

AUSTRALIAN LEGISLATION CONCERNING MATTERS OF INTERNATIONAL LAW 1992*

A. Commonwealth Statutes

1. Antarctic (Environment Protection) Legislation Amendment Act 1992 (No 156 of 1992)¹

Implements the Madrid Protocol on Environmental Protection to the Antarctic Treaty (other than Annex IV on Marine Pollution).

2. Arts, Sport, Environment and Territories Legislation Amendment Act 1992 (No 21 of 1992)

Amends the National Parks and Wildlife Conservation Act 1975 to insert in the list of Conventions in the Schedule to the Act, in relation to which regulations can be made, the following agreements:

- Convention on the Conservation of Nature in the South Pacific, signed at Apia, Western Samoa on 12 June 1976;
- Convention on the Conservation of Migratory Species of Wild Animals, signed at Bonn on 23 June 1979;
- Agreement between the Government of Australia and the Government of the People's Republic of China for the Protection of Migratory Birds and their Environment (CAMBA), signed at Canberra on 20 October 1986.

3. Asian Development Fund Act 1992 (No 36 of 1992)

Authorises a further contribution by Australia to the Asian Development Bank for purposes of the Asian Development Fund.

4. Crimes Legislation Amendment Act 1992 (No 164 of 1992)

Inserts new provisions into the Crimes Act 1914 dealing with piracy, and repeals imperial legislation dealing with the subject. The new section 51 of the Crimes Act defines an "act of piracy" as:

an act of violence, detention or depredation committed for private ends by the crew or passengers of a private ship or aircraft and directed:

* Prepared by the Attorney-General's Department, Canberra.

1 See Practice Section, Chapter XIII pp 614-17 of this volume.

- (a) if the act is done on the high seas or in the coastal sea of Australia – against another ship or aircraft or against persons or property on board another ship or aircraft; or
- (b) if the act is done in a place beyond the jurisdiction of any country – against a ship, aircraft, persons or property.

The maximum penalty for performing an act of piracy is imprisonment for life. The maximum penalty for voluntarily participating in the operation of a pirate-controlled ship or aircraft is imprisonment for 15 years.

5. Crimes (Ships and Fixed Platforms) Act 1992 (No 173 of 1992)

Implements the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988, and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988.²

6. Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Amendment Act 1992 (No 77 of 1992)

Makes minor amendments to the 1990 Act of the same name, which was enacted to enable ratification by Australia of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Ratification by Australia occurred on 16 November 1992.

7. Disability Discrimination Act 1992 (No 135 of 1992)

Provides for national, uniform legislation to make discrimination against people with disabilities unlawful in certain circumstances, in the areas of employment, education, access to premises, the provision of goods, services and facilities, accommodation, the disposal of land, the activities of clubs, sport, the administration of Commonwealth laws and programs and in requests for certain information. Harassment of a person on the grounds of disability is also made unlawful. The Act relies, *inter alia*, on the International Covenant on Civil and Political Rights 1966, the International Covenant on Economic, Social and Cultural Rights 1966, and ILO Convention No 111 – Discrimination (Employment and Occupation) 1958.

8. Endangered Species Protection Act 1992 (No 194 of 1992)

Enables the making of regulations to give effect to the following six treaties so far as they relate to the recovery or conservation of native species or ecological communities listed in the Act:

- Agreement between the Government of Australia and the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment, signed at Tokyo on 6 February 1974;

² See Practice Section, Chapter IV pp 421–22 of this volume.

- Convention on Wetlands of International Importance especially as Waterfowl Habitat, adopted on 2 February 1971 by the Conference on the Conservation of Wetlands and Waterfowl, held at Ramsar, Iran;
- Convention on the Conservation of Migratory Species of Wild Animals (see item 2 above);
- Convention on the Conservation of Nature in the South Pacific (see item 2 above);
- CAMBA (see item 2 above);
- Convention for the Protection of the Natural Resources and Environment of the South Pacific (the SPREP Convention), signed at Nouméa on 24 November 1986.

