

REVIEWS

INTERNATIONAL LAW AND HUMAN RIGHTS. By H. Lauterpacht. London: Stevens & Sons Limited, 1950. pp. 475, xvi. £2 10s.

ONE of the paramount problems of our time is how law, including international law, can be made best to serve the purpose of maintaining a free society. In this comprehensive and insightful study Professor Lauterpacht brings to finest conception and expression his many distinguished contributions to meeting this problem.¹ Within its much controverted domain,² his book is unique for its clarity in statement of goals, for the realism with which it describes trends in international doctrine and practice and in conditioning factors in international society, and for the specificity and cogency of its recommendations. The author's stated purpose is to study and appraise the human rights provisions of the United Nations Charter, and subsequent efforts to make these provisions effective, against "the wider background of the problem of the subjects of international law and of the interaction of the law of nations and the law of nature in relation to the enduring issue of human government—the securing of the natural and inalienable rights of man,"³ and he breaks his task into three parts: The Rights of Man and the Law of Nations, Human Rights under the Charter of the United Nations, and The International Bill of the Rights of Man (comprising the author's own detailed recommendations for content and implementation).

To establish that human rights are an appropriate concern of international law and organization, Professor Lauterpacht begins by surveying "The Subjects of the Law of Nations" and demonstrating that individual human beings have long been "subjects" of both rights and duties in international doctrine and practice.⁴ The shibboleth that only nation-states can be subjects of international law he disposes of by pointing to the today hardly controvertible position of public international bodies and to the growing participation of private international organizations in important power decisions. The role

1. Such contributions include AN INTERNATIONAL BILL OF THE RIGHTS OF MAN (1945); *The Subjects of the Law of Nations*, 64 L.Q. REV. 97, 438 (1948); *Human Rights in the International Law Association* in REPORT OF THE FORTY-SECOND CONFERENCE, PRAGUE, 1947, 13 (1948); and many related books and articles.

2. The controversy in this country is outlined in Report, Committee on United Nations, Section of International Law, A.B.A. (1950) 112. For discussion and bibliography see Chafee, *Federal and State Powers under the U. N. Covenant on Human Rights*, 1951 WISC. L. REV. 389; McDougal & Leighton, *The Rights of Man in the World Community: Constitutional Illusions Versus Rational Action*, 59 YALE L.J. 60 (1949).

3. P. vii.

4. It may be noted that the principal attack in this country upon the human rights program has been not so much upon "substantive provisions" as upon the "propriety of such a subject in the field of international relations." Report, *supra* note 2, at 116.

of the individual, as both beneficiary of doctrine and bearer of duties, is traced through the protection of aliens, agreements specifically conferring rights upon individuals, humanitarian intervention, crimes against humanity in the Nuremberg Charter, offences against the law of nations, treaties for the protection of minorities, the liabilities of individuals as organs of the state, and the doctrine of the incorporation of international law as the law of the land. Strongly insisting that the "fact that the beneficiary of rights is not authorized to take independent steps in his own name to enforce them does not signify that he is not a subject of the law or that the rights in question are vested exclusively in the agency which possesses the capacity to enforce them,"⁵ Professor Lauterpacht nevertheless reinforces his case by summarizing the historical instances in which individuals have been given direct access to international tribunals for the protection of their rights and he urges that Article 34 of the Statute of the International Court of Justice should be amended to give a measure of such access. The factors offered to account for the increasing concern of international law for the individual include "the acknowledgment of the worth of human personality as the ultimate unit of all law," "the realization of the dangers besetting international peace as the result of the denial of fundamental human rights," the need for the subjection of the individual directly to the rule of international law "in a period of history in which the destructive potentialities of science and the power of the machinery of the State threaten the very existence of civilized life," and recognition of the fact that the international interests and contacts across frontiers of individuals are no longer "rudimentary", as in the beginnings of traditional international law, but are rather such that "the interdependence of States which requires regulation is the interdependence of the individuals who compose them."⁶ From his survey Professor Lauterpacht, therefore, concludes not only that we may have to revise outmoded conceptions of the "subjects" of international law but even that we may have "to become more conscious . . . of the justification and the practical beneficence of proceeding on the basis of a conception of international law as being the law not of the society of States but of international society in all the diversity of its manifestations requiring and admitting of legal regulation by rules other than the municipal law of States."⁷

In his next section on "The Law of Nature and the Rights of Man" Professor Lauterpacht recounts a well-known history of the interrelations of natural law, the doctrine of natural rights, national constitutions, and international law and founds contemporary concern for human rights deep in antiquity and human nature. Though he stresses that "the international recognition and protection of the rights of man is, in strict juridical logic, independent of any doctrine of natural law and natural rights"⁸ and agrees

