Public international law is a global legal system which regulates the conduct of countries and other actors, both in international relations and within states' territories. *Public International Law* offers Australian students a comprehensive and accessible introduction to international law.

Covering the fundamental topics of international law – including treaties, use of force and dispute settlement – this text also discusses specialised branches such as humanitarian law, criminal law and environmental law. The key principles and theories of international law are clearly explained and analysed, and their application is illustrated by succinct, carefully chosen extracts from cases and materials. These sources strike a balance between key international cases and important cases from domestic legal systems, with an emphasis on Australian cases and state practice.

Discussion questions at the end of each chapter encourage students to apply and test their understanding of each topic, while a glossary of key terms clearly explains complex concepts.

Written by an expert author team, *Public International Law* is a fundamental resource for Australian students of international law.

Emily Crawford is a Professor at the University of Sydney Law School.

Alison Pert is an adjunct Associate Professor at the University of Sydney.

Ben Saul is Challis Chair of International Law at the University of Sydney.
PUBLIC INTERNATIONAL LAW

Edited by
Emily Crawford
Alison Pert
Ben Saul
For Ivan Shearer (1938–2019) and James Crawford (1948–2021), who taught us to love international law, and to love teaching it.
CONTENTS

About the authors page xxii
Preface xxv
Acknowledgements xxvi
Table of cases xxviii
Table of statutes xli
Table of treaties and other international instruments xlv
List of abbreviations lxxiii

1 Overview of public international law 1
Ben Saul

1.1 Introduction 2

1.2 What is international law? 2
1.2.1 Historical context 3
1.2.1.1 Early origins 3
1.2.1.2 The 19th and early 20th centuries 5
1.2.1.3 The international order after 1945 6
1.2.2 Participants 7
1.2.2.1 States 7
1.2.2.2 International organisations 8
1.2.2.3 Other actors 9

1.3 Implementation and enforcement 12
1.3.1 International level 13
1.3.1.1 State responsibility 13
1.3.1.2 Diplomatic claims 13
1.3.1.3 Dispute settlement methods 13
1.3.1.4 Other accountability procedures 14
1.3.1.5 Enforcement of international security 14
1.3.1.6 Self-help 14
1.3.1.7 Treaty law 15
1.3.1.8 Social processes 15
1.3.2 National level 16

1.4 The nature of international law as ‘law’ 16
1.4.1 International law is not “law”? 17
1.4.2 Voluntarism: law by sovereign consent 18
1.4.3 Hart: international law is law lacking a legal system 19
1.4.4 Realists: international law is subordinate to power 20
1.4.5 Pragmatists: international law is recognised and treated as law 22
1.4.6 International law as process 24
1.4.7 Theories of compliance with international law 25

1.5 Critical theories 26
1.5.1 Marxism 26
1.5.2 Third World Approaches to International Law 28
1.5.3 Feminism 28
1.5.4 Postmodernism 30

Discussion questions 31

2 Sources of international law
Emily Crawford 32

2.1 Introduction 33

2.2 The traditional starting point: art 38 of the Statute of the International Court of Justice 33
2.2.1 Treaties 34
2.2.2 Custom 34
2.2.2.1 State practice 34
2.2.2.2 Opinio juris 38
2.2.2.3 Local or regional custom 40
2.2.2.4 The persistent and subsequent objector 41
2.2.2.5 The interaction between treaties and custom 42
2.2.2.6 Jus cogens 43
2.2.3 General principles of law 45
2.2.4 Judicial decisions and the teachings of highly qualified publicists 47
2.2.4.1 A special subcategory of highly qualified publicists: the International Law Commission 48

2.3 Another binding source of international law: unilateral declarations 49

2.4 Soft law instruments 50
2.4.1 Resolutions of international organisations and conferences 51
2.4.2 Codes of conduct and manuals of instruction 52

