

HUMAN RIGHTS IN NATIONAL AND INTERNATIONAL LAW. Edited by A.H. Robertson. [Manchester: Manchester University Press; Dobbs Ferry, NY.: Oceana Publications. 1968. xvi + 396 pp. (including Index) 70s.].

This book presents the proceedings of the Second International Conference on the European Convention on Human Rights held in Vienna in October 1965 under the auspices of the Council of Europe. While the delay of three years in publication might be regretted this delay has not significantly diminished the relevance or value of the views expressed.

The main proceedings are reported under nine topic headings.\* For each topic, the principle paper is presented followed by the written comments, a summary of the oral discussion and with a concluding "summing up" by the principal speaker. There is also a chapter on "Conclusions and Future Prospects". Speeches made in the opening ceremony are also included.

The quality of the main papers as well as of the ensuing discussion is high but this only reflects the calibre of the participants who are experts either on the international protection of human rights generally or on the European system in particular.

Two points may be made at the outset: First, the reader should have a good knowledge of the working of the provisions of the Convention and of the implementation machinery in order to appreciate the proceedings. This is not a work suitable for one seeking only an introduction to the operation of the European human rights system. Secondly, while the focus is, indeed, on the European Convention the proceedings will certainly interest the general student of international law. For instance, Sorensen's "Obligations of a State Party to a Treaty as Regards its Municipal Law" is a very succinct account of the problems of treaty implementation within the municipal sphere and deserves to be read even by those not too interested in human rights or in the European system. Similarly, the papers by Fawcett, Jean-Flavien Lalive and Capotorti consider human rights in a broader perspective. This element therefore commends the book to a readership beyond the specialists of the European Convention.

The majority of the other Chapters are, of course, devoted almost entirely to a critical examination of the European system.

Verdross ("Status of the European Convention in the Hierarchy of the Rules of Law") is more concerned with municipal norms and does not adequately inquire whether general international law accords any status to human rights norms. Such discussion would have enabled him to lay down the foundations for his views.

\*The nine topics, with the names of the principal authors in parenthesis, are: 1. Obligations of a State Party to a Treaty as Regards its Municipal Law (*Max Sorensen*); 2. Status of the European Convention in the Hierarchy of Rules of Law (*Alfred Verdross*); 3. Possibilities of Conflict in National Legal System between the European Convention and other International Agreements (*Francesco Capotorti*); 4. Does the Convention have the Force of 'Ordre Public' in Municipal Law? (*W.J. Ganshof van der Meersch*); 5. Comparison of the Jurisprudence of National Courts with that of the Organs of the Convention as regards the Rights of the Individual in Court Proceedings (*Thomas Buergenthal*); 6. Comparison of the Jurisprudence of National Courts with that of the Organs of the Convention as regards Other Rights (*Ulrich Scheimer*); 7. Consequences of the Application of the Convention in Municipal and International Law (*Roger Pinto*); 8. The Protection of Human Rights on a Universal Basis: Recent Experience and Proposals (*J.E.S. Fawcett*); 9. The Protection of Human Rights within the Framework of Existing Regional Organizations (*Jean-Flavien Lalive*).

When Sean McBride inquired (p. 66) "Has not the time arrived . . . . to treat parts, at least of the Universal Declaration as forming part of the law of nations and of customary international law," Verdross' reply is most unpersuasive because of the lack of any clarification in his main presentation: "The rights laid down in the Universal Declaration have not yet become international customary law because the Declaration constitutes an instance of limited international agreement and the rules embodied in it have thus not yet been received in all civilized countries" (p. 70). Incidentally, his view stands in sharp contrast to others expressed elsewhere in the work: Schwelb (p. 147), [the Declaration] "has contributed to the blurring of the traditional distinction between 'binding' and 'non-binding' pronouncements. All this may necessitate a revision of the traditional sources of international law," and Sohn (p. 287), [the Universal Declaration] "is assuming more and more the character of a rule of law."

In Chapters 5 and 6, Buergenthal and Scheuner undertake a comparative study of the jurisprudence of municipal courts with that of the organs of the Convention in respect of the rights under the Convention. Buergenthal confines his study to rights of the individual in court proceedings (Articles 5, 6 and 13) and Scheuner deals with other rights. Although they made separate studies it is interesting to see that their conclusions are similar: Buergenthal (p. 198), "these national and international tribunals do not for the most part reach divergent theoretical conclusions" and, Scheuner (p. 264), "on the whole, the construction placed on the provisions of the Convention by international and national authorities agree." (Incidentally, footnote 2 on p. 221 which attributes the authorship of *The Changing Structure of International Law* to Schwarzenberger instead of Friedmann is an error the avoidance of which, this reviewer is sure, would have been equally appreciated by both the distinguished writers).

Chapter 8, "The Protection of Human Rights on a Universal Basis" (Fawcett) and Chapter 9, "The Protection of Human Rights within the Framework of Existing Regional Organizations (Jean-Flavien Lalive) are particularly interesting for their discussion of more general problems of international protection of human rights. Fawcett's main paper is not very comprehensive but valuable supplementation is provided by Janos Toth and Schwelb. When the Conference was held in 1965 the U.N. had not yet finally adopted the International Covenants on Human Rights and so discussion in these chapters are on the draft Covenants. There is much enthusiastic debate on the proposal for a U.N. High Commissioner for Human Rights—a topic still relevant today for the United Nations General Assembly has yet to come to a decision on it.

Jean-Flavien Lalive's main paper is a comprehensive survey of efforts at regional protection of human rights in Europe, the Americas, Africa, Asia, among the Arab States and in the British Commonwealth. Schwelb, well known for his preference for centralised-universal protection of human rights expresses dismay (p. 355) at the "alarming attempts at the fragmentation of the international action to promote human rights, an artificial creation of parochialism under the pseudonym of regionalism." One wonders whether Schwelb is perhaps being too cynical of regional efforts. If the European system has been shown to work, might not similar systems work elsewhere? Could not regional systems complement, rather than jeopardise, United Nations efforts?

To sum up, this book, although mainly concerned with the European Convention, has much in it that will interest those concerned with human rights generally or with the relationship between international law and municipal law. For Asian scholars, lawyers and politicians who wish to seriously consider all the ramifications of proposals to have an Asian Convention on Human Rights (such as that mooted by the 1965 International Commission of Jurists Conference in Bangkok) this book should be required reading.