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# INTERNATIONAL LAW

CASES AND MATERIALS WITH AUSTRALIAN PERSPECTIVES



Donald R. Rothwell  
Stuart Kaye  
Afshin Akhtarkhavari  
Ruth Davis

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## International Law

### Cases and materials with Australian perspectives

With a strong focus on Australian practice and interpretation of international law, this comprehensive cases and materials textbook will provide students with a contemporary understanding of an area of law that has seen major changes in recent years.

Written by a team of pre-eminent experts, *International Law: Cases and Materials with Australian Perspectives* is unique in reflecting the Australian context, perspectives and values around international law. Each chapter covers a substantive area of the law with specialist topics on human rights, law of the sea, and international environmental law. Major cases and treaties are highlighted and accompanied by clear and accessible commentary and analysis. Students will be able to readily identify the key principles, rules and distinctive learning points and will benefit from the clear exposition of state practice in the field, how it has contributed to the development of the law, and how Australian governments have viewed and interpreted international law.

**Donald R. Rothwell** is Professor of International Law at the ANU College of Law at the Australian National University.

**Stuart Kaye** is Winthrop Professor of Law at the University of Western Australia.

**Afshin Akhtarkhvari** is Senior Lecturer at the Griffith Law School and a member of the Socio-Legal Research Centre at Griffith University.

**Ruth Davis** is Lecturer in Law in the Faculty of Law at the University of Wollongong.

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# Preface

The United Nations Decade of International Law concluded at the end of 1999 but it seems that some of the more significant changes in the discipline of international law have occurred since 2000. During this last decade the international community established a number of formal dispute settlement mechanisms through new courts and tribunals. This added significantly to the volume of jurisprudence available to international lawyers to work with and study. Important challenges like responses to international terrorism, the use of force, international crimes such as genocide and piracy, and addressing climate change have caused States,<sup>1</sup> international organisations, and peoples to reconsider some of the foundational concepts and principles of international law.

During this period scholars have actively established and strengthened certain approaches to studying and researching international law. The global administrative law project, for instance, has focused on developing an understanding of administrative law-type mechanisms in international law. This suggests a maturing of the legal system that was not present in the later part of the 20th century. Theoretical and interdisciplinary approaches to studying international law have been particularly strong in the past decade and have encouraged scholars to ask new questions about this body of law and the international politics associated with it.

During the past few decades, Australia's engagement with the international community and its contribution to global affairs have continued to increase in a way that is commensurate with its economic capacity, strategic alliances, and contributions to international affairs. For example, since 1999 Australia has been a particularly active contributor and leader in regional and global military operations in East Timor, Afghanistan, Iraq and the Solomon Islands. These events have all raised significant international legal issues with respect to State sovereignty, the use of force, human rights and international humanitarian law. Debates over the operation and interpretation of international law by Australia have been commonplace in the past decade to such a degree that international law has increasingly become part of the Australian public discourse. Yet, despite the significance of Australia's contributions to international affairs and, correspondingly, its interpretations and implementation of international law, the majority of international law texts commonly available in Australia are written with either a British or an American perspective.

This book seeks to fill that niche, providing a useful tool for research and study in the field of public international law, in particular for those seeking an understanding

<sup>1</sup> For the purposes of this book, an entity which meets the criteria for statehood under international law is referred to as a 'State' and is distinguished from those units which make up federal systems, such as Australia, and are referred to as 'states'. Australia is therefore a State while New South Wales is a state.

of Australian contributions to, and interactions with, the international legal system. Alongside all of the 'essential' international cases and materials that are of fundamental importance in illustrating international law concepts and practices, the book includes a strong base of Australian and regional material to demonstrate the continuing importance of international law for Australia. Extracts from these materials are presented within a coherent framework of commentary that seeks variously to explain, elaborate and provoke further thought.

In producing this book, the authors have drawn upon their collective experience in teaching and researching in the field of international law over many years. As with any such project, compromises have had to be made in terms of the breadth and depth of coverage. This is particularly so in relation to the later chapters relating to specific fields of international law, where the law of the sea, international environmental law and human rights law were selected for more in-depth treatment. While other topics are equally interesting and worthy of attention, these three were chosen because of their relative importance for Australian practice and their ability to further demonstrate principles and concepts referred to in the foundational chapters.

While the authors have shared responsibility for production of the book, and have extensively reviewed and contributed to each other's work, primary responsibility for writing the chapters is as follows:

Donald R. Rothwell: Chapters 3, 4, 5, 12 and 1 (with Afshin Akhtarkhavari)

Stuart Kaye: Chapters 6, 7 and 8

Afshin Akhtarkhavari: Chapters 2, 9 and 1 (with Donald R. Rothwell)

Ruth Davis: Chapters 10, 11 and 13

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## About the authors

**Donald R. Rothwell** is Professor of International Law at the ANU College of Law at the Australian National University. In 2006 he chaired the Sydney Panel of Independent International Legal Experts which authored the report *Japan's Special Permit ('Scientific') Whaling under International Law*, and in 2008 chaired the Canberra Panel addressing the same issue. In 2008 he was awarded the Vice-Chancellor's Award for Community Outreach at the Australian National University. He is Co-Editor in Chief of the *Australian Year Book of International Law* and serves on the Editorial Advisory Board of the *New Zealand Yearbook of International Law*.

**Stuart Kaye** is Winthrop Professor of Law at the University of Western Australia. In 1995 he was appointed to the International Hydrographic Organization's Panel of Experts on Maritime Boundary Delimitation and in 2000 was appointed to the List of Arbitrators under the Environmental Protocol to the *Antarctic Treaty*. He is a former Chair of the Australian Red Cross National International Humanitarian Law Committee, and is also a legal officer in the Royal Australian Navy Reserve and a Fellow of the Royal Geographical Society.

**Afshin Akhtarkhvari** is Senior Lecturer at the Griffith Law School and a member of the Socio-Legal Research Centre at Griffith University. His PhD thesis, entitled 'Environmental Principles and Change in International Law and Politics', is in press with Edward Elgar Publishing. For more than 12 years he has lectured in public international law and has published on international environmental law and legal education. He is a member of the Editorial Board of the *Griffith Law Review*.

**Ruth Davis** is Lecturer in Law in the Faculty of Law at the University of Wollongong, where she is also a member of the Australian National Centre for Ocean Resources and Security. Her research interests revolve around the international legal regime for the protection of the marine environment, with a particular interest in Antarctica and the Southern Ocean. She is currently pursuing a PhD in the field of international law for cetaceans.

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