

able. But if the choice is between government or large corporation controls on the one hand and an almost painful amount of individual contributions on the other, prudence dictates the latter alternative. The government would follow a more proper course of action if it encouraged such contributions by increasing the percentage deduction allowed for individual charitable contributions.

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International Law and Asylum as a Human Right. By Manuel R. Garcia-Mora. Washington: Public Affairs Press, 1956. Pp. vii, 171. \$4.50.

The author of this important study locates the problem of asylum in the broad field of human rights. After noting the persecutions of recent years, especially by totalitarian governments with an underlying philosophy hostile to ethnic, linguistic, religious or political minorities within their jurisdiction, he writes:

It is for people thus persecuted that asylum appears as the only hope, especially when the United Nations Charter does not give individuals the right to appeal directly to the Security Council, the General Assembly or the International Court of Justice if any of the rights mentioned in the Universal Declaration of Human Rights are violated. In the absence of such a procedure, international law has no other choice but to recognize a person's right to demand asylum in foreign territory when confronted with revolutionary upheavals and tyrannical regimes. As long as the law of nations does not provide for a centralized machinery to which the individual could resort directly for the adequate protection of his rights and values, asylum as a human right is filling a gap in the international legal order [p. 163].

There has been a great deal of juristic and other discussion concerning the best way to realize the commitments of the United Nations to assure general respect for human rights and fundamental freedoms. The first method undertaken by the United Nations was to achieve a clear definition of these rights, and this was partially accomplished in the Universal Declaration of Human Rights, approved by the General Assembly in 1948. This instrument describes itself as "a common standard of achievement of all people and all nations," rather than as a legally binding instrument. The United Nations has attempted to develop the principles of the Declaration into "covenants" of human rights, which would have the latter character, but has encountered great difficulties. Not the least of these difficulties has been the attitude of the United States government which, under the pressure of the Bricker Amendment movement, declared in 1953 that it had no intention of seeking the ratification of such covenants.

Instead, the United States proposed a program of education, which it called an "action program," including annual reports from members on their progress

in protecting human rights, studies of particular human rights and an advisory service on specific aspects of the problem, including seminars and scholarships. The General Assembly in 1955 authorized the Secretary-General to proceed on the last of these proposals, and in the Spring of 1956 the Human Rights Commission gave, with some hesitation and dissent, a measure of support to the whole program. Such activities, it is hoped, may keep world public opinion alive to the importance of respecting human rights and may induce national governments to improve their legislation and administration under the pressure of local public opinion, and a better understanding of the techniques best adapted for giving practical protection to human rights. For many years, UNESCO has been engaged in an educational program in the field, and the annual publication by the United Nations of a Human Rights Yearbook has a similar objective.

It has become clear that different methods may be necessary for protecting different types of human rights. Instead of a single covenant, two have been proposed, one on civil liberties and the other on economic and social rights. A further differentiation in the advancement of rights of the latter type is to be observed in the activities of the Specialized Agencies of the United Nations. Thus the International Labor Organization specializes on labor rights, UNESCO on educational rights, the Trusteeship Council and the Expanded Technical Assistance Program on the rights of underdeveloped peoples and the High Commissioner for Refugees and his predecessors the International Refugees Organization and United Nations Relief and Rehabilitation Administration on the rights of displaced persons and victims of war. Special subcommissions under the Human Rights Commission have studied the protection of minorities and women.

The traditional approach of international law to the subject of individual rights has been through defining the right of intervention or interposition by national governments to protect their citizens abroad or to protect persons accorded specific rights by general treaties to which the interposing state is a party. The United Nations as a collective body has occasionally interposed through resolutions of the Security Council or the General Assembly in grave cases of discrimination or other denial of human rights contrary to the Charter or other treaties. Such action has, however, usually been resisted by the state criticized on the ground that it constitutes intervention in its domestic affairs, contrary to Article 2, Paragraph 7, of the Charter.

Judicial procedure for nullifying adverse legislation or administrative action has been the normal means for maintaining individual rights within national states. Such procedures have been proposed at the international level by recognition of the obligation of national courts to apply the Charter, treaties and covenants of human rights, even though in conflict with national legislation, by provisions for appeal to an International Court of Human Rights at the instance of aggrieved individuals, or by invocation of the jurisdiction of the International Court of Justice by application of a state or by request of an agency

of the United Nations for an advisory opinion. States, however, have generally manifested great reluctance to subordinate their legal sovereignty to such procedures of a civil character.

The same is true of criminal procedures. The Nuremberg Charter defined crimes against humanity as well as those against peace and the law of war. The war crimes trials at Nuremberg, and elsewhere, applying these principles, found many persons of the Axis countries guilty of violating human rights. The Genocide Convention, which defines a particular crime against humanity, was initiated by the United Nations General Assembly and has been widely ratified, though not by the United States. However, the effort to create a general code of crimes against international law and to establish an international criminal court to enforce it, irrespective of national legislation, has lagged because of the fear by some states that the international court might not observe adequate standards of judicial procedure, and the fear by some that it might interfere with their policies or the methods they deemed suitable for conducting them. The effort has been further hindered by the reluctance of many states to subject their nationals to the jurisdiction of a "foreign" court, and by the lack of agreement upon the scope and nature of the crimes which should be subject to the jurisdiction of such an international criminal court.

