

BOOK REVIEW:

THE AUSTRALIAN YEARBOOK OF INTERNATIONAL LAW (1970-1973)

(Edited by R. H. Miller, Butterworths Pty. Ltd., Chatswood, Australia;
Dobbs Ferry, N.Y., Oceana Publications, 1975, pp. viii, 175 [1975]).

The Australian Yearbook of International Law, published under the auspices of the Monash Law School, is a survey of current problems of public and private international law with a digest of and commentary on Australian practice for the years 1970 to 1973. Edited by R. H. Miller, together with an editorial board and a group of consultants, the Yearbook, which is in its fifth year of publication, covers the years 1970 to 1973 but came out in 1975. The issue consists of selected articles mainly on Human Rights written by ranking law professors of Australia and representatives of the Attorney General of Australia.

Of significant importance to Asian readers are: "United Nations Fact Finding Mission in the Field of Human Rights" by editor R. H. Miller, who is also a senior lecturer in law in the Monash University (p. 40); "A Preliminary Survey of Action to Further Human Rights in the Asian Region" a paper presented on behalf of the International Law Association (Australian Branch) (p. 51); "Prospects for United Nations Protection of the Human Rights of the Indigenous Minorities" by Elizabeth M. Eggleston, senior law lecturer of Monash University (p. 68); "Investments Contracts and the Developing Countries" by K. W. Ryan, Professor of Law of the University of Queensland (p. 91); and "Recent Developments in Private International Law 1970-1972" by Michael Pryles, senior lecturer in law of the Monash University (p. 103).

In his article on the United Nations fact-finding mission in the field of Human Rights, Robert Miller deals with cases investigated by the U.N. fact-finding commission set up in 1963 on the alleged persecution of Buddhists in South Vietnam, South Africa's apartheid practices, and the treatment of citizens of territories occupied by Israel during the June 1967 Middle East War.

It is Article 2, paragraph 7 of the United Nations Charter which has proved to be the greatest legal and political impediment to effective international implementation of human rights. Said article does not authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State. Said provision has been

an almost insurmountable obstacle to United Nations' efforts to deal with relations between individuals and their governments.

The paper presented on behalf of the International Law Association (Australian Branch) summarizes the possibilities of achieving progress in the protection and implementation of human rights on a regional basis, especially in the Asian region. It was suggested for example during the 54th Conference of the International Law Association at the Hague that (1) Universal and regional systems providing for international protection of human rights be complementary to each other; (2) It is considered advisable to retain in all relevant international treaties uniform definitions of Human Rights.

The Seminar held in Tokyo held in May 1960 participated in by ranking jurists, government officials and lawyers from 19 States from Asia discussed the function of criminal law and penal sanctions in relation to the protection of Human Rights. Questions have been asked as to how far and to what extent substantive criminal law can ensure the protection of Human Rights.

Examinations have been conducted on violations of privacy and penal sanctions against social discrimination. The paper dwelt on post seminar developments in several Asian States.

Elizabeth Eggleston's "Prospects for United Nations Protection of the Human Rights of Indigenous Minorities" is a discussion of her experience in attending the Sub-Commission on Prevention of Discrimination Federation of Women Lawyers (FIDA). She presents the problems on the protection of human rights due to the political character of the United Nations. The United Nations was set up by governments rather than by men. While there was the statement of the determination of states to protect human rights, when it came to setting up the procedures of the U.N. "no nation was ready to surrender the claim to sovereignty, which in effect means the right to be judge in its own cause" (citing W. Macmahon Hall, *Defeat of an Ideal*).

The article on "Recent Developments in Private International Law" by Michael Pryler is an interesting treatise on conflict of laws situations. It treats of recognition of divorces obtained abroad (*Indyka v. Indyka*, 1969 A.C. 33 and *Nicholson v. Nicholson*, 1967 *Australian Yearbook of International Law*, 229); the recovery of damages due to foreign torts (*Chaplin v. Boys*, 1969 A.C. 356); breach of contracts (*Safran v. Chani*, 1970-72 SR (NSW) 1946); ascertainment of the proper law of contract; domicile; jurisdiction; application and enforcement of foreign judgments, marriage.

"Investment Contracts and the Developing Countries" written by K. W. Ryan presents the problems encountered in the recent developments by developing countries that have attracted private foreign capital. For host countries, private foreign capital inflows are a mixed blessing. On the one hand, they bring often desperately needed financial resources, and technological and entrepreneurial skills. On the other, they bring a degree of external control over economic activity, to which developing countries are not unique in being highly sensitive. For the investor the main concern is business advantages which he expects to derive from the venture. There is also the problem of protecting and regulating foreign investments. Investment contracts are usually of long terms. Within the period of contract there might be change of circumstances. The author suggests three possible approaches in the event of change of circumstances in order to modify the contractual obligations of the investing company and the host Governments.

The reader might also be interested in how Australia deals on the subject of Human Rights in three articles, namely: "Prospects and Problems for an Australian Bill of Rights" by Gareth Evans and "Measures for the Promotion of Human Rights" by P. R. Loof. "Australia's Approach to International Treaties on Human Rights" by F. J. de Stook. Robert Miller also has written on the "Australian Practice International Law". This work includes reviews, the official acts of Australia concerning human rights, nationality and citizenship, deportations, highjacking of aircraft and the Law of the Sea, recognition of States and Governments immunities, and the movement towards self government and independence Papua and New Guinea.

Of significance to the Philippines is the statement made by R. L. Harry, head of the Australian delegation to the Second Committee of the Third United Nations Conference on the Law of the Sea expressing his support to the archipelagic concept advocated by Australia's neighbors, namely, Indonesia, and the Philippines. Australia accepts the archipelagic concept of enclosing the water area in and around the archipelago with baselines and the giving of sovereignty to the archipelagic concept with special concerns related to the preservation of its security and political unity; preservation of its marine environment; and the exploitation of its marine resources (see p. 146).

In advocating the special consideration to archipelagic States, Australia has in mind its special responsibility to Papua New Guinea, which was then to be granted its independence (Papua New Guinea has been declared as an independent State this year). While supporting the archipelagic concept as important to her friends and developing neighbors,

the Australian delegation assumed that responsible criteria can be formulated to confine recognition of archipelagic status to those States which are genuinely archipelagic in character. It is to be stated at this point that after the last session of the Third United Nations Conference held in Geneva in the spring of 1975, (committee II submitted Informal Single Negotiating Text which includes a chapter on archipelagos, provisions fixing the criteria of determining genuine archipelagos. (See Arts. 117-130, Informal Single Negotiating Text (A/CNE.62/WP.8/Part II).

The Philippines however, is not in accord with the position of the Australian delegation that there must be assured an unimpeded passage through the archipelagic waters. The position of the Philippines on this score is that since the archipelagic concept recognizes the sovereignty of the State over its archipelagic waters, passage of foreign vessels and aircraft must be regulated by the State at least for the protection of its security and political unity and preservation of marine resources. The Philippines assures all States that such regulations are reasonable and consistent with her obligations to the international community in promoting international trade and commerce.

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