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Book Notes

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BOOK NOTES

INTERNATIONAL PROTECTION OF HUMAN RIGHTS,

by Alessandra Luini del Russo (Lerner Law Book Co., Inc., 1971).

Until the Nuremburg Tribunal, international thought concerning human rights conformed to the idea that the guarantor of these rights was the national sovereign. With the birth of the United Nations and the Universal Declaration of Human Rights, the need for international guarantees of human rights within a state was formally recognized; that individuals have certain inalienable human rights is a proposition which few nations will dispute today. Furthermore, despite wide ideological differences, most states have found it possible to agree on the scope and consequences of man's fundamental freedoms. However, at the point of agreeing on the mechanisms by which remedies may be made available to those individuals whose rights have been infringed, international accord generally breaks down. It is this problem of arriving at a practical international guarantee of human freedoms which Professor del Russo investigates in a comprehensive survey and analysis of the European Convention's machinery for effective international protection of human rights, as well as the history preceding this agreement between seventeen European nations.

The history of international concern for human rights and of the attempts to secure those rights on an international basis is a brief one, but it is built on a centuries-old search for human freedom. Professor del Russo examines the origins of man's belief in fundamental human freedoms and traces the development of that belief to the point where it was recognized that this subject was one of international concern. In the shambles of post-war Europe and at the conference in San Francisco, the international community acknowledged its belief that world peace was not possible without the assurance of personal freedoms to the citizens of all nations. Shortly thereafter, however, the newly

organized United Nations demonstrated the practical inability of the member nations to arrive at a workable system of guarantees. Political and idelogical differences were too great for the achievement of the utopian goal of global protection of human rights. It is against this backdrop of theoretical agreement and practical disunity that Professor del Russo portrays the European Convention as an example of effective protection and as a solution leading to eventual world-wide agreement.

In recognizing the inadequacy of the United Nations for these purposes, the European Convention of 1950 adopted a European Bill of Rights embodied in the Convention and subsequent Protocols. Three agencies were set up to provide a means for enforcing the enumerated rights: the European Commission, the Court of Human Rights, and the Committee of Ministers of the Council of Europe. The main portion of the book deals with each of these organs separately, considering their jurisprudence, their jurisdiction and procedure, and their significance to the signatory nations. Focusing on the main problem, the previous inability of states to cooperate in such a venture, Professor del Russo gives careful attention to the strategems and procedures adopted for the functioning of each organ. It is this aspect of the book which makes it not merely a survey of the Convention, but rather a clear demonstration of the workability of the European Convention.

The European Commission and its self-adopted rules are representative of the framers' concern that the structure of guarantees they might achieve would be enforceable only by consent of the member nations. Although the Convention revolved around the idea of a judicial remedy for alleged violations of human rights, several states had voiced objections to the idea of compulsory jurisdiction. For instance, it was by no means certain that the jurisdiction of the Court of Human Rights would be accepted by all or even some of the member states. The Commission served as a means of briding the gap of five years between the Convention and the eventual acceptance of the Court's jurisdiction largely because its own self-imposed rules

acted to calm the fears of nations which mistrusted the idea of the Court. These rules of procedure demonstrate the Commission's concern for providing sufficient safeguards to respondent states to permit the building of a gradual acceptance of the Commission and its jurisdiction. With this in mind, the Commission provides for initial review of all petitions in secret. The succeeding steps are a blend of conciliatory and fact-finding procedures. As a result of these factors most disputes are settled without being referred to the Committee of Ministers or to the Court of Human Rights. The secrecy of the Commission's procedures has been criticized as incompatible with its function of protecting human rights, but, as the author points out, any other approach would never have gained the wide support which the Commission now enjoys.

The Committee of Ministers and the Court of Human Rights are the alternatives which the Commission has for the final disposition of those petitions which it rules admissible and which have not yet been settled by informal arrangement. It is only through one of these bodies that reparation can be granted a petitioner. This judicial role of the Committee of Ministers is another result of the desire to provide redress, even at the cost of leaving the decision-making process to a highly political body instead of a judicial institution. It was created as an alternative for those signatory states who refused to accept the Court's jurisdiction. Thus a judicial aspect was added to the Committee's executive powers in the hope that it would be an interim measure until the Court's compulsory jurisdiction was accepted by all signatory states. In addition, the Committee like the Commission, has secret hearings in deference to the sensitivities of states. Of the three institutions, only the Court of Human Rights has open hearings and public records.