9. Income Tax (International Agreements) Amendment Act 1992 (No 139 of 1992)³

Implements double taxation treaties with Indonesia (signed on 22 April 1992), Spain (signed on 24 March 1992) and Vietnam (signed on 13 April 1992), and repeals provisions implementing an airline profits agreement with India.

10. International Air Services Commission Act 1992 (No 103 of 1992)

Establishes the International Air Services Commission, the function of which is to determine which Australian carriers will be permitted to exercise Australia's rights under its bilateral air service agreements with other countries.

11. International Labour Organisation (Compliance with Conventions) Act 1992 (No 220 of 1992)⁴

Amends Commonwealth laws to enable Australia to demonstrate compliance with ILO Convention 68 – Food and Catering (Ships' Crews) 1946, and Convention 108 – Seafarers' Identity Documents 1958, and to comply with ILO Convention 147 – Merchant Shipping (Minimum Standards) 1976.

Provides for regulations to be made which would enable ratification of ILO Convention 73 – Medical Examination (Seafarers) 1946.

Provides for regulations to be made to prescribe procedures to be observed for the purposes of the Tripartite Consultation (International Labour Standards) Convention 1976, which was ratified by Australia on 11 June 1979.

3 See Practice Section, Chapter VIII pp 489–90 of this volume.

4 See Practice Section, Chapter IX pp 558–61 of this volume.

12. Migration Amendment Act 1992 (No 24 of 1992)

Inserted provisions into the Migration Act 1958 requiring that non-citizens arriving illegally by boat between 19 November 1989 and 1 December 1992 be kept in detention pending determination of refugee status and either the grant of an entry permit or removal from Australia. The constitutional validity of these provisions was considered in *Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs*.⁵

13. Migration Amendment (No 2) Act 1992 (No 84 of 1992)

Introduces a scheme to allow the Minister to maintain effective control of the refugee processing system.

14. Migration Reform Act 1992 (No 184 of 1992)

Establishes new mechanisms for determination of refugee status, including a Refugee Review Tribunal.

15. Mutual Assistance in Business Regulation Act 1992 (No 25 of 1992)

Authorises Australian business regulatory agencies to compel the giving of evidence, the provision of information and the production of documents to assist foreign business regulators in the enforcement of foreign business laws.⁶

16. Ozone Protection Amendment Act 1992 (No 46 of 1992)

Implements the Montreal Protocol on Substances that Deplete the Ozone Layer as adjusted and amended by the Second Meeting of Parties, 1990.⁷

17. Qantas Sale Act 1992 (No 196 of 1992)

Enables finalisation of the sale by the Australian Government of Qantas Airways Limited. The Act contains provisions designed to ensure that Qantas remains "substantially owned and effectively controlled" within Australia for the purposes of Australia's bilateral air service agreements and the International Air Transit Agreement.

18. Social Security Legislation Amendment Act 1992 (No 81 of 1992)

Implements an agreement on social security of 1 April 1992 between Australia and Austria.

5 (1993) 176 CLR 1 (see Cases, pp 356-60 above). These provisions were subsequently amended, and extended to persons arriving until 1 November 1993, by the Migration Amendment (No 4) Act 1992 (No 235 of 1992).

6 See Practice Section, Chapter VIII pp 479-81 of this volume.

7 See Practice Section, Chapter XIII pp 611-13 of this volume.

**19. Social Security Legislation Amendment Act (No 2) 1992
(No 229 of 1992)**

Implements amendments to the agreement on social security of 1 October 1990 between the United Kingdom and Australia.

Implements an agreement on social security of 12 May 1992 between Australia and Cyprus.

**20. Transport and Communications Legislation Amendment Act
(No 2) 1992 (No 71 of 1992)**

Implements Annex IV of the Protocol on Environmental Protection to the Antarctic Treaty (marine pollution).

