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LONGER BOOK REVIEW

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In the year when the fiftieth anniversary of the adoption of the *Universal Declaration of Human Rights* on 10 December 1948 is celebrated, the Human Rights Institute (HRI) of the International Bar Association (IBA) has published a useful compilation of basic texts of human rights instruments.

As befits a body comprising judges and lawyers in more than 180 countries, it is unsurprising that the IBA collection has concentrated on those instruments most likely to be relevant to the practising lawyer. It is a sign of the times - and of the progress made since 1948 - that a professional body such as the IBA has established its Human Rights Institute and that the latter has now published this work. The HRI includes amongst its objects the

promotion and protection of human rights under the law; defence of the independence of judges and lawyers; the world-wide adoption of international standards; and the dissemination of information about the contents of human rights law. An Australian, Mr Nicholas Cowdery QC (the Director of Public Prosecutions for the State of New South Wales) is a Vice-President of the HRI. The President of the IBA is Mr Desmond Fernando PC, an experienced advocate from Sri Lanka.

The bulk of the book, comprising nearly 800 pages, is made up of treaty and other texts containing the international and regional statements of human rights principles. The texts are divided, logically enough, into two parts. Part 1 collects the instruments relevant to the establishment of the general framework for the international protection of human rights. Part 2 contains instruments of special relevance to human rights and the administration of justice.

In Part 1 the texts are arranged, respectively, in sections dealing with universal rules formulated by the United Nations and regional instruments adopted for the human rights courts and commissions in Europe, the Americas and Africa. As to the universal rules, these are contained within the five basic documents familiar to every lawyer with even a rudimentary understanding of the core instruments of human rights principles: the *Charter of the United Nations* (1945), the *Universal Declaration* (1948), the *International Covenant on Civil and Political Rights* (1976) and the *International Covenant on Economic, Social and Cultural Rights* (1976). The First

Optional Protocol to the *International Covenant on Civil and Political Rights* (1976) pursuant to which States may subject themselves to complaints to the UN Human Rights Committee is also included. It was pursuant to that Protocol that the successful complaint was made against Australia in *Toonen v Australia* (UN Doc CCPR/C/50/D/488/1992 (1994)). That complaint concerned the then Tasmanian laws criminalising adult, private, consensual homosexual conduct. A sign of the potential effectiveness of these universal principles, at least in countries which take their obligations seriously, may be found in the subsequent passage through the Australian Federal Parliament of the *Human Rights (Sexual Conduct) Act* 1994 (Aust) which over-rode the offending Tasmanian laws. Subsequently the Parliament of Tasmania repealed and amended its law, although until the federal Act was passed it had refused to do so.

The substantial section on regional instruments demonstrates to a lawyer outside Europe, the Americas and Africa the enormous developments which have been occurring in the past thirty years, in particular, in the creation of commissions and courts to hear and determine human rights complaints. It will be necessary in a later edition to bring up to date the changes now underway in the role and functions of the European Court of Human Rights and the recent agreement of the Organisation for African Unity to establish an African Court of Human Rights. This lastmentioned move highlights vividly the complete failure of governments in Asia and the Pacific to establish even so much as a regional Commission to receive complaints about human rights breaches and suggestions that

domestic laws, courts and remedies have failed to afford proper redress. The isolation of Asia and Oceania in this regard is now shown in stark relief. If this publication encourages lawyers in the Asia/Pacific region to renew their efforts to create a regional mechanism for dealing with human rights complaints, that would be no bad thing. Unfortunately, many of the worst instances of human rights abuses in recent history have occurred in Asia, the genocide in Cambodia in the 1970s being but the most vivid instance in this regard.

Part 2 of the book collects usefully the instruments developed by the United Nations, the Council of Europe, the Organisation of American States and other bodies relevant to human rights and the administration of justice. The arrangement of these instruments is logical and clear. The first section deals with crime and punishment. It collects treaties and resolutions dealing successively with the personnel engaged in the system; prisoners; the death penalty; children and young persons and the victims of crime. The UN Basic Principles on the Role of Prosecutors, Lawyers and on the Independence of the Judiciary are set out at the head of this section. It is useful to have the collection of United Nations and other instruments on the standard minimum rules for the treatment of prisoners as well as particular instruments relevant to juvenile prisoners. The collection differentiates between those rules which are found in treaties to which states can subscribe and "soft law" of the international community constituted by resolutions of the General

Assembly of the United Nations or other international or regional bodies.

The second section of Part 2 collects instruments relevant to torture and enforced disappearance. The third contains the instruments dealing with crimes against international law, including the Geneva Contentions I to IV and United Nations Treaties on Genocide, Crimes Against Humanity, War Crimes and the Crime of Apartheid.

