

Extract from:

UNITED NATIONS JURIDICAL YEARBOOK

1974

Part Three. Judicial decisions on questions relating to the United Nations and related
intergovernmental organizations

Chapter VIII. Decisions of national tribunals



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Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

Australia

HIGH COURT OF AUSTRALIA

BRADLEY V. THE COMMONWEALTH OF AUSTRALIA AND ANOTHER:
DECISION OF 10 SEPTEMBER 1973¹

United Nations Charter—Resolutions of the Security Council—Effect in Australia—Charter of the United Nations Act 1945, section 3

The plaintiff, a South African national, was the acting director of the “Rhodesian Information Centre”, the purpose of which he described as “the dissemination of factual information about Rhodesia throughout Australia”. On 19 April 1973, all mail and telephone services to the Centre were discontinued in pursuance of a direction issued on 18 April 1973 by the Postmaster-General.

In an action brought before the Court, the plaintiff claimed that the defendants had wrongfully and unlawfully discontinued the telephone service and stopped the mails. The Court held that the direction given by the Postmaster-General exceeded his authority and was invalid. It noted that as a means of justifying an exercise of the Court’s discretion in the defendant’s favour, reliance had been placed upon resolutions of the Security Council [by which the Council had condemned the Unilateral Declaration of Independence and the Proclamation of Republican Status, in Rhodesia, had described the régime in that territory as illegal and had called on all Member States to refrain from recognizing or assisting it], and upon the fact that those resolutions were in their terms addressed to Member States who, by Article 25 of the Charter, had agreed “to accept and carry out the decisions of the Security Council in accordance with the present Charter”. However, the Court observed,

“... resolutions of the Security Council neither form part of the law of the Commonwealth nor by their own force confer any power on the Executive Government of the Commonwealth which it would not otherwise possess. The Parliament has passed the *Charter of the United Nations Act 1945*, section 3 of which provides that ‘The Charter of the United Nations (a copy of which is set out in the Schedule to this Act) is approved’. That provision does not make the Charter itself binding on individuals within Australia as part of the law of the Commonwealth. In *Chow Hung Ching v. The King* (1948), 77 C.L.R. 449, at p. 478, Dixon J. said: ‘A treaty, at all events one which does not terminate a state of war, has no legal effect upon the rights and duties of the subjects of the Crown and speaking generally no power resides in the Crown to compel them to obey the provisions of a treaty: *Walker v. Baird* (1892) A.C. 491’, and a similar view was expressed by Latham C.J. in *R. v. Burgess Ex parte Henry* (1936), 55 C.L.R. 608, at p. 644. Although, in those passages, mention is made of British subjects, it is clear since *Johnstone v. Pedlar* (1921) 2 A.C. 262, that an alien, other than an enemy alien, is, while resident in this country, entitled to the protection which the law affords to British subjects. (See also *Nissan v. Attorney-General* (1970) A.C. 179, especially at pp. 211-212, 232-233 and 235.) Section 3

¹ Reported in 47 A.L.J.R., p. 504-519.

of the *Charter of the United Nations Act 1945* was no doubt an effective provision for the purposes of international law, but it does not reveal any intention to make the Charter binding upon persons within Australia as part of the municipal law of this country, and it does not have that effect. Since the Charter and the resolutions of the Security Council have not been carried into effect within Australia by appropriate legislation, they cannot be relied upon as a justification for executive acts that would otherwise be unjustified, or as grounds for resisting an injunction to restrain an excess of executive power, even if the acts were done with a view to complying with the resolutions of the Security Council. It is therefore unnecessary to consider whether the resolutions of the Security Council, properly construed, would require the Commonwealth as a member nation to take the action that has been taken against the Rhodesia Information Centre.”
