followed by a discussion on the mechanisms for the implementation and enforcement of human rights,[85] and another on regional instruments and institutions.[86] Although these

[78] At 205.

[79] [1992] ICJ Reports 240.

[80] 82 International Law Reports 499.

[81] At 243.

[82] At 266.

[83] At 271.

[84] At 273-279.

[85] At 279-286.

[86] At 296-290.

discussions are erudite, they take up two thirds of the chapter and the Australian perspective appears as one third only.[87] However, the Australian discussion is insightful, and the summation states the following:

> Australians are only just beginning to debate human-rights issues seriously and there have been ominous signs that the result may yet be a retreat into the safe harbour of sovereignty through constitutional arrangements that make it more difficult for Australia to become party to human-rights treaties.[88]

Human rights and related issues on land rights and race relations are burning topics in Australia today. Against this backdrop, which includes discussion of the landmark *Mabo (No 2) case,*[89] Ms Mathew concludes that retreat from human rights "under the banner of sovereignty is the regressive action of a nation that refuses to think".[90] Ongoing litigation in this area will provide interesting and challenging times for Australia and its High Court. The question is whether the judicial activism of the Brennan court will continue under the Gleeson court.[91]

The discussion on refugees is both controversial and relevant in the Australian context. This topic appears as Chapter 12, written by Thomas Musgrave. The Australian perspective is comprehensively presented and the chapter embraces a "practical" discussion on the 1951 Convention Relating to the Status of Refugees, the 1967 Protocol, the (Cth) 1958 Migration Act, refugees and quasi-refugees in Australia, Australia's domestic refugee program, the Refugee Review Tribunal, and judicial review by the Federal Court and High Court.

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[87] At 290-298.

[88] At 298.

[89] (1992) 175 Commonwealth Law Reports 1.

[90] At 298-299.

[91] In May 1998 Chief Justice Brennan retired from the High Court of Australia, and Chief Justice Gleeson of the Supreme Court of New South Wales was appointed to succeed him.

Brian Opeskin presents the Law of the Sea in Chapter 13. The chapter is a technical presentation, seemingly in keeping with the nature of the topic. The chapter concentrates on the codification conventions and provides a cross-section diagram which lends great assistance to the visual perception of maritime zones under the 1982 Convention of the Law of the Sea.[92]

Chapter 14 is written by Rosemary Rayfuse and is entitled International Environmental Law. Like the law of the sea, it is an area which is heavily codified. The sources of international environmental law and the historical development, concepts and principles are discussed.[93] There is also discussion on an entire range of international environmental concerns, namely, those affecting air and atmospheric pollution,[94] pollution from nuclear activities,[95] pollution of the marine environment,[96] transboundary movement of hazardous waste,[97] and protection of biological diversity.[98] The final section has a particular relevance for Australia as it deals with the protection of migratory and endangered species including forests, the protection of wetlands and other habitat (including Kakadu National Park), and the protection of world cultural and natural heritage (including the Western Tasmania Wilderness and Great Barrier Reef).

Donald R Rothwell is the author of Chapter 15 on the Antarctica and International Law. Much has been written since Francis Auburn's monograph on *Antarctic Law and Politics*.[99] The issue of sovereignty remains controversial. Professor Rothwell presents the Australian case by arguing for the legitimacy of the Antarctic Treaty system.[100]

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[92] At 330. Also see Antarctic territorial claims map at 388.

[93] At 335-366.

[94] At 361-368.

[95] At 368-369.

[96] At 369-373.

[97] At 373-374.

[98] At 374-380.

[99] 1982, C Hurst, London.

[100] At 405-406.

The final chapter (Chapter 16) deals with "Current Trends in International Legal Theory". By Hilary Charlesworth, it is a keen response to David Kennedy's criticism that international lawyers are famous for their "traditional inattention to theory".[101] The chapter explores the new theories of international law,[102] including feminist international legal theories. As an inclusive topic in a basic textbook, Chapter 16 is therefore unusual and breaks with tradition. But it soon appears obvious that rather than being out of place, it is a provocative concluding chapter that asks the reader: will you change your mind about what you have just read, now that you are aware of alternative theories that apply to the nature and concepts of international law?

Three new theories of international law are identified. The first, known as "New Haven", started in the 1940s in the Yale Law School. This theory is described thus:

> The Hew Haven approach seeks to develop a 'policy science' of international law, focusing on the processes by which legal rules and policies are made. Its jurisprudence is concerned with making policy choices and decisions, rather than with locating the source of obligation in international law. It offers a 'scientific', objective method for the articulation and application of policies about international activity. International law is regarded as the product of an authoritative decision-making process, rather than a discrete body of rules. For the New Haven school, the concept of 'decision' is a very broad one, extending from the making of law, to its application, to its reception in economic and social life. The New Haven method of analysis requires, first, the clarification of the standpoint of the observer (for example, through acknowledgement of their position in a particular hierarchy) to allow disengagement and objectivity; second, consciousness of the conceptual categories used by an observer to analyse particular situations; and third, an understanding of the processes used to influence particular outcomes.[103]

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[101] At 408.

[102] However, "[t]hese cannot easily be categorised as 'natural law' or 'positivist'": ibid.

[103] At 409.