The final section of the book contains various instruments relating to international cooperation in criminal matters. These illustrate the remarkable network of law and institutions which has been developing in recent years. There are various documents dealing with extradition, principally within the Council of Europe. The system available within the Commonwealth of Nations is not included. Instruments on mutual legal assistance, the transfer of proceedings and the transfer of prisoners are there. The book closes with materials relevant to the international tribunals which have recently been established to deal with major international crimes. These include the statute of the International Tribunal for Human Rights Violations in the Former Yugoslavia, that on the International Tribunal for Rwanda, the rules of procedure observed in these two tribunals and the draft statute for the International Criminal Court. The last-mentioned has now been overtaken by the statute which was finally adopted by the meeting of plenipotentiaries in Rome on 17 July 1988 (A/Conf.183/C.1/L.76/Add1-15).

The editors of this work teach law at universities in Scotland. They have provided a considered and readable overview of 41 pages which describe the historical development of the legal protection of human rights by international law, the relationship between international human rights law and domestic law (with special attention to the position in the United Kingdom and the United States of America) and some descriptive notes on general features of international human rights law which are designed to help lawyers understand some of the controversies that surround this area of discourse. The final section of the editors' introduction deals with the way the network of international conventions, resolutions and other instruments can be enforced by complaint to reporting mechanisms and by invocation of international and adjudicatory bodies. Special attention is given in this section to procedural considerations such as time limits and the common requirement to exhaust domestic remedies.

Because this is a very fast moving field of law, it will be necessary before too long for the IBA to publish a revised edition. At the least this will be essential to substitute the final statute of the International Criminal Court - and the rules of procedure of the Court when adopted - in place of the draft which appears at the end of this book. When the re-publication takes place, it would be desirable, in my view, for a few additional changes to be made, quite apart from the updates that will be necessary. Some expansion of the introductory comments of the authors might be helpful, for example,

to refer to the jurisprudence on the domestic application of international human rights norms of Australia (eg *Mabo v Queensland [No 2]* (1992) 175 CLR 1 at 42; *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273 at 288); New Zealand (*Tavita v Minister of Immigration* [1994] 2 NZLR 257); and India (*Vishaka & Ors v State of Rajasthan 7 Ors,* unreported decision of the Supreme Court of India, 13 August 1997. The influential *Bangalore Principles* ((1988) 62 ALJ 531) which were adopted in 1988 could well be included as these have certainly helped to promote the judicial use of international human rights jurisprudence, even when the international treaty in question has not been incorporated into municipal law by domestic legislation. The *Bangalore Principles* state that, even without municipal legislation, it is permissible for judges, at least in common law countries, interpreting ambiguous legislation and filling a gap in the common law, to take into account any applicable international human rights principle. At least this may be done where such a principle has entered international customary law or, possibly, where the country in which the court in question operates has ratified the international instrument and accepted its obligations.

In Australia, this reviewer has suggested that international human rights principles may also be taken into account in construing ambiguous provisions of the national constitution. See eg *Kartinyeri v The Commonwealth* (1998) 72 ALJR 722 at 765-766. Although this view might not yet command majority judicial acceptance, it could be helpful for legal practitioners to have reference to judicial and

academic material in the interaction between international and domestic law in this area. It is developing very fast. In a book targeted to the practising profession, the available guideposts in jurisdictions outside the UK and the USA should be called to attention.

It might also be helpful if the editors were to list the principal source materials for the jurisprudence which is growing around the international and regional instruments and to describe how practitioners can find access to materials such as the decisions of the United Nations Human Rights Committee or the European Court of Human Rights. Increasingly courts in all parts of the world are calling upon this material in their decisions. Reference could also usefully be given to Internet sources of the texts.

Finally, it would be extremely helpful if the next edition were to contain a thorough index at this one does not. This would permit busy judges and practitioners to find access to materials relevant to particular themes which may be referred to in several international and regional instruments. In the exposition of principle, the cross-references to such sources, and comparison of their texts, would greatly enhance the utility of such a work. Some consideration of cutting the costs of publication by the production of smaller regional editions might be worthwhile.

These suggestions apart, the initiative of the IBA and its Human Rights Institute is to be applauded. It is surely a reassuring

development that the world-wide body representing practising lawyers should have commissioned this book in the hope that it will find its way onto the shelves of the IBA's members. Only if books like this are on legal shelves will the extraordinary developments of international human rights law be translated from fine aspirations, expressed in the noble language of treaty texts and conference resolutions into practical application for the protection of human rights of clients. The framework of legal principle has been built during the past fifty years. The challenge of the next fifty years will clearly be to improve the mechanisms for upholding these principles. Occasionally those mechanisms will be international courts, tribunals and committees. In the nature of things, it seems more likely that they will usually be the courts of domestic jurisdiction utilising their own constitutional, statutory and common law techniques to breathe life into the universal human rights principles.

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