Implements the Protocol amending article 56 of the Convention on International Civil Aviation, 6 October 1989.

Implements the Protocol amending article 50(a) of the Convention on International Civil Aviation, 26 October 1990

Implements the revision of the list of substances to be annexed to the Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances Other than Oil (Marine Environment Protection Committee, resolution MEPC.49(31), adopted on 4 July 1991).

Implements substituted Annex III to the MARPOL Convention ("Regulations for the Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form").

Implements amendments to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, dealing with designation of:

(a) the Antarctic area as a special area under Annex I and V of MARPOL (Marine Environment Protection Committee, resolution MEPC.42(30), adopted on 16 November 1990); and

(b) the Wider Caribbean area as a special area under Annex V of MARPOL (Marine Environment Protection Committee, resolution MEPC.48(31), adopted on 4 July 1991).

Implements amendments to Annex 1 of MARPOL dealing with oil pollution (Marine Environment Protection Committee, resolution MEPC.47(31), adopted on 4 July 1991).

**21. Transport and Communications Legislation Amendment Act
(No 3) 1992 (No 216 of 1992)**

Incorporates amendments to the Protection of the Sea (Prevention of Pollution from Ships) Act 1983 to give effect to amendments to the Annex to MARPOL 1973/78, (Marine Environment Protection Committee, Resolutions MEPC.51(32) and MEPC.52(32), adopted on 6 March 1992).

B. Commonwealth Regulations

1. Regulations made under the Copyright Act 1968

Copyright (International Protection) Regulations (Amendment) (SR 1992 No 124).

Copyright Regulations (Amendment) (SR 1992 No 165).

2. Regulations made under the Diplomatic Privileges and Immunities Act 1967

Diplomatic Privileges and Immunities Regulations (Amendment) (SR 1992 Nos 7, 41 and 118).⁸

3. Regulations made under the Extradition Act 1988

Extradition Regulations (Amendment) (SR 1992 No 333).

Extradition (Aviation) Regulations (SR 1992 No 67).

Extradition (Commonwealth Countries) Regulations (Amendment) (SR 1992 No 128).

Extradition (Traffic in Narcotic Drugs and Psychotropic Substances) Regulations (SR 1992 No 403).

Extradition (United States of America) Regulations (Amendment) (SR 1992 No 394).

4. Regulations made under the Family Law Act 1975

Family Law (Child Abduction Convention) Regulations (Amendment) (SR 1992 Nos 34 and 159).

5. Regulations made under the International Organisations (Privileges and Immunities) Act 1963

European Bank for Reconstruction and Development (Privileges and Immunities) Regulations (SR 1992 No 110).

International Organisations (Privileges and Immunities of Certain Missions) Regulations (SR 1992 No 272).

South Pacific Forum Secretariat (Privileges and Immunities) Regulations (SR 1992 No 162).

Specialised Agencies (Privileges and Immunities) Regulations (Amendment) (SR 1992 No 238).

⁸ See Cases, pp 342–46 above, and Practice Section, Chapter X pp 571–75 of this volume.

6. Regulations made under the Migration Act 1958

The following regulations contain provisions dealing with refugees:

Migration Regulations (Amendment) (SR 1992 No 22), regulation 14.

Migration Regulations (Amendment) (SR 1992 No 51), regulation 28.

Migration Regulations (Amendment) (SR 1992 No 291), regulation 9.

Migration Regulations (Amendment) (SR 1992 No 346), regulation 8.

Migration (1993) Regulations (SR 1992 No 367), regulations 1.3, 1.5, 2.10, 2.16, 2.29, 7.8, 7.14, 7.15, 7.18, Schedules 1-4.

Migration Regulations (Amendment) (SR 1992 No 392), regulations 8, 9, 14, 15.

7. Regulations made under the Mutual Assistance in Criminal Matters Act 1987

Mutual Assistance in Criminal Matters (Argentine Republic) Regulations (Amendment) (SR 1992 No 372).