Discussion questions 53

3 The law of treaties
Alison Pert and Meda Couzens 55

3.1 Introduction 56

3.2 What is a treaty, and the relationship of treaties with customary international law? 56
3.3 The Vienna Convention on the Law of Treaties 57
3.3.1 Introduction and scope 57
3.3.2 What is a treaty for the purposes of the VCLT? 58
  3.3.2.1 An agreement between states 58
  3.3.2.2 In written form 58
  3.3.2.3 Governed by international law 59
  3.3.2.4 Whether embodied in one or more instruments 59
  3.3.2.5 Whatever its particular designation 59
3.4 Treaty negotiation and conclusion 60
3.5 Expressing the consent to be bound 61
3.6 Entry into force of a treaty 62
3.7 Reservations to treaties 62
  3.7.1 Reservations vs interpretative declarations 63
  3.7.2 Are reservations allowed? 64
  3.7.3 Effect of reservations 67
3.8 Legal effects of a treaty 69
  3.8.1 Obligation not to defeat the object and purpose of a treaty prior to its entry into force (art 18) 69
  3.8.2 Observance of treaties: obligations after the treaty comes into effect 69
    3.8.2.1 Pacta sunt servanda 69
    3.8.2.2 Internal law and observance of treaties 70
    3.8.2.3 Treaties and third states 70
3.9 Application of treaties 70
3.10 Interpretation of treaties 70
  3.10.1 General rule of interpretation (art 31) 71
  3.10.2 Supplementary means of interpretation (art 32) 72
  3.10.3 Role of resolutions of international organisations 73
3.11 Invalidity, termination, withdrawal from and suspension of a treaty 73
  3.11.1 Invalidity 74
    3.11.1.1 Internal law 74
    3.11.1.2 Error 75
    3.11.1.3 Fraud or corruption 75
    3.11.1.4 Coercion 75
    3.11.1.5 Breach of good faith: a further ground of invalidity? 76
  3.11.2 Termination, withdrawal and suspension 76
    3.11.2.1 Termination or suspension by express or implied agreement 77
    3.11.2.2 Denunciation or withdrawal by express or implied agreement 77
4 International law and Australian law
Tim Stephens and Meda Couzens

4.1 Introduction

4.2 International law and domestic law: general concepts, theories and comparisons

4.3 Domestic law in international law
4.3.1 Municipal law as a source of international law
4.3.2 Deficiencies in municipal law no justification for breach of international law

4.4 Categorising the influence of international law on Australian law

4.5 Treaties and Australian law
4.5.1 The treaty-making process
4.5.2 Constitutional considerations
4.5.3 Legislative considerations
4.5.4 Treaties and administrative decision-making

4.6 International law and statutory interpretation

4.7 International law and constitutional interpretation

4.8 Customary international law in Australian law
4.8.1 Crimes in customary international law

4.9 Proof of international law in Australian courts

5 Statehood, self-determination and territory
Rowan Nicholson

5.1 Introduction

5.2 Statehood
5.2.1 The role of the statehood criteria
5.2.1.1 The criteria of population, territory and government
5.2.1.2 The criterion of independence
5.2.1.3 The example of Australia
5.2.2 The role of recognition
5.2.2.1 Recognition as a state
5.2.2.2 Recognition as a government
5.2.3 The role of unlawfulness

