

## THE INDIVIDUAL AND INTERNATIONAL LAW

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**Introduction.** Ambiguity has characterized the relationship of the individual to international law. However, it is an ambiguity which is gradually dissipating, or at least clarifying, as the international community becomes increasingly aware that "[i]n the international as in the internal order, human values are the reason behind the legal rule."<sup>1</sup> In traditional international legal theory, the state was the subject of international law; the state had rights and duties under this system and the standing to protect its interests. In recent times, the state's primacy has had to be shared with the international organization, recognized unquestionably as a subject of international law since the International Court of Justice's Advisory Opinion in the *Bernadotte Case*.<sup>2</sup>

But even at the height of philosophical dedication to the Hegelian primacy

of the state in the international order, exceptions to the rule were made for some individuals. The pirate on the bounding main, the blockade runner, the contraband carrier, the violator of the laws of war have long been recognized as "subjects of international duties."<sup>3</sup> In the broad area of state responsibility for the protection of aliens—despite traditional theory in which an injury to the alien is subsumed to an injury to his state—Professor Bishop points out:

it will be seen that in practice claims are frequently thought of as those of individual claimants, and that in such aspects as the measure of damages, waiver of claims, etc., the results are in closer accord with a recognition of the individual's rights under international law than with the

logical consequences of the premise that individuals have no rights under international law.<sup>4</sup>

It is certainly arguable that the refugee, often stateless and living under the jurisdiction of the United Nations High Commissioner for Refugees, is perforce a subject of international law.<sup>5</sup> Whether individuals become subjects of international law by custom or as a general principle of international law,<sup>6</sup> it is the state which concedes this status. Similarly, it is the state which can create this status positively by conferment on the individual by treaty, a point made clear in 1928 by the Permanent Court of International Justice in its Advisory Opinion on the Jurisdiction of the Courts of Danzig.<sup>7</sup> But two decades before that opinion, states were already prepared to grant the individual standing to enforce his rights internationally. Under the terms of the abortive 1907 Hague Convention on an International Prize Court, the individual could bring both original and appellate actions before this tribunal.<sup>8</sup> In the same year, the Central American Court of Justice was established, and here again, the individual had standing to appear.<sup>9</sup> This court came to an end in 1917; but the idea of the individual's right to bring a complaint before an international tribunal reappeared in the provisions for the mixed arbitral tribunals which were established under the peace treaties after the First World War. Among them, the German-Polish Convention of 15 May 1922, establishing a Conventional Regime in Upper Silesia, was held to permit the individual to sue his own state.<sup>10</sup>

The great thrust, however, toward recognition of the active status of the individual under international law and toward the responsibility of the international community for furthering that condition has been a phenomenon of the past three decades. It has been a response, on the one hand, to revulsion against the atrocities committed against

millions of people during the Second World War and, on the other hand, to the inchoate but deeply felt aspirations of peoples emerging from totalitarian or colonial rule.

The Preamble of the United Nations Charter spoke first of peace and next of human rights. Article 1(3) of the charter called for "promoting and encouraging respect for human rights and for fundamental freedoms"; and the "promotion of human rights" was made a central concern of the Economic and Social Council. (arts. 62(2), 68). Where the charter spoke in generalities, the Universal Declaration of Human Rights, in 1948, gave form to these generalities and set the course for substantive implementation thereof. The significance of the declaration cannot be overestimated. As Mrs. Roosevelt, first American Representative to the United Nations Human Rights Commission put it: "It is a declaration of basic principles of human rights and freedoms . . . serv[ing] as a common standard of achievement for all peoples of all nations."<sup>11</sup>

The declaration has been the frame of reference for numerous treaties spelling out specific human rights. Like the Declaration of Paris of 1856, which eventually became the rule for maritime states whether they were parties to it or not, so the Universal Declaration has become, not "law" in strict usage, but rather a pervasive influence in national constitution making and lawmaking<sup>12</sup> and in popular thinking.

The individual's relationship to international law has been changing from object to possessor of recognized rights and duties under the law. These rights and duties may have to be guaranteed or enforced at the state level for want of international machinery for these purposes. Nevertheless, their existence and the international community's commitment to their furtherance have been established.

Within this frame of reference, we shall consider three aspects of the indi-

vidual's relationship to international law: the individual as a concern of the United Nations; the individual as a concern of a regional organization; and the individual as a concern of the international community. These three aspects of the subject are areas in process of development.

**The Individual as the Concern of the United Nations.** Concern for the individual as the possessor of rights is a broad charge on the United Nations.<sup>13</sup> Implementation of this concern is one of the functions of the Economic and Social Council (arts. 62(2), 68). Within the ambience of the Council, the Commission on Human Rights has the responsibilities of making studies of human rights problems, acting upon petitions from aggrieved individuals, and submitting recommendations on policy to the Council. The subject is also of concern to other agencies associated with the United Nations, such as the Office of the High Commissioner for Refugees and the International Labor Organization. From time to time, the General Assembly has appointed special committees to deal with pressing issues, such as *apartheid* in South Africa.