Mutual Assistance in Criminal Matters (Japan) Regulations (Amendment) (SR 1992 No 263).

Mutual Assistance in Criminal Matters (Traffic in Narcotic Drugs and Psychotropic Substances) Regulations (Amendment) (SR 1992 No 401).

Mutual Assistance in Criminal Matters (United Mexican States) Regulations (SR 1992 No 167).

8. Regulations made under the Patents Act 1990

Patents Regulations (Amendment) (SR 1992 No 148).

9. Regulations made under the Protection of the Sea (Prevention of Pollution from Ships) Act 1983

Protection of the Sea (Prevention of Pollution from Ships) Regulations (Amendment) (SR 1992 No 101).

10. Regulations made to implement United Nations Security Council Resolution 748 (1992), imposing sanctions against Libya⁹

Air Navigation Regulations (Amendment) (SR 1992 No 104)

Customs (Prohibited Exports) Regulations (Amendment) (SR 1992 No 103)

9 See Practice Section, Chapter VIII p 463 of this volume.

11. Regulations made to implement United Nations Security Council Resolution 757 (1992), imposing sanctions against the Federal Republic of Yugoslavia (Serbia and Montenegro)¹⁰

Air Navigation Regulations (Amendment) (SR 1992 No 153).

Customs (Prohibited Imports) Regulations (Amendment) (SR 1992 No 154).

Customs (Prohibited Exports) Regulations (Amendment) (SR 1992 No 155).

Migration (Yugoslavia (Serbia and Montenegro) – United Nations Security Council Resolutions) Regulations (SR 1992 No 157).

10 See Practice Section, Chapter VIII pp 463–65 of this volume.

Australian Practice in International Law 1992

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CONTENTS

I. International Law in General

United Nations Decade of International Law – Role of international law – Peaceful settlement of disputes – Role of International Court of Justice – Call for universal acceptance of compulsory jurisdiction of International Court of Justice – Need for better implementation of international law – Developments in various areas of international law – Proposed United Nations Congress on Public International Law – Dissemination of international law – Joint statement to United Nations Sixth Committee by Canada, Australia and New Zealand	389
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II. Sovereignty, Independence and Self-Determination

Self-determination and self-management – Australian Aborigines – Prime Ministerial statement at Australian launch of the International Year for the World's Indigenous People	393
Draft Declaration on the Rights of Indigenous Peoples – Self-determination and indigenous peoples	
Australian position	396
Australian Aborigines	399
United Nations Working Group on Indigenous Populations – Future role – Australian proposals	401
Self-determination – Australian Aborigines	
Governmental response to Royal Commission into Aboriginal Deaths in Custody	402
Native title to land – <i>Murray Island (Mabo)</i> case	405
Self-determination – Link with international peace and security	407
Revision of International Labour Organisation (ILO) Convention No 169: Indigenous and Tribal Populations, 1957 – ILO Convention No 169: Indigenous and Tribal Populations, 1989 – Australian Position on ratification	408
Sovereignty	
Antarctica – Australian sovereignty	409
Papua New Guinea – Independence from Australia – Australian position on Bougainville	409
Self-determination	
Cocos (Keeling) Islands	410
Sudan	410
Sovereignty and self-determination – Israel and Palestinian people – Australian position	411
	377

III. Recognition

Recognition of States

Former Yugoslav Republics and Yugoslav Federation	412
Slovenia and Croatia	413
Bosnia–Herzegovina	414
Macedonia – Australian non–recognition	415
Succession to former Yugoslavia – Australian notification to Conference on Yugoslavia of debt owed by former Socialist Federal Republic of Yugoslavia to Australian national	417
Tibet – Australian non–recognition – Visit of Dalai Lama	418
Recognition and the Palestinian Liberation Organisation	419