5.2.3.1 Entities created by unilateral secession

5.2.3.2 Entities created by force

5.2.3.3 Entities created by breaches of other peremptory norms

5.3 Self-determination

5.3.1 The right to external self-determination

5.3.1.1 The scope of the right to external self-determination

5.3.1.2 How self-determination affects statehood

5.3.2 Other manifestations of self-determination

5.4 Territory

5.4.1 The initial territory of new states

5.4.2 Territorial change

5.4.2.1 Conquest

5.4.2.2 Cession

5.4.2.3 Occupation of terra nullius

5.4.2.4 Prescription

5.4.3 Territorial disputes

5.4.3.1 Effective occupation

5.4.3.2 Critical date

5.4.3.3 Relativity of title

5.4.4 Special types of territory

Discussion questions

6 Jurisdiction and immunities

6.1 Introduction

6.2 Jurisdiction

6.2.1 Meaning and scope

6.2.2 The Lotus case

6.2.3 Civil jurisdiction

6.2.3.1 The Alien Tort Statute of 1789

6.2.4 Criminal jurisdiction

6.2.4.1 The territoriality principle

6.2.4.2 Extended territoriality and the ‘effects doctrine’

6.2.4.3 The nationality principle

6.2.4.4 The passive personality principle

6.2.4.5 The protective principle

6.2.4.6 The universality principle

6.2.4.7 ‘Prosecute or extradite’ treaties

6.2.4.8 Universal jurisdiction in national courts

6.2.5 Accused brought ‘unlawfully’ before the court

6.2.6 Extradition
6.3 Diplomatic immunity
6.3.1 Diplomatic relations
6.3.2 Consular relations
6.3.3 The Vienna Convention on Diplomatic Relations
   6.3.3.1 Immunities
   6.3.3.2 Appointments
   6.3.3.3 Duration of immunity
   6.3.3.4 Inviolability
   6.3.3.5 Duties of the sending state

6.4 Foreign state immunity
6.4.1 Absolute vs restrictive immunity
6.4.2 Who or what is entitled to immunity?
   6.4.2.1 The ‘state’
   6.4.2.2 Agencies and instrumentalities, separate entities
   6.4.2.3 Political subdivisions
   6.4.2.4 Individuals representing the state: functional immunity
   6.4.2.5 Personal immunity for certain individuals: the ‘Troika’
6.4.3 Some questions not answered by the Arrest Warrant case
   6.4.3.1 Personal immunity from civil proceedings
   6.4.3.2 Personal immunity beyond the Troika?
6.4.4 Immunity for jus cogens violations?
   6.4.4.1 Immunity from criminal proceedings for torture
   6.4.4.2 Immunity from criminal proceedings for other jus cogens violations
   6.4.4.3 Immunity from civil proceedings for torture and other international crimes
6.4.5 Functional immunity of officials for other crimes

6.5 Immunity before international tribunals

6.6 Special mission immunity

6.7 Foreign act of state doctrine

Discussion questions

7 State responsibility and diplomatic protection

Chester Brown, Emily Crawford and Brett Williams

7.1 Introduction

7.2 A brief history: custom and the work of the International Law Commission

7.3 Elements of state responsibility
   7.3.1 Attribution of conduct
   7.3.1.1 Conduct of state organs, and of persons or entities exercising elements of governmental authority

© in this web service Cambridge University Press & Assessment
www.cambridge.org
7.3.1.2 Ultra vires or unauthorised acts 184
7.3.1.3 Acts by non-state actors or groups 185
7.3.1.4 Adoption by the state 186
7.3.1.5 Joint responsibility 187
7.3.2 Breach 188
7.3.3 Admissibility of claims 188
7.3.4 Circumstances precluding wrongfulness 188
  7.3.4.1 Consent 188
  7.3.4.2 Self-defence 189
  7.3.4.3 Countermeasures 190
  7.3.4.4 Force majeure 190
  7.3.4.5 Distress 191
  7.3.4.6 Necessity 191
7.3.5 Consequences of an internationally wrongful act 192
  7.3.5.1 Cessation 192
  7.3.5.2 Reparation 193
7.3.6 Consequences for a breach of a jus cogens norm 195
7.3.7 Invocation 196
7.4 Diplomatic protection 198
7.5 Content of a state’s obligation regarding the treatment of foreign nationals 200
  7.5.1 National standard vs the international minimum standard 200
  7.5.2 International minimum standard of treatment 200
  7.5.3 Responsibility for direct and indirect injury to foreign nationals 201
  7.5.4 Obligation to provide physical protection for foreign nationals 202
  7.5.5 International minimum standard and obligations under investment treaties 202
  7.5.6 Expropriation of the property of foreign nationals 203
7.6 Additional requirements for a claim in diplomatic protection 206
  7.6.1 Nationality of claims: natural persons 206
  7.6.2 Nationality of claims: corporations and shareholders 207
  7.6.3 Exhaustion of local remedies 208
7.7 State responsibility in the era of international human rights law 209
Discussion questions 210
8 Use of force 212
  Alison Pert
  8.1 Introduction 213
  8.2 Pre-1945 213
  8.3 The Charter of the United Nations 214
    8.3.1 ‘Force’, ‘in their international relations’, ‘any state’ 214
    8.3.2 ‘Territorial integrity or political independence’ 214
8.3.3 What is prohibited? 215
8.3.4 The prohibition is customary international law, and \textit{jus cogens} 216
\hspace{1em} 8.3.4.1 The \textit{Nicaragua} case 216
8.3.5 Indirect use of force vs ‘effective control’ 218
8.3.6 What is not a use of force? 218
8.3.7 New challenges: cyber-attacks 219
8.3.8 What is a threat of force? 220