The work of the United Nations in promoting and protecting human rights involves research, investigation, legislation, and measures of control. For example, seven studies of various kinds of discriminatory treatment of minorities have been made under the auspices of a subcommission of the Human Rights Commission. The most recent, entitled *Racial Discrimination*,<sup>14</sup> was published in January in pursuance of the observance of 1971 as the International Year for Action to Combat Racism and Racial Discrimination. An example of the investigatory function is seen in the work of the General Assembly's Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories.<sup>15</sup> This committee

has held hearings in Western Europe and the Middle East on the conditions of refugees in areas under Israeli military control and has visited refugee camps located outside these areas but apparently not within them. The subject will have a high priority on the Commission's agenda at its next session.<sup>16</sup>

The international community in general, and the United Nations in particular, have been productive in the realm of legislation relating to human rights. One compilation indicates that some 50 conventions or protocols directly bearing on the subject have been concluded by the United Nations and its agencies, the Organization of American States, the European Community, and by special international conferences.<sup>17</sup> Among them are such instruments as the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the 1949 ILO Convention on Right to Organize and Bargain Collectively, and the 1966 International Covenant on Civil and Political Rights. It is relatively easy, and often a gratifying activity, to draft conventions, but it is quite another thing to persuade states to ratify them, and beyond that, to act upon them. Of these 50 human rights conventions, 39 are in force. This figure is deceptive, however, for the Convention on Territorial Asylum is in force for only eight signatories while, on the other hand, the Supplementary Convention on the Abolition of Slavery is in force for 89 states. It is interesting, in the present company, to note that the 1949 Prisoners of War Convention and the Convention for the Protection of Civilian Persons in Time of War have the largest number of ratifications of the 50, 134 each.<sup>18</sup>

Any attempt to analyze the significance of this body of international legislation on human rights would be a time-consuming and possibly futile exercise. Suffice it to observe that such instruments as the four Geneva Conventions constitute established inter-

national law. Others, as with the Universal Declaration itself, may have only a psychological impact on members of the international community, serving as programmatic statements or, at the most, as aspiration. On surveying this legislation, one is compelled to conclude that there is a plethora of it and that ratification, implementation, and enforcement of present legislation should preempt the attention of states and international organizations in the next few years rather than the drafting of new legislation in this particular area. As Professor Lasswell has so cogently observed with regard to human rights:

It is not enough to obtain widespread concurrence on overriding goals or on more particularized standards to be applied. Unless there are clear expectations about the identity of those who are authorized to decide, the modalities to be followed in the resolution of a controversy, and the sanctions appropriate to the impermissible deviator from the prescribed norms, the legal situation remains incomplete.<sup>19</sup>

The continuing problem of dealing with *apartheid* in both South Africa and Southern Rhodesia, a policy described by the Secretary General as the "most conspicuous mass violation of human rights and fundamental freedoms,"<sup>20</sup> demonstrates Professor Lasswell's point. Taking Rhodesia as a case history of current interest, and given his criteria, there has been relatively little doubt that the United Nations was the agency authorized to deal with Southern Rhodesia's commitment to a policy which in terms of the charter constituted a threat to peace. As for the "modalities," there were relevant human rights conventions to serve as standards, if not as rules of law, as well as the processes available to the United Nations under the charter. The dilemma, however, has lain in the determination of appropriate sanctions and measures for their enforcement.

Here Professor Lasswell might have added that the legal situation has to be balanced against the political situation; that is, balanced with respect to relations among the agents of enforcement acting as members of the United Nations and in terms of their assessment of their own national interests *vis á vis* the United Nations broader objectives.

Zimbabwe, as it is known to the Africans, is rich in minerals, agrarian products, and cheap labor. As the area has moved from "self-governing colony" to self-declared independent republic, the orientation of the dominant political element has been a commitment to unremitting *apartheid*. During the first 4 years of negotiations between the United Kingdom and Southern Rhodesia as to the terms of independence, the United Nations had a "watching brief," so to speak, on behalf of the aggrieved majority as well as its own members. In June 1962 the General Assembly found that the Rhodesian situation was properly within the jurisdiction of the United Nations because the area qualified as a non-self-governing territory.<sup>21</sup> Since then, the General Assembly, the Security Council, the Fourth Committee, and the General Assembly's Committee on Decolonization have engaged in exhortation and condemnation of the Rhodesian authorities as well as expostulation to the United Kingdom.

