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# NORTH CAROLINA JOURNAL OF INTERNATIONAL LAW AND COMMERCIAL REGULATION

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Volume 16 | Number 1

Article 6

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Winter 1991

## Review Article

North Carolina Journal of International Law and Commercial Regulation

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### Recommended Citation

North Carolina Journal of International Law and Commercial Regulation, *Review Article*, 16 N.C. J. INT'L L. & COM. REG. 79 (1991).  
Available at: <http://scholarship.law.unc.edu/ncilj/vol16/iss1/6>

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## Review Article

### **Cover Page Footnote**

International Law; Commercial Law; Law

## REVIEW ARTICLE

**NEW DIRECTIONS IN HUMAN RIGHTS.** Ellen Lutz, Hurst Hannum, Kathryn Burke (Eds.). Philadelphia: University of Pennsylvania Press, 1989. Pp. xv, 246.

*Reviewed by* Ranee K.L. Panjabi\*

This book establishes very clearly that human rights are now widely recognized as being an integral and vital part of many diverse facets of life. Its coverage is broad, ranging from articles on minority rights to issues such as extradition, torture, genocide and the implementation of human rights in armed conflict. Though this tendency to roam all over the topic may deprive the book of a sense of cohesiveness, the quality of the individual articles is good and this, to some extent, mitigates the problem of such broad coverage. Cohesiveness is sought instead in the dedication of the book to distinguished human rights activist Frank C. Newman, former Dean of the University of California, Berkeley's Boalt Hall School of Law. Frank Newman's dynamic contribution to the cause of human rights is stressed in the dedication and in the concluding chapter.<sup>1</sup> The contributors are all either Newman's former students or his colleagues. They are distinguished lawyers and law professors. Some of them participate in organizations such as Amnesty International and International Alert. Some of them have been involved with international agencies dealing with human rights and have integrated their interest in human rights into their professional activities in the field of international law.

The book is recommended for scholars of international law who might be interested in specific chapters to update their knowledge. Students of human rights may benefit by acquiring an understanding of the many facets of this subject. Human rights activists might find some of the practical suggestions for solutions to recurring problems

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<sup>1</sup> *Dedication to NEW DIRECTIONS IN HUMAN RIGHTS*, at vii (E. Lutz, H. Hannum & K. Burke eds. 1989); Van Boven, *Creative and Dynamic Strategies for Using United Nations Institutions and Procedures: The Frank Newman File*, in *NEW DIRECTIONS IN HUMAN RIGHTS*, *supra*, at 215.

very useful. This is in fact one of the most interesting features of the book. That human rights have invaded so many spheres of human life is a healthy sign for us all. This book gives the reader new directions as well as new goals for the future enlargement of the sphere of human rights generally.

This Article will not deal in detail with all the contributions or cover the significance of each in the literature on human rights. Instead, this Article will first elucidate pragmatic suggestions taken from a few chapters and then explore in some detail the "directions" taken by some of the other contributing authors. It is hoped that such an approach will both introduce lawyers to the practical value of this book and inspire readers to discover it for themselves in its entirety.

Contributor Sandra Coliver, a lawyer who is active on human rights committees, has some interesting suggestions for the improvement of United Nations mechanisms to assist women whose human rights are threatened or violated.<sup>2</sup> In a critical analysis, she outlines the weakness of the existing framework and proposes institutional change in terms of more coordination between dealing agencies and greater emphasis on investigation, research, and assessment of human rights violations that are particularly directed against women. Coliver also favors an enlarged role for non-governmental organizations in the collection of information on abuses.<sup>3</sup>

Attorney Stephen Rosenbaum contributes a very well-written article demonstrating the practical implementation of international human rights law as it applies to the needy.<sup>4</sup> Serving with California's rural legal assistance program, Rosenbaum believes that "[t]here are several ways in which Legal Services' objectives can be enhanced through the use of international law in domestic legal arenas."<sup>5</sup> His proposals include reference to international human rights instruments<sup>6</sup> and education of advocates in human rights issues.<sup>7</sup> "Finally, legal aid offices can use human rights law to reach out to the private bar."<sup>8</sup> Rosenbaum favors resort to the international petition process "by addressing a communication to one of the international human rights bodies."<sup>9</sup> Rosenbaum justifies this approach by explaining that "[t]he international forums . . . offer complainants a

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<sup>2</sup> Coliver, *United Nations Mechanisms on Women's Rights: How Might They Better Help Women Whose Rights are Being Violated?*, in *NEW DIRECTIONS IN HUMAN RIGHTS*, *supra* note 1, at 25.