The halting progress of all these efforts to assure greater respect for human rights throughout the world, by definition, by education, by specialized cooperation, by national or international political interposition, or by civil or criminal adjudication at the international level, has suggested to some students of the subject that attention should be concentrated on particular practical remedies which might initiate trends of wider scope. Among such remedies particular attention has been directed to the right of petition to appropriate international bodies by individuals and non-governmental agencies for the purpose of giving information or initiating an international proceeding, to habeas corpus or similar procedures to protect individuals from arbitrary arrest and imprisonment, even by their own government, and to the right of asylum, which is the subject of the present volume.

Of all these methods for obtaining a toe-hold upon the problem of human rights in a world of states jealous of their sovereignties, the last seems to the author of this volume the most feasible, although he quotes Judge Lauterpacht: [F]rom the point of view of strict logic the provision of the right of asylum from persecution would seem unnecessary or even obnoxious, for if the Bill of Rights is adhered to there ought to be no room for persecution [p. 146].¹

However, general respect for human rights does not seem likely in any immediate future. Consequently, it is important to give an opportunity to actual or potential victims of persecution to escape. Unsatisfactory as is this remedy, it may be for a long time the best that international law can assure, and even this remedy encounters serious difficulties.

¹ Quoting Lauterpacht, *International Law and Human Rights* 345 (1950).

At the present time, the *right* of asylum for the individual does not exist in international law. Ships in distress may have a right to temporary asylum in ports, and in time of war, belligerent troops and warships may have a right of asylum in neutral territory, provided they submit to internment for the duration of the war. But in general, asylum is a right of the state, not of the individual. This right of the state falls into two categories, territorial and extra-territorial asylum, the latter referring to the somewhat controversial right of a state to give asylum to refugees in its embassies, consulates, and warships in foreign territory. The present volume does not deal with this matter, which was recently discussed at length by the International Court of Justice in the case of Haya de la Torre, a refugee Peruvian politician who was given asylum in the Colombian Embassy at Lima. It confines its attention to territorial asylum, a right of states acknowledged to flow from their sovereignty.

The author discusses with insight and voluminous citation, first the limitations which states have often placed upon their exercise of this right by accepting treaty obligations, and second, the extent to which they have, in special circumstances, acknowledged an individual right of asylum.

Limitations upon the grant of asylum have flowed mainly from the theory that states have a common interest in the administration of criminal justice, and their consequent tendency to conclude extradition treaties denying asylum to fugitives from foreign criminal justice within their territory. The author examines the law of extradition in detail, indicating the change from a practice which provided for the extradition of political offenders, but gave asylum to common criminals, to the opposite practice of the present. Grotius and Hobbes in the seventeenth century regarded revolution with disfavor, and considered its fomenters—traitors to their own country—as the worst criminals who in the common interest of political order should be extradited for punishment. The British revolution of the seventeenth century, however, developed a more tolerant attitude toward revolution in that country, and in the eighteenth century international jurists like Vattel recognized the “right of revolution,” and urged that asylum be given to political fugitives. In the nineteenth century extradition treaties increasingly excepted “political offenses,” and at the same time insisted that extradition should be accorded for ordinary crimes only when specified in an extradition treaty, and when the extraditing country was assured that due process of law would be observed in the prosecution.

The author deals effectively with the intricate problem of defining “political offenses,” which often are accompanied by common crimes. He prefers the liberal tradition, generally accepted by Great Britain and the United States, permitting asylum to persons who commit murder or other felonies clearly in pursuit of a political objective. The author favors excluding from extradition the “crimes against peace,” defined in the Nuremberg Charter, “the purely political” character of which, he says, “can scarcely be disputed” (p. 92).

He would also regard desertion from national military forces and other politi-

cally motivated military offenses, such as sabotage and espionage, as "political offenses." While he would allow asylum to persons guilty of the first of the Nuremberg crimes, as did the Netherlands after World War I in giving asylum to the Kaiser, he regards the other two Nuremberg crimes—crimes against the law of war and crimes against humanity—as "common crimes" sufficiently defined to be extraditable.