When independence was unilaterally declared by Rhodesia in November 1965, however, the Security Council faced the question of action. Many members demanded military measures either by the United Kingdom or by the Security Council acting under article 42 of the charter. Others urged the use of diplomatic and economic controls under article 41. The latter view prevailed, and for the first time the United Nations resorted to economic sanctions. The Security Council called upon members to terminate economic relations with Rhodesia, to refrain from selling arms

and other military materiel to them, to cease supplying them with oil and petroleum products, and to refrain from establishing diplomatic relations with the "illegal authority" in Rhodesia.<sup>22</sup> While primary reliance was placed on economic sanctions, force was not wholly disregarded. In 1966 the Security Council authorized the United Kingdom "to prevent by the use of force if necessary, the arrival at Beira [Mozambique] of vessels reasonably believed to be carrying oil destined for Southern Rhodesia" and to "arrest and detain the tanker known as *Joanna V* upon her departure from Beira in the event her oil cargo is discharged there."<sup>23</sup> Under this authorization, one tanker of unstated lineage was reported to have been stopped without incident.<sup>24</sup>

In a resolution of 6 December 1966, the Security Council spelled out the scope of the economic sanctions, which included agricultural and mineral products, military equipment of all kinds, aircraft, motor vehicles and parts, as well as oil and petroleum products.<sup>25</sup> On 29 May 1968 the Security Council unanimously adopted a resolution imposing a general embargo on trade with Southern Rhodesia<sup>26</sup> and reminded members of their duty under article 25 of the charter to observe this embargo. In 1970 the Security Council reaffirmed the United Nations commitment to the embargo.<sup>27</sup>

During the 3 years of the general embargo, the Rhodesian situation has not markedly changed with respect to either the status of the African population or to the independence issue. The primary reason is the refusal of South Africa and Portugal to observe the embargo; and there are other states which, although overtly committed to sanctions, engage in covert trade with Rhodesia. Consequently, the Security Council's Sanctions Committee report of last year foresaw the declining impact of the embargo as a measure of per-

suasion short of force.<sup>28</sup> On the other hand, there is some reason to think that the sanctions constitute a continuous pressure which is beginning to wear thin the Rhodesian intransigence.<sup>29</sup> For one thing, no state has recognized the regime, although South Africa and Portugal maintain consular relations with it.<sup>30</sup> It follows, then, that recent congressional approval of the Senate's amendment to the Military Procurement Authorizations Bill, Fiscal 1972—removing chrome ore from the list of embargoed products, as proclaimed by the President pursuant to the United Nations Participation Act<sup>31</sup>—will serve to strengthen that intransigence.<sup>32</sup> Moreover, such congressional action would put the United States in the class of admitted violators of article 25 of the charter.

The Rhodesian situation can be assessed in various ways. To date, response to it probably demonstrates the by no means original conclusion that economic sanctions may not be an effective long-term technique of control because evaders will always emerge. Evasion becomes the more attractive alternative to compliance as time passes, especially where an embargo can be almost as disadvantageous to the embargoing state as to the embargoed state. However, response to the Rhodesian situation also demonstrates substantial recognition by members of the United Nations of their common interest in and responsibility for protection of human rights of masses of people, particularly in a colonial area, and their willingness to resort to sanctions for this objective.

The Individual as the Concern of a Regional Organization. The Southern Rhodesian case illustrates the United Nations attempt to deal with individual rights. We shall now consider the relationship of the individual to international law at a regional level. The European Convention on Human Rights

of 1950 binds 15 members of the Council of Europe.<sup>33</sup> The Convention, which takes the Universal Declaration as its point of departure, is addressed to the protection of substantive and procedural personal rights. As we have already observed, conventions on human rights are not unusual. The significance of the European Convention, however, lies in its provision of machinery for handling complaints of alleged violations of its terms. *Grandrath v. Federal Republic of Germany*<sup>34</sup> illustrates this protective process.

Grandrath, a painter's assistant by trade and a Jehovah's Witness by religious affiliation, refused to perform his military service or substituted civilian service on the ground that as a minister of a religious sect he was exempted from any such commitment. After he pressed this defense unsuccessfully in the administrative courts and continued to refuse to perform substituted civilian service, criminal proceedings were commenced against him on the charge of desertion. He was convicted and sentenced to 8 months; on appeal, the sentence was reduced to 6 months. Grandrath then sought relief in the Federal Constitutional Court which dismissed his complaint as "manifestly ill-founded."<sup>35</sup> While serving his sentence, he turned to another avenue of redress. West Germany is one of 11 parties to the Convention which recognize the competence of the European Commission on Human Rights to receive petitions from individuals, groups of individuals, and nongovernmental organizations.<sup>36</sup>

Grandrath petitioned the Commission, complaining that his rights as guaranteed under articles 4, 9, and 14 of the Convention had been violated by West Germany. In particular, he argued that he had been compelled to do forced labor from which, as a minister, he should be exempted (art. 4), that his freedoms of conscience and of religion had been violated (art. 9), and that he

had been subjected to discrimination on religious grounds (art. 14) in that Roman Catholic and Protestant clergy enjoyed the exemptions from which he had been barred by reason of his belonging to a sect which could not afford a full-time clergy.

