

- ENVIRONMENTAL OUTLOOK NO 3: LAW AND POLICY Edited by Paul Leadbeter, Neil Gunningham and Ben Boer (The Federation Press, Annandale, NSW: 1999) ISBN 1-862873-151; 304pp; AUD\$49.95

Environmental Outlook No 3: Law and Policy is a comprehensive collection of essays which analyse the new trends and emerging principles of environmental law. The analysis is conducted at international, regional (European Union, Asia Pacific) and national levels. The book also aims to be a practical guide, showing the implications for industry of the current evolution of environmental law.

Throughout the collection of essays there are several overarching, recurrent topics. One is that of the recognition and implementation of sustainable development. This theme is found in the essays of Lal Kurukulasuriya on "Recent Developments in Environmental Law in the Asia-Pacific", Ben Boer on the "Implementation of International Environmental Law in the Asia-Pacific" (especially his discussion of the Mekong River Agreement), Paul Stein and Susan Mahony on "Incorporating Sustainability Principles in Legislation", Neil Gunningham and Darren Sinclair on "Incentives for Cleaner Production", and Jan McDonald on "APEC and Ecologically Sustainable Development", who analyses the successes and failures (the latter seem greater) of APEC policies with respect to sustainable development.

Importantly, several essays in this book demonstrate that the implementation of sustainable development is achieved by a wide variety of means. These include the precautionary principle, as shown by Stein and Mahony in their discussion of the application of the principle in Australian case law. They also include the use of Environmental Impact Assessments (EIA). The review process of Australian EIA legislation is critically discussed in the paper by Steven Münchenberg.

Another example concerns mechanisms providing for an integrated approach to environmental protection. This is the case with "multi-use" policies and regulations for the protection of the marine environment, as analysed by Sam Bateman in his essay. Bateman rightly stresses the need for a more "area-based" approach in Australian legislation, which, as he indicates, already exists in Canada under the federal Oceans Act 1996. At the same time, Don Rothwell notes in his chapter on "International Marine Environmental Law and Policy", the lack of international cooperation concerning the pressing problem of land-based marine pollution. He attributes this lack of cooperation to countries being reluctant to place limits on their development and on their sovereignty.

A second fundamental theme often repeated in this collection of essays is the growing diversity of instruments being used to achieve sustainable development. The recourse to a wider range of instruments has the benefit of providing a more flexible approach, adapted to each particular circumstance. Such instruments include the increasing use made of economic instruments, as shown for example by Bryan Jenkins in his assessment of developments concerning the licensing of pollution discharges in Western Australia. The adoption of a flexible approach, as

well as the use of market mechanisms are also advocated by Senator Robert Hill, Australia's Minister for the Environment, in his "Opening Address".

A third recurrent theme is that of the progress being made towards a "partnership approach" in environmental protection. The new partnership approach concerns first a partnership within governmental institutions. This is found for example in Australia with the recent policy of "cooperative federalism" between the Commonwealth government and the states, examined in the papers by Geoffrey Lindell, John Taberner, as well as that of Senator Hill. The new Environmental Protection and Biodiversity Conservation Act enacted by Australia's federal Parliament in September 1999 (after the publication of the book) thoroughly confirms this approach.

Nevertheless, Taberner in his paper on the "National Environment Protection Council", laments the lack of initiatives and leadership of the Australian federal government in the field of environment protection. This is despite the fact that, as Taberner shows, the possibility of such leadership has been recognised by the courts: for example, the High Court in *Western Australia v. Commonwealth*.<sup>1</sup>

Above all, this collection of essays shows that a new partnership approach is beginning to permeate the relationship between governmental institutions and the private actors in society. Those actors cover industry groups, but also NGO and other interest groups such as farmers, fishermen, city dwellers, and walkers.

A new partnership between governmental institutions and industry is evident at a European level, as shown in the essay by Margaret Brusasco-MacKenzie, when she presents for example the "1996 Auto-oil Program" of the European Union. In the same vein, Brusasco-MacKenzie notes the importance of voluntary agreements between industry and governments in the European Union. A new "partnership approach" is also found in the field of heritage law for example in Australia. In his interesting and provocative paper, Simon Molesworth cites the "partnership approach" as one of the seven principles adopted by the Commonwealth's Committee of Review in 1996, concerning the management of federal heritage properties. Such a partnership approach is also evident in the reviewing process of Australian federal legislation concerning Environmental Impact Assessment, as discussed by Mnchenberg. Indeed, the author praises the wide consultation and participation of industry and conservation groups during the review process of the federal legislation (even if, as the author explains, the process was eventually halted for political reasons). Equally, Amanda Cornwall points out in her chapter titled "Environmental Marketing", to the substantial participation of industry in the process of international standards for consumer products.

Despite the welcome comprehensiveness of the essays in this book, one may regret that certain important topics essential to the future of environmental law, such as that of forestry, or of genetic resources, were not covered in detail. Another

1 (1995) 69 *Australian Law Journal Reports* 309 (Australia).

minor criticism lies in the lack of a "unified" format for the collection of essays, which at times appear disjointed and very different in their scope and focus. Maybe this is the nature of a collection of essays? A clearer, possibly narrower goal for these essays would have been more beneficial, possibly focusing on sustainable development, or on a new "partnership approach" for environmental protection.

Nevertheless, in light of the primary, stated vocation of this book being to identify and analyse in a practical manner, the new trends of environmental law at an international, regional and national level, the collection of essays succeeds very well in achieving its aim.

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