5. P. 27.

6. Pp. 62, 63.

7. P. 66.

8. P. 73.

that the law of nature, like any other form of justification, can be "an instrument of reaction" as well as "a lever of progress," he still insists that conceptions of natural law can serve as useful sources of inspiration and sanction for men of goodwill. The generalizations of "that law of nature which, throughout the ages, proved to be the principal bearer of the idea of the indefeasible rights of man" were not speculative, fanciful products, but "were generalizations from actual experience."⁹ The authors of these generalizations "endeavored to form laws of conduct by reference to the nature of man, to his physical and mental constitution as they saw it, and to his station and purpose in the scheme of creation as they perceived it from the contemplation of the world around them."¹⁰ Transcending all the vagaries of the philosophers, as "objective factors" and "productive of laws," are "the social nature of man; the generic traits of his physical and mental constitution; his sentiment of justice and moral obligation; his instinct for individual and collective self-preservation; his desire for happiness; his sense of human dignity; [and] his consciousness of man's station and purpose in life."¹¹ The degree to which the founders of contemporary international law, such as Vitoria, Grotius, Vattel, Wolff, and Puffendorf, drew upon concepts of natural law and concerned themselves for the individual suggests again a conception of that law as not merely governing the mutual relations of states, but "as being above the legal order of sovereign States," as being "the universal law of humanity in which the individual human being as the ultimate unit of all law rises sovereign over the limited province of the State."¹²

Coming to his main theme, the analysis of "The Law of the Charter," Professor Lauterpacht takes a strong position that the several clauses on human rights in the United Nations Charter are "no mere embellishment of a historic document" but add up to legal obligation. The human rights provisions "figure prominently in the statement of the purposes of the United Nations" and members "are under a legal obligation to act in accordance with these Purposes."¹³ The author finds "a mandatory obligation implied in the provision of Article 55 that the United Nations 'shall promote respect for, and observance of, human rights and fundamental freedoms'" and "a distinct element of legal duty in the undertaking expressed in Article 56 in which 'All Members pledge themselves to take joint and separate action in co-operation with the organization for the achievement of the purposes set forth in Article 55.'"¹⁴ The "legal duty to promote respect for human rights includes," he elaborates, "the duty to respect them" and "in addition, the obligation to further the adoption of means and establishment of agencies for the effective

9. Pp. 97, 98.

10. P. 98.

11. P. 101.

12. P. 120.

13. P. 147.

14. P. 148.

international enforcement of these rights."¹⁵ In support he invokes among other authorities "judicial pronouncements, including those of Justices of the Supreme Court of the United States," in which "these provisions of the Charter have been treated as a source of self-executory legal obligations affecting private rights."¹⁶

The impact of the "domestic jurisdiction" clause of the United Nations Charter—Article 2(7) which reads "nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter . . ."—Professor Lauterpacht minimizes by insisting upon a technical meaning for "intervene" and a lack of any clear meaning for "matters which are essentially within the domestic jurisdiction of any state." Intervention is interpreted in the sense of traditional doctrine as implying "a peremptory demand for positive conduct or abstention—a demand which, if not complied with, involves a threat of or recourse to compulsion."¹⁷ This obviously does not refer to "the procedures of investigation, study, report, and recommendation" by organs of the United Nations.¹⁸ Matters "essentially within the domestic jurisdiction of any state" are few if the reference is to matters which "cannot have international repercussions" and it is generally agreed that international agreement can make matters of international concern.¹⁹ The United Nations Charter itself makes "the observance of fundamental human rights and freedoms" a matter of international concern; the "reservation of domestic jurisdiction" cannot be made to "accomplish the impossible and combine the acceptance of obligations with freedom from obligation."²⁰ To support his position Professor Lauterpacht offers a careful survey of the history of argument and practice about "domestic jurisdiction" in the United Nations.

In other chapters Professor Lauterpacht reviews the measures taken in implementation of the Charter and deplores their timidity and inadequacy. "The various proposals for a 'Covenant' of Human Rights, the Covenant itself when adopted, the Universal Declaration on Human Rights, and similar drafts and instruments must be regarded," he suggests, "as stages in the adoption of an International Bill of Human Rights conceived as an effective part of the law of nations commensurate with the ideals of the charter, the en-

15. P. 152.

16. P. 151. "Self-executory" is not perhaps the best word. It is clear, however, that judges and other decision-makers in this country regard the United Nations Charter as a source of crystallized national policy which they must take into account. For the most careful and measured statements of the impact of the Charter on American law see Schachter, *The Charter and The Constitution: The Human Rights Provisions in American Law*, 4 VAND. L. REV. 643 (1951) and Wright, *National Courts and Human Rights—The Fujii Case*, 45 AM. J. INT'L L. 62 (1951).