The Commission held that this application was admissible, that is, that his contentions under the Convention warranted examination on their merits (art. 27(2)). The Commission then proceeded to try to effect a friendly settlement of the dispute (art. 28). When this move proved unsuccessful, the Commission reported the case to the Committee of Ministers of the Council of Europe and to West Germany together with its conclusion that there had been no violation of the Convention (art. 31). During the 3 months following this report, no effort was made by the parties to bring the case to the European Court of Human Rights (art. 48). It should be observed that although the individual does not have standing to institute proceedings in the Court, the Commission or a member state, including the respondent,<sup>37</sup> can do so on his behalf. After examining Grandrath's situation, the Committee of Ministers concluded that there had been no violation of the Convention (art. 32). Adopting the Commission's report, they found that under German law, the applicant could have been assigned to civilian service in his hometown and would, thereby, have been able to pursue his religious duties on the same part-time basis as he had done prior to his call to military service.

In the 14 years from 1955 through 1968, the Commission received 3,895 applications from individuals directed against states and seven interstate applications. Of this number, 52 (49 individual and three interstate) applications were declared admissible.<sup>38</sup> Most of the complaints have been directed against Austria, Belgium, and West Germany. Eight cases were referred by the Commission to the European Court of

Human Rights.<sup>39</sup> These concerned preventive detention (*Lawless*), forfeiture of political rights and limitation of professional opportunity (*De Becker*), educational discrimination against a linguistic minority (*Belgian Linguistics Case*), unreasonable prolongation of detention pending trial or delay in trial process (*Neumeister, Stögmüller, Matznetter, Wemhoff*), arbitrary and discriminatory arrest and trial procedure (*Delcourt*).

How effective is this institutional structure in protecting the individual? The Commission accepted only 52 applications out of 3,452 applications on which decisions were reached between 1955 and 1968 and arrived at only three "friendly settlements" during this period. For its part, the Court heard only eight cases in a decade, and one was dismissed as moot before decision. Of the remaining cases, the complainants won three and lost four. For the individual the process is time-consuming not only because all local remedies must be exhausted before the complainant approaches the Commission, but also because proceedings at these high levels move with all deliberate speed. Grandrath had been out of jail for 26 months before the Committee of Ministers closed his case. It must be observed, however, that this process discourages frivolous applications and encourages dedication and tenacity, among other virtues.

A political factor has been written into the Convention which could militate against successful prosecution of some cases. Article 15 authorizes parties to take "measures derogating from [their] obligations under this Convention" under emergency conditions provided that the Council of Europe has been previously notified of the existence of the relevant legislation. As of 1968, 16 of the 18 members had done so.<sup>40</sup> The first case decided by the Court involved a complaint against Ireland for preventive detention to which

Ireland took exception on the ground of article 15. The Court held for Ireland because the state had complied with the terms of the article (*Lawless*).

It is easy to overestimate or, on the other hand, to deprecate experience under the European Convention on Human Rights. The statistics are not necessarily the determinant here. For example, there is the phenomenon of "anticipatory action." In several instances a respondent state has acted to change arbitrary judicial processes or offensive legislation in anticipation of an adverse decision by the Commission or by the Court.<sup>41</sup> A drastic version of "anticipatory action" was resorted to by Greece in December 1969 when this state withdrew from the Council of Europe in anticipation of being ousted following an unfavorable report by the Commission on charges brought by Denmark, Norway, Sweden, and the Netherlands to the effect that Greece was mistreating political prisoners and otherwise violating human rights guaranteed under the Convention. The promotion and protection of human rights are major commitments of parties to the Statute of the Council of Europe which provides in article 3 that each state "must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms. . . ."<sup>42</sup> The violator of this article faces suspension from the Council, a request for voluntary withdrawal, or ouster by the Council.<sup>43</sup> Parties to the European Convention on Human Rights are bound to observe the decisions of the Committee of Ministers (art. 32(4)) and of the Court (art. 53). Nonobservance carries the same penalties as are provided under the statute.

Another phenomenon has been the pervasive influence of the European Convention. It was invoked in some 322 judicial proceedings before national courts of members from 1955 through 1968.<sup>44</sup> If one bears in mind that in the

international legal system, national judicial processes supplement international judicial processes, or supply lacunae therein, then the record of the European system for protection of human rights becomes significant.

The European system has a lot going for it: the common cultural heritage of members; the common legal heritage, despite the differences, often more apparent than real, between the civil law and the common law systems; and the common commitment to mutual cooperation in what is essentially a European Commonwealth of Nations. Whether this kind of system for the protection of individual rights can be constructed in other regions is a challenging proposition.