8.4 Self-defence 221
8.4.1 Necessity and proportionality 222
8.4.2 Procedural requirements for lawful self-defence 223
\hspace{1em} 8.4.2.1 Reporting to the Security Council 223
\hspace{1em} 8.4.2.2 Declaration by victim state: collective self-defence 223
8.4.3 ‘Armed attack’ 223
\hspace{1em} 8.4.3.1 Meaning of ‘armed attack’ 224
\hspace{1em} 8.4.3.2 Timing of ‘armed attack’ 225
\hspace{1em} 8.4.3.3 Pre-emptive self-defence 227
8.4.4 Protection of nationals abroad 228
8.4.5 Self-defence against terrorism 228
\hspace{1em} 8.4.5.1 The ‘unable or unwilling’ doctrine 229

8.5 Collective security: action authorised by the Security Council 230
8.5.1 Collective security 230
8.5.2 Sanctions 230
8.5.3 Peacekeeping 231
8.5.4 Authorisation of force 232

8.6 Humanitarian intervention and the responsibility to protect 233

8.7 Intervention by invitation 235
8.7.1 The principle of non-intervention 236
8.7.2 The right to intervene by invitation 236

Discussion questions 237

9 International dispute settlement 238

\textit{Chester Brown}

9.1 Introduction 239
9.2 International dispute settlement: an overview 239
\hspace{1em} 9.2.1 Existence of a ‘dispute’ 240
\hspace{1em} 9.2.2 Legal and political disputes 241
9.3 Evolution of the obligation to settle disputes peacefully and the \textit{UN Charter} framework 242
9.4 Diplomatic methods for the peaceful settlement of international disputes 244
\hspace{1em} 9.4.1 Negotiation 244
\hspace{1em} 9.4.2 Fact-finding and inquiry 246
9.4.3 Good offices 247
9.4.4 Mediation 248
9.4.5 Conciliation 249

9.5 International arbitration 251

9.6 International Court of Justice (ICJ) 252
  9.6.1 History 252
  9.6.2 Composition 252
  9.6.3 Access to the Court 253
  9.6.4 Jurisdiction of the Court 254
    9.6.4.1 Contingent jurisdiction 254
    9.6.4.2 Admissibility of claims 258
    9.6.4.3 Provisional measures 260
    9.6.4.4 Third-party intervention 261
    9.6.4.5 Advisory jurisdiction 261
  9.6.5 Judgments 262
  9.6.6 Australia and the ICJ 263

9.7 Role of the United Nations and regional organisations in the settlement of international disputes 264

Discussion questions 264

10 International human rights law 265
  Irene Baghoomians and Jacqueline Mowbray

10.1 Introduction 266
  10.1.1 Histories of international human rights law 266

10.2 Substantive content of international human rights law 267
  10.2.1 The major international human rights instruments 267
    10.2.1.1 The Universal Declaration of Human Rights 267
    10.2.1.2 The ICCPR and the ICESCR 268
    10.2.1.3 Other international human rights instruments 269
    10.2.1.4 International refugee law 270
    10.2.1.5 Regional human rights treaties 270
  10.2.2 Overview of rights and obligations 272
    10.2.2.1 Who has obligations under international human rights law? 272
    10.2.2.2 Who has rights under international human rights law? 272
    10.2.2.3 Jurisdictional scope 272
    10.2.2.4 Nature of obligations: respect, protect, fulfil 273
    10.2.2.5 Derogations and limitations 273
    10.2.2.6 Reservations to human rights treaties? 274
    10.2.2.7 Generations of rights? 275
10.3 The institutional framework: international human rights bodies 275
10.3.1 International bodies 275
10.3.1.1 Human Rights Council 276
10.3.1.2 Human rights treaty bodies 278
10.3.2 Regional bodies and mechanisms 281
10.3.2.1 ASEAN case study 284
10.3.3 Civil society 285

