

# FOREWORD

Professor Anthony Cassimatis AM is the Director of the Centre for Public International Law and Comparative Law in the University of Queensland. He has made an outstanding contribution to student learning in international law and international legal advocacy. He has inspired in many Australian students, particularly in his State of Queensland, an abiding interest in public international law such that they may be found around the world in embassies, tribunals and as legal practitioners applying their craft with the rigour for which their fundamental training prepared them. There is now, in effect, a global network of former students who proudly and affectionately describe themselves as 'the Cassimatis diaspora'. A not insignificant part of their preparation has been Professor Cassimatis's dedication, over decades, to the advancement of international law through the encouragement of student participation in the Philip C Jessup International Law Moot Competition, in which Australian law students have had considerable success.

This book is the product of years of successful teaching and reflection and is greatly to be welcomed. It breaks no particularly new ground. That is not its purpose and, indeed, would be less useful to its target audience of students and domestic practitioners were it to do so. It offers a coherent and systematic analysis of the underpinning theory and practice of international law today.

It is instructive to consider how many of the topics of international law have changed either in emphasis or inclusion over the years, some unimaginably so to earlier writers. Let me mention just two scholars with an Australian connection. In 1885, Pitt Cobbett (born in Adelaide, South Australia in 1852 and later foundation holder of the Challis Chair at Sydney University) published when a practising barrister of Gray's Inn, London, *Leading Cases and Opinions on International Law*. It had many subsequent editions. The profound change effected on the theory and practice of international law by two world wars and an enduring United Nations can be seen from the arrangement of Cobbett's material. He gave approximately equal treatment to each of the three broad divisions of Peace, War and Neutrality. What is particularly striking is the absence of the individual as an actor in the international sphere beyond aliens, domicile, diplomats, the slave trade and piracy. Pitt Cobbett wrote in his Preface:

There is some tendency on the part of English lawyers to regard that body of custom and convention which is known as International Law, as fanciful and unreal; as a collection of amiable opinions, rather than a body of legal rules.

He blamed the text writers for aspiring to write of international law as they would wish it to be rather than describing existing usage for this state of affairs. Professor Cassimatis has

fallen into no such trap. He has meticulously set out the traditional theoretical underpinnings of each subject-matter of the discipline and provided ample examples of states practice but without neglecting the leading *opinio juris*.

The second text writer is more recent although there have been great changes in the world order in the ensuing years. In 1965, Professor DP O'Connell (then at the University of Adelaide but subsequently holder of the Chichele Chair in International Law at Oxford) published his two-volume treatise, *International Law*. The effective date of his material was 1961, a mere 16 years after the end of the Second World War when the political and economic transformation of the world affected both the role and content of international law. Even then among many common lawyers, there was a lingering devotion to John Austin.

Professor O'Connell singled out two factors as influencing the further development of international law: the emergence of numerous post-colonial new states who sought to influence the content of the world legal order having had no part in the development of its norms, and the much wider dissemination of diplomatic practice and judicial decisions in readily accessible collections than had hitherto been the case. This latter vast and rapidly accumulating source of authority had a profound influence on the analysis of international law and opened up much state practice to scrutiny and synthesis. The modern advent of sophisticated electronic means for accessing and managing quantities of information has lightened considerably the burden of research. And of the former, in the three-quarters of a century since the great wave of newly emancipated peoples entered the international community, change to international law has been more incremental and nuanced than had been anticipated. Its greatest influence has, arguably, been on the development of international human rights obligations.

While Professor O'Connell's own philosophy of natural rights inhering in all was grounded in the 17th century founding fathers of international law, he was of the view that as a system of law international law struggled to give effect to those rights. In a work of over 1000 pages, the discussion of human rights is little more than 20 pages. Professor Cassimatis has a particular interest in human rights having been closely involved in the humanitarian law section of the International Red Cross in Australia for very many years. He writes with deep knowledge and confidence on the topic. The protection of human rights under international law occupies 40 pages in a book—less than half the length of O'Connell's text.

The other area where the individual has been more clearly recognised as actor is in the development of international criminal law. For Pitt Cobbett, that kind of individual responsibility lay, if at all, in the realm of municipal law while Professor O'Connell, writing only 15 years after the Nuremberg and Tokyo War Crimes Tribunal adjudications, was grappling with the fundamental question of the individual owing duties in the international context. He had been a postgraduate student at Cambridge under Professor Hersch Lauterpacht, acknowledged as having developed the modern concept of crimes against humanity. That the individual might be the subject of prosecution for crimes against humanity in an international forum is now well accepted conceptually. Professor Cassimatis has devoted an important chapter to its elucidation.

Two other areas which find little if any attention in these earlier Australian works and which are fully and authoritatively covered by Professor Cassimatis relate to international economic law and the protection of the environment. The latter has occupied much international diplomatic debate and is, with human rights, the cause most embraced by young people today. The treatment of both topics by Professor Cassimatis is thorough and thought-provoking.

I predict that this book will enjoy great success amongst students and domestic practitioners looking for an authoritative guide to international law, its theoretical and practical principles and analysis of contemporary problems.

*The Honourable Dr Margaret White AO*

*Brisbane, 25 October 2020*

Justice Margaret White has been the Judge of the Queensland Court of Appeal (2010–2013); Judge of the Supreme Court of Queensland (1992–2010); Joint Commissioner for the Royal Commission into the Protection and Detention of Children in the Northern Territory (Cth) (2016–2017); Commander in the Royal Australian Naval Reserve (2002–2010) and Deputy President of the Defence Force Discipline Appeal Tribunal (Cth) (2008–2013).