**The Individual as a Concern of the International Community.** The third aspect of the relation of the individual to international law, to be considered here, concerns the individual as a subject of international criminal law. We mentioned earlier that despite the theory that the individual is an object of international law, there have been exceptions for persons accused of such offenses as piracy or violations of the laws of war. The offense of aircraft hijacking was added to this list on 14 October 1971, when the Convention for the Suppression of Unlawful Seizure of Aircraft (Hijacking Convention) went into force.<sup>45</sup> Under customary international law, states have universal jurisdiction over piracy committed on the high seas or "in a place outside the jurisdiction of any state."<sup>46</sup> The four Geneva Conventions appear to extend this jurisdiction by providing: "Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches [of the Convention], and shall bring such persons, regardless of their nationality, before its own courts."<sup>47</sup> But it has remained for the Hijacking Convention

to define universal jurisdiction in unequivocal terms, obliging a party to submit an offender to prosecution or to extradite him regardless of the place in which the offense might have been committed. This means, for example, that an alleged hijacker of an aircraft from Mali to Gabon could be prosecuted in the United States if he were found here.<sup>48</sup>

The emergence of the international offense of aircraft hijacking is a phenomenon of contemporary times, and it is an interesting example of what can be done about a bad situation when the international community is thoroughly aroused. The Convention on Offenses and Certain Other Acts Committed on Board Aircraft (Tokyo Convention) was the first to identify the offense.<sup>49</sup> It took 6 years to get the 12 ratifications necessary to bring the Tokyo Convention into force; it took 9 months to get the 10 ratifications necessary to bring the Hijacking Convention into force. As of 18 October 1971, 15 states are bound by it, and that is a better record than some human rights conventions have. Although acts of unlawful diversion of an aircraft from its scheduled destination to a destination in a different country occurred sporadically between 1947 and 1967, the upsurge of incidents in the United States and other countries in the period from January 1968 through December 1970 (a total of 157) goaded states, the United Nations, the International Civil Aviation Organization, and aviation professionals, such as the International Air Transport Association and the International Federation of Airlines Pilots Associations, into action. Indeed, if one can ascribe anything positive to the Palestine Liberation Front, one can credit them with supplying the final impetus to the conclusion of the Hijacking Convention, when they seized five aircraft in the late summer of 1970, acts which jeopardized the lives of some 600 passengers and crew and which ended with the destruc-

tion of four of the aircraft.

Apart from the impact of hijacking, there has also been a growing incidence of other acts directed against aircraft, passengers and crew, and ground facilities. For example, in July a BOAC plane bound for Khartoum was forcibly diverted to Benghazi and two passengers were removed. The two, who were apparently associated with an abortive military coup in the Sudan, were then sent by Libya to the Sudan where they were executed.<sup>50</sup> A variation on this theme was provided by the detention of a hijacked plane and the holding of 12 passengers and the crew as hostages by the state of first landing for 90 days for the purpose of political retaliation against the state of the plane's registration.<sup>51</sup> EI Al aircraft were attacked in the Athens and Zurich airports in 1968 and 1969, and the EI Al passenger terminal in Athens was bombed in the latter year. A Swissair aircraft was destroyed in midair in 1970, presumably through terrorist action. Within the past year, extortion has become popular, whether for cash or in order to secure the release of terrorists from prison, which was one motive for the Palestine Liberation Front's massive caper last year.

Whatever personal considerations may motivate hijackers, ranging from husbands escaping from their wives to mental derangement, it is the hijacking motivated by international political considerations which is particularly alarming. Interference with international civil aviation for the sake of opportunistic furtherance of foreign policy objectives, for retaliation,<sup>52</sup> for dramatization by subversive political movements, or for blackmail is a dangerous game. A current example is the exacerbation of strained relations between India and Pakistan following the hijacking of an Indian Air Lines plane from Srinagar to Lahore, its subsequent destruction on the ground, and the grant of political asylum to the perpetrators. The Indian

response was a ban on all flights by Pakistani civil and military aircraft across India.<sup>53</sup>

Where does the individual fit into this picture? There are two factors to be considered—one is that states' or the international community's concern with deterrence through prosecution of hijackers; the other is protection of the offender by assuring him of just legal proceedings, a factor which is particularly significant when political motivation is at issue. Prosecution is the focal point of the Hijacking Convention—submission of the accused to prosecution "without exception whatsoever" in the state of first landing, in a state to which he has been extradited, or in any member state in which he may be found (art.7). *Submission* to prosecution is not the same as prosecution, so a case might not come to trial, for example, if the accused were found not to be competent to stand trial or where political intent was shown to be the prime reason for a hijacking.<sup>54</sup> It should be observed, however, with regard to the defense of the political offense, that there appears to be a trend toward curtailing the admission of this plea as a bar to prosecution for hijacking. Hijackers who apparently acted for political reasons have been convicted in Austria, Denmark, France, West Berlin, and West Germany; and a case is pending in Argentina. It may be added that there is nothing in the Convention to prevent a state's granting political asylum to a hijacker after completion of his sentence.

