

A NEW SCHOOL OF INTERNATIONAL LAW

At its May, 1962, meeting the Council of the University of Adelaide approved *in principle* a proposal to create a School of International Law in the University. Full details of the organisation of this new development have not been finalised as yet, and in accordance with the University Council's decision the implementation of the present plans for the new School are dependent upon outside financial aid and the outcome of a submission to the Australian Universities' Commission seeking financial assistance from governmental sources to support the project. The planning of the new School of International Law, to be centred at the University of Adelaide has, however, reached the stage where the present role envisaged for this new development in Australian legal studies calls for some examination and analysis.

At the outset, it must be emphasised that the present proposal is not aimed at creating a legal centre which will specialise in the theoretical study of International Law. Such studies may be needed at times to provide essential background for the main focus of the School, which is intended to concentrate on legal problems directly related to Australia's overseas trading activities. Particular reference has been made by the proponents of the school to trade relations between this country and the nations of South-East Asia and the Far East; but problems relating to all Australian trade will be within its purview.

The need in Australia for a centre such as this proposed School, specialising in the legal issues related to Australia's overseas trading activities, is today becoming increasingly apparent. The emergence of the European Economic Community already poses international legal issues of considerable complexity for Australian commercial interests. The strong possibility that Great Britain will soon join the Economic Community, by acceding to the Treaty of Rome, will accentuate and further complicate these problems. But quite apart from any problems related to the European Common Market, Australia's overseas trade, since the end of the second world war, has progressively come to rely more and more on the growth of trade between this country and nations which were not traditionally within Australia's sphere of commercial interest. Many of these new trading activities are carried on with nations which are not rooted in the common law tradition. Because of this there is a pressing need to ensure that those directly engaged in this trade, and those who are called upon to advise on legal aspects of the growing volume of these transactions, should understand more fully the legal rules governing their operation.

So far, in Australia, little concentrated and co-ordinated study has been attempted to keep the commercial community fully informed on the legal aspects of our new overseas trading ventures. A small beginning has been made at the University of Melbourne Law School in 1962 with the organisation of a special seminar on legal problems of Australia's overseas trade. This is in line with the practice of most large American Law Schools, which have special elective courses for their students to study this subject. But as yet there

is no centre in Australia which undertakes the detailed analysis of international commercial law with a view to guiding and assisting commercial interests on legal issues related to their overseas trading activities.

In the United States, as the direct result of special Institutes being set up in several leading Universities, rapid strides have been made, particularly in recent years, in keeping the American businessman and his legal advisers well informed on legal problems related to overseas trading operations. Special guides, for example, relating to trading with the European Economic Community have been produced to give the American legal practitioner an understanding of the working of the Community and how American business interests can best take advantage of this changed situation. The series of volumes produced at the Harvard Law School, on the Taxation Law of foreign countries (of which the volume on Australia is an excellent example), again illustrates the type of information which needs to be collected so that a country with overseas trading interests can fully understand the legal pitfalls which may be involved.

From small beginnings, it is hoped, in some ways at least, that the proposed School of International Law will grow so as to emulate the activities of these American institutions.

At the present stage of planning for the new School the main line of early development for the new institution has already been tentatively agreed upon. The initial activities of the School, if it is founded, would concentrate on building up a store of factual information related to international legal problems of most immediate concern to the Australian commercial community. Provision would then be made for the dissemination of this material to business interests and legal practitioners and others who may be called upon to advise these interests on their international trading problems.

In fulfilling the dual purposes of research and disseminating the product of its researches the School would be both a research organisation and a teaching school. From time to time the School might also, should its funds permit, publish material on aspects of its work.

Preliminary planning has indicated the type of subject which may well be dealt with by the School if it is established. The following examples of proposed research projects are mentioned now to give some understanding of the scope and function of the research activities which could be undertaken by the new School. It must be emphasised, however, that no finality has yet been reached on the detailed work which could be carried out by the School, and these proposals are only referred to in order to give a closer understanding of the type of work in general contemplation.

There are many pressing problems, related to Australia's position as the world's eighth largest trading nation, which may well call for investigation by the School. Perhaps the principal ones which seem most immediately apparent are as follows:—

(a) Problems related to exchange control, both by the Australian government and overseas countries with which Australia engages in trading activities. The new School could well examine the actual controls which are employed in Australia and elsewhere and address

itself to such closely related issues as the rules of frustration of contract through the operation of exchange control laws. In the process of such an analysis the School would no doubt examine, too, the treaty rules which affect Australian-Asian commercial transactions in relation to exchange control.