The Court represents the final result of pitting compromise and pragmatism against the fears and hesitation of the member states in submitting themselves to such compulsory jurisdiction. The Convention makes no mention of the independence of the judiciary or of the finality of its decrees; it merely provides for a Court with the same number of Justices as there are member nations in the Council of Europe.

Furthermore, there is no mention of conflicts or interests on the part of the Justices. The single requirement is they be of high moral standards. Finally, an individual petitioner has no standing before the Court. The Court's jurisdiction is not original over all human rights disputes, rather, it is derivative from the Commission. Thus, at first glance, it would seem that the conciliation of the states has eroded the original concept of the Court's power at the expense of the object of the entire Convention: namely, the individual. But as Professor del Russo's treatment of the problem shows, this is not the case. In actual practice, because the Court's jurisdiction has been accepted by many of the member nations, the individual still has a remedy and a hearing.

There is a close working relationship between the Commission and the Court. When a case is forwarded by the Commission, it then acts as amicus curiae as well as the chief fact-finding instrument to the Court. The Court has the power to call as a witness any person deemed important to the controversy, including the original petitioner. In this way the rights of the individual are in fact protected in an open hearing, while the dignity of the party-state is preserved to its satisfaction. An examination of this procedure is pursued further by the author's analysis of the seven cases which the Court had adjudicated at the time of printing.

The feature of the book which is perhaps most convincing of the efficacy of the Convention is the survey in Chapter IX of the impact of the Convention at the national level. The most striking examples of the Convention's effectiveness are to be found in those states which do not recognize the Convention as law. In those instances, the Convention can be seen as creating a moral framework within which every state feels compelled to legislate and adjudicate. As to those states which accept the Convention as domestic law, the impact is even more pronounced and more certain. For instance, Malta, the last country to ratify the Convention, has adopted verbatim large portions of the provisions of the Convention in its Constitution. The author concludes this survey of the Convention's effectiveness with an analysis of the future of the European model in other settings. Emphasis is again

placed on the pragmatic attitudes of the member states which have been the foundation of the success of the European Convention.

Professor del Russo's book should prove invaluable as a reference for those interested in a concise overview of the workings of the European Convention, as well as for those interested in the practical problems of protecting human rights on the international level. It is well organized for the purposes of either group, and includes appendices containing selections from the major international agreements and declarations on human rights, including the Universal Declaration, the European Convention, and the Inter-American Convention. While the author examines only the European Convention in detail, its general applicability on a wider scale or in different areas is strongly suggested. Further consideration of the relationships between the various signatory nations prior to the Convention might have been desirable as a framework within which to view the Convention. This is because the European states have had a far longer history of cooperation on a limited basis than any other comparable group of nations. The success of the Convention is undoubtedly based to some extent on this fact, and detailed knowledge of the impact of this factor is a prerequisite to any final determination of the Convention's wider application.

C.H.H.

INTERNATIONAL LAW AND THE RESOURCES OF THE SEA

by Juraj Andrassy (Columbia Univ. Press, 1970)

International Law and the Resources of the Sea constitutes an addition to the growing body of literature dealing with the utilization of the ocean floor by nations. The book is concerned with the development of the continental shelf as a legal concept. In essence, it seeks to recast this geological expression into an international legal term dealing with property rights on the ocean floor.

The author first examines the scientific meaning of "continental shelf" and provides a survey of the phrase as it presently is used in treaties and agreements, including a proposal for a new legal definition of the term. The latter chapters of the book deal with the problem of administering undersea land to which no claim has been made.

The author introduces the book with a discussion of the continental shelf, i.e. that area between the shoreline or shallows and the ocean depths. This region is directly related to the submarine terrain and the geological activity of the area. The size of the continental shelf, therefore, varies substantially within the borders of any given state. Between states, there is even greater variation.

