

**Basic Documents on Human Rights** edited by Ian Brownlie [Oxford, Clarendon Press, 1992, third edition (1997 reprint), x + 631 pages, ISBN 0-19-825683-3, ISBN 0-19-825712-0 (pbk)]

The object of this work, now in its third edition, is to provide a useful collection of sources on human rights in the form of a handbook.<sup>1</sup> The collection first appeared in 1971 in slimmer form, but the third edition has 54 documents and more than 600 pages. Given its size, the collection would find it difficult to maintain its image as a handbook for too much longer. It has been six years since this collection (now in its third edition) was updated as a new edition. Consequently, it would be interesting to see what the fourth edition has in store for the reader.

The present edition may be considered a bestseller. It first appeared in 1992 and since then has been reprinted several times, in 1993, 1994 (twice), and lately in 1997. Human rights is a new area which quickly gathered momentum after World War II and it has also become the fastest growing area of international law. This had been achieved by the international community recognising and accepting a large variety of new rights in a relatively short period of time. The proliferation of international instruments and other documents in the area has also meant that human rights have become the biggest area of study in international law. This has been spurred on by social consciousness as the underlying theme of human rights, a theme which students sometimes embrace with a passion or perceive as "sexy". As a result, this collection provides the student with a discerning and convenient starting point.

As a handbook, the work has proven to be an ideal companion for students and practitioners alike. As a resource book which contains the core instruments, including other documents of importance, it is unparalleled. The wider coverage permits other important and relevant inclusions, such as the Dissenting Opinion of Judge Tanaka in the *South West Africa Cases (Second Phase)*,<sup>2</sup> which discusses the concept of equality, and the Report by the Secretary-General of the 1964 United Nations Conference on Trade

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<sup>1</sup> See Preface to the third edition at ix.

<sup>2</sup> At 568-598.

and Development on "Towards a New Trade policy for Development".<sup>3</sup> The Report, edited down to incorporate only those parts that are significant to human rights, refers to the section on the Old Order,<sup>4</sup> the Great Depression and World Trade,<sup>5</sup> and the Disintegration of the Old Pattern and the Developing Countries.<sup>6</sup> Chapter IV of the Report is then presented, on GATT and the Developing Countries, which has two sections, on the Achievements of GATT<sup>7</sup> and the Structural Differences and their Consequences.<sup>8</sup> It will be interesting to see what change, if any, this part of the book will undergo, in the light of the Uruguay Round developments and other world economic developments that have since taken place.

As a new area of law, human rights has mainly depended on international legislation for regulation, of which there is plenty. This poses a real problem for any editor who has to select and establish priorities, and make difficult decisions about "significant omissions".<sup>9</sup> In this work, the editor has used relevancy and currency as yardsticks to cull, add and update. And as expected, the 1967 Draft Convention on the Elimination of All Forms of Religious Intolerance has been replaced by the 1981 Declaration on the Elimination on All Forms of Intolerance and of Discrimination Based on Religion or Belief. As previously noted, the time is ripe for a new edition of this book and it is foreseeable that even this Declaration may have to make way for new documents which have appeared since 1992. Two such examples are the 1993 ILO Indigenous People Convention and the 1995 Declaration on the Rights of Indigenous Peoples.

In the Preface, the editor explains the parameters of the work and states that "[a]mongst the omissions are the instruments relating to the

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<sup>3</sup> At 618-627.

<sup>4</sup> At 619.

<sup>5</sup> At 620.

<sup>6</sup> At 621.

<sup>7</sup> At 623.

<sup>8</sup> At 625.

<sup>9</sup> *Ibid.*

humanitarian law of war".<sup>10</sup> He attributes the omissions to problems of selection, the need to establish priorities, and the fact that the collection is not an encyclopaedia.<sup>11</sup>

The recognition and enumeration of modern human rights began after World War II and may be traced to the United Nations Charter and the Universal Declaration of Human Rights. On the other hand, the humanitarian law of war governs crimes against humanity that had been committed within the context of a war. This has been described by Professor Gerhad von Glahn as a "new" category of international crimes that began with its prescription in Article 6(a) of the Charter of the International Tribunal at Nuremberg.<sup>12</sup> He states:

Basically, crimes against humanity, beyond the sphere of traditional war crimes, represented offenses committed against civilians, and not so much against individuals as against civilian populations. Obviously such a development meant an expansion in the scope of international law.<sup>13</sup>

There appears to be a fine line between human rights law and the humanitarian law of war which tends to blur depending on when the crime against humanity is committed. According to Professor von Glahn, there are two different sets of offences in Article 6(a), depending on whether they are committed during or before the war. He states:

Murder, extermination, enslavement, deportation, and other inhumane acts applied against any civilian population" represented, in time of war and applied to enemy, crimes against the laws of war. The article went further, however, and specified not only the criminality of such acts in time of war, but also "before" a war and then stipulated "or persecutions on political, racial, or religious

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<sup>10</sup> *Ibid.*

<sup>11</sup> At ix.