10.4 Domestic implementation of international human rights law 286
10.4.1 International overview 286
10.4.2 Human rights law in Australian law 287
10.4.2.1 Federal law 287
10.4.2.2 State and territory human rights legislation 287
10.4.2.3 A federal human rights Act? 288
10.4.3 Australian institutions for the protection and promotion of human rights 289
10.4.3.1 Parliamentary Joint Committee on Human Rights 289
10.4.3.2 Australian Human Rights Commission 289

10.5 Human rights as a discourse and critiques 291
Discussion questions 293

11 International humanitarian law
Emily Crawford

11.1 Introduction 295

11.2 Sources of international humanitarian law 295

11.3 Types of armed conflict and scope of application of international humanitarian law 298
11.3.1 International armed conflicts 298
11.3.2 Non-international armed conflicts 299
11.3.3 Parallel conflicts 301
11.3.4 Transformation of conflicts and internationalised, transnational, hybrid and spillover conflicts 301
11.3.5 Scope of application of international humanitarian law 302

11.4 Fundamental principles of international humanitarian law 303
11.4.1 Distinction 303
11.4.2 Proportionality 303
11.4.3 Military necessity 305
11.4.4 Humanity 305
11.4.5 Prohibition on causing unnecessary suffering and superfluous injury 305

11.5 Persons and objects under international humanitarian law 306
11.5.1 Combatants and attached non-combatants 306
11.5.2 Civilians (including those taking direct part in hostilities) 308
11.5.3 Objects 310
  11.5.3.1 Military objects and objectives 310
  11.5.3.2 Civilian objects 310
11.6 The law of targeting and the rules on means and methods of warfare 311
  11.6.1 The law of targeting 312
  11.6.2 Prohibited means and methods of warfare 312
    11.6.2.1 Weapons 312
    11.6.2.2 Methods 313
11.7 Special protection regimes 314
  11.7.1 Prisoners of war 314
  11.7.2 The law of occupation 315
  11.7.3 Wounded, sick and shipwrecked 316
  11.7.4 Cultural property 317
  11.7.5 The natural environment 317
11.8 Implementation and enforcement of international humanitarian law 318
Discussion questions 319

12 International criminal law 320
Rosemary Grey

12.1 Introduction 321
12.2 International criminal law and its aims 321
12.3 The development of international criminal law 323
12.4 The enforcement of international criminal law today 325
  12.4.1 International Criminal Court 325
    12.4.1.1 Jurisdiction of the ICC 326
    12.4.1.2 The ICC’s admissibility rules 327
  12.4.2 National courts 329
  12.4.3 ‘Hybrid’ criminal tribunals 330
12.5 Crimes under international law 331
  12.5.1 War crimes 331
  12.5.2 Crimes against humanity 332
  12.5.3 Genocide 333
    12.5.3.1 Genocide in Australia? 336
  12.5.4 Aggression 338
12.6 Individual criminal responsibility 341
  12.6.1 Commission 341
  12.6.2 Command responsibility 343
  12.6.3 Defences 344
Discussion questions 345
# 13 International law of the sea