IV. Jurisdiction

Australian reaction to trial in United States of person abducted from another country	420
Unlawful acts at sea – Legislation enabling Australian accession to convention and protocol	421
Lockerbie incident – Australian call for Libyan compliance with Security Council Resolution	422
Child custody disputes – Abduction of children	423
Extradition – Australian practice	423
Extraterritorial application of Australian legislation – Trade Practices Act and Trade Practices Amendment Bill	424
Assertions of extra–territorial jurisdiction on antitrust issues – OECD Committee on Competition Law and Policy	427
Mutual assistance in business regulation	428
Enforcement of foreign judgments in Australia – Australian legislation	428
Reciprocal recognition and enforcement of judgments – New Zealand and United Kingdom	429
Convention on Taking of Evidence Abroad in Civil or Commercial Matters 1970 – Australian accession	430
UN Sixth Committee discussion of Convention on Jurisdictional Immunities of States and their Property – Joint statement by Canadian, Australian and New Zealand delegations	431

V. Territory

Australian external territories

Legal regimes of Christmas Island and Cocos (Keeling) Islands – Legislation	434
Australian Antarctic Territory – Australian law in Antarctica – Parliamentary report	436
Australian Antarctic Territory – Arrangement with Italy for scientific cooperation	441

VI. Law of the Sea

United Nations Convention on the Law of the Sea – Australian efforts to achieve United States support	442
Right of innocent passage – Article 19 of the United Nations Convention on the Law of the Sea – Response of coastal State to allegedly non-innocent passage – <i>Lusitania Expresso</i>	443
Freedom of navigation	
Transit through international strait and archipelagic waters	444
Transit through Exclusive Economic Zone – Assistance to ships at sea – United Nations Convention on the Law of the Sea	444
Fishing zones	
Driftnet fishing – Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific – Australian ratification	446
Conservation of fisheries resources – Niue Treaty on Fisheries Surveillance and Law Enforcement in the South Pacific – Australian signature – Role of Forum Fisheries Agency	447
Cetacean conservation – Australian opposition to commercial hunting of cetaceans	448
Australian Fishing Zone – Agreement with Indonesia	449
Australian Fishing Zone – Illegal fishers – Amendments to Australian legislation	450
Australian Fishing Zone – Heard Island and McDonald Islands territory	450
Piracy – Incidence in South East Asia – Australian role – International Maritime Organisation	451
Freedom of navigation – Protection of the marine environment – Compulsory pilotage of vessels	451
Foreign vessels – Inspections by Australia	452

VII. Aviation and Space Law

International civil aviation	
Air service agreements	454
Air service agreements – Russia	455
Possibility of direct air links with Malta	455
Protocols to Chicago Convention – Amendments to Australian legislation	456
Smoking on international air services	456
Space law – International agreements – Liability as a "Launch State" – Parliamentary Report on Developing Satellite Launching Facilities in Australia	457

VIII. International Economic Law

Convention on the Settlement of Investment Disputes between States and Nationals of Other States – Australian designation of constituent subdivisions for purposes of article 25(1) of Convention	461
Economic sanctions	
Libya – United Nations Security Council Resolution 748	463
Serbia	463
Proposed international arms embargo – Burma	465
Export controls	
Co-ordinating Committee for Strategic Multilateral Export Controls – Missile Technology Control Regime	465
Cultural material – Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property – Australian reservation	466
Economic boycotts – Arab economic boycott of Israel – Australian opposition	467
Convention for the Protection of Cultural Property in the Event of Armed Conflict – Parties – Australian position	467
International economic law – General Agreement on Tariffs and Trade	
GATT Agreement on Technical Barriers to Trade ("Standards Code") – Australian acceptance	470
Uruguay Round – Intellectual property rights – Australian approach	470
Australian tariff reductions and concessions on Anti-Dumping and Countervailing Codes	471
Australian action against United States and European Community export subsidy practices	473
International economic law	
Anti-dumping legislation – Amendments	475
United States claims of Australian unfair trade barriers against United States products	478
Effect of United States unilateral trade policies upon Australian exports	479
Mutual assistance in business regulation – Australian legislation	479
European Energy Charter negotiations	481
Financial Action Task Force on Money Laundering	482
Australia–New Zealand Closer Economic Relations Trade Agreement (CER) – 1992 review	483
Harmonisation of Australian and New Zealand business law	484
Convention Establishing an International Organisation of Legal Metrology – Amendments to Australian legislation – Mutual recognition agreements	485