<sup>3</sup> *Id.* at 43-44.

<sup>4</sup> Rosenbaum, *Lawyers Pro Bono Publico: Using International Human Rights Law on Behalf of the Poor*, in *NEW DIRECTIONS IN HUMAN RIGHTS*, *supra* note 1, at 109.

<sup>5</sup> *Id.* at 111.

<sup>6</sup> *Id.* at 111-12.

<sup>7</sup> *Id.* at 112.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 114.

flexibility not often available in U.S. judicial and administrative tribunals as well as a way around the bureaucratic obstacles put in place by the Legal Services Corporation and Congress."<sup>10</sup> He does, however, caution lawyers to "be ever mindful of the intrinsically conservative nature of their profession."<sup>11</sup> Although he says "[e]xpanding the limits of the law is an objective most attorneys can embrace,"<sup>12</sup> Rosenbaum warns that "human rights claims should be used sparingly in pleadings."<sup>13</sup>

In exploring new directions in human rights, anyone familiar with the burgeoning literature on this subject will have come across articles dealing with the continuing conflict between state sovereignty and minority claims for non-discriminatory treatment, fairness, and in extreme cases secession from the existing nation. The year 1990 was marked by the claims of minorities demanding such rights. The U.S.S.R. is currently beset with threatened secessions; Yugoslavia faces the same problem.<sup>14</sup> The process of "balkanization" in Eastern Europe has been one significant consequence of Gorbachev's policy of *glasnost*. It is obvious that the concept of the "nation state" will require fundamental restructuring, and this may well be the ultimate challenge for political leaders in the 1990s. From the Quebecois in Canada to the Tibetans in China, ethnic groups are demanding change, even if in some cases such change imperils existing national unity.

Contributor Hurst Hannum, Executive Director of the Procedural Aspects of International Law Institute in Washington, discusses the issue of minority rights.<sup>15</sup> Explaining that "[t]he United Nations Charter contains no provision specifically addressing the issue of minority rights,"<sup>16</sup> Hannum suggests four reasons why this issue has been so difficult. "First, the existence of 'minorities' does not fit easily within the theoretical paradigm of the state,"<sup>17</sup> and "[s]econd, the reality of minorities and largely heterogeneous states in the contemporary world is at odds with the theory of the nation-state as it developed in the nineteenth century."<sup>18</sup> Hannum continues, "[t]hird, there is a fundamental fear on the part of *all* countries, and especially newer states, that the recognition of minority rights will encourage fragmentation or separation and undermine national

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<sup>10</sup> *Id.* at 115.

<sup>11</sup> *Id.* at 133.

<sup>12</sup> *Id.* at 126.

<sup>13</sup> *Id.* at 132.

<sup>14</sup> See *infra* note 20 and accompanying text.

<sup>15</sup> Hannum, *The Limits of Sovereignty and Majority Rule: Minorities, Indigenous Peoples, and the Right to Autonomy*, in NEW DIRECTIONS IN HUMAN RIGHTS, *supra* note 1, at 3.

<sup>16</sup> *Id.* at 11.

<sup>17</sup> *Id.* at 13.

<sup>18</sup> *Id.* at 14.

unity and the requirements of national development."<sup>19</sup> At time of writing this Article, the relatively wealthy Yugoslavian province of Slovenia has threatened secession.<sup>20</sup> The Yugoslavian Government, fearing dismemberment of the nation, has counter-threatened reprisals. Hannum's last reason concerns "the reality of widespread discrimination and intolerance based on religion and ethnicity."<sup>21</sup> A pertinent example would be the recent situation in India. The attempt by former Indian Prime Minister Singh to enlarge the quota of administrative positions given to lower caste and minority groups generated large scale protests by the majority, contributing further to political instability in the fragile democracy of India.