Tim Stephens

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>13.1 Introduction</td>
<td>347</td>
</tr>
<tr>
<td>13.2 Origins and development</td>
<td>347</td>
</tr>
<tr>
<td>13.3 Coastal state maritime zones</td>
<td>349</td>
</tr>
<tr>
<td>13.3.1 Baselines</td>
<td>351</td>
</tr>
<tr>
<td>13.3.2 Territorial sea</td>
<td>352</td>
</tr>
<tr>
<td>13.3.3 Contiguous zone</td>
<td>354</td>
</tr>
<tr>
<td>13.3.4 Exclusive economic zone</td>
<td>355</td>
</tr>
<tr>
<td>13.3.5 Continental shelf</td>
<td>357</td>
</tr>
<tr>
<td>13.3.6 Archipelagic waters</td>
<td>359</td>
</tr>
<tr>
<td>13.4 Maritime boundary delimitation</td>
<td>361</td>
</tr>
<tr>
<td>13.4.1 Australia and Timor-Leste’s maritime boundary</td>
<td>363</td>
</tr>
<tr>
<td>13.5 Maritime zones beyond national jurisdiction</td>
<td>364</td>
</tr>
<tr>
<td>13.5.1 High seas</td>
<td>364</td>
</tr>
<tr>
<td>13.5.2 Deep seabed</td>
<td>365</td>
</tr>
<tr>
<td>13.6 Maritime environmental protection</td>
<td>367</td>
</tr>
<tr>
<td>13.7 Fisheries</td>
<td>369</td>
</tr>
<tr>
<td>13.8 Dispute resolution</td>
<td>370</td>
</tr>
<tr>
<td>Discussion questions</td>
<td>371</td>
</tr>
</tbody>
</table>

# 14 International environmental law

Ben Boer

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>14.1 Introduction</td>
<td>373</td>
</tr>
<tr>
<td>14.2 Development of international environmental law</td>
<td>373</td>
</tr>
<tr>
<td>14.2.1 International environmental law over five decades</td>
<td>373</td>
</tr>
<tr>
<td>14.2.2 National level implementation</td>
<td>375</td>
</tr>
<tr>
<td>14.2.3 Remedies for violations</td>
<td>375</td>
</tr>
<tr>
<td>14.3 Sources and drafting of IEL</td>
<td>375</td>
</tr>
<tr>
<td>14.4 International institutions</td>
<td>377</td>
</tr>
<tr>
<td>14.4.1 United Nations Environment Programme</td>
<td>377</td>
</tr>
<tr>
<td>14.4.2 United Nations Environment Assembly</td>
<td>377</td>
</tr>
<tr>
<td>14.5 Principles of international environmental law</td>
<td>378</td>
</tr>
<tr>
<td>14.5.1 The importance of principles</td>
<td>378</td>
</tr>
<tr>
<td>14.5.2 Established principles</td>
<td>378</td>
</tr>
<tr>
<td>14.5.3 Sustainable development</td>
<td>380</td>
</tr>
<tr>
<td>14.5.3.1 Sustainable Development Goals 2015</td>
<td>381</td>
</tr>
<tr>
<td>14.5.3.2 Sustainable development in Australia</td>
<td>382</td>
</tr>
</tbody>
</table>
14.5.4 Emergence of new principles

14.5.4.1 Principles of IEL in a global instrument 382
14.5.4.2 Environmental Rule of Law 383
14.5.4.3 In dubio pro natura 384
14.5.4.4 Principle of non-regression 384
14.5.4.5 Principle of progression 385
14.5.4.6 Human right to a safe, clean, healthy and sustainable environment 385

14.6 Selected environmental law issues 388

14.6.1 Greenhouse gases and climate change 388
14.6.2 Transboundary air pollution 390
14.6.3 Chemicals and wastes 390
14.6.4 Conservation of biological diversity 392
14.6.5 Land degradation 394

14.7 Heritage conservation 395

14.7.1 The heritage conventions 395
14.7.2 The World Heritage Convention 396
14.7.2.1 The World Heritage Convention in Australia 397

Discussion questions 399

15 International organisations

15.1 Introduction 401

15.2 Origins and purposes of international organisations 401
15.2.1 League of Nations 1919 402
15.2.2 Contemporary international organisations 404

15.3 What is an international organisation? 405
15.3.1 Established by international law 405
15.3.2 Membership including states 406
15.3.3 International legal personality 407

