
Book Reviews

Gowlland-Debbas, Vera (ed.). *Multilateral Treaty-Making: The Current Status of Challenges to and Reforms Needed in the International Legislative Process*. The Hague: Kluwer Law International, 2000. Pp. 142.

Mastrojeni, Grammenos. *Il negoziato e la conclusione degli accordi internazionali*. Padua: Cedam, 2000. Pp. 288.

A process of rethinking is taking place in the field of treaty-making, due to the increasing numbers of negotiating actors and the growth of subject-matters requiring regulation.¹ The importance of the treaty-making process in international law can be readily appreciated in light of the double nature of an international treaty: it is both a legal act (*instrumentum*) and a source of law (*negotium*). The developments currently occurring in the field of treaty negotiation and conclusion are therefore worthy of examination, both from the perspective of the negotiator and the international lawyer.

The two books under review analyse the topic of treaty-making and share the underlying motivations just mentioned, particularly the need for a reassessment of the negotiating phase in a period in which new international actors are gaining a higher profile in the diplomatic arena. However, the two authors bring entirely different perspectives to the topic. The volume edited by Professor Gowlland-Debbas approaches the question of treaty-making from the viewpoint of the forms

and procedures of the international legislative process, especially in a multilateral perspective. Attention is not given to the normative content of the legislative process, except when the substance of the norm is likely to act upon the procedure, as is the case for human rights and the environment.

The papers collected in this volume were presented at the Forum Geneva held in Geneva on 16 May 1998 under the sponsorship of the Graduate Institute of International Studies and the American Society of International Law. The contributions were made by renowned academics as well as legal advisers to international organizations, both governmental and non-governmental. The book's privileged addressees are academics and international lawyers interested in the challenges involved in the creation of treaties in the era of globalization.

In contrast, Mastrojeni has used his experience as an official in the Italian Ministry of Foreign Affairs in writing his book and the result is a highly pragmatic, didactic and, at times, anecdotal publication. The volume is mainly aimed at civil servants involved in negotiations who have little or no experience in the field. Mastrojeni focuses on negotiating techniques, particularly in the bilateral process.

The book edited by Gowlland-Debbas attempts to shed light on today's negotiating actors: Who are they and is their impact on the international legislative process becoming so significant as to mean that the traditional forms of international law-making, such as the work of the International Law Commission, have become inadequate to meet the new needs of the international community?

Non-governmental actors are certainly not new to international law-making, as exemplified by the International Labour Organisation where, since 1920, employers' and

¹ A. Aust, *Modern Treaty Law and Practice* (2000); R. A. Higgott, G. Underhill and A. Bieler, *Non-State Actors and Authority in the Global System* (2000); and M. Fitzmaurice and P. Muchlinski (eds), *Non-State Actors and International Law* (2001).

employees' representatives have been bestowed with decision-making powers alongside government officials. The ILO's special tripartite structure seems to remain relevant as an example of international collective bargaining in the changing reality of international law-making. However, new actors are now participating in virtually all branches of international law, ranging from trade to human rights. Malanczuk looks at the role of one such actor, the multinational enterprise (MNE), in the treaty-making process. Although the major concerns of MNEs continue to lie more with lobbying at the national level than in the international sphere, such actors, in the author's opinion, nevertheless play an increasingly advisory role on the international plane. It is this novel influence that has led the United Nations to devise new forms of cooperation with the private sector, such as the Global Compact initiative which was launched by the Secretary-General in 2000.²

In addition to MNEs, the role of non-governmental organizations (NGO) appears to be quite significant as far as treaty-making is concerned. Doswald-Beck refers to the successful lobbying by the International Campaign to Ban Landmines at the Ottawa conference and also notes the case of conventional weapons, to which may now be added the 1998 NGO coalition for the creation of the International Criminal Court. She concludes that, in those instances, NGOs had a 'mostly beneficial' influence which was 'actually appreciated by the majority of states', a remark that is underscored also by Brower. However, the participation of NGOs in areas other than law-making is still controversial, as is illustrated by the ruling of the WTO Appellate Body in the *Asbestos* case rejecting the submission of *amicus curiae* briefs.³

Issues of representativeness and account-

ability of both MNEs and NGOs are unfortunately only briefly touched upon in the book, despite the challenge they pose to the credibility of these new actors and their potential impact on the international legal order.