International development assistance	
Relevance of human rights situation in recipient States – China, Burma and Indonesia	485
Relevance of human rights situation in recipient States – Vietnam	486
Use of aid to enhance human rights – Papua New Guinea	486
Defence expenditure in recipient States– Australian Development Cooperation program safeguards	487
Australia's aid program	488
International agreements for the avoidance of double taxation	
Agreements with Indonesia, Vietnam and Spain	489
Agreement with India	490
International agreements for the protection of investments –	
Agreement with Hong Kong	491
International agreements on science and technology – Proposed agreement with the European Communities	492
International maritime law – Limitation of liability for maritime claims – Hamburg Rules – Australian position	492
International trade law developments in Australia	493
International economic law and trade – Australian view of developments and institutional structures	493

IX. Individuals

International criminal jurisdiction – Proposed International Criminal Court – Draft Code of Crimes Against the Peace and Security of "Mankind" – Australian position	497
Human rights in general	
Universality – Role in development – International responses to breaches	500
Australian international human rights policy	502
United Nations General Assembly – Forty-seventh regular session – Human rights issues	506
Human Rights Conventions	
Australian Declarations and Reservations	506
Australian Declarations and Reservations – Agenda of Standing Committee of Attorneys-General	514
Australian Declarations and Reservations – World Conference on Human Rights	515
Convention on the Elimination of All Forms of Racial Discrimination – Declarations or Reservations with respect to Article 4(a) of Convention by State Parties	516
Timing of Australian reports	516
Convention on the Elimination of All Forms of Discrimination Against Women – Australia's second report	517

IX. Individuals – continued

Convention on the Elimination of All Forms of Racial Discrimination – Australian Reservation on Article 4(a) of Convention – Proposed racial vilification legislation – Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief	518
Convention on the Elimination of All Forms of Racial Discrimination – Australian report – Swan Brewery site	522
Convention on the Rights of the Child – Parties	523
Convention on the Rights of the Child – Female genital mutilation – Australian action	523
Convention on the Rights of the Child – International Covenant on Civil and Political Rights – Western Australian legislation on juvenile sentencing	524
Genocide Convention 1948 – International Covenant on Civil and Political Rights – Possible and actual Australian legislative measures	525
Human rights – Partial prohibition of political advertising in the electronic media – Consistency with the International Covenant on Civil and Political Rights	526
Human rights – Alleged breaches of human rights – Representations by Australia	
In 1990	533
East Timor	533
Kurdish people	538
Syria	539
Sudan	539
Turkey and Cyprus	542
Burma	543
Human rights – Alleged breaches of human rights	
Burma – Australian support for Resolution of United Nations Third Committee	544
Representations by Australia – Thailand	544
Representations by Australia – Iran – Salman Rushdie	545
Human rights – Dispute over recognition of former Yugoslav Republic of Macedonia – Australian position	545
South Africa – Ciskei Massacre – Responsibility of South African Government	545
Refugees – Determination of refugee status	
Definition of "refugee" – Persons not fitting "refugee" definition	546
Detention of refugee applicants – Changes to review procedures	547
Refugees – Applicants for refugee status in Australia – Statistics	551
International Labour Organisation Conventions	
Australian ratification of ILO Conventions – Committee of Experts on the Application of Conventions and Recommendations	553