A current, related topic of growing concern to human rights advocates is the issue of the rights of indigenous people. Their victimization in a number of countries from Canada and the United States to Australia has been a serious blot on the human rights record of these nations. Richard Falk has explained that indigenous people are victimized because they "represent a competing nationalism."<sup>22</sup> He voices the dilemma facing the majority in any nation when "to render complete satisfaction to indigenous claims is virtually to relinquish the basis on which non-indigenous peoples rest their rights."<sup>23</sup> The crucial issue is the degree to which certain groups may be said to have particular rights and the extent to which such rights can legitimately curtail the rights of the majority population. Ian Brownlie has commented that "[i]nherent in the concepts of equality and of human rights is the idea that groups as such may have rights."<sup>24</sup> However, returning to the book being reviewed, Hannum points out that "[i]nternational human rights law has only infrequently been applied to protect the interests of groups per se."<sup>25</sup>

Richard Falk has proposed the need for "an acceptance of some international personality for indigenous peoples, so that they can present their claims and grievances in arenas outside the national legal system,"<sup>26</sup> and he has called for the formulation of a Draft Convention on the Rights of Indigenous Peoples.<sup>27</sup> Hannum, by contrast, appears to prefer reliance on national systems by increasing minority/indigenous involvement in society, possibly through resort

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<sup>19</sup> *Id.* (emphasis in original).

<sup>20</sup> *Slovenes to Vote on Independence*, N.Y. Times, Dec. 23, 1990, at 8, col. 1.

<sup>21</sup> *Id.*

<sup>22</sup> Falk, *The Rights of Peoples (In Particular Indigenous Peoples)*, in *THE RIGHTS OF PEOPLES* 17, 18 (J. Crawford ed. 1988).

<sup>23</sup> *Id.* at 22.

<sup>24</sup> Brownlie, *The Rights of Peoples in Modern International Law*, in *THE RIGHTS OF PEOPLES* 1, 2 (J. Crawford ed. 1988).

<sup>25</sup> Hannum, *supra* note 15, at 17.

<sup>26</sup> Falk, *supra* note 22, at 35.

<sup>27</sup> *Id.*

to "weighted voting rather than purely numerical majority rule."<sup>28</sup> The encouragement to minority and indigenous people to develop their own cultural heritage while recognizing that, nationally, the way of life of the majority will prevail,<sup>29</sup> is a proposal fraught with implementational problems. One wonders how Hannum (who makes this suggestion) would have dealt with the recent crisis in Canada when the Mohawks set up barricades to protest the expansion of a golf course onto land perceived as sacred by the Indian people. Although Hannum's proposal is realistic, the events of the recent past seem to demonstrate that indigenous groups are becoming more assertive and more effective in voicing their complaints against the majority. Falk has given one reason for this by explaining that "[p]erhaps ironically, the growth of modern communications and transportation has internationalized the struggle of indigenous peoples in the last decade or so."<sup>30</sup>

Looking at events in India, Canada, the U.S.S.R., and any number of countries, one can only agree with Hannum that "[t]he goal of 'unity within diversity' remains elusive."<sup>31</sup> However, if nation states would concentrate more on eliminating discrimination against people and less on destroying differences between people,<sup>32</sup> there might yet be some improvement in the future.

One unfortunate consequence of a nation state based on the majority way of life has been the all-too-frequent resort to genocide of minorities and indigenous people in an attempt literally to eliminate the problem. Hannum asserts that "[g]enocide has been committed against indigenous, Indian, or tribal peoples in every region of the world."<sup>33</sup> Leo Kuper's research has revealed the proliferation of genocide and the inability of international organizations to curtail it. Bangladesh, Cambodia, Burundi, Paraguay, and Uganda are only a few examples of areas where mass murder has been committed in recent memory. Kuper has lamented that "[t]he performance of the United Nations Organization in the suppression of the crime of genocide is deeply disillusioning."<sup>34</sup> He has suggested that world public opinion should be actively generated as one measure of prevention.<sup>35</sup> Persuading or pressuring the government concerned might be useful and if these ideas do not suffice, "then the time has clearly arrived to launch a full-scale international alert with all

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<sup>28</sup> Hannum, *supra* note 15, at 20.

<sup>29</sup> *Id.* at 21.

<sup>30</sup> Falk, *supra* note 22, at 19.

<sup>31</sup> Hannum, *supra* note 15, at 21.

<sup>32</sup> *Id.* at 22.

<sup>33</sup> *Id.* at 15.

<sup>34</sup> Kuper, *The Sovereign Territorial State: The Right to Genocide*, in *HUMAN RIGHTS IN THE WORLD COMMUNITY* 56, 61 (R. Claude & B. Weston eds. 1989).

