

S.A. Williams and A.L.C. de Mestral, *An Introduction to International Law*, Toronto, Butterworths, 1987, 437 p., ISBN 0-409-87559-7

Franca Ciambella

Volume 19, Number 1, March 1988

URI: <https://id.erudit.org/iderudit/1059204ar>

DOI: <https://doi.org/10.7202/1059204ar>

[See table of contents](#)

Publisher(s)

Éditions Wilson & Lafleur, inc.

ISSN

0035-3086 (print)

2292-2512 (digital)

[Explore this journal](#)

Cite this review

Ciambella, F. (1988). Review of [S.A. Williams and A.L.C. de Mestral, *An Introduction to International Law*, Toronto, Butterworths, 1987, 437 p., ISBN 0-409-87559-7]. *Revue générale de droit*, 19(1), 288–289.
<https://doi.org/10.7202/1059204ar>

Droits d'auteur © Faculté de droit, Section de droit civil, Université d'Ottawa, 1988

This document is protected by copyright law. Use of the services of Érudit (including reproduction) is subject to its terms and conditions, which can be viewed online.

<https://apropos.erudit.org/en/users/policy-on-use/>

This article is disseminated and preserved by Érudit.

Érudit is a non-profit inter-university consortium of the Université de Montréal, Université Laval, and the Université du Québec à Montréal. Its mission is to promote and disseminate research.

<https://www.erudit.org/en/>

S.A. WILLIAMS and A.L.C. DE MESTRAL, *An Introduction to International Law*, Toronto, Butterworths, 1987, 437 p., ISBN 0-409-87559-7.

At the time of writing, the annual Philip C. Jessup International Law competition, to be held in Ottawa on February 27-28, 1988, is quickly approaching. Those involved in the fascinating field of international law, which is not always considered "true law", recall the prominent writers of the subject from the days of Hugo Grotius to the twentieth century. Two authors in Canada to recently publish a second edition of their "student textbook" are Williams and de Mestral.

The preface of the book states the objective the authors successfully accomplish: "to introduce the reader to public international law with special emphasis on Canadian practice" (p. v). The book contains all the "classical chapters", that is, those treating the basic notions of international law such as the definition of terms, the subjects, state immunities, the law of the sea, and dispute mechanisms. All of the chapters boast a strong Canadian emphasis. For example, that on human rights discusses the *Canadian Charter of Rights and Freedoms*. Similarly those treating fisheries, airspace (the presence of I.C.A.O. headquarters in Montréal), free-trade and sovereignty-association make specific reference to Canadian problems and application of international law.

As an introductory text, it is clear and succinct, and written in unobscure easily understood language. It is contemporary and demonstrates flexibility towards new trends in the law. The authors for instance, illustrate why more and more the individual should be considered a subject of international law. Private citizens do not presently have this status, and cannot appear before the International Court of Justice. If they had this capacity, it would facilitate amongst others, international human rights law, international commercial law and the application of criminal responsibility. The writers' approach is not conservative as the advent of the individual as a subject is encouraged, borne of the realization of its necessity in practice.

Perhaps not as successful as the goal on the preface is the statement accompanying the title: "Chiefly as Interpreted and Applied in Canada." While the Canadian application forms part of the book, it is not clear as to what the authors meant by a "Canadian interpretation". Both meanings this writer could attribute to it, were not evidenced in the book. Did the authors imply years of Canadian caselaw and doctrine leading to a custom, or did they mean a truly distinct Canadian national interpretation of international law? The latter cannot stand, for having a distinct national interpretation goes against the universality and uniqueness of the law. According to the authors, international law is:

the system of law containing principles, customs, standards and rules by which relations between states and other international persons are governed (p. 1).

All nations are part and subject to the same system. Their interpretation is from the same unique source, and therefore cannot differ.

The former possibility entails gathering numerous works in establishing a general practice of law, illustrated by years of decisions rendered by Canadian courts, by statements and press releases issued by Parliament and from opinions

of legal advisors, to trace the “material aspect” and the “psychological aspect” leading to a custom. The product of such an arduous task would be a library of volumes in itself and not a similar text.

The book is complete and well documented, but suffers from minor gaps in some sections. To illustrate, chapter two, entitled the “Relationship of International Law to Domestic Law” is analyzed. It deals generously with the interplay of international law to domestic law. The debate between the monists and dualists continues, the former arguing that international law is automatically “incorporated” as part of the domestic legal order, and the “dualists” arguing that it is only incorporated when it is specifically transformed. The current trend of “harmonization” follows neither school of thought. It evaluates the way in which international law is in “harmony” or co-operates with domestic law. The chapter also discusses specifically the Law of the U.K. and the Law of Canada. The gap occurs in its last section questioning whether provinces can legislate in violation of international law. Two arguments are exposed. Either the federal and provincial governments cannot legislate in violation to the law, or that only the provincial legislature cannot contravene it. The second argument concerning only the provinces is refuted because

it is supported neither by the cases nor by current provincial practice of legislating special arrangements for diplomats or the headquarters of the International Civil Aviation Organization, nor indeed by the general understanding that the provincial legislatures enjoy legislative supremacy within their spheres of jurisdiction (p. 40).

Then the writers put down their pens. The first argument involving both the provincial and federal governments is forgotten. The reader is never told whether there is basis for its support. Also, it seems that depth and analysis is sacrificed for magnitude in content, resulting in some superficiality.

The reader must be wary and should remember the book is intended as “introductory”. Its clarity and simple language is a compensating asset to the weaker attributes. Finally, the authors’ efforts to emphasize the Canadian application is a rare treat. In the past, the existence of Canada in the international arena was ignored and at most, minimized. This may not have totally changed, but at least the book is a courageous step in a display of confidence and initiative to do so.

Franca CIAMBELLA
Student, Faculty of Law,
University of Ottawa