Principles of International Trade Law as a Monistic System

By Hercules Booysen
Interlegal (2002)
907 pp
Soft cover R396 (VAT incl)

As set out in the Preface, the aim of this publication is to provide a general picture of all the legal rules governing international trade law; more specifically, it endeavours to integrate the public and private law norms governing international trade (in other words, to describe international law as a monistic system).

The author deals comprehensively with, as he sees it, all relevant principles governing international trade law and makes ample reference to treaties, publications and texts of international case law and arbitrations. For example, the work even includes a chapter (chapter 14) on Foreign Investment Agreements, which is perhaps not as relevant as the chapters on the Protection of Intellectual Property Rights (chapter 12) and International Transport (chapter 16).

Part VI (Dispute Resolution) includes a chapter on International Commercial Arbitration (chapter 19) and WTO Dispute Resolution (chapter 20). Given the volume and increasing importance of international trade, one would perhaps have expected a more detailed discussion of dispute resolution, especially as it pertains to the South African situation. The increasing popularity of arbitration as a method of settling disputes prompts the practitioner to seek perhaps a more practical approach in these two chapters. However, as the author states in the Preface, this publication relates to principles (and not practicalities). Furthermore, in the author’s Preview to Part VI, he opines that the resolution of international trade law disputes by national courts is excluded, since it is – in the view of the author – ‘primarily a municipal and not an international trade law topic’.

Since the emphasis is on the underlying principles rather than on the evaluation of treaties, conventions and case law, it might not be the ideal option for a busy practitioner. Nevertheless, it has to be said that this is a comprehensive work providing a good overview of international trade law and, certainly, a handy reference work for any student and practitioner interested in this particular topic.

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Witchcraft Violence and the Law in South Africa

John Hund (editor)
Protea Boekhuis (2003)
Soft cover R120 (VAT incl)

The incidence and seriousness of witchcraft-related violence in South Africa may surprise, and certainly should trouble those of us who are committed to a dispensation founded on rationality, the rule of law and human rights. Some argue that the current legal regime (in the form of the Witchcraft Suppression Act) is a relic of a colonial past that imposed Western beliefs on an African population disregarding cultural realities. The law has failed to respect beliefs and communities have taken the law into their own hands, at times resulting in murder, violence and loss of homes and property.

Hund’s book is a stimulating and pleasant read. It contains essays from contributors from various disciplines exploring philosophical and legal dilemmas underlying witchcraft-related violence and providing insight into the social context in which witchcraft belief operates. Conveniently, the book also contains an extract from the Witchcraft Suppression Act and a summary of the 1995 Ralushai Commission of Inquiry into Witchcraft Violence and Ritual Murders in the Northern Province.

While belief in witchcraft amongst the South African population is pervasive, many of us dismiss it as irrational. How then must the legal system respond to the violence? Take for example Chavunduka’s reference to a method for detecting witches: a medicine is given to all adults in a family or village to drink in a gathering. If innocent, the accused vomits; if guilty, the accused retains the ‘medicine’ should a person die from it, it is accepted that guilt is established.

Hund urges that the legal system should take seriously deeply held convictions about the reality of spirit worlds providing a framework, based on Jungian principles, for understanding these convictions as psychic phenomena. Hund suggests that sango-mas should give expert testimony in state courts. Niehaus recommends that the state should adopt a minimalist option, allowing local level processes that limit violence against witches to proceed, repealing laws relating to witchcraft and charging those who perpetrate assault and murder under existing laws. Nthai argues that witchcraft-related offences should be left to be mediated in traditional courts by traditional healers in a regulatory context still to emerge.

The violence takes at least two forms: it is perpetrated by persons practising witchcraft (sometimes involving notorious ‘muti murders’) and – more commonly, it would seem – it is perpetrated against people thought to be witches. Hund’s book helps us to understand the nature of witchcraft and the ways it manifests in our society, both in remote communities and in everyday political and social circles.

If we are going to take the beliefs seriously – as the Ralushai Commission and most of the contributors urge us to do – at least two approaches (drawn from Hund’s analysis) seem possible. Either one can regard witches as constituted merely by the community’s labelling persons as witches must be understood as a phenomenon of the African (and other communities’) spiritual world.

The book provides the reader with the tools to engage with these debates. Its contributors, though taking up the challenges seriously, approach the issues from different perspectives. For example, sango Credo Mutwa gives an account of the sango’s spiritual world. Other contributions attempt to explain patterns of witchcraft-related violence in terms of economic, social and political concerns. What seems to be missing is a critical gender analysis of how witchcraft-related violence constitutes violence against women as Niehaus alludes.