<sup>35</sup> L. KUPER, *THE PREVENTION OF GENOCIDE* 224 (1985).

urgency."<sup>36</sup>

In his contribution to the book being reviewed, Antonio Cassese has written a revealing analysis of the genocide perpetrated in September 1982 by Lebanese Phalangist forces against Palestinian refugees in the camps at Sabra and Shatila.<sup>37</sup> The massacre occurred while the territory was under Israeli military occupation. Cassese, who teaches international law at the University of Florence and is Chairman of the Council of Europe Steering Committee for Human Rights, believes that the investigation into the 1982 massacre did not utilize "the full potential of international law."<sup>38</sup>

An equally serious concern of human rights activists relates to the proliferation of torture in a number of societies, particularly in Third World countries which are under some form of dictatorship. Contributor Nigel Rodley, Head of the Legal and Intergovernmental Organizations office of Amnesty International, has written a thought-provoking article on this particular violation of human rights.<sup>39</sup> Rodley comments that the prohibition against torture enunciated in international instruments such as the International Covenant on Civil and Political Rights<sup>40</sup> is non-derogable even during a public emergency.<sup>41</sup> In this respect, Rodley's ideas are similar to those expressed in Subrata Roy Chowdhury's recent study *Rule of Law in a State of Emergency*.<sup>42</sup> Chowdhury has referred to the 1975 United Nations Declaration on Protection from Torture which specifies that "'a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment.'"<sup>43</sup> Some human rights activists would argue that these are obligations *erga omnes* and that this prohibition against torture "has acquired the character of *jus cogens*."<sup>44</sup>

Rodley also considers the related concept of state responsibility and reparation as well as the idea of individual culpability, much enlarged by the principle of universality of jurisdiction,<sup>45</sup> and the rejec-

<sup>36</sup> *Id.* at 224-25.

<sup>37</sup> Cassese, *Genocide and the International Community: The Case of Sabra and Shatila*, in *NEW DIRECTIONS IN HUMAN RIGHTS*, *supra* note 1, at 97.

<sup>38</sup> *Id.* at 106.

<sup>39</sup> Rodley, *The International Legal Consequences of Torture, Extra-Legal Execution, and Disappearance*, in *NEW DIRECTIONS IN HUMAN RIGHTS*, *supra* note 1, at 167.

<sup>40</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, arts. 4(2), 7, 999 U.N.T.S. 171 (1967), *entered into force* Mar. 23, 1976.

<sup>41</sup> Rodley, *supra* note 39, at 169.

<sup>42</sup> S. ROY CHOWDHURY, *RULE OF LAW IN A STATE OF EMERGENCY* (1989).

<sup>43</sup> *Id.* at 189 (quoting Declaration on the Protection of All Persons From Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 9, 1975, G.A. Res. 3452, 30 U.N. GAOR Supp. (No. 34) at 91, U.N. Doc. A/10034 (1976)).

<sup>44</sup> *Id.*

<sup>45</sup> Rodley, *supra* note 39, at 176. Rodley asserts that hostage-taking is "a case where states are *required* either to exercise . . . jurisdiction or to extradite to a country willing to

tion of the defense asserted at Nuremberg of "*respondeat superior*"—"an order from a superior officer or a public authority may not be invoked as a justification of torture."<sup>46</sup> Rodley concludes that "[t]orture, extra-legal execution, and causing people to disappear are serious violations of international law."<sup>47</sup> The issue of accountability has also been raised by Theodor Meron, who has suggested that "[d]istinguishing between acts of a state and private acts would perhaps be facilitated by placing the burden of proof on the state involved. An act of an official would be presumptively attributed to the state unless the state could establish that the official acted as a private individual."<sup>48</sup>

That the problem of torture is extremely serious is beyond dispute. That the practice has proliferated in recent decades is also now widely acknowledged. In the late 1970s, Matthew Lippman warned that "the practice of torture is widespread,"<sup>49</sup> and asserted that in 1979 torture was resorted to in sixty-one countries.<sup>50</sup> Very recently, Amnesty International has revealed grave violations by the Iraqi invaders of the human rights of Kuwaiti citizens.<sup>51</sup> There can be no question that enforcement of the international prohibition against torture will be a major direction for human rights advocates in the 1990s.