15.4 Powers of international organisations 409

15.5 Immunities from and privileges under national law 411
15.5.1 Immunities of the United Nations 412
15.5.2 Privileges of the United Nations 413
15.5.3 Immunities and privileges of UN personnel 413
15.5.4 Lifting of immunity 414

15.6 Responsibility and accountability of international organisations and member states 415
15.6.1 Breach of an international obligation 416
15.6.2 Attribution 416
15.6.3 Dual attribution 417
15.6.4 Responsibility for contributing to the acts of others 418
15.6.5 Responsibility of member states for a breach by an international organisation 419
15.6.6 Dispute settlement procedures 419

15.7 United Nations 1945 420
15.7.1 General Assembly 423
15.7.2 Security Council 424
15.7.3 Other UN bodies 425
  15.7.3.1 World Bank and International Monetary Fund 426
  15.7.3.2 Other autonomous UN bodies 426
  15.7.3.3 World Trade Organization 426
15.7.4 UN Secretariat 426
15.7.5 Criticisms of the United Nations 427
15.7.6 Reform of the United Nations 428

Discussion questions 429

16 International economic law 430
Chester Brown and Alison Pert

16.1 Introduction 431

16.2 International trade law 431
  16.2.1 The General Agreement on Tariffs and Trade 1947 431
  16.2.2 The World Trade Organization 433
    16.2.2.1 The General Agreement on Tariffs and Trade 1994 434
    16.2.2.2 The General Agreement on Trade in Services 436
    16.2.2.3 The Agreement on Trade-Related Aspects of Intellectual Property 437
    16.2.2.4 The Understanding on Dispute Settlement 439
  16.2.5 Australia and the WTO 441
  16.2.3 Other free trade agreements 441

16.3 International investment law 442
  16.3.1 Introduction 442
  16.3.2 Substantive obligations in investment treaties 444
    16.3.2.1 Fair and equitable treatment 444
    16.3.2.2 Full protection and security 447
    16.3.2.3 Protection from expropriation 448
    16.3.2.4 Most-favoured-nation treatment 450
    16.3.2.5 National treatment 451
    16.3.2.6 Umbrella clause 452
Editors

Emily Crawford is a Professor at the University of Sydney Law School, where she teaches and researches in international law and international humanitarian law. She has published widely in the field of international humanitarian law, including three monographs and a textbook, and is co-editor of the Journal of International Humanitarian Legal Studies.

Alison Pert (LLB (Hons), LLM, PhD) is an adjunct Associate Professor at the University of Sydney where she lectures in public international law and international law and the use of armed force. She has practised as a lawyer in government and in the private sector in London, Papua New Guinea and Australia, and has represented Australia at international organisations including Unidroit and UNCITRAL, and in treaty negotiations. She is the author of Australia as a Good International Citizen (Federation Press, 2014) and co-author of International Humanitarian Law (CUP, 3rd edition forthcoming, 2023, with Emily Crawford).

Ben Saul is Challis Chair of International Law at the University of Sydney, and an Associate Fellow at the Royal Institute of International Affairs (Chatham House) in London and the International Centre for Counter-Terrorism in The Hague. He has taught at Harvard, Oxford, The Hague Academy of International Law and in Italy, India, Nepal and Cambodia, and been a visitor at the Max Planck Institute for International Law and the Raoul Wallenberg Institute for Human Rights. He has published 20 books and hundreds of articles. His books include Defining Terrorism in International Law (2006), the Oxford Commentary on the International Covenant on Economic, Social and Cultural Rights (2014) (awarded a Certificate of Merit by the American Society of International Law), the Research Handbook on International Law and Terrorism (2020) and the Oxford Guide to International Humanitarian Law (2020). Ben has advised United Nations bodies, governments, militaries and security agencies, and NGOs; practised in international tribunals; and undertaken missions in over 35 countries. He has a doctorate from Oxford and honours degrees in Arts and Law from Sydney.

