

Index

Antarctica

Australian claim, basis of, 306-07
Australian practice, 306-12, 320-21
defence legislation, exclusion of, 309
environment, protection of, 309-11
fishing zone, 320-21
icebergs, 312
international conventions, extension of, to, 308-09

mineral resources regime, 311

scientific research, 311-12

Soviet base, 311-12

Apartheid

Australian practice, 367, 415-16, 423

Australia

external territories, 312

immigration, policy and practice,

basic principles, 354-55

'illegal immigrant', definition of, 355-56

immigrants, legal status of, 143-44, 160

Migration and Settlement Agreements (Post-War), 142-161

assisted passage and settlement, 148-49

economic factors, 143, 152

historical background, 146-49

human rights, element of, 149-60

post-war policy, 147-48

law in,

constitutional law, 262-63

inheritance and application of English law, 255-56

extra-territorial application of, 284-87

territorial waters legislation, 283-85

legal foundation of, 256-60

status as sovereign nation, 362, 264-65

US antitrust laws, enforcement in, 287-92

Australian Aborigines

Australian practice, 260-61, 367-69

discrimination against, 367-69

ICJ, access to, 420-21

proposed treaty, 260-61

status of, 256-60

Aviation law

Australian practice, 328-35

bilateral arrangements, 328-30

hijacking,

Australian legislation, 330-32

International Conventions, 332-33

offence in Queensland, 333-34

piracy, 332-33

Mortgage Convention, 335

terrorism, 333

Continental Shelf

Australian practice

definition, 323

objectives at LOSC, 324

sovereign rights over, 316

delimitation principles, 112-17

Diplomatic and Consular relations

Australian practice, 392-410

consular functions, 394-95

diplomatic immunity,

definition and scope, 400-03

waiver by Philippines, 370, 402

diplomatic status,

recognition of, 395-97

executive certificate, 396-97

embassy,

Croatian, recognition of, 407-10

inviolability of premises, 406

espionage and, 394, 406-07

establishment of, 392-93

protection of diplomats,

Singh case, 397-400

US hostages in Tehran, 403-06

trade commissioners, role of, 393-94

Disputes

access to ICJ, 420-21

settlement of,

ACOA complaint to ILO, 427-28

Australian practice, 341, 351-53, 427-28, 433-35

Kampuchea, in, 433-35

role of international law in,

Falkland Islands crisis, 63-70

nationalization of alien property, 341, 351-53

East Timor

Australian practice

Fretilin, 373

Indonesia's claim, status of, 279-82

seabed delimitation, 281-82

European Economic Community (EEC)

GATT, breach of, 345-46

restrictive immunity, doctrine of, and the, 12

Exclusive Economic Zone (EEZ)

Australian practice,

fishing zone and, 321

objectives at LOSC, 324

sovereign rights over, 316-17

Environment

Australian practice,
protection of,

- Antarctica, 309–11, 320
- marine environment, 323–24
- Fraser Island, 350–51

Falkland Islands

discovery and settlement of, 25–35
self-determination and, 46–47, 52–58
sovereignty dispute over, 20–70

- Argentine claim, 35–40, 56–63
- British claim, 40–47, 56–63
- choice of law problem, 67–70
- Latin-American perspective, 47–56

territorial acquisition of, See *Territory*

Fisheries

Australian practice — fishing zone, 316–23
access by foreigners, 319–322
Antarctica, 320–21
bilateral agreements, 322
EEZ, 321
establishment legislation, 316–20
'excepted waters', 318–19
international obligations, 317–20
Law of the Sea Conference and, 317–19,
324–26
proclamation of, 319–21
State views, 321–22
'treaty waters', 318
PNG proclamation, 304

Hijacking

See *Aviation Law*

Hostages

Australian practice,
draft convention, 432
US hostages in Tehran, 403–06

Human rights

Australian Immigration practice, in relation to,
149–61, 354–55
Australian practice, 270–72, 356, 364–69, 383–
91, 427–28
children, 391
civil and political rights, 383–88
freedom of association, 427–28
freedom of expression, 388–89
implementation of, 385–86, 389
reservations to Covenant on, 386–88
torture, 389
discrimination, in Australia,
aboriginals, 367–69
aliens, 356
employment, in respect of, 356, 365–66
international obligations, 364–69
women, 364–65
disabled persons, rights of, 389
economic social and cultural rights, 383–84,
389–91

right to development, 389–91
general principle of law, as a, 117–19
Helsinki Final Act, 388
legal status of, 383–84
Lusaka Declaration, 366–67
non-interference with State affairs, in relation to
principle of, 270–72
prisoner transfers, 391
See also, *Apartheid, Hostages, Individuals,
Refugees*