The second theory, the New Stream, reflects "the turn to postmodernism in late twentieth century scholarship".[104] Here, the techniques of the critical legal studies ("CLS") movement are translated onto the international plane. Professor Charlesworth writes:

> Since the late 1970s, CLS scholars have challenged a view of the law as rational, objective, and principled by studying the indeterminacy of and contradictions inherent in legal rules. ...A unifying theme in much CLS scholarship is the fundamental coincidence of law and politics and the futility of liberal attempts to carve out a separate and distinct sphere for legal truth.[105]

A summary of one version of this postmodern critique is provided by Anthony Carty:[106]

> The crucial question is simply whether a positive system of universal law actually exists, or whether particular States and their representative legal scholars merely appeal to such positivist discourse so as to impose a particular language upon others *as if it were a universally accepted legal discourse*. So post-modernism is concerned with unearthing difference, heterogeneity and conflict *as reality* in place of *fictional* representations of universality and consensus.[107]

The third theory is expounded by jurists from developing countries from "the South",[108] led by the former President of the International Court of Justice, Mohamed Bedjaoui. Their critique of the international legal order is based on "the inevitability or universality of particular international-law

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[104] At 410.

[105] Ibid.

[106] See Carty, "Critical international law: recent trends in the theory of international law" (1991) 2 European Journal of International Law 66 at 68.

[107] At 410.

[108] In contrast to the developed "North".

principles...asserting their Western orientation and cultural bias."[109] Professor Charlesworth states:

> 'Southern' international lawyers have argued that many international legal principles were devised to justify colonial confiscation and appropriation and suggested that the participation by the South in the development of international law will lead to a new international legal order. A major focus for critical analysis has been aspects of the international economic system, which led in the 1970s to a campaign for a 'New International Economic Order'...
>
> Another challenge by the South has been to the international law-making process, especially with respect to customary international law. The South has argued that, as it did not participate in the development of international law, it should not necessarily be bound by it.[110]

As foreshadowed in the question above, if one were to apply the theories to the foregoing chapters, it could lead to new perspectives, resulting in wide-ranging ramifications. For example, if Mohamed Bedjaoui's position is applied, it would directly impact on Australia's claim to the Australian Antarctic Territory.

In 1991, the development of feminist international jurisprudence to address issues of impartiality and objectivity was given an impetus following Professor Charlesworth's award winning collaborative work in the area.[111] But why has it taken feminists so long to address what they perceive as an imbalance and a gendered system of justice? She attributes this to "the particularly male-dominated nature of the discipline, both in its academic and practising branches".[112] Indeed, if one were to examine the diplomatic

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[109] At 413.

[110] Ibid.

[111] Charlesworth and ors, "Feminist approaches to international law" (1991) 85 American Journal of International Law 613.

[112] At 414.

representation in the United Nations today, only a handful of delegations is headed by women (six, at last count) compared to a United Nations membership of almost two hundred states. Professor Charlesworth concludes her contribution with the following words:

> The moribund theoretical tradition in international law deplored by David Kennedy[113] has undergone a revival. There are now lively debates about the international nature of international law and strong challenges to its authority and universality. International lawyers need to be self-conscious about the theories of law and obligation that they assume as they practise their craft so that they better understand the political and social implications of their work and the inevitable partiality of their perspective.[114]

Indeed, the seeds for this consciousness should be planted in the classroom.

The reader will quickly observe that no footnotes clutter the text. Instead, cases are conveniently referred to by a short title and their citations are streamlined in a Table of Cases.[115] However, some citations do not include the date of the case, a minor irritation. Further, lack of clutter has another disadvantage. The reader will soon discover that it is not always possible to source a quotation easily especially when no reference is given. For instance, in the quotation used in Chapter 1 by Professor Blay which is attributed to "Brownlie", [116] presumably Professor Ian Brownlie, there is no footnote reference for it, not even under "Brownlie" in "Further Reading" at the end of Chapter 1[117] or under "Brownlie" in the Bibliography for that chapter.[118]

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[113] Kennedy, "A new stream of international law scholarship" (1988) 7 Wisconsin International Law Journal 1.

[114] At 417.

[115] At xvii-xxxi.

[116] At 11; see note 31.

[117] At 21.

[118] At 419.

This work has the ingredients (and more) for a textbook course on international law in Australia. Overall, the concept behind the work is sound. It is mainly written in plain English and the presentation is user friendly. To facilitate reading and research, a suggested reading list is provided at the end of each chapter. Further assistance is found in a separate bibliography at the end of the work, presented according to the chapters in which they are relevant.[119] The work is current and reflects the information and technological age we live in. References are made to websites and the editors have provided a directory of useful internet addresses.[120] However, there is one small curiosity in the work and it relates to the consistent hyphenation of the expression "human-rights",[121] and at times, "international-law".[122]

More importantly, the information given in the work is correct. The work lives up to its claim that it deals with the Australian perspective and it incorporates aspects that have resulted from the judicial activism of the High Court of Australia in recent times. This reflects the contemporaneous heightened sense of national identity that is occurring in Australia, thus lending a distinctive Australian flavour to the development of international law and practice in this country.

Although the work is a compilation of short chapters, the chapters are sufficient, succinct and well formatted. The large number of chapters (16 of them) ensures that there is inclusiveness of topic areas. However, in this age of semesterisation of university curricula in Australia, one cannot help but wonder if it is possible to do justice to the breadth and content of this textbook in one semester of undergraduate study.

As for myself, I have recommended the work to my students.

Associate Professor Alexis Goh

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[119] At 419-424.

[120] At xxxvii.

[121] For example they abound in Chapter 11.

[122] For example see note 109.