(b) Legal studies on the scope and operation of such international agencies as the International Monetary Fund, the International Bank for Reconstruction and Development and the General Agreement on Tariffs and Trade, with particular reference to Australian rights and duties with respect to these bodies, could prove to be of significant value to our commercial community.

(c) One of the ever-recurring problems related to the international flow of capital, is the protection accorded by international and municipal law to overseas investment. Although the outflow of capital from Australia is comparatively small, the development of new Australian overseas trading interests sometimes makes it desirable to ascertain the protection given to Australian investment overseas. More importantly, however, in the quest for overseas capital for this country, commercial interests, and State governments, too, should have a clear conception of the municipal law conditions favouring and retarding the investment of overseas capital here.

(d) In the past decade barter arrangements have been a growing feature of trade relationships between Australian firms and firms in Asia, South-East Asia and the Far East. An analysis of the rights and duties of traders under these agreements, with particular reference to jurisdictional problems raised by arbitration clauses in such agreements, may well repay close study.

(e) In the rapidly changing circumstances of the world today changes in territorial sovereignty have become almost a commonplace. Transfers of sovereignty to ex-colonial territories involve difficulties of considerable complexity, not least with respect to the operation of trading arrangements and trade agreements which formerly applied to these countries, through agreements entered into with the nation which formerly governed the new nation. At the beginning of this year, for example, Western Samoa, which was formerly a New Zealand Trust Territory under the United Nations, achieved independence. An examination of Australia's trading rights now with Western Samoa, in the light of this transfer of sovereignty could greatly assist any trader with commercial interests in this region. Such questions as to whether obligations entered into under the old regime continue after the transfer of sovereignty may well call for an answer. Western Samoa is not of course a vital centre for Australian trade, but the problems which may occur with the transfer of sovereignty there exemplify the type of difficulty which may be found in organising trade relations with other newly independent nations in Africa and South-East Asia. The change in sovereignty in South Africa, too, when that nation became a Republic in 1961 is another example of this situation.

(f) Changes in the government of a country also may involve legal difficulties to which it is not always easy to give a ready answer. One problem of immediate concern in this context is the question of the consequences which flow from Australian companies entering into trading relationships with mainland China or with

North Vietnam, whilst recognition of these administrations is withheld by the Australian government. Arising out of this situation, what guarantees can be incorporated into legal contracts with these countries and what status is held by government-owned trading corporations in these countries, with which such contracts must be negotiated? This year, too, there have been reports of new trading activities between Australian firms and Cuba. What are the rules which govern these new trade moves?

(g) If, as seems likely, Britain enters the European Common Market, the legal consequences of this development will no doubt call for careful and detailed analysis. In addition to affecting the tariff laws relating to our trading rights, Britain's entry will make some changes in Britain's internal law, and as several English legal authorities have recently suggested this will mean that some re-thinking will have to be done with respect to the basis of certain internal trading rules which presently operate in Great Britain. Closer to Australia, Britain's entry into the Common Market could raise new legal problems with respect to Australian trade with such British colonies as Fiji, where Australia has considerable commercial interests, and with North Borneo and Sarawak and perhaps even Singapore, if the proposed Greater Malaysia Federation has not become a reality by the time Britain joins the European Union.

Besides its research functions, however, Adelaide's School of International Law could also aspire to be a teaching institution to disseminate the product of its researches on as wide a basis as possible. The Institute could teach Commercial lawyers, Counsellors to our Trade Commissioners, Commercial Accountants advising exporters and importers, senior bank officers, students from Asia, South-East Asia and the Far East and teachers of law from Australia and overseas.

As its teachers and main research officers the School could have on its staff persons with a knowledge of commercial law both in Australia and overseas and lecturers skilled in the theory and practice of international law. From time to time, too, visiting teachers might come to the School to engage in teaching activities for a period.

The development of a School of International Law along the lines suggested in this comment would, it is believed, fulfil a very important function in laying a firm legal foundation for assisting in maintaining the smooth running of Australia's trading activities in a rapidly changing world. It would build up a significant store of information on international commercial problems, and, in the long run, help to lay a basis for greater co-operation and understanding between Australia and those countries, particularly in our hemisphere, where two-way trade is progressively growing to be of vital economic significance.

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