One of the most positive and heartening political developments of the late 1980s and 1990 was the success of the near global clamor of millions demanding democracy as a form of government. The near eradication of Marxist totalitarian regimes in Eastern Europe along with the fervent enthusiasm there for democracy as a viable alternative have now caught on as an almost global phenomenon. Though some voices for democracy have been brutally silenced, as in the case of China where the geriatric leadership has for the moment stifled the youthful demands voiced during the summer of 1989 in Beijing's Tiananmen Square, there can be no denying the intensity with which Asians, Africans, Latin Americans, and Europeans are pressuring their political systems in the direction of progressive change. One consequence of this fervor has been the appearance of

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do so," as opposed to the case of piracy where universal jurisdiction is merely *permitted*. *Id.* (emphasis in original).

<sup>46</sup> *Id.* at 183 (quoting Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted Dec. 10, 1984, entered into force June 28, 1987, art. 2(3), G.A. Res. 39/46, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), reprinted as modified in 24 I.L.M. 535 (1985)).

<sup>47</sup> *Id.* at 185.

<sup>48</sup> T. MERON, HUMAN RIGHTS AND HUMANITARIAN NORMS AS CUSTOMARY LAW 156 n.64 (1989).

<sup>49</sup> Lippman, *The Protection of Universal Human Rights: The Problem of Torture*, in HUMAN RIGHTS IN THE WORLD COMMUNITY, *supra* note 34, at 65, 71.

<sup>50</sup> *Id.* at 66 n.6.

<sup>51</sup> *Amnesty Report Says Iraqis Tortured and Killed Hundreds*, N.Y. Times, Dec. 20, 1990, at A9, col. 5.

several new democratic governments often led by persons who suffered serious human rights violations at the hands of the previous government. To cite only one example, the present President of Poland, Lech Walesa, was himself a victim of the communist system which he helped to overthrow. Inevitably, the new democratic governments have freed the victims of past repression. However, among some human rights advocates, the termination of violations is legally and morally insufficient, given the extent of abuses in the past and their impact on so many lives. Commitments by new governments to observe human rights in the future are also not deemed adequate to redress the activities of the past. The extent of human suffering involved appears to demand more in terms of redress.

Contributor Ellen Lutz writes about the very relevant and timely subject of compensation for victims of past abuses.<sup>52</sup> Lutz's work with Amnesty International, the American Civil Liberties Union, and the United Nations Human Rights Commission leads her to conclude that "international law is silent regarding the mechanics of implementing a fair compensation program."<sup>53</sup> Lutz believes that "[j]ust as it is within the province of international law to proscribe human rights abuses, it is appropriate for international law to be concerned with the needs of former victims who suffer as a result of past violations of human rights."<sup>54</sup>

Lutz suggests that international organizations draft "guidelines for redressing past abuses of human rights,"<sup>55</sup> and that "[n]eutral, internationally applicable standards that take into consideration the gravity of the acts committed as well as the health and justice-related needs of former victims need to be created."<sup>56</sup> Lutz's guidelines would consider the following:

1. Who is entitled to compensation?
2. For what categories of loss or damage should compensation be paid?
3. From whom may compensation be sought?
4. When may a person seek compensation?<sup>57</sup>

Her detailed suggestions merit careful consideration by human rights activists and international lawyers. The effective universal implementation of such compensatory proposals would considerably enlarge the protection offered by human rights instruments. Even if such ideas do not deter violators, they will, if implemented, definitely be "a step toward ensuring that those who have suffered human

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<sup>52</sup> Lutz, *After the Elections: Compensating Victims of Human Rights Abuses*, in *NEW DIRECTIONS IN HUMAN RIGHTS*, *supra* note 1, at 195.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 196.

<sup>55</sup> *Id.* at 197.

<sup>56</sup> *Id.* at 196.

<sup>57</sup> *Id.* at 201.

rights abuses are provided with the means to help restore their dignity and their physical, mental, and financial well-being.”<sup>58</sup>

To read this book is to gain some understanding of the multifaceted nature of human rights. The scope and dimensions of human rights continue to reach further and further, bringing these principles into virtually all aspects of human life. In seeking to develop and expand the parameters of human rights protection, the contributors to this volume have indicated clearly that the main direction in the 1990s for human rights activists and advocates will lie in increasing global awareness and in educating people so that they may add their voices to demand that politicians, judges, and lawyers work to implement the principles of the Universal Declaration of Human Rights.<sup>59</sup>

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<sup>58</sup> *Id.* at 211.

<sup>59</sup> Universal Declaration of Human Rights, Dec. 10, 1948, G.A. Res. 217, U.N. Doc. A/810, at 71 (1948).

