
International Law and Trade



AUSTRALIAN INTERNATIONAL LAW: CASES AND MATERIALS

Edited by H Reicher
(Law Book Company 1995 pp 1083 \$95)



INTERNATIONAL TRADE LAW: COMMENTARY AND MATERIALS

By M Pryles, J Waincymer & M Davies
(Law Book Company 1996 pp 1111 \$125)

TWO books covering different aspects of international law have recently been published in Australia. The first, *Australian International Law*, edited by Harry Reicher, deals with public international law and the second, *International Trade Law*, by Michael Pryles, Jeff Waincymer and Martin Davies examines the international trading system. The publication of these books indicates a growing awareness of the 'globalisation' which affects Australia at the end of the 20th century. Both books are welcome additions to the law library.

Australian International Law is divided into five parts: (i) The Basic Elements of the International Legal System; (ii) Jurisdiction on Land, at Sea and in the Air; (iii) Constraints on the Exercise of Jurisdiction; (iv) The Procedural Dimension of Treaties; and (v) Settlement of Disputes. The 13 chapters in the book are written by noted Australian legal scholars including Hilary Charlesworth, Gerald McGinley and Timothy McCormack. The editor, Harry Reicher, also contributes to several chapters and there are numerous extracts from Australian law journals. In the preface, Reicher notes that the book is 'the first indigenous Australian casebook' on international law drawing solely on Australian sources. Australian judicial decisions, statements by Australian representatives to international organisations and proceedings in the Australian parliament on matters of international law are extracted to form an interesting and uniquely Australian text on the subject. Even if the book did not have other merits, this would make it a valuable addition to Australian legal literature.

The book's other merits, however, are its inclusion of topical issues of contemporary international law and the clarity of its layout and design. Important topics such as Australia's involvement in Antarctica, Australian approaches to the international protection of human rights and international environmental law are fully explored in separate chapters. The chapter on Antarctica, written by Mandi Haynes and Martin Tsamenyi, looks at the Antarctic Treaty to which Australia is an original signatory. Also examined in this chapter are proposals to make Antarctica the 'common heritage of mankind', as well as the issue of mining in Antarctica which continues to provoke controversy.

The chapter on international environmental law by Juliet Behrens, Peter Lawrence and Harry Reicher tackles various issues which are of concern to Australians: ozone protection, nuclear testing, the disposal of hazardous waste, world heritage legislation and biological diversity. An extract from the Nuclear Test Cases (*Australia v France* — *ICJ Pleadings* (1973)) is included in the material on pages 709 and 775. This provides informative reading, despite the displeasing fact of its being broken into two segments. One would have expected this chapter to precede the chapter on Antarctica, but Antarctica is discussed in chapter 6 while international environmental law is, for unexplained reasons, found in chapter 10.

Australian International Law does an excellent job of using Australian sources to illustrate issues of international law. One particularly informative chapter is chapter 2, written by Gerald McGinley and Harry Reicher, on the relationship of international law and Australian law. The significance of *Minister of Immigration and Ethnic Affairs v Teoh* ((1995) 128 ALR 353) and its aftermath are well illustrated, enabling those unfamiliar with the issues to understand *Teoh's* ramifications. In a similar manner, chapter 4 by Harry Reicher and Gerry Simpson discusses sovereignty and jurisdiction by using *Mabo v Queensland (No 2)* ((1992) 175 CLR 1) and the Native Title Bill as examples of the modern approach. Both chapters 2 and 4 are essential prerequisites for comprehending the interaction between public international law and Australian domestic law.

A few topics are given superficial treatment in *Australian International Law*, leaving the reader unaware of the complexities of the subject. For example, the section on customary international law is too brief and fails to present comparative views on the doctrine. The authors should have included sections contrasting the 'objectivist' or 'sociological' view of customary international law with the 'participatory' or 'voluntarist' view. This would have helped to explain this difficult but important area. Despite this small complaint, *Australian International Law* is a worthy achievement and a useful resource for international law classes taught in Australia.

The second book, *International Trade Law*, explores a very large subject — the international trading system. Authors Pryles, Waincymer and Davies have succeeded in presenting an informative, interesting and workable overview of international trade law using both Australian and overseas sources. Their book is divided into four parts: (i) International Trading; (ii) Marketing and Licensing; (iii) Dispute Resolution; and (iv) Impediments and Regulations. Topics such as international investment, finance, taxation and dispute resolution are addressed in a readable manner. Most of the topics appear in an appropriate order, with the exception of an important chapter on the domestic implementation of international trade rules which sets forth the current process of Australian treaty-making. This comes not at the beginning of the book, where one expects it, but rather in chapter 19 (p 899). This could perhaps be corrected in future editions.

International Trade Law begins with interdisciplinary perspectives on international trade in chapter 2. The economics, politics and philosophy of international trade are examined giving the novice reader an instructive foundation for the study of the legal aspects of international trade. An understanding of the theory of 'comparative advantage' is useful in an introductory course on international trade, although the practising trade lawyer may not be interested in it. Chapter 2 ends by raising the following provocative questions: 'Is it fair for

industrialised countries to protect certain industries, such as textiles, given that these are the industries where developing countries are likely to have the greatest comparative advantage? Is it fair for industrialised countries to ban importation of certain scarce natural resource products in order to promote their sustainability, even though the relevant exporting country finds it easier to increase domestic wealth by exploiting the comparative advantage in this sector?' Unfortunately, both questions are left largely to the lecturer and the students to pursue alone without assistance from the authors.

The chapters on the GATT and WTO (chs 14-24) form an important and useful guide to the multilateral trading system of which Australia is a part. The background and history of the WTO, basic principles of the GATT and WTO, and dispute resolution provide students with essential information regarding international trade. Also covered are the rules surrounding dumping, countervailing duties, subsidies, and trade in agricultural goods. In my experience as a lecturer at Flinders University, these are all areas with which law students have little or no familiarity. Many of my international law students have never heard of the WTO despite the fact that it was established on 1 January 1995 as the successor to the GATT and Australia is a member state. *International Trade Law* is highly recommended for those who want to be informed about the current international trading regime.

The authors of *International Trade Law* should be complimented for their discussion of different forms of dispute resolution in Part 4. Negotiation, mediation and litigation on an international scale are examined in chapter 12, which begins with the UNCITRAL conciliation rules and issues in cross-cultural negotiation. Arbitration is the core of chapter 13. This chapter includes an interesting section on drafting arbitration agreements and enforcing arbitration awards which is well worth reading. Australia has a modern arbitration law in the International Arbitration Act 1974 (Cth) and, given the current popularity of alternative dispute resolution courses, this is a timely and useful chapter.

At times *International Trade Law* appears too ambitious in attempting to cover too many aspects of international trade. Nevertheless it is effective as an introductory text for law students and provides a handy reference for trade law practitioners. Its inclusion of both Australian and foreign documents and commentary relevant to international trade is to be highly commended. This book, together with *Australian International Law*, should be purchased by those law students and lawyers who realise the need for a comprehensive understanding of public international law and the international trading system.

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