Individuals

aliens,
deportation, Australian law and policy, 356–
61
discrimination against, 356
due process, 361
Australian practice, 356–64, 369–74, 383–84,
394–95
Australians overseas, 394–95
citizenship,
allegiance to Queen, 362
deprivation of, 364
dual nationality, 362–64
diplomatic asylum, 382
entry, right of — visas, 373–74
extradition, 369–70
political asylum, 382–83
travel, right of — passports, 370–73
Indonesia

Australian Practice,
Irian Jaya (West Irian), 267
See also *East Timor*
International Court of Justice (ICJ)
Australian Practice,
access to, 352, 420–21
nomination of candidates to, 417–19
law-making function of, 137–38
International Economic Law
Australian practice, 341–53, 423
commodity arrangements, 345
compensation claims,
cancellation of contract, 353
Fraser Island mining, 350–53
foreign investment,
mortgage of property, 344
'naturalisation' of companies, 342–43
GATT
basic principles, 344–45
EEC breach, 345–46
NIEO, 341, 423
nationalisation of property, 341–42
restrictive business practices, 346
trade relations with,
Rhodesia, 349
South Africa, 349
Soviet Union, 349
Taiwan, 348–49
uranium, export and nuclear safeguards, 346–48

International law

comity, international, and US antitrust laws, 287-301

'common heritage of mankind', 179, 308, 325, 339

customary law, 110-16

nature of — jurisprudential issues, 'choice of conflicting philosophies' — the Falkland Islands Crisis, 67-70
use of international law by municipal courts — the *Trendtex* case, 5-19

development of, as a result of, bilateral treaty practice, 160-61
international organisations, the work of — the Office of the UNHCR, 139-41, 172, 179-80

jus cogens, 178

municipal courts, in, 5-19, 261-63, 387-301, 302-04, 333-35, 360-61, 365-66

sources of, 2-5, 108-09, 137-38

treaties, 109-10

custom, 110-16

general principles of law, 116-19

judicial decisions, 137-38

International Law Commission

continental shelf delimitation, and, 113, 116-117

sovereign immunity, and, 75-78, 80, 83-84, 91, 105-07

rescue at sea, and, 217

International Organisations

Australian Practice, 421-26

Inter-Governmental Maritime Consultative Organisation (IMCO) 218, 227

International Refugee Organisation, 140, 147-48, 150-51

Office of the UNHCR, refugees law, and, 120-28, 133-36, 139-41, 164, 172, 174, 179-83, 192-93, 198, 200, 204, 206-07, 216, 227, 421-22

Pacific Community, 421-22

United Nations,

amendments of Charter, 422

Credentials Committee, 423-24

GA Resolutions, status of, 422-23

Staff Pension Fund, 425

universality of membership, 423, 426

WHO, 425-26

Israel

occupation of territory by 314, 429

WHO membership, 425-26

Jurisdiction

Australian citizens overseas, 301

Australian practice, 283-301, 367

extra-territorial application of laws,

apartheid measures, 367

Crimes at Sea legislation, 284-85

US antitrust laws, 246, 287-301

whale protection, 286-87

territorial waters, 283-85

extent of jurisdiction, 315-16

States and Territory rights, 283-84

Law of the Sea

Australian practice,

marine environment, 323-25

maritime jurisdiction, 315-26

right of innocent passage, 324, 326

Torres Strait Treaty, 304-06

See also, *Continental Shelf, Fisheries, Maritime Law, Rescue at Sea, Seabed, Territorial Sea.*