The Hijacking Convention calls for prosecution of the offender at the state level. There can be no doubt, however, that where national or international political feeling is running high, a hijacker would receive short shrift under the judicial processes of many states. Taking cognizance of this fact in the context of the Palestine Liberation Front's activities in September 1970, the Secretary General urged that an

international court be established with jurisdiction over such offenders as hijackers and kidnapers of foreign diplomats.<sup>55</sup> The idea is not a new one. The League of Nations proposed such a court in 1937,<sup>56</sup> but nothing came of it because of the Second World War; in any case, the proposal was too far in the vanguard of reality. In 1951 the United Nations Committee on International Criminal Jurisdiction prepared a draft statute on an international criminal court.<sup>57</sup> No action has been taken on it, however, probably because its prospective focus seemed to be upon the prosecution of perpetrators of war crimes and genocide.<sup>58</sup> Moreover, for a country as dedicated to the jury in criminal proceedings as the United States is, there was something decidedly offensive about the draft's unequivocal provision that "[t]rials shall be without a jury" (art. 37). Compared with the structure under the European Convention of Human Rights, the draft seemed ponderous. For example, the screening process supplied by the European Commission would be provided, under the draft, by the General Assembly or an organization of states so authorized by the General Assembly or by a state which had granted jurisdiction to the

court with the approval of the General Assembly.

The idea of an international criminal court is not a chimera but rather a logical development within an effective system of international criminal law. Given the experience under the European Convention, however, it would seem more feasible to develop such a court at the regional level than to attempt to establish one for the international community. For the time being, we must be content with prosecution of the international criminal at the state level and with the assumption that fair procedures will be followed by civilized states.

In international law, as in much else of human experience, we coexist in time, to paraphrase Rabindranath Tagore. That is, we live in the late 20th century for some things, in the 19th century for others, and in the Middle Ages—or even prehistory—for yet others. One would be less than candid not to admit that the individual's relationship to international law, while changing, has not changed to such an extent that he can be wholly classified as a subject of international law. In the broad perspective of time, however, the development is clear, and the momentum for change is established.

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#### FOOTNOTES

1. Charles de Visser, *Theory and Reality in Public International Law*, P.E. Corbett, transl. (Princeton: Princeton University Press, 1957), p. 172.

2. The Hague, International Court of Justice, *Reparations for Injuries Suffered in the Service of the United Nations* (Hague: 1949), p. 174.

3. Hersch Lauterpacht, *International Law, Being the Collected Papers of Hersch Lauterpacht*, E. Lauterpacht, ed. (Cambridge: University Press, 1970), p. 284.

4. William W. Bishop, *International Law. Cases and Materials*, 3d ed. (Boston: Little, Brown, 1971), p. 463.

5. Frank E. Krenz, "The Refugee as a Subject of International Law," *The International and Comparative Law Quarterly*, (London: British Institute of International and Comparative Law, 1966), v. XV, p. 90.

6. The Hague, International Court of Justice, *Advisory Opinion on Reservations to the Convention on the Prevention and Punishment of Genocide* (Hague: 1951), p. 15 at 23.

7. Permanent Court of International Justice, ser. B, no. 15, 1928.

8. James B. Scott, ed., *Reports to the Hague Conferences of 1899 and 1907* (Oxford: Clarendon Press, 1917), arts. 3-6, p. 765-770.

9. Manley O. Hudson, *International Tribunals, Past and Future* (Washington: Brookings Institution and Carnegie Endowment for International Peace, 1944), p. 68.

10. Foreign Office, *British and Foreign State Papers* (London: H.M. Stationery Office, 1926), v. CXVIII, p. 365; See, Arnold D. McNair and H. Lauterpacht, eds., "Steiner and Gross v. Polish State," Case No. 188, *Annual Digest of Public International Law Cases, Years 1927-28* (London: Longmans, Green, 1931), p. 291, cited by Lauterpacht, p. 289.

11. "General Assembly Adopts Déclaration of Human Rights," *The Department of State Bulletin*, 19 December 1948, p. 751.

12. E.g., Constitutions of 18 African States. See, United Nations, Office of Public Information, *The United Nations and Human Rights* (New York: 1968), p. 14-15. In 1959 the Inter-American Commission on Human Rights was established. Its activities are examined in Anna P. Schreiber, *The Inter-American Commission on Human Rights* (Leiden: Sijthoff, 1970). See, generally, Vernon Van Dyke, *Human Rights, the United States, and World Community* (New York: Oxford University Press, 1970).

13. United Nations Charter, arts. 1(3), 13(1)(b), 55(c), 56, 76.

14. United Nations, Commission on Human Rights, *Racial Discrimination*, E/CN.4/Sub.2/307/Rev.1 (1971).

15. *United Nations*, General Assembly, Report, G.A. A/8089 (XXV).

16. United Nations, Commission on Human Rights, *Report on the Twenty-Seventh Session*, Supp. no. 4 at 82, E/CN.4/1068.

17. *Revue des Droits de l'Homme*, v. III, 1970, p. 357 ff. See J. Rolz-Bennett, *Human Rights, 1945-1970* (New York: United Nations, Office of Public Information, 1970), OPI/407.

