

Book Review  
*Compte rendu*

*International Law Chiefly as Interpreted and Applied in Canada*,  
8th edition

edited by Hugh M Kindred *et al*  
Emond Montgomery, 2014, 960 pages

Reviewed by Gib van Ert\*

*International Law Chiefly as Interpreted and Applied in Canada* has guided Canadian lawyers and law students in their research and study of public international law for 50 years now. Its first author was Jean-Gabriel Castel, a pillar of Canadian international legal scholarship. Another such pillar, Hugh Kindred, took over the work as general editor in 1987 and has continued in that role to this, the work's eighth edition. Kindred is joined now by Phillip Saunders and Robert Currie as general editors, and seven other notable contributors including Jutta Brunnée, Ted McDorman and René Provost.

In their preface, the general editors describe the work as “freshly refurbished for the 21st century” and explain that “[n]ot since the fourth edition in 1987 has the book received such a thorough review and revision in its organization and presentation.” The editors are justly proud. The eighth edition is broader and brighter, with remarkable new discussions of state jurisdiction and international humanitarian law, and a more engaging, readable tone.

The organization of the book has been simplified. Previous editions devoted separate chapters to interstate relations (recognition, state immunity and diplomatic immunities), dispute resolution, state jurisdiction over territory, nationality and state jurisdiction over persons. These topics are still addressed in the eighth edition, but they are folded into other chapters (mostly the new chapter on state jurisdiction) and revised (sometimes lightly, sometimes wholly) with very satisfactory results. The book is now eleven chapters instead of fifteen and flows more naturally from theme to theme.

Castel's original work was in the form of a texts and materials collection with occasional annotations. In subsequent editions the annotations became more prominent and the work began to resemble a traditional textbook, though still with heavy reliance on long excerpts from

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international materials. This format, which the eighth edition generally maintains, has its strengths and weaknesses. A knowledgeable and careful selection of excerpts from treaties, cases and other international materials can give the reader an unalloyed insight into the law. But it can also abandon the reader, whether student or practitioner, in places where guidance is needed.

For the most part the editors – or rather the authors – recognize the risk inherent in relying too heavily on excerpted text, and guide the reader through the materials with thoughtful introductions and notes. The chapter on state jurisdiction, for instance, is a *tour de force* in which the key materials are delivered with extensive and insightful commentary. It could nearly be a standalone book in itself. The chapters on state responsibility, international humanitarian law, international criminal law, human rights, the law of the sea and environmental protection are all notable for presenting primary source material together with strong narrative accounts of these areas of law. The balance struck in these chapters between an approachable account of the material, and the material itself, is admirable. Not every chapter succeeds in this, however. The book's opening chapter, on sources of international law, is less narrative in form and throws the reader into the deep end with a sophisticated discussion of the hierarchy of international sources as early as page 4. More extensive authorial guidance around the materials is to be preferred, and for most of the book that is what is given.

A more prosaic difficulty with “texts and materials” books such as this is the practical one of distinguishing the quoted materials from the notes and comments. The eighth edition of *International Law Chiefly* solves this problem with a simple but very effective formatting change; long excerpts from treaties, judgments or other international materials are now clearly differentiated from the rest of the text by a helpful bar on the left margin (the way some email programs mark chains of messages). The result is a much more user-friendly textbook in which the reader can immediately distinguish long quotations from the annotations that accompany them.

Returning to matters of substance, the addition of a chapter on international humanitarian law is especially welcome, and regrettably necessary, in a work that aims to be a comprehensive account of public international law in the early twenty-first century. Existing chapters on human rights, international criminal law, the law of the sea and environmental protection remain strong, accessible introductions to these areas.

Most international law textbooks include a discussion of international law's reception in its primary audience's domestic legal system. The habit of addressing this topic in international law textbooks is so ingrained that it would seem an omission to exclude it. Yet a singular feature of domestic reception schemes is their domesticity; international law generally does not tell states what effect international legal norms in their various forms must have in municipal law. Despite the frequent (and telling) similarities in the ways states tend to give local effect to their public international legal obligations, reception questions are largely ones of domestic constitutional law rather than international law and therefore fit somewhat awkwardly into international law textbooks. Successive editions of Castel's work have better reason than most to tackle reception law questions, for this work has always proposed a view of international law through a Canadian lens. Chapter three's consideration of international law's national application in Canada has some good discussions of the incorporation of custom after *R v Hape*,<sup>1</sup> the ascertainment of international law by Canadian courts, and the difficulties inherent in Laskin CJC's analysis of treaty implementation in *MacDonald et al v Vapor Canada Ltd.*<sup>2</sup>

In their preface to the eighth edition, the general editors explain that the work is "primarily intended for law students." Perhaps they ought to have added "and their teachers who are unreasonably expected to introduce an entire legal system in a one-semester course." Teaching public international law is an exercise in the judicious inclusion and exclusion of cases, instruments, topics and even whole areas of law, and the same is true of writing or revising an international law textbook. For the most part the editors of and contributors to the eighth edition of *International Law Chiefly* have been very judicious indeed. I see one area, however, where inclusion would have been preferable to exclusion. The eighth edition is notably lacking in an introduction to international law and the contemporary international legal system. There is an introduction of sorts in the first two pages of chapter one, "Sources of International Law," but it is too brief and in the wrong place (having nothing especially to do with international law's sources). What is needed, I suggest, is an overview of the structure and organization of the modern international legal system. Major international legal institutions such as the UN and its organs, the International Court of Justice, other international courts and tribunals, and specialized bodies such as the World Trade Organization and the International Committee of the Red Cross make appearances throughout the work and are helpfully described at various points; but these organizations, institutions and regimes could be depicted more coherently in a standalone discussion of the international legal system. That system is

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<sup>1</sup> 2007 SCC 26, [2007] 2 SCR 292.

<sup>2</sup> [1977] 2 SCR 134.

not entirely coherent, of course, and I do not suggest that a phoney coherence should be imposed on it, but the traditional approach followed in international law textbooks of opening with the sources of international law does nothing to orient students in the legal system to which they are being introduced. Indeed it serves only to encourage the notion that international law is more academic than practical.

This complaint is more than a quibble, but not by much. In almost every sense this new edition is a success. I came away from it convinced of its value as a teaching aid. I expect to recommend it to students in future. It is, however, more than a students' introduction. Throughout the book, and particularly in the areas of state jurisdiction and state responsibility, there are explanations and insights of value to Canadian lawyers and judges. While it is directed mainly at law students and their teachers, the eighth edition of *International Law Chiefly as Interpreted and Applied in Canada* has lessons for Canadian practitioners, too.