Human Rights: The Cape Town Conference — Proceedings of the First International Conference on Human Rights in South Africa, 22-26 January, 1979, edited by C. F. Forsyth and J. E. Schiller, (Juta and Co., South Africa, 1979). ISBN 0 7021 1018 3.

On reviewing the *Proceedings of the First International Conference on Human Rights in South Africa* 1979, one is inclined to respond as did the author of a paper on 'Snakes in Ireland' that there are no snakes in Ireland. While perhaps conceding this point the conference organizers hoped to stimulate in South Africa an awareness of the substantive content of Human Rights and to learn from international and national experience. The *Proceedings* draws together the wide range of papers presented at the conference and includes a summary of panel discussions. Its publication was no easy task. After the galley proofs had been received the Police Act of 1958 was amended to make the publication of any 'untrue' matter relating to the Force an offence. This required the deletion of allegations made by participants regarding the persistent use of torture by the police. The organizers also had difficulty obtaining the necessary entry visas for international experts who had expressed views critical of South Africa. These and other problems explain the relatively meagre participation by delegates outside the African continent.

While the conference focused on human rights violations in South Africa the papers make a general contribution to an understanding of human rights in terms of legal substance, and more particularly, the procedural difficulties of implementation. There is virtual universal agreement on the broad content of human rights as catalogued in the United Nations Declaration and Covenants. The principal weakness of the international law of human rights lies in its enforcement. It has proved especially true of human rights law that 'substantive law has . . . the look of being gradually secreted in the interstices of procedure'. For this reason F. Ermacora's paper outlining the procedural status of the individual before the European Court of Human Rights is a useful example of how the articulation of more precise 'rights' depends on an effective procedural machinery.

Of particular interest to Australia in light of the Human Rights Commission Bill presently before the Federal Parliament are the papers debating the advantages of a constitutional Bill of Rights and ratification of the International Covenant on Civil and Political Rights. A. Rubinstein, of the Israeli Knesset, puts the traditional British view that political climate, public opinion and inbred attitudes are more important safeguards for human rights than constitutional guarantees. J. S. Read, of the University of London, disagrees and points out that the United Kingdom has now enacted legislation on racial and sexual discrimination and has established commissions to implement and publicize the provisions. The question for Australia is whether a U.S. style Bill of Rights is exportable or whether reliance is better placed on *ad hoc* legislation, an enlightened judiciary and public education.

L. Henkin, of the University of Columbia, argues for the national Bill of Rights but stresses that human rights protection remains inadequate for the more deeply rooted reason that there is no international consensus on the relative importance of human rights and other public goals. This accounts in part for the reluctance of states to submit their human rights practices to international scrutiny and, more surprisingly, for their reluctance to criticize the behaviour of other states or to risk diplomatic goodwill bringing violations before international tribunals. It is precisely because there is some consensus on questions of human rights in Europe that the European Convention and procedures have been successful.

The relative significance of human rights in different political and social environments is discussed in several papers. J. D. Van der Vyver, of the University of Witwatersrand, concludes that there can be no international standard where Western, Eastern socialistic and Third World attitudes differ so greatly. The Western view emphasizes the rights of the individual and the Socialist approach is to create conditions within which all individuals can exercise their rights, while the Third World nations give preference to developmental goals. L. Schlemer, of the University of Natal,

adds that even were a standard to exist further difficulties lie in reconciling individual and group rights in highly plural societies. In a particularly thoughtful and well researched paper he argues that the social, economic and political preconditions for human rights must be more precisely understood. He describes these preconditions as including a liberal intellectual tradition, the rule of law, a class rather than ethnically based political tradition, academic freedom and freedom of the press. He concludes that they do not exist in most Third World states and are not encountered in South Africa. The subsequent panel discussion was useful in highlighting the view that economic development and human rights are necessarily interrelated and ought not to be considered in the alternative.

The development and fusion of human rights principles and the humanitarian law of war by the Geneva Diplomatic Conference, 1974-77, are discussed by G. I. A. Draper, of the University of Sussex. He argues that it is "overwhelming intellectual arrogance' for man to make laws to govern his conduct while he is engaged in exterminating his fellow human beings. The danger in confusing distinct and opposing areas of international law becomes more apparent when it is realized that while there is substantial adherence to the Geneva Conventions on the law of war, only a small number of states has ratified the International Covenant on Civil and Political Rights.

The protection of human rights is beset by a number of apparent contradictions. How can these rights be preserved where the security of a state is at risk as in Israel, or where international terrorism is a threat? Can individual rights be reconciled with traditional notions of state sovereignty at international law? When are human rights a matter of international concern such that the Charter prohibition of intervention in internal affairs no longer applies? When do group interests take priority over individual rights? The Conference papers deal with each of these questions and generally succeed in avoiding the emotive rhetoric which pervades much of the vast literature on human rights. This collection is a useful contribution in that the authors have attempted to move beyond the 'hurrah' words of human rights to articulate the pre-conditions for human rights in developing states and to examine procedures for their effective implementation.

An important criticism made by a participant is that several papers make the unwarranted assumption that the United States practice, whether in establishing human rights for wage earners, freedom of the press or the franchise for blacks, should guide, direct and finally force reform in South Africa. There has been little research into the transferability of domestic human rights laws. In light of the trend to considering these rights, correctly or otherwise, as relative, more thought might be given to the value of Western experience for Third World States. Despite the development of substantive and procedural human rights at the international level it remains true that states prefer to set their own houses in order before undertaking internationally enforceable obligations. While states increasingly wish to be seen to comply with international standards, if only because it is politically advantageous, they will so do in terms of their own political, legal and cultural traditions.

A final point on the inclusion of the panel discussions in the *Proceedings*. They were generally disappointing as the participants did not expand on the central ideas presented in the papers but rather on relatively peripheral issues. Nonetheless the discussions will give the reader some sense or 'flavour' of the conference and of the diversity of opinion among the participants.

G. D. TRIGGS*

* LL.M. (S.M.U.), LL.B.; Barrister and Solicitor of the Supreme Court of Victoria, Lecturer in Law, University of Melbourne.