Contributors

Irene Baghoomians has worked in the areas of public interest and human rights litigation, policy and research, including at the Australian Law Reform Commission and the Department of the Prime Minister and Cabinet. Irene was a legal policy adviser in the Race Discrimination Unit of the Human Rights and Equal Opportunity Commission (1998–2000). In New York, she studied for an LLM at Columbia University Law School (2000–01) and was designated a human rights fellow. Upon graduation she was granted a second human rights fellowship which she spent at the Center for Constitutional Rights. Irene is a Senior Lecturer at the University of Sydney Law School and is the coordinator of the clinical legal education program.
Ben Boer is an Emeritus Professor in the University of Sydney Law School. He was also the international Co-Director of the IUCN Academy of Environmental Law (2006–08) and Deputy Chair of the IUCN World Commission on Environmental Law (2012–16). He was a Distinguished Professor in the Research Institute of Environmental Law at Wuhan University, PRC (2011–20). He has served as a consultant to various intergovernmental and non-governmental organisations, and is a member of the Board of Governors of the International Council of Environmental Law. He continues to write on a range of environmental law and human rights topics. He is co-founder and co-editor of the *Chinese Journal of Environmental Law*.

Chester Brown is Professor of International Law and International Arbitration at the University of Sydney Law School. He is also a Barrister at 7 Wentworth Selborne Chambers, Sydney, and an Overseas Member of Essex Court Chambers, London. He teaches and researches in the fields of public international law, international dispute settlement, international arbitration, international investment law, and private international law. He also maintains a practice in these fields, and has been involved as counsel, expert and arbitrator in various proceedings, including before the International Court of Justice, the Iran–United States Claims Tribunal, inter-state and investor–state tribunals, as well as in inter-state conciliation proceedings, international commercial arbitrations and domestic court proceedings.

Meda Couzens is a Lecturer with the School of Law, Western Sydney University and an Honorary Research Fellow with the University of KwaZulu-Natal, South Africa. Meda holds a PhD from Leiden University, The Netherlands and other postgraduate degrees (legal and multidisciplinary) from universities in South Africa, the United Kingdom and Romania. Meda has taught public international law at the University of Sydney and Western Sydney University. Her main area of research is the rights of children.

Rosemary Grey is a Senior Lecturer at the University of Sydney Law School. Her research focuses on gender and international criminal law, with a focus on the International Criminal Court (‘ICC’) and the Extraordinary Chambers in the Courts of Cambodia (‘ECCC’). She has taught courses in public international law, international criminal law and domestic criminal law, and has submitted amicus curiae observations in the ICC and ECCC.

Jacqueline Mowbray is an Associate Professor at the University of Sydney Law School, where she teaches international law, human rights, and legal theory. She is also the external legal adviser to the Commonwealth of Australia’s Parliamentary Joint Committee on Human Rights, and she was a member of the drafting committee of the Abidjan Principles on the Right to Education. Her book, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials* (co-authored with Ben Saul and David Kinley), was winner of the 2015 American Society of International Law Certificate of Merit.

Rowan Nicholson teaches and researches in international law and public law. His book *Statehood and the State-Like in International Law* (Oxford University Press, 2019), adapted from his doctorate at the University of Cambridge, draws on colonial history and presents a theory about how political communities acquire legal rights and duties. His other research interests include the status of Indigenous Australians. He has worked on cases before the International Court of Justice and was previously co-director of the Sydney Centre for Education.
International Law. He is now at Flinders University and also speaks and writes about international law in the media.

**Tim Stephens** is Professor of International Law at the University of Sydney Law School. He teaches and researches in public international law, with his work focusing on the international law of the sea, international environmental law and international dispute settlement. Tim holds a PhD in international law from the University of Sydney, an MPhil in geography from the University of Cambridge, and BA and LLB degrees (both with Honours) from the University of Sydney. He is a Fellow of the Australian Academy of Law and a past president of the Australian and New Zealand Society of International Law.

**Brett Williams** is the Principal of Williams Trade Law and is an Honorary Senior Lecturer at the Law School of the University of Sydney, where he is an associate of the Sydney Centre for International Law and the Centre for Asian and Pacific Law.