The legal difficulty with the geological concept becomes evident when consideration is given to the growing importance of the ocean floor as an economic and political asset. Originally it was conceived that the physical properties of the location would constitute the major bar to unlimited territorial claims to the ocean bottom. The limitations of pressure and depth, it was reasoned, would prevent expansion by nations across these undersea territories. Such limitations have been eliminated by scientific developments, resulting in claims to undersea lands by countries with adequate technology. The author suggests, consequently, that the demands of some countries for increasingly larger shares of this area will continue unless some boundary is created to confine the expansion. As man is able to work at greater depths and

pressures for longer periods of time, there would be little to prevent the United States, for example, from claiming a portion of the ocean floor reaching 1,500 miles into the Atlantic. Alternatively, those countries without sufficient technology or wealth would be unable to make any effective claim to the undersea territory. Furthermore, completely landlocked countries would not be in a position to participate in the great undersea land boom.

The author suggests that the geological concept of the continental shelf is inadequate for a legal resolution of the problem. Since there are neither human nor geographical limitations to potential expansion the author selects an artifical limitation consisting of two elements: depth and distance. He contends that the most practical limit would allow expansion in the submarine lands either to a depth of 200 meters (isobaths) or for a distance of 30 miles from low tide shoreline, whichever secures a greater area for the sovereign.

One critical consideration of the plan is the arbitrary nature of its limits. From those limits, disputes will inevitably arise. Those countries which have relatively small claims to contiguous submerged areas presumably would not protest the wider boundaries. On the other hand, nations which fall within the following three categories can be expected to oppose strongly the author's plan: first, nations with extant technology capable of immediately expanding undersea claims; second, countries which are currently overpopulated; and third, underdeveloped countries with limited natural resources. The first situation is exemplified by the United States or the Soviet Union, which have increasingly turned to the ocean floor for both economic and strategic reasons. Neither country would be amenable to limiting their expanding claims which have resulted from advanced technology. The second case is illustrated by countries such as India or Communist China where dry land continuously is being depleted. The magnitude of the population and the concomitant demand on land and resources force these nations to turn to undersea territory. The third category is illustrated by several Latin American claims currently extending as far as 200 miles into the ocean. These countries have limited assets and feel

that the utilization of undersea resources should be reserved to themselves.

In the second part of the book, Professor Andrassy deals with the administration of that area of submerged lands not in the hands of a particular country. He contends that even if a limit of either 200 isobaths or 30 miles is put into effect, there will be a substantial area of the ocean floor unclaimed by any sovereign. The plan, therefore, is to divide the undersea areas of the world among nations according to need. It is this area, the author indicates, that will solve the problem of countries, such as the Congo or Switzerland, which have no contiguous undersea area.

This divided area would require administration by an international body. The author envisions a tiered organization consisting of a board or council, a director or secretary-general, and an assembly having open membership. The assembly would be the general policy making body. Professor Andrassy does not, however, go beyond these general guidelines in establishing the functions and duties of the assembly. It may be inferred from the argument for open membership that the assembly tier is to serve as a channel for communication and intercourse through which nations, not represented on the council or board, may express their desires and participate in the formulation of policy. In emergency situations, however, the efficacy of such a large assembly would be minimal. As a result, the author emphasizes the role of the other two tiers in facilitating the policy making function of the organization. First, the board or council would have a selective membership and would be charged with the general administrative functions of the agency. Second, the director or secretary-general presumably would be given general supervisory duties. The author views these two tiers as being essentially the decision-making organs. He gives several examples of how these tiers might be structured, but does not advocate any particular method of implementation. Because of the author's unwillingness to expand his ideas, it is difficult to determine how useful or effective these organs will, in fact, be.

In his treatment of unclaimed undersea territory, the author avoids extensive treatment of the functions and scope of the agency which he proposes. In broad terms he does suggest, however, that the agency will provide research work and services such as weather forecasting; regulate all uses of the sea; grant licenses and control submarine exploration; and generate improved undersea agreements. The key to the entire scheme is the ability of the proposed organization to regulate the area with the necessary precision. For this reason, an analysis of the day-to-day operation of the agency would be an asset to the book. The ultimate test of the agency's success will be the regulation and control of this vast area of land, unhindered by the national claims. Because Professor Andrassy is silent about this aspect of his plan, one is forced to conjecture about the scope of the agency's powers and its chances of success in the administration of this great frontier.

K.D.K.