THE POSITION OF THE INDIVIDUAL IN INTERNATIONAL LAW. By Carl Aage Norgaard. [Copenhagen: Munksgaard. 1962. 325 pp. N.kr. 39.50]

HUMAN RIGHTS IN EUROPE. By A. H. Robertson. [Manchester: Manchester University Press. 1963. ix + 280 pp. £1. 15s. 0d.]

The Position of the Individual in International Law is the text of Dr. Norgaard's thesis for the *juridiske doktorgrad* of Aarhus University. This explains why the authorities quoted by the author tend to be selected primarily from Danish sources. However, since the work is presented to the public as one in international law this narrowness might have been amended between thesis and printing as a book. An index might also have been added.

It is the author's opinion that "fundamental conditions for peace are respect for human life and dignity, reasonable economic conditions for everybody, respect of fundamental human rights, and a certain standard of education and culture" (p. 12). He therefore seeks to ascertain the extent to which international law confers personality upon the individual regarding these rights, and points out that rather than make a broad sweeping statement on the subject, it is more useful to examine how far subjectivity is enjoyed for specific purposes.

To a great extent the learned author bases his philosopy of law upon the teachings of Alf Ross, but his definition of 'right' is not identical. According to Dr. Norgaard "a right of a person A means that a legal rule is to his benefit — irrespective of whether A himself or only another person for instance his state can bring an action against the person who violates the rule in question. In other words, the term, right, regards only the substantive right in contradistinction to the procedural capacity" (p. 33). This special approach to the concept leads to an equally special definition of "duty" as "a legal rule [that] requests a certain conduct from [an individual] — irrespectively of whether he himself can be held responsible before a court if he violates the rule in question or only another person for instance his state can be held responsible for his act or omission. Again, the term, duty, regards only the substantive duty in contradistinction to the procedural problem of responsibility" (p. 32). This leads to a subdivision covering such matters as 'right and procedural capacity', 'duty and responsibility', 'subject of rights' — one for whose benefit a legal rule exists, regardless of whether he has any legal capacity in relation thereto, 'subject of petitions', 'subject of proceedings', 'subject of rights and proceedings', 'subject of duties' — one of whom certain conduct is required by law, regardless of whether he can be held responsible for its violation, 'subject of examinations', 'subject of responsibility', 'subject of duties and responsibility', and 'subject of law' — "a person who is subject of rights and proceedings and/or subject of duties and responsibility" (p. 33). The work is confined to examining "whether individuals can have rights and procedural capacity or duties and responsibility under international law" (p.33,n.11).

This classification of terms leads to some unusual interpretations. Thus, the learned author states that the immunity of a diplomat from taxation makes him a subject of rights under international law (p.96); while he considers that if the Nuremberg Tribunal was an international tribunal, then the accused were subjects of international law (pp.175-6: 197,215). On the other hand, he asserts that the Tokyo Tribunal was not international, since it was established by a Proclamation of the Commander-in-Chief and was only an "inter-allied occupation tribunal" (p.216). It is submitted that this disregards the fact that MacArthur was given this power by international agreement, and, although Dr. Norgaard mentions it elsewhere, he overlooks here the significance of the view of the Nuremberg Tribunal that the four Powers in establishing the court only did what each of them could have done singly. It fact, he denies that each of them could "singly establish a tribunal endowed with the same jurisdiction" (p.193), but does not explain why.

It is also a little difficult to agree, in view of the importance of consent and intention in international law, that if a created organ has all the characteristics of a tribunal, "it must be considered a tribunal even if the creators of the organ

originally had no intention of creating a tribunal" (p.178). He also believes that, even if the intention was to create a tribunal, if it lacks what he considers to be one of the essential features of a tribunal, then, despite the intention, no tribunal has been created. The essential characteristics he lists as the intention to establish a tribunal; its designation as court or tribunal (yet, at p.246 he states that the Arbitral Commission on Property, Rights and Interests in Germany is, despite its name, a tribunal: "From the rules of the Charter of the Commission it follows that the parties have intended to establish a tribunal") ; creation by or by virtue of a treaty; it shall not be part of the judiciary of a single state; it shall consist of independent judges of different nationality; the parties shall have the right to have judges of their own nationality on the bench (this raises questions as to the character as a tribunal of those international judicial bodies specially established which have no national judge, or of the World Court when it decides that no such judge need be appointed); it shall apply international law; its jurisdiction must be international and wider than that which any single state can confer upon its own tribunals; and it shall have jurisdiction only where the parties have accepted it by general or special agreement (p.179). This latter requirement would mean that if the United Nations, acting in accordance with Article 2 (6) of the Charter set up a tribunal with jurisdiction even over non-members without their consent, and possessing power to call upon the United Nations for enforcement, then, according to the learned author, this would not be a tribunal.

The effect of the specialised character of the author's definitions is made clear in his approach to the position of international civil servants. He says that the administrative law of the organisations regarding their civil servants is international, and the tribunals established in relation thereto are likewise international tribunals, so that the officials, "having access to one of the five Courts or Tribunals" are 'subjects of law' in the sense mentioned above (p.299). On the other hand, officials who do not have access to such tribunals are not subjects of international law, regardless of whether they have rights and duties under international law (p.300).

A more traditional approach to the position of the individual in international law is adopted by Dr. Robertson in his account of *Human Rights in Europe.* Like Dr. Norgaard, he also has an idealistic view of human rights: "Respect for human rights is the guarantee of democracy.... An international order which can effectively secure human rights is thereby taking the biggest single step towards the prevention of war" (pp.1,2). Perhaps this is why the Convention extends its protection to all, regardless of nationality, who are in the territory of a party to the Convention (p.15). Hitler formerly used the ill-treatment of, or discrimination against, aliens (provided they were Germans) as justification for take-over bids.

Commentators and critics on the international scene nowadays frequently refer to the right to vote as an indication of democracy and the introduction of discrimination among inhabitants as a denial of this. It is useful, therefore, to be reminded that while the Protocol to the European Convention on Human Rights provides that "the High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot", the European Commission has pointed out, in connection with a claim put forward by an applicant who was in prison at the time of the Saar Plebiscite, "it does not follow that they recognise the right to every individual to take part therein" (p.37). Again, "not all differentiation is discrimination", and the Commission has held that punishment of male but not female homosexuals is not discrimination and therefore not contrary to the Convention (p.39).

Perhaps the most interesting part of Dr. Robertson's book is the description of some of the applications which have come before the Commission, and particularly of the *Lawless* case, relating to the detention without trial of a member of the Irish Republican Army by the Irish Government. This was the first case to go right through the requisite processes until it reached the Court. The latter agreed with the Commission that, even accepting the Government's good faith, it still had the right to examine whether an emergency existed (p.135).

The real significance of the Commission and the Court seems to lie in the power of criticism and publicity. Of the seven cases discussed by Dr. Robertson, only one partially succeeded, but in five of the others the municipal law was amended.

One of the complaints that is frequently heard among international lawyers is that States and the United Nations do not make sufficient use of legal processes and bodies. Dr. Robertson points out that in so far as human rights in Europe are concerned States prefer the Commission and the Committee of Ministers to the Court. "Eleven Foreign Ministers, deciding perhaps on political grounds, will naturally be reluctant to take a decision unfavourable to one of their colleagues; whereas four judges (in a chamber of seven), deciding on legal grounds are unlikely to feel the same hesitation about rendering a judgment against a state to which they have obligations of judicial impartiality but not of political friendship" (p.99).

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