Law of the Sea Conference

Australian statements,

7th Session, 323-24

8th Session, 324-25

9th Session, 325-26

ICNT — Fisheries, 317-18

Maritime Law

Australian practice,

shipping registration, 326-27, 415

Natural Resources

Australian practice,

Fraser Island, 350-51

uranium export policy, 346-48, 415, 430-31

seabed, 325-26

Outer Space Law

Australian practice, 335-40

Australian participation in

treaties, 335-36

delimitation, 339

geostationary orbit, 338-39

liability for damage, 335-36

remote sensing, 337-38

Skylab, 336

space objects, registration of, 336

use of nuclear power, 339-40

Private International Law

contract, 239-40, 248-50

domicile, 247-48

judgments, enforcement of, 244-47, 287-301

jurisdiction, 235-44

ex-nuptial children, 237-38

federal, 243-44

foreign land, over, 243

joinder of parties outside, 242

Service and Execution Process Act 1901

(Cth), 240-43

tort, 240-42, 250-51

Recognition

Australian practice, 423-24, 372, 72, 391, 393,

348-49, 273-82

- foreign judgments, US antitrust laws, 246, 287-92
- custody orders, 391
- general principles of, 273
- governments, of,
- Chile, 393
 - China/Taiwan, 273-74, 348-49, 372-73
 - Iran, 274
 - Kampuchea, 274-76, 393, 423-24
 - South African 'homelands', 276
 - Uganda, 276-77
 - Yugoslavia, 277
- incorporation of territory, of,
- Baltic states, 278-79
 - East Timor, 279-82
- liberation movements, of,
- Fretilin, 373
 - PLO, 277-78
 - SWAPO, 278
- Refugees*
- asylum, 128-36, 164, 167-75, 177, 180, 183, 187-88, 190, 194-97, 200-02, 207, 210, 337-82
- ASEAN countries, and, 125-28, 193-94, 213-15, 221-22, 375
- Australian practice, 359-60, 374-82
- burden-sharing, 175-87, 194, 209, 378-82
- functional necessity, as, 175-78
 - moral and legal obligations of, 178-84
 - scope of obligation of, 184-87
- definition, 119-22, 162-66, 374-75, 382-83
- durable solutions, 172-77, 180-81, 188, 191-99, 201-03, 206-12, 378-79, 381
- illegal immigrants, 125-27, 207, 355-56
- international solidarity, 175-78, 210-12, 376-82
- non-refoulement*, 121, 128-36, 165-75, 175-78, 182, 185-89, 194-96, 199-201, 204, 210, 212, 377
- asylum, and, 167-75, 128-36
 - non-rejection at frontier, 169-72
 - temporary refuge, 199
- resettlement, 176-77, 179-82, 185-88, 191-95, 100, 209-11, 378-79
- 'source' problem, 380
- standards of protection of, 140, 205-08, 380-81
- status, 119-28, 202-07, 356, 375-76, 359-60
- temporary refuge, 189-211, 376-82
- asylum, and, 202-5, 377-78
 - admission, and, 191, 193-9, 212, 377-78
 - definition, 199
 - function of, 191-94
 - illustrations of, 191-94
 - international solidarity, and, 210-12, 379-80
 - legal nature of, 190
 - non-refoulement* and, 199, 377
 - status of, 202-07
- UNHCR, Office of the, and, 120-28, 133-36, 139-41, 164, 172, 174, 179-83, 192-93, 198, 200, 204, 206-07, 216, 227
- voluntary repatriation, 163, 176, 179, 188, 191, 193-94, 197-99, 208-11, 378, 381
- See also *Rescue at Sea*
- Rescue at Sea*
- Australian law, 219-20
 - coastal state, duties of, 226-28
 - compensation, 224-26
 - flag state, duties of, 222-23
 - international legal norms, 216-19, 223-24
 - refugees, and 213-33
 - resettlement of rescued, 213, 228-32
 - search and, 220-24
- Rhodesia*
- Australian practice,
 - arms embargo 348-39
 - immigration policy, 355
 - trade relations, 348-50
 - visas, 373-74
- Seabed*
- Australian practice,
 - East Timor/Australia boundary, 281-82
 - resources, 323, 325-26
- Self-determination*
- Australian practice, 265-70
 - decolonisation, 266-67
 - definition, 265-66
 - Falkland Islands, 46-47, 57-58
 - Irian Jaya (West Irian), 267
 - right to development, 267
 - Vanuatu, 268-70
- South Africa*
- Australian practice,
 - arms embargo, 438-39
 - Gleneagles Agreement, 416
 - trade relations, 348-50
 - UN membership, 423
- Sovereign immunity*
- acta iure gestionis/acta iure imperii, 9, 73, 85-86, 88-89, 92-93, 95, 96, 106
- Australian legislation, 82, 104-07
 - 'commercial transactions', scope of, 81-88
 - common law, state of, 11, 71-75, 104-05
 - corporations and state instrumentalities, 94-96
 - doctrine of, absolute/restrictive principle, 5, 9-10, 12-14, 16, 74, 77-79, 96, 106
 - enforcement of,
 - arbitral awards, 99-102
 - judgments, 102-04
 - execution against property, 73-75, 103-04
 - International Law Commission,
 - the work of, 75-80, 83-84, 91, 105-07
 - jurisdictional links with forum, 90-92
 - pacta tertiis rule, 102
 - sovereign authority, notion of, 96
 - State practice, and, 75-104
 - Tate letter, 10, 17, 102, 73
 - torts within jurisdiction, 88-90