In the present writer's opinion, it would seem logical to regard all clearly established crimes against the law of nations as extraditable. If there is a common interest in the administration of criminal justice in any cases, there would seem to be in the case of such crimes. On this matter, the author's argument seemed to the reviewer unconvincing, as does his argument denying asylum to "subversives," who, he says, "aim, not at overthrowing one particular government, but *all* governments." "[S]ubversives, whether we call them anarchists, terrorists, or communists, are," he says, "enemies of all government irrespective of their character," because they stand "in notorious opposition to all political systems contrary to their revolutionary ideology." Their situation is, he says, "totally different from that of political offenders" (p. 88). While international conventions have defined "terrorism" as a crime against international law, and the Institute of International Law in 1892 excluded from the concept of political crime "[c]rimes directed to uproot the fundamental social institutions, irrespective of national divisions or of any given political Constitution or form of Government" (p. 100), it would seem that the author's broad concept of "subversives" lends itself to abuse. Unless more clearly defined and accepted by international law it might be grounds for denying the freedom of opinion, religion, and ideology, guaranteed by the Universal Declaration of Human Rights, and of denying asylum to many whose only offense is adherence to unpopular beliefs.

It would appear that codification of offenses against the law of nations should be developed to indicate those offenses with a political aspect which should be excluded from the concept of "political offense" and made subject to extradition to the country where the offense was committed, or to the jurisdiction of an international criminal tribunal, if such were established. Since in general crimes against the law of nations, like piracy, are, under international law, subject to the jurisdiction of any state which has possession of the alleged criminal, it is possible that in this case the Grotian dictum that the state should either punish or extradite should be applicable. It seems probable, however, that due process of law would be better assured if an international criminal tribunal had jurisdiction of such offenses.

The difficulty in recognizing asylum as an individual right, correlative with an obligation of states to grant it, flows from the tradition that only states are subjects of international law and from the acknowledged right of states to control immigration into their territory. The author easily disposes of the first objection, pointing out that it arises from a fiction which conflicts with the basic

Charter concept of human rights and fundamental freedoms. The International Court of Justice has recognized that states by treaty may give individuals subjective rights under international law. There has been an increasing tendency among jurists to acknowledge that individuals are subjects of international law, and that in many circumstances states in prosecuting them or in protecting their rights act as agents of the international community.

The latter difficulty is more serious. Every state feels that it should control the composition of its own population for cultural and social, as well as economic reasons. The Universal Declaration of Human Rights, though declaring that "everyone has a right to leave any country, including his own" and giving everyone a right to "return to his country," does not give a right to enter any other country.² Another article of the Declaration reads: "Everyone has the right to seek and to enjoy in other countries asylum from persecution."³ Originally the words "to be granted" appeared instead of "to enjoy" but many of the states were unwilling to undertake a general obligation to admit those seeking asylum. Individuals can therefore, according to the Declaration, "enjoy" asylum only in states which are willing to admit them. The right to "seek asylum" is, therefore, a very limited right. Even this right may be invoked only to escape "persecution" and "may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations."⁴ This, incidentally, would seem to bar asylum for those guilty of "crimes against peace" since the United Nations has endorsed the Nuremberg Charter. The Universal Declaration, therefore, provides a rather attenuated claim to asylum for persons guilty of "political offenses" of the type excluded from extradition treaties.

While admitting that it would be *de lege ferenda*, the author urges states to accept a definite legal obligation to give at least temporary asylum to such refugees. He further points out that this obligation has been undertaken in a number of treaties, especially among Latin American countries, and that the actual granting of such asylum has become a common practice, especially among the free countries of the world.

In this connection, attention is given to the grant of asylum to prisoners of war who do not wish repatriation, a question discussed at length in the Korean armistice negotiations in 1953. The author concludes that the 1949 Prisoners of War Convention did not exclude such asylum, and could not be held to abrogate the general right of the states to give asylum. Furthermore, its intention was to confer human rights upon the individual prisoners, which certainly would not be compatible with the idea of compelling unwilling prisoners to return to their country of origin with the risk of imprisonment or execution on the ground that

² The Universal Declaration of Human Rights Art. XII, § 2 (reproduced in Sohn, *Cases and Materials on World Law* 541-47 [1950]).

³ *Ibid.*, at Art. XIV, § 1.

⁴ *Ibid.*, at Art. XIV, § 2.

they were in fact deserters. In spite of this conclusion, the author believes that it would be desirable to revise the 1949 Convention in order to make this point clear.

The author's treatment of the important problem of territorial asylum is comprehensive, detailed, and clear. He begins his study with a general discussion of the status of the individual in international law and of the sources of that law, in connection with which he discusses the merits of "positivism" and "naturalism," with preference for the latter. He considers the views of the founders of international law on these general questions, as well as on the specific question of asylum. This discussion makes it clear that, while the nineteenth century fell away from the classical doctrine that the individual is a subject of international law, it accepted the right of political dissent and revolution and, increasingly, political refugees were able to obtain asylum in many states. The author makes a strong case for a positive recognition of asylum for such persons as a human right, agreeing with Ambassador Philip C. Jessup that "Precedent and humanity would suggest that every state should be under an obligation to grant temporary refuge to persons fleeing from persecution" (p. 5). Although numerous cases are cited, the book lacks a table of cases and the index is too brief. The content is sufficiently valuable to justify the reference paraphernalia usual in law books. The book is an important addition to the growing literature on human rights.

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