

Book Reviews

interpretive muscles. But it also reflects the rather hermaphroditic propensities of international organizations in some fields, in which self-citation and repetition become the primary legal tools of 'analysis'.

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Ryszard Cholewinski, *Migrant Workers in International Human Rights Law: Their Protection in Countries of Employment*. Oxford: Clarendon Press, 1997. Pp. lxxii, 465.

Although international human rights law is, in principle, comprehensive in its scope and applicability, its practitioners have tended to focus heavily on those rights which are susceptible of gross violation and, in any event, to treat labour law as though it were a separate domain. It comes as no surprise then that the plight of migrant workers is far from the mainstream. As the dustjacket of this book notes, '[m]igrant workers and their families outnumber refugees and displaced persons, but are given far less attention when it comes to the international protection of their rights'. The book does as well as any could to remedy those shortcomings.

The author adopts a broad definition of migrant workers to include their families as well as undocumented and illegal migrants. Similarly, he adopts an appropriately expansive approach to their rights, with a strong emphasis upon their economic, social and cultural rights. While the first chapter is entitled 'International Migration for Employment: An Overview with Reference to the Right to Development', the relevance of the latter right is hardly demonstrated. Curiously, civil rights seem to be equated with the rights of citizenship and are overlooked, although this is a key area in relation to migrant workers. Some of the relevant rights are dealt with under a separate category of 'residency rights'. There is no analysis devoted to the pros and cons of according the right to vote (at least in local elections) to migrant workers, despite increasing attention to the issue in certain contexts. The author notes on the first page that 'basic' rights 'such as the right to life, the right not to be subjected to torture and the right to freedom of thought, conscience or religion are

not discussed in any depth'. No explanation is offered, but it can be assumed that the general human rights regime is thought to be sufficient to protect migrant workers in relation to these matters. Such rationale would not seem to be applicable, however, in the case of religion, which is an area in which migrant workers suffer many, and sometimes rather violent, forms of discrimination. It thus seems an odd omission.

The analysis is divided into three parts. The first surveys general international legal standards, the second focuses on the work of the International Labour Organisation (ILO) and the UN Convention in this field, and the third consists of a detailed analysis of the Council of Europe and European Union standards and policies. The last-mentioned is especially well researched and comprehensive and the analysis is skilfully integrated. In the first part, considerable attention is given to the UN's 1985 clumsily-titled Declaration on the Human Rights of Individuals who are not Nationals of the Country in which they Live. Cholewinski justifiably criticizes the shortcomings of the Declaration, but does not really explain the reasons for its virtual invisibility since its adoption.

His analysis of the ILO's work in this field is thorough and painstaking. It is, however, a little wooden, in the manner of so many analyses of the ILO that, for want of many alternatives, must rely almost entirely upon official ILO documentation, supplemented only by the writings of current or former officials of the Organization. His conclusion on the ILO succeeds in identifying the main question (in essence, why have the relevant ILO Conventions attracted so few ratifications?), but misses an opportunity to speculate as to the answers. The analysis of the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) is first-rate. He mines the *travaux préparatoires* for all they are worth and draws on all the relevant literature to provide by far the most helpful analysis of the Convention available. He also asks why the Convention on the Rights of the Child, adopted one year earlier, now has 191 states parties while the ICMW has seven. He rejects the view that the ICMW might be a 'white elephant' and defends its importance.

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He gives relatively little attention, however, to the possibility that the Convention might be a prime example of the old aphorism that the best is the enemy of the good. In other words, the proponents of the Convention might have over-reached themselves in coming up with a treaty which is the longest, most detailed and in some respects the most progressive in relation to existing standards, of all the UN's human rights treaties, thus making it unratifiable for those states which are most affected by the phenomenon of migrant workers.

The author now teaches at Leicester, but the book derives from a doctoral thesis written at the University of Ottawa. Like almost all such works, it still bears some of the scars. Almost 50 pages of tables of cases and legislation is grossly overdone. On the other hand, the 30-page bibliography attests to the assiduity of the author in unearthing even the most obscure references. Footnoting probably takes up 35 per cent of the total word count, but underscores the book's value as a reference work.

Overall, the author consistently advocates the adoption of higher standards for the protection of migrant workers, while recognizing that the necessary progress will require a quantum leap in states' preparedness to protect this group. The book is an authoritative work, and will justly become the principal reference source in its field.

P. A.

Brus, Marcel M. T. A., *Third Party Dispute Settlement in an Interdependent World: Developing an International Framework*. Dordrecht, Boston, London: Martinus Nijhoff Publishers, 1995; Pp vi, 255. Index. § 100.

In this ambitious study, Marcel Brus investigates the influence of the changing international environment on the perspectives of third party dispute settlement. In his view, the 'interdependent world society' is in a state of transition, marked by internationalization, denationalization and 'participatory pluriformity', with the result that the traditional state-centred international system is being substituted by the increasing participation of NGOs, individual actors and inter-

national organizations representing 'community interests'. Accordingly, the international system needs a new balance between the individual interests of states and the interests of the international community as a whole. Brus seeks to understand this development by using systems approaches and theories of legitimacy.

Drawing on a distinction that Dworkin has applied to the domestic legal order, Brus' main thesis is that the international legal community is developing from a 'rule-book community' towards a 'community of principle'. The former is characterized by the voluntarism of classical international law, the latter by 'integrity', namely the coherent application of justice and fairness in accordance with other fundamental community principles. As for Dworkin, principles, along with participation and procedures, constitute for Brus the central element for the legitimacy of the legal order of a true community. He sees evidence for the emergence of substantive principles in international law in the development of the concepts of *jus cogens* and obligations *erga omnes* and the universal acceptance of fundamental principles without the consent of all states. But, as Brus must acknowledge, if one maintains – in line with the majority of international lawyers – the traditional voluntarist law-making procedures, there seems to be no satisfactory legal explanation for that development.

Nevertheless he accepts the recognition of these principles as 'fact'. In line with his claim of the increasing role of principles, Brus demands the development of appropriate procedures. His analysis of law-making, supervisory mechanisms and dispute settlement – which was supposed to be the main focus of the book – remains however largely conventional. Having described the dispute settlement procedures in the Law of the Sea Convention, the WTO and UNCED in a cursory fashion, Brus concludes that the use of binding third party dispute settlement in specific regimes has to be increased, but that the international community is not ready for a global dispute settlement regime of a binding nature. This raises doubts, however, about whether a transition of the international legal system towards that of an international community of principles