<i>Australian Practice in International Law 1992</i>	383
Australian ratification of ILO Conventions – Reports under article 22 of ILO Constitution – Australian legislation	558
Australian domestic law – Consistency with Convention	561
ILO Convention 156 – Workers with family responsibilities – Australian legislation	562
Standards on minimum wages, equal pay and termination of employment – Proposed Australian legislation	563
International Covenant on Civil and Political Rights – Department of Social Security reviews of Aidex demonstrators	564
Individuals – Bilateral Social Security Agreements	565
Mutual assistance in criminal matters – Agreement with the Republic of Korea	566

X. Diplomatic and Consular Relations

Diplomatic relations – Establishment of diplomatic relations – Croatia and Slovenia	567
Diplomatic and consular relations – First Australian ambassador to Ukraine – Opening of Australian consulate in Ukraine	568
Diplomatic relations – Protection of missions – Attack on Iranian Embassy in Canberra	568
Diplomatic privileges and immunities – Demonstrations outside diplomatic missions – Vienna Convention on Diplomatic Relations – Impairment of dignity of mission – Amendments to Diplomatic and Consular Privileges and Immunities Regulations	571
Diplomatic relations – Expulsion of Australian diplomat from Vanuatu	575
Diplomatic and consular relations – Mandatory United Nations sanctions – Serbia and Montenegro – Reduction in diplomatic and consular presence	576

XI. Treaties

Australian implementing legislation – January 1991–July 1992	577
Council of Europe treaties to which Australia may accede	580
Practice of non-disclosure of detail of treaty negotiations	581
Consultation with States and Territories prior to ratification – UNESCO Convention on Technical and Vocational Education	582
Convention on the Settlement of Investment Disputes Between States and Nationals of Other States – Australian Designation of Constituent Subdivisions for Purposes of Article 25(1) of Convention	583
Australian procedures for conclusion of treaties – Australian implementation of United Nations human rights treaties	583
International Treaties for the Protection of Human Rights	586
Information on Australian treaty action	590
Tabling of texts in Parliament	590

XII. International Organisations

Human Rights Committee – Election of Australian national	591
UN Commission on the Status of Women and UN Statistical Commission – Election of Australia	591
UN Commission on Crime Prevention and Criminal Justice – Election of Australia	592
United Nations – Role and future	592
United Nations General Assembly – 47th Regular Session – Outcomes for Australia	594
United Nations Industrial Development Organisation – Application by Australia of the 1947 UN Convention on the Privileges and Immunities of the Specialized Agencies	595
Convention on the Law of Treaties between States and International Organizations or between International Organisations – Proposed Australian Accession	596
Australian membership of international organisations – Intergovernmental Council of Copper Exporting Countries – International Bauxite Association – Australian withdrawal	596
Forum Fisheries Agency – Role and membership	597
World Heritage Committee meetings – Australian representation	598
United Nations Security Council – Australian support for Japanese permanent membership of UNSC and role in UN peacekeeping	598
United Nations Conference on Environment and Development – Institutions with environmental role	598

XIII. International Environmental Law

Hazardous wastes – Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal	
Australian accession	599
<i>Maria Laura</i>	601
United Nations Conference on Environment and Development	
Australian position	603
Institutions with environmental role	607
Instruments adopted	608
United Nations Framework Convention on Climate Change – Agreement at UNCED and Australian ratification	609
Convention on Biological Diversity – Australian signature	611
Protection of the ozone layer – Montreal Protocol	
Amendments – Australian legislation	611
Proposal to bring forward phase-out dates – Australian support	613
Protection of Antarctica	
Protocol on Environmental Protection to the Antarctic Treaty ("the Madrid Protocol") – Australian legislation	614
Regulation of tourism	617

