

- **MALAYSIA AND UNCED: AN ANALYSIS OF A DIPLOMATIC PROCESS: 1989–1992** by Fauziah Mohd Taib (Kluwer Law International, London: 1997) ISBN 90 411 0683 9; xvii+206pp; UK£68.00 /US\$109.00/NLG175.00

The transition of Malaysia from a dependent colony to an independent and newly industrialising state has been a perceptible progress. It is not known whether in the psychology/*opinio juris* of the State it has not been an internationally significant nation till UNCED. As a former colony of the British (and a current member of the Commonwealth), much of the foreign policies of the former were also a part of the latter. At UNCED, Malaysia not only met the British and the Americans head on in an emerging new foreign policy but also a host of other developed nations in the warfare over her forests – Malaysia's sovereign natural resources. Malaysia, the largest producer of tropical timber, was challenged by the developed nations when they pointed out that the most serious environmental problem faced by mankind today resulted from the deforestation in Malaysia. There was a proposal to boycott tropical timber to save the forests. Malaysia perceived the threat of a treaty encompassing all her forests as "global commons" would materialise at the Rio Summit. She had to quickly defend her sovereign natural resources and formulate her views on environmental conservation and developmental priorities and above all inhibit the formulation of a global convention on the forests.

UNCED has attracted a great deal of attention from a legal standpoint. The issues involved covered *inter alia* deforestation, reforestation, setting up of a green global fund, transfer of technology from the developed to the developing countries as a *quid pro quo* to halt deforestation, the origin and causes of pollution, the apportioning of blame for pollution, poverty, environment and trade, and a programme of action and sustainable development. However, *Malaysia and UNCED* is not about law and the environment. It is about a diplomatic process. It is spread over five chapters and two Appendices; Appendix A is on "Forest Cover Internationally" and Appendix B focuses on "Excerpts of Speeches Made by Members of the Malaysian Delegation".

Chapter One sets out the conceptual framework. Here the author points out that UNCED like its precursor, the Stockholm Conference, was a special conference of the United Nations even though the term "special conference" does not appear in the United Nations Charter. Attending such special conferences is part of State diplomacy today. The elements of conference diplomacy in relation to UNCED are highlighted. These elements are the actors, decision-making processes, environmental politics and paradigm shift. The actors at UNCED were States, multinational corporations, non governmental organisations, media representatives and international governmental bodies. Taib has not discussed the rightfulness or wrongfulness of the participation of these actors from the angle of subjects and objects of international law endowed with international legal personality with direct and indirect rights and duties. Decision-making processes involved

the preparation of the *ad referendum* agreement which was followed by formal resolutions arrived at by consensus.

It is also pointed out that negotiations at UNCED were conducted mainly between groups and not individual States. Examples of such groups were the Group of 77, European Union (Community then), the Western Group, the Arab States, small island states, the CANZ Group made up of Canada, Australia and New Zealand, and the former East European Group. Environmental politics was regarded as low politics as military might could not be used to influence outcomes of specific international environmental issues.

The paradigm shift discussed was the move from the exclusionist standpoint to sustainable development. Taib attempts to explain the differences in content between United Nations resolutions, declarations and signatures to conventions from the viewpoint of social scientists. The status of these instruments remains at the heart of international law. For example, Cheng, who has written extensively on resolutions, notes as follows:

7. Except in constitutional matters relating to the administration and finances of the Organisation, resolutions of the United Nations General Assembly are merely recommendatory.
8. Provided that the intention is expressed articulately and without ambiguity, there appears to be no reason why an Assembly resolution may not be used as a means for identifying the existence and contents of a new *opinio juris*.
9. Such a law-finding resolution is itself still without binding force, but provides strong evidence of the existence and contents of the rule of law it states, and Member States voting for it may even be estopped from denying what it avers.¹

In law it is very important to distinguish between the legal rules and the social context in which the rules operate. Therefore, in law questions such as the existence of the rule of general international law according to *opinio generalis juris* and *opinio generalis obligationis conventionalis* becomes very important.

The second chapter contains the main thrust of the book which focuses on the intensive efforts that the officials of the Malaysian Ministry of Foreign Affairs undertook to prepare for UNCED where Malaysia seemed to be singled out as the main and only culprit for the bad state of repair the environment was in. Taib, being privy to the Ministry's meetings and follow-up, has vividly narrated Malaysia's preparations for UNCED and the Rio Summit and how the nation State engaged herself in a truly professional and independent analysis of the environmental debate. Malaysia did not forge alone either at UNCED or at the Rio Summit but she grouped with the Group of 77 which are the countries of the South. Taib has shown us how Malaysia sought to influence international policy with national ones, how she consciously and intelligently pursued her stand on the forests issue.

1 Bin Cheng *Studies in International Space Law* (Clarendon Press, Oxford: 1997) 147.

In Chapter Three, Taib states that though there were several actors at UNCED, the only ones who mattered were the States and the decision-making process at the special conference followed an almost similar pattern as at general United Nations Conferences. Chapter Four is on the Rio Summit. It deals with the organisation of the conference and the conduct of the negotiating and non-negotiating actors. The negotiators may be deemed to be the diplomats and the government officials representing their States and the non-negotiators were defined as Heads of State and Government, the media and the non governmental organisations. The chapter states that "Consensus", used as a tool to encourage agreement on very difficult issues, seemed to soften all the hardliners including Malaysia.

The final chapter assesses the impact UNCED had on the United States, the South, the European Union and non governmental organisations. As far as Malaysia was concerned she was very glad that there was no international treaty on national forests which adopted a form of "global commons". Taib recapitulates the leadership role played by Malaysia at various fora in preparation for the Rio meetings and the active and aggressive role adopted at UNCED.

The UNCED process is not an easy topic to either narrate or even examine. The outcome was not found in one all encompassing treaty, but in resolutions, declarations and conventions. Taib has not set out the principles of diplomatic protocol normally used in conferences. However, she has communicated to the reader the chaos that went on at UNCED and the extraordinary role played by Tommy Koh, Singapore's Ambassador to the United Nations.

The book focuses on process and not on substance. It is a useful tool for a wide variety of readers including all involved in diplomatic conferencing for there is a considerable degree of maturity required in presenting international and national affairs. It serves to inform the people of Malaysia that her international destiny and image is closely linked with the sheer industry of her people and the ability of her people to network and portray themselves effectively in the international arena. It is true to say that it is difficult to understand the foreign policy of any State. Taib's book ought to make many Malaysians think and form their own opinions on the subject matter discussed. As a guided democracy, the national policy has to be reflective of the contributions of well-informed and thoughtful citizens. Indeed the preparations for UNCED and the Rio Summit show just this.

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