In a globalized world, the increase in the number of negotiating actors on the international plane is paralleled by a growing heterogeneity of subject-matters treated. This has raised the question among international lawyers as to whether there is a need for special rules to accommodate the variety of features found today in treaties or whether the existing general rules on treaties (in particular, the Vienna Convention on the Law of Treaties of 1969) can cope with our changing social reality. Both Simma and Redgwell underline the special nature of their respective fields of interest, namely, human rights and the environment, without, however, qualifying them as self-contained regimes. Rather, they each advocate the unity of the international legal order, and argue that such unity could be supported by valuing the contribution that each substantive field of international law can make to the development of the general law of treaties. The impact of human rights treaties on the rules of interpretation, reservations, denunciation and state succession to treaties provides a good example of such dynamics.

The specific requirements of multilateral environmental treaties have given rise to formulations which could be borrowed by other branches of international law. The stringent need for flexibility in environmental treaties dictated by the rapid advancements in scientific knowledge and by the evolving nature of obligations over time has led to major changes in the type of treaty used. In the environmental field, as Redgwell explains, general obligations are normally contained in framework treaties, while technical details are confined to annexes or protocols (e.g. the 1992 Framework Convention on Climate Change and the 1997 Kyoto Protocol on targets and timetables for greenhouse gas reductions). Moreover, different procedures are often established for amendments to the substantive provisions and the technical regu-

² See the Global Compact strategy announced by the UN Secretary-General at the UN Millennium Summit of 2000.

³ *European Communities — Measures Affecting Asbestos and Asbestos-Containing Products*, WT/DS135/AB/R, 12 March 2001, paras 50–57.

lations, given the need for rapid adjustments in response to scientific innovations.

The unity of the international legal order could well be undermined by the changing nature of treaty-making both *ratione personae* and *ratione materiae*. A number of contributors to this volume, including Alain Pellet, express such concern. In Pellet's view, the International Law Commission should guarantee the unity of general international law by responding to the continually evolving needs of the international community for general rules. At the same time, special fora should deal with technical fields. Pellet advocates 'uniform rules' for all branches of international law and, while recognizing the need for exceptions to the basic rules, he maintains that the principle of legal certainty requires that exceptions be included in the 'general codification'. Brower and Abi-Saab support the adoption of 'general frameworks' by means of multilateral treaties or other normative solutions, for which the consent of the international community can be established. Yet, they stress that such frameworks should provide broad obligations that states can comply with gradually 'through national adjustment of norms without further resort to the ratification process', the latter being too dependent on contingent political factors. The definition of details should therefore be dealt with by additional international instruments requiring more limited acceptance or by the formation of general principles through state practice. Environmental treaties seem to provide a successful example of this.

The books under review complement each other perfectly. Gowlland-Debbas' collection of scholarly essays is very useful in understanding the new international social reality as far as treaty-making is concerned and seeks ways for the law to adapt to it. It is an informative, enriching and at times thought-provoking book, which certainly achieves its stated aim of contributing to the debate on the reforms needed in the international legislative process. The reader may however find that insufficient attention is given to the implications of the increasing importance of new actors on the international plane in terms of

their representativeness, accountability and international personality. This development could have such far-reaching consequences in the field of international law as to call for a re-examination of the theory of international legal personality in the sense of envisaging the creation of new subjects of international law, an issue which was left open by the International Court of Justice in the well-known case of *Reparation for Injuries Suffered in the Service of the United Nations*.⁴ Moreover, one of the classical fields of international law, the use of force, which is undergoing rapid *de facto* change particularly after the terrorist attack of 11 September 2001, finds no place at all in the volume. Yet, the role of the Security Council as a quasi-international legislator has sparked a lively debate, and the creation of the two ad hoc international tribunals and the recent adoption of a 'mini-convention' on how to combat international terrorism may provoke renewed interest in the topic.⁵

Mastrojeni's book does not provide a scholarly contribution to the field of international law-making, mainly because it takes the participation of new actors in the international arena as a starting point for its analysis of negotiating techniques without analysing their nature or importance. Mastrojeni merely advises the new actors, whoever they may be, on how to be most effective in a negotiating process. Nevertheless, the author achieves his goal of providing helpful information to the inexperienced negotiator. Intercultural communication is given particular attention, with extensive practical advice on possible communication strategies. The book does not

⁴ Cf. ICJ Reports (1949), at 179, where the Court states that: 'The subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends upon the needs of the community.'

⁵ SC Resolution 1373 of 28 September 2001 constitutes an interesting example of secondary legislation which could probably be qualified as a 'general framework' in the meaning used in this review.

require background knowledge in international law and is indeed readily accessible to non-lawyers. It is highly instructive, due to its

straightforward language and its frequent use of charts and examples.

European University Institute *Luisa Vierucci*