<i>Australian Practice in International Law 1992</i>	385
Protection of the marine environment	
Prevention of pollution from ships – Amendments to legislation	619
Prevention of pollution from ships – London Dumping Convention – Dumping of jarosite waste	621
Torres Strait Treaty	622
Protection of the environment – Liability for nuclear damage	
International Atomic Energy Agency Standing Committee on Liability for Nuclear Damage – Australian involvement	623
<i>Akatsuki Maru</i>	624
World Heritage List – International Convention for the Protection of the World Cultural and National Heritage – Australian areas listed	624
International Union for Conservation of Nature – 18th Session of General Assembly – Recommendations – Australian action	625
Protection of endangered species – Elephants	628
Environmental cooperation – Memoranda of understanding with Germany and Singapore	628
Environmental management and tourism – Antarctica	629
Appendix I: Map of the Antarctic Continent showing territorial claims of treaty parties	632

XIV. Disputes

Peaceful settlement of disputes	
Security role of United Nations	633
United Nations – Capacity for preventive diplomacy, peace-keeping and peace-making	637
International Court of Justice – Acceptance of compulsory jurisdiction of ICJ	638
Settlement of particular disputes	
International Court of Justice – Cases involving Australia – <i>Nauru v Australia</i> – <i>Portugal v Australia</i>	638
Former Republic of Yugoslavia	639
Cyprus	644
Armenia–Azerbaijan	644
Withdrawal of Russian troops from Baltic States	645
Sri Lanka	646
British nuclear testing in South Australia – Negotiations for compensation	646
Middle East	647
Bougainville	649
Border problems between Papua New Guinea and Solomon Islands – Absence of Australian responsibility	651

XIV. Disputes - continued

United Nations peace-keeping operations	
Cambodia - United Nations Transitional Authority in Cambodia	652
United Nations Operation in Somalia (UNOSOM) - "Operation Restore Hope" - Australian contributions	654
Extent of Australian support	655
Former Republic of Yugoslavia	656
Australian support for Japanese participation	657

XV. Use of Force and War

International humanitarian law	
Additional Protocol I to 1949 Geneva Conventions - International Fact-Finding Commission - Australian declaration under Article 90	658
Alleged breaches of international humanitarian law - Australian representations - Israeli deportation of Palestinians	659
Alleged breaches of international humanitarian law - Australian representations - Bosnia-Herzegovina	660
Use of force - Iraq - Australian support for United Nations Security Council resolutions - Australian support for "no-fly zone" in Southern Iraq	660
United Nations General Assembly - Forty-seventh regular session - Arms control and disarmament issues	663
Disarmament	
Nuclear disarmament and nuclear tests moratoria - Australian views	664
Proposed Comprehensive Nuclear Test Ban Treaty resolution - United Nations General Assembly vote - Australian reaction	666
Non-proliferation of weapons of mass destruction - Extended Mandate of Missile Technology Control Regime - Australian support	666
Weapons - Nuclear weapons tests by China and the United States - Australian reactions	667
Weapons - Nuclear Non-Proliferation Treaty	
China and France	668
Newly independent States of former Soviet Union	669
Namibia, Niger and Burma	671
Australian urging of the Democratic People's Republic of Korea to comply with requirements under the NPT	671
Iraq - Article IV of Treaty on the Non-Proliferation of Nuclear Weapons (NPT) - United Nations Security Council Resolutions	672
Role of International Atomic Energy Agency (IAEA) - Strengthening of IAEA safeguards - Iraq - Democratic People's Republic of Korea	675

<i>Australian Practice in International Law 1992</i>	387
Pakistani admission of nuclear weapon capability – Australian reaction	676
United States discontinuance of production of weapons grade nuclear material – Australian reaction	677
Nuclear Suppliers' Group – Dual-use items – New supply to non-nuclear weapons States	677
Plutonium shipments – Alleged plutonium stockpiling by Japan – Nuclear safeguards agreements	678
Nuclear safeguards agreements – Australia–Mexico Nuclear Cooperation Agreement	681
Weapons – Chemical weapons – Negotiation of Chemical Weapons Convention – Australian role	682
Weapons – Defence exports	
Applications to export from Australia	689
Argentine controls – Australian reaction	690