18. U.S. Dept. of State, *Treaties in Force; a List of Treaties and Other International Agreements of the United States* (Washington: U.S. Govt. Print. Off., 1971), p. 343, 355.

19. Harold D. Lasswell, "The Bond Between Prescriptive Content and Procedure," Luis Kutner, ed., *The Human Right to Individual Freedom* (Coral Gables, Fla.: University of Miami Press, 1971), p. 94.

20. United Nations, Office of Public Information, *A Principle in Torment. I—The United Nations and Southern Rhodesia* (New York: 1969), p. 2.

21. United Nations, General Assembly, Resolution 1747 (XVI), 28 June 1962, quoted in Marjorie M. Whiteman, *Digest of International Law* (Washington: U.S. Dept. of State, 1968), v. XIII, p. 705-706.

22. United Nations, Security Council, Resolution 217, 20 November 1965, quoted in Whiteman, v. XIII, p. 740-741. The measures of redress against Southern Rhodesia are also examined in Whiteman, v. XII, p. 361 ff.

23. United Nations, Security Council, Resolution 221, 9 April 1966, quoted in Whiteman, v. XIII, p. 741.

24. *Ibid.*

25. United Nations, Security Council, Resolution 232, 16 December 1966, quoted in Whiteman, v. XIII, p. 432-434.

26. United Nations, Security Council, Resolution 253, 29 May 1968, quoted in Whiteman, v. XIII, p. 746-748.

27. United Nations, Security Council, Resolution 277, 18 March 1970.

28. U.N. Doc. S/9844, 31 July 1970.

29. Sec., "Department Reviews U.S. Position on Southern Rhodesia," *The Department of State Bulletin*, 26 July 1971, p. 111 at 113.

30. *International Conciliation*, no. 284, 1971, p. 178, n. 3.

31. U.S. Laws, Statutes, etc., *United States Statutes at Large*, Public Law 264, 79th Congress (Washington: U.S. Govt. Print. Off., 1946), v. LIX, p. 619, as amended by Public Law 341, 81st Congress (Washington: U.S. Govt. Print. Off., 1950), v. LXIII, p. 734, and Public Law 86-707, 86th Congress (Washington: U.S. Govt. Print. Off., 1961), v. LXXIV, p. 797; U.S. Code, Title 22, sec. 287c(a)(b); "Relating to Trade and Other Transactions Involving Southern Rhodesia," Executive Order 11322, 5 January 1967, *Federal Register*, v. XXXII, p. 119; "Relating to Trade and Other Transactions Involving Southern Rhodesia," Executive Order 11419, 29 July 1968, *Federal Register*, v. XXXIII, p. 10837.

32. Sec. 503, H.R. 8687, 92d Cong., 1st Sess. 1971; see "Military Procurement Authorization 1972," *Congressional Record*, 23 September 1971, p. S14933-S14947. The Senate insisted on this amendment, *ibid.*, p. S16156, 8 October 1971. For the record, it may be added that the amended bill was approved by both houses, *ibid.*, p. S18298, 11 November 1971. It was signed by the President on 17 November, Terence Smith, "Nixon Will Defer Action on Chrome," *The New York Times*, 18 November 1971, p. 13:1. In a resolution adopted on 16 November, the General Assembly warned that chrome ore imports in pursuance of this legislation would

constitute a violation of article 25 of the Charter, *The New York Times*, 17 November 1971, p. 1:7 (city ed.).

33. Austria, Belgium, Cyprus, Denmark, Federal Republic of Germany, Iceland, Ireland, Italy, Luxembourg, Malta, Netherlands, Norway, Sweden, Turkey, United Kingdom. France and Switzerland are not parties to the Convention. Greece ceased to be a party as of 1 January 1971.

34. "Grandrath v. Federal Republic of Germany," *Year Book of the European Convention on Human Rights 1965* (Hague: Nijhoff, 1967), v. VIII, p. 324 ff; *Year Book of the European Convention on Human Rights 1967* (Hague: Nijhoff, 1969), v. X, p. 627 ff.

35. *Year Book of the European Convention on Human Rights 1967*, p. 628.

36. Article 25. The states are Austria, Belgium, Denmark, Federal Republic of Germany, Iceland, Ireland, Luxembourg, Netherlands, Norway, Sweden, United Kingdom. Declarations are usually made for periods of 2, 3, or 5 years.

37. "Neumeister v. Republic of Austria" was the first case submitted by a respondent on behalf of the complainant. *Year Book of the European Convention on Human Rights 1966* (Hague: Nijhoff, 1968), v. IX, p. xviii.

38. *Year Book of the European Convention on Human Rights 1968* (Hague: Nijhoff, 1970), v. XI, p. 12, 160-166.