<sup>12</sup> von Glahn G, *Law Among Nations* (sixth revised edition, 1992, Macmillan Publishing Co, New York) 885.

<sup>13</sup> *Ibid.*

grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal.

The "before the war" part and the concluding portion of the quoted text must be taken to be a reiteration of the existence of fundamental human rights.<sup>14</sup> The tribunal itself decided that it would only deal with acts listed in Article 6(c) that had taken place after the beginning of the war and thus deliberately avoided the thorny issue of human rights.<sup>15</sup>

The content pages of the work reveal other reasons for the work's success. A collection of documents is usually presented alphabetically or chronologically. However, this work is presented according to the substance of the documents, as though it were a textbook on the subject. Some readers will find this useful as it also identifies the scope of this huge subject area. If an alphabetical search is still required, there is an Index to help.<sup>16</sup>

There are nine sections, called Parts, each dealing with a different topic. The sections, including some of the documents, are separately prefaced by an introduction, which places in context the documents selected for inclusion. The topics in each part are well chosen. The efforts of the United Nations in the development of human rights are found in the first four Parts. Emphasis is given to the contributions of two United Nations agencies, the International Labour Organization<sup>17</sup> and the United Nations Educational, Scientific and Cultural Organization.<sup>18</sup> Regional documents are also included, and come from Europe,<sup>19</sup> Latin America<sup>20</sup> and Africa.<sup>21</sup>

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<sup>14</sup> Schwelb, "Crimes against humanity" (1946) 23 *British Yearbook of International Law* 178.

<sup>15</sup> *Ibid.*

<sup>16</sup> At 629-631.

<sup>17</sup> Part Three.

<sup>18</sup> Part Four.

<sup>19</sup> Part Five.

<sup>20</sup> Part Six.

<sup>21</sup> Part Seven.

The last two Parts deal with the concept of equality<sup>22</sup> and trade and development.<sup>23</sup>

To some, the inclusion of a section on trade and development (as noted above) may, *prima facie*, seem incongruous because, when human rights are referred to, one tends to think of the right to life and other fundamental freedoms including equality and the right to a fair trial. But it could be argued that human rights also incorporate the right to "*economic and social development* [as] an indispensable means to the full realization of human rights in the modern world".<sup>24</sup>

In this context, the inclusion of trade and development instruments is not out of place. In fact, the genesis of economic rights are found much earlier, in the 1948 Universal Declaration of Human Rights.<sup>25</sup> In the Preamble, the dignity and worth of the human person are reaffirmed and reference is made to social progress and better standards of life in larger freedom. According to Jose Figueres, Article 22 provides that everyone is entitled to the economic, social and cultural rights indispensable for his or her dignity and the free development of his or her personality. He states:

There is a close association between human rights and the objectives of the United Nations Conference on Trade and Development, established in New York and Geneva in 1964. The Conference was convened for the purpose of studying trade between the rich and poor countries, and to try to find the means of correcting the trends that are widening the gap between the two groups.<sup>26</sup>

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<sup>22</sup> Part Eight.

<sup>23</sup> Part Nine.

<sup>24</sup> At 600; see Figueres, "Some economic foundations of human rights: a study" UN Doc A/CONF32/L 2 (8 February 1968), paper published as an official document of the International Conference on Human Rights, held in Tehran under the auspices of the United Nations: at 600-617.

<sup>25</sup> At 21-27.

<sup>26</sup> At 604; see Figueres note 19 at para 48.

Therefore, “[t]rade between rich and poor nations *could* be an instrument of uniform world development.”<sup>27</sup>

In June 1993, about 180 nations attended the United Nations World Human Rights Conference in Vienna. The Conference resulted in the Vienna Declaration and Program of Action, which referred to equity in economic relations and a favourable international economic environment. Trade and development were seen as means towards the alleviation of poverty and social exclusion, thereby fostering the protection and promotion of human rights.

But Jose Figueres observes that there are “international obstacles”:<sup>28</sup>

[S]mall nations cannot develop without intense trade with the advanced countries, (a) because their people want to consume the products of foreign industry or agriculture; (b) because industrialization requires capital goods produced in the developed countries; and (c) because indispensable services such as communications and transportation are largely the property of the rich countries.<sup>29</sup>

In conclusion, owing to its depth and breadth (631 pages), the book has exceeded the intention that it be a “handbook”. The book is also an established work by a internationally renowned international lawyer and academic. As such, it is no wonder that it did not take the marketplace long to be convinced that this resource book is worth having on the shelf.

Associate Professor Alexis Goh

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<sup>27</sup> At 605; Figueres note 19 at para 49.

<sup>28</sup> At 604.

<sup>29</sup> *Ibid*; Figueres note 19 paras 46-47.