- US/UK experience, 81–104
waiver of, 74–75, 96–102, 104
- Sovereignty*
- Australian practice, 268–72, 337–39, 429, 432–36
- Australia, with respect to
legal basis of, 256–60
status of, 264–65, 362
- Falkland Islands crisis, and, See *Falkland Islands*
- geostationary orbit, and, 338–39
- natural resources, over, 337–38
- non-interference in State affairs,
principle of, 270–72, 429
- State, and refugee entry, 136–41
- territorial integrity,
Afghanistan, 435–36
Angola, 434
Falkland Islands, 40, 52, 57–59, 61, 68
Kampuchea, 432–33
Uganda, 434
- Taiwan*
- Australian practice,
nationals, right of entry of, 372–73
recognition of, 273–74, 348–49, 372–73
- Territorial Sea*
- Australian practice, 283–87, 302–04, 315–16, 324
- Australian legislation,
crimes at sea, 284–85
fishing, 302–04
State powers, 283–84
whaling, 286–87
- charts, relevance of, 302–04
- extent of jurisdiction, 315–16, 324
- PNG proclamation, 304
- Territory*
- acquisition of,
abandonment, 30, 36–38, 41, 69
cession of rights, 27–28, 30, 43, 46, 59
choice of law concept and, 67–70
conquest, 42–43, 50–55, 60, 68
no conquest rule, 50–55
Cyprus, 429
Falkland Islands 25–70 See also *Falkland Islands*
inchoate title, 40
islands, claims to, 313
Israel, by, 314, 429
Kampuchea, 432–33
Monroe doctrine, 48–52, 60
Namibia, 313–14, 423
occupation, 36, 38–40, 42–43, 46, 50, 54–55, 60, 67–68, 313–14, 423, 429, 432–34
Papal Bulls, 21–23, 40
prescription, 39, 44–45, 60
authority, exercise of, 43–46, 59
historical consolidation, 44–45
protests, 31–35, 39–40, 44, 46, 58, 60, 69
proximity, principle of, 27, 40, 68–69
self-determination, and, 46–47, 47–58
succession of rights, 31, 35–36, 40–41
terra nullius/res nullius, 22, 36, 38–39, 42, 50–51, 60, 258–60
Uganda, 434
uti possidetis, 38, 41, 42, 50–51, 54, 68
- Antarctica*, See *Antarctica*
- Australian Practice, 278–82, 313–14, 423, 429, 432–34
- incorporation of,
Baltic States, 278–79, 282
East Timor, 279–82
- Treaties*
- Australian practice, 411–16
- ANZUS, 414–15
- ASEAN, 413–14
- enforcement of, 415
- international arrangements, 415–16
- ratification of, 411–12
- signature of, 411
- source of international law, as a, 109–10
- termination of, 415
- Use of force and war*
- Australian practice, 280–81, 347–48, 429–39
- defense pact — Australia/PNG, 432
- Falkland Islands Crisis, the, 20, 54, 56–57, 60–63, 70
- foreign troops, use of, 429
- foreign intervention in,
Angola, 434
Afghanistan, 435–36
Cyprus, 429
East Timor, 280–81, 438
Kampuchea, 432–33
Korea, 434
Palestine, 429
Uganda, 434
Zaire, 429
- mercenaries, use of, 439
- nuclear non-proliferation, 347–48, 429–31
- nuclear tests, 430
- settlement of disputes, 63–70, 434–35
- terrorism, 432
- United States*
- antitrust laws, 287–301
- hostages in Tehran, 403–406
- sovereign immunity, and, 81–104
- Warfare*
- treaties on, Australian reservations to, 437–38