17. P. 167.

18. P. 214.

19. P. 175.

20. P. 215.

during aspirations of mankind and the requirements of international peace.”²¹ He presents his own revised draft of such a Bill and explains and justifies both its substantive and procedural provisions in great detail. He makes a particularly strong case for “recognition of the effective right of petition by private individuals and groups.”²² His recommendations and discussion should be of inestimable value and inspiration to the workers and negotiators presently engaged with these matters in the United Nations and elsewhere. In two concluding chapters he appraises the Universal Declaration of Human Rights and the Proposed European Court and Commission for Human Rights. Because apparently of concern for future efforts, he offers a low estimate—perhaps much too low—of the probable influence of the Universal Declaration on future decisions.

The summary above is but the barest indication of the content of a rich and powerful book. The reviewer is so much in accord with Professor Lauterpacht’s major purposes and conclusions that he hesitates to indicate reservations. It may not, however, weaken general agreement to suggest that some of the themes of the book could be made even more persuasive. Thus, the whole controversy about the “subjects” of international law might be more explicitly recognized as a verbalistic quagmire. The important facts are that not only nation-states, public international bodies, and individuals but also transnational political parties, pressure groups, and private associations are all participants in a world power process; that policy is continually being formulated and applied on behalf of and for the control of all these participants on a global scale; and that all of these participants are afforded varying degrees of access to international and national *fora* for the protection of their interests.²³ Whether an observer labels any one of these participants as a “subject” of international law or not is entirely a matter of preference in verbal esthetics or a function of the argument he is trying to win. The support that the great tradition of natural law gives to community measures for protecting human rights could, for a second example, be considerably strengthened by a detailed demonstration of how the findings of contemporary social science about man’s nature and community processes augment and reinforce the wisdom of the philosophers.²⁴ The position that Article 2(7) the “domestic jurisdiction” clause, of the United Nations Charter offers no impediment to the human rights program might, once again, be strengthened by emphasizing two points: first, that whatever the clause means it imposes no limits on the power of

21. Pp. 276, 277.

22. P. 302.

23. An analysis of this type could be made to show the irrelevance and anachronism of such critical reviews as that of Green in 4 INT’L L.Q. 126 (1951).

24. A few examples of the relevant literature are: ADORNO & ASSOCIATES, *THE AUTHORITARIAN PERSONALITY* (1950); Chisholm, *The Psychiatry of Enduring Peace*, 6 PSYCHIATRY 3 (1946); DOLLARD, *FRUSTRATION AND AGGRESSION* (1939); LASSWELL, *POWER AND PERSONALITY* (1948); KARDINER & OVESEY, *THE MARK OF OPPRESSION* (1951); and MALINOWSKI, *FREEDOM AND CIVILIZATION* (1944).

nation-states to make new agreements; and, secondly, that for ascertaining any possible limit on the powers of the organization, meaning can only be given to the phrase "domestic jurisdiction," as a functional equivalent of "sovereignty" and "independence" and the polar opposite of "international concern," by locating one's problem in the realities of the contemporary world power process, which include inescapable interdependences with respect to human rights.²⁵ It may be added, finally, that some of Professor Lauterpacht's comments on United States constitutional law, such as the suggestion that "the bulk of the provisions of an International Bill of Rights fall, according to the Constitution, within the province of the States,"²⁶ do not accord with the best critical thinking in this country.²⁷ These reservations are, however, in sum but minor. Professor Lauterpacht has given us a book which will do much to promote a "primary political goal of humanity," the "further transformation of the law of nations from a law of States to a law of international society with the individual human being at the very center of its constitutional structure."²⁸

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PARTNERS IN PROGRESS, A Report to the President by the International Development Advisory Board, 1951. Pp. v, 120.

MEASURES FOR THE ECONOMIC DEVELOPMENT OF UNDER-DEVELOPED COUNTRIES, Report by a Group of Experts Appointed by the Secretary-General of the United Nations. United Nations, Department of Economic Affairs: New York, 1951. Pp. ix, 108.

It is now some two and one-half years since President Truman in the famous "Point Four" section of his Inaugural address warned of the threat to American security from poverty and discontent in the backward areas of the world. In the brief period since that address much has happened to justify the President's anxiety: the 600 million people of China have fallen under the control of a hostile Communist regime; aggression in Korea has cost thousands of United Nations casualties; unrest in Iran has jeopardized Western access to the oil of the Middle East; and the tempo of Communist infiltration and military activity has increased all along the continent of Asia. In view of the speed and gravity of these events, one is prompted to ask what

25. For elaboration see McDougal & Leighton, *supra* note 2, at 77 *et seq.*

26. P. 302.

27. For a comprehensive survey of the impact of the proposed Covenant on federal and state powers, see Chafee, *supra* note 2. It is not suggested that Professor Lauterpacht's comments are without support in this country. One from abroad may perhaps be forgiven a choice of false prophets.

28. P. 310.

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