

Treaty Making and Australia: Globalisation versus Sovereignty? edited by Philip Alston and Madelaine Chiam [Sydney, Federation Press, 1995, x + 309 pages, ISBN 1 86287 195 7, soft cover]

In 1995, Sir Ninian Stephen¹ commented that “[t]he aspect of law or public affairs which seems most to have been affected by change during my lifetime in the law is that of the growth of international law and the growing *internationalisation* of law”.² He noted that countries have become increasingly interdependent and increasingly willing to transfer at least some of their power to international agencies and conferences.

The domestic law of Australia, like that of many other countries, now includes substantial portions that are international in origin. These laws do not only deal with subjects that are inherently international, such as international trade or the law of the sea. They also deal with topics that fall well within the traditional confines of “purely domestic” matters that, in principle, should be left to each constituent Australian state.

Treaty Making and Australia canvasses the issues that arise out of this development. At a simplistic level, the central issue of the book may be characterised thus: do treaties threaten Australia’s sovereignty? This main question can be broken into many more specific or sub-questions that challenge our traditional ideas about the way treaties are negotiated and ratified by Australia, and the means by which they are incorporated into our domestic law.

This book is a collection of papers. Several of them were originally presented to a conference in May 1995 that was jointly organised through the Australian National University’s Centre for International and Public Law, and the Australian and New Zealand Society for International Law. The contributors are an interesting mix of academics, lawyers, politicians and public servants, along with representatives of industry, trade unions, consumers and social welfare groups. The resulting volume documents a wide range of views and gives an insight into the well-founded concerns

¹ Former Governor-General and Chief Justice of the High Court of Australia; now Judge of the International Criminal Tribunal for Yugoslavia.

² “The expansion of international law – sovereignty and external affairs” (January/February 1995) *Quadrant* 20.

that modern treaty practice generates in various sectors of the Australian community.

Philip Alston's thought provoking introduction argues that recent debate over the proper role of international law in Australia has been sidelined, that it has focused on issues of form rather than issues of substance. For example, he criticises "the rhetorical use of the term sovereignty as a surrogate for other unspecified concerns", [page 16] and questions the utility of that concept when considering the appropriate relationship between international law, domestic law and politics.

Part I, entitled "The Law and Politics of International Standards within Australia", provides a general legal and political analysis of international standards in the Australian legal system. George Winterton's contribution is on the Commonwealth's "Treaty Power" and the need for greater accountability and public participation in the treaty making process. [pages 29-51] David Kinley examines the consequences of executive ratification of treaties for Australian democracy. [pages 52-73] Kenneth Wiltshire contributes a short piece on the impact that treaty implementation has on federal-state relations, and how best it should be managed. [pages 75-80] Justice Michael Kirby comments on the role that international law can and does play in the development of the common law, with particular reference to the Bangalore Principles. [pages 81-92] The debate in Australia has thus focused on the incorporation of treaty obligations into domestic law, largely ignoring other sources of international law. Part I concludes with a paper by Ivan Shearer which discusses the importance of customary international law for Australian domestic law. [pages 93-103]

Part II, entitled "Australian Responses to International Standards", continues the scene-setting process, focusing on the trend towards globalisation and international cooperation. Two papers, by Louise Sylvan [pages 107-114] and John Braithwaite respectively, [pages 115-125] discuss the process of international standard setting and the implications for individuals and for business regulation throughout the world. Securing effective public participation in the standard setting process is noted as a particular issue.

Part III, entitled "Australian Responses to International Standards", deals directly with Australia's response to international standards in several

important contexts. Hilary Charlesworth criticises Australia's "split personality" in relation to human rights, contrasting our high standing in international human rights fora with our lacklustre performance in actually implementing our international obligations. [pages 129-140] Matthew Neuhaus discusses the obstacles placed by national and international politics in the way of ratifying and implementing international agreements. In particular, he focuses on the struggle to implement the relatively uncontroversial Geneva Protocols of 1977 for the Protection of Victims of Armed Conflict. [pages 141-148] Penelope Matthews is critical of Australia's approach towards implementing the 1951 Convention Relating to the Status of Refugees. [pages 149-162] Martin Tsamenyi explains the development of international environmental law and canvasses some of the more important consequences of these relatively new international law obligations for Australian industry and politics. [pages 163-173]

Part IV is simply entitled "Political Perspectives". Michael Lavarch, then federal Attorney-General, discusses the process of globalisation and points out that much of this process takes place outside the international law-making arena and within the realms of multinational business. [pages 177-184] Daryl Williams, now federal Attorney-General, discusses reforms to the treaty-making process advocated by the Coalition parties, made all the more significant by their federal election success earlier this year. [pages 185-195] Australian Democrats' Spokesperson on Foreign Affairs, Human Rights, Overseas Development, Immigration, Communications and the Arts, Senator Vicki Bourne, presents a proposal for requiring parliamentary approval of treaties prior to their ratification by the Australian government. [pages 196-203]

In Part V, which is entitled "Sectoral Perspectives", different sectoral perspectives on globalisation and treaty-making issues are presented. A broad range of views is provided: business, labour movement, social welfare, mining industry, environmental and rural. These pieces provide an interesting and valuable contrast to the preceding chapters, because they identify the concerns of groups and individuals who are affected on a daily basis by the process of globalisation and the incorporation of international standards at the domestic level. [pages 207-249]

Finally, the book concludes in Part VI, entitled "Comparative Perspectives", with some comparative pieces: Rosemary Rayfuse on Canada, [pages 253-

265] Christine Chinkin on the United Kingdom, [pages 266-282] and Sir Kenneth Keith on New Zealand. [pages 283-291]

The inevitable process of globalisation impacts upon our everyday lives in more ways than we can probably imagine. Periodically, however, certain debates came to the fore and, in a blaze of media publicity, highlight the concern of large sectors of the community over the process and its consequences. Perhaps unfairly, it appears to be the treaty-making process which has generated the most debate. *Treaty Making and Australia* provides a timely and important contribution to this debate, incorporating the views of a range of stake holders. Just as importantly, however, it places the debate in some perspective, by presenting the reader with the broader context of globalisation and international norm creation, and the implications for Australian domestic law and politics.

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