39. "Lawless" Case (Merits), Judgment of 1 July 1961; "de Becker" Case, Judgment of 27 March 1962; Case "Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium" (Merits), Judgment of 23 July 1968; "Neumeister" Case (Merits), Judgment of 27 June 1968; "Wemhoff" Case, Judgment of 27 June 1968; "Stögmüller" Case, Judgment of 10 November 1969; "Matznetter" Case, Judgment of 10 November 1969; "Delcourt" Case, Judgment of 17 January 1970. Four cases were before the Court in 1970. Forward in Europe, Legal Supplement no. 2/1971, 35.

40. Austria, Belgium, Cyprus, Denmark, Federal Republic of West Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Malta, Netherlands, Norway, Sweden, Turkey, United Kingdom. Greece withdrew from the Council on 12 December 1969, effective 31 December 1970.

41. See, "Ofner v. Austria," *Year Book of the European Convention on Human Rights 1960* (Hague: Nijhoff, 1962), v. III, p. 322 (changed rules of procedure of Supreme Court); "De Becker v. Belgium" (legislation attainting wartime collaborators substantially modified before Court's decision).

42. Foreign Office, *British and Foreign State Papers* (London: H.M. Stationery Office, 1957), v. CLIV, p. 509 at 510.

43. *Ibid.*, art. 8, p. 511.

44. *Year Book of the European Convention on Human Rights 1968*, p. 1081, n. 1.

45. As of 18 October 1971, the following states were bound by this convention: Bulgaria, Costa Rica, Ecuador, Gabon, German Democratic Republic, Hungary, Israel, Japan, Mali, Niger, Norway, Sweden, Switzerland, U.S.S.R., United States. The convention became effective 30 days after the deposit of the 10th ratification which was that of the United States.

46. United Nations, "Convention on the High Seas. Done at Geneva on 29 April 1958," *Treaty Series* (New York: 1964), v. CDL, arts. 15(1), 19, p. 82. According to the Preamble, this convention is "generally declaratory of established principles of international law."

47. United Nations, "Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949," *Treaty Series* (New York: 1950), v. LXXV, art. 129, p. 135 at 236. The other three have an identical article.

48. Art. 7, "International Conference on Air Law Approves Convention on Aircraft Hijacking," *The Department of State Bulletin*, 11 January 1971, p. 53. See also, "Department Urges Senate Advise and Consent to Ratification of Hijacking Convention," *The Department of State Bulletin*, 19 July 1971, p. 84, for analysis of convention. This type of jurisdiction is recognized, e.g., in Swedish law which authorizes the state to take jurisdiction over a criminal act which is an offense in the place of commission and in Sweden. (*Code of Criminal Procedure*, ch. 19, sec. 2.) Pursuant to this provision, Sweden began a preliminary investigation of Tsironis' hijacking of an Olympic Airways aircraft from Greece to Albania. He had been granted asylum in Sweden. J. Sundberg, "La Piraterie Aérienne," *Revue Internationale de Droit Penal*, v. XLI, 1970, p. 165, 172-175.

49. As of 18 October 1971, there were 32 ratifications and 13 accessions.

50. See, *inter alia*, *Daily* (London) *Telegraph*, 31 July 1971, p. 4:3.

51. Algerian detention of EI AL aircraft, crew, and passengers. "Algerians Detain 21 Israelis on Jet," *The New York Times*, 24 July 1968, p. 1:7; *The New York Times*, 2 September 1968, p. 14:6 (city ed.). Israel returned the compliment by removing two Algerian officials from a BOAC

plane and detaining them. "Detention of Two Algerian Officials Is Formally Ordered by Israel," *The New York Times*, 27 August 1970, p. 2:4.

52. See *Whiteman, v. XIII*, p. 129-131, for Ivory Coast diversion of Guinean aircraft in 1967.

53. "Skyjacking Wrenches India-Pakistan Ties," *Christian Science Monitor*, 17 February 1971, p. 3:2; *Pakistan News Digest*, 5 March 1971, p. 6:3; 11:1; *Pakistan Affairs*, 22 April 1971 (special issue).

54. Cf. *Re Kavic*, Hersch Lauterpacht, ed., *International Law Reports* (London: Butterworth, 1957), v. XIX, p. 371 (extradition of hijacker denied); *Re Abarca*, *International Law Reports*, v. XL, p. 208 (extradition granted of persons accused of attempting to destroy aircraft in midflight).

55. *Herald Traveler* (Boston), 15 September 1970, p. 7:3; Henry Tanner, "Hijacking Court Urged by Thant," *The New York Times*, 15 September 1970, p. 17:1.

56. League of Nations Doc. C.548.M.385.1937.V.

57. U.N. Doc. No. A/AC.48/4 (1951); "United Nations Committee on International Criminal Jurisdiction Draft Statute for an International Criminal Court," *Supplement to the American Journal of International Law* (Washington: American Society of International Law, 1952), v. XLVI, p. 1.

58. See, International Law Commission, "Draft Code of Offences Against the Peace and Security of Mankind," *Supplement to the American Journal of International Law* (Washington: American Society of International Law, 1951), v. XLV, p. 126.