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The International Law of Human Rights

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THE INTERNATIONAL LAW OF HUMAN RIGHTS. By Paul Sieghart. Oxford: Clarendon Press, 1983. Pp. xxiv, 569. \$89.00.

Reviewed by Daniel C. Turack*

Mankind remains witness to the continued violation of human rights in many countries due to the politics, philosophy, or policies of national governments. The internationalization of human rights is a reality. A growing mountain of literature on the subject attests to its importance.¹

This particular book is intended to be a statement of the black letter human rights law as it now stands. The author's intent is clear—the work is a handbook “of what human rights now consists of: what it says and (where this raises doubts) what that means; and how it works—as well as an elementary apparatus of reference for further research.”² Data from two human rights treaties not yet in force are included, along with universal and regional treaties in force, on the basis that both are expected to become operative during the useful life of the book. These two international instruments are the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,³ and the African Charter on Human and Peoples' Rights.⁴

Although the book is written for use by the practitioner who has need of easy access into human rights law, its framework has been so carefully designed that someone not at all familiar with international law can use the book with facility. Throughout the book, the author emphasizes the law contained in the treaty provisions (*le droit écrit*). If textual meaning is not plain and clear, prior interpretation and application are set out as espoused by the relevant courts, tribunals, and other independent institutions competent to pronounce on them (*la jurisprudence*). Where-

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1. See D. Vincent-Daviss, *Human Rights Law: A Research Guide to the Literature* (pt. I, International Law and the United Nations), 14 N.Y.U. J. INT'L L. & POLITICS 209 (1981); (pt. II), *id.* at 487 (1982).

2. P. SIEGHART, *THE INTERNATIONAL LAW OF HUMAN RIGHTS* xxi (1983).

3. U.N. Doc. E/CN.4/1367, Annex (March 5, 1980).

4. 21 INT'L LEGAL MATERIALS 59 (1982); 27 REV. INT'L COMM. JUR. 76 (1981).

ever the author's comment is offered, it is not discursive, but rather a description of the pertinent subject-matter. An abundance of scholarly human rights literature exists, however, and the author has intentionally avoided its import or reference (la doctrine).

Mr. Sieghart has divided the book into four Parts. Part One describes the framework. Herein the reader finds the place of human rights law within the scheme of law in general; the development of international law and its relationship to municipal law; an exposition of the treaty processes; the international supervisory and enforcement procedures in the relevant international institutions; and, the basis on which domestic institutions can take jurisdiction over individuals who have allegedly perpetrated "international crimes."

In Part Two, entitled "Articles of General Application," the author accounts for the right of signatory states to restrict or otherwise delimit the application of certain human rights; exigencies which may permit states to derogate from adherence to the guaranteed rights; when these treaties can be denounced; and the meaning of non-discrimination.

Part Three consists of a survey of those individual and collective rights and freedoms recognized and guaranteed in the universal and regional instruments. Although the author's organization of materials throughout the book is impressive, his classification and approach in this Part is worthy of the highest praise. For example, within the broad classification of physical integrity, he covers the rights of life, liberty, and security; arrest and detention; torture and other ill-treatment; freedom of movement and asylum. Typically, on the subject of the right of freedom of movement, the relevant textual provisions of all the universal and regional instruments are set out. These are followed by a section of cross-references as to whether the correlative state's obligation is absolute and immediate or qualified and progressive. It is followed by references to other sections of the book. A comment section then contains a discussion of the main elements of the right. Freedom of movement falls into six categories: freedom to choose a residence within the territory of a state; freedom to move about within the borders of a state; freedom to leave a state; freedom to enter a state; freedom of expulsion from a state; and freedom from exile. The author points out

whether the differences in the language used in the various instruments are meant to have any special significance. Interestingly, in relation to the reason for omission of any mention of individual expulsion from the Fourth Protocol to the European Convention, the author makes one of his sparse references to a human rights expert as authority. A brief historical note traces the emergence of this specific right; here he goes back as far as England's Magna Carta of 1215. Finally, the author outlines in detail the case-law or "jurisprudence" involving freedom of movement in national courts and before the international adjudicative institutions.

My chief criticism is directed to Part Four, the final part of the book, which merely reproduces the procedural articles contained in the international instruments. Here one finds a survey of the composition and organization of the various institutions operating under each treaty. It includes procedures for: communication of alleged violations; international investigation of complaints or settlement; admissibility in the complaint process; jurisdiction of the pertinent bodies set up to handle alleged violations; and their supervisory powers.

I believe that the uninitiated practitioner must of necessity go to the human rights literature for further assistance as to the sequence of steps to be followed in representing his client. Mr. Sieghart's comments are too thin in this area. Practitioners need to know a great deal more about the "remedies" process so as to feel competent and comfortable in working within the particular human rights system.

There is a list of the relevant instruments—their year of adoption, entry into force, and abbreviations used. Another list shows institutions referred to in the book and their abbreviations. A useful table enumerates the status of the main treaties, including the parties, reservations, and their interpretations. The practitioner, however, will have to look elsewhere to keep up to date. Another useful table notes the judgments, decisions, and reports cited by the author. There is also an index of articles cited of the major international instruments, and a brief selected bibliography.

Mr. Sieghart has produced an excellent and massive book on international human rights law. It is both scholarly and thorough in coverage. His work is deserving of high praise. It will be

very useful to the practitioner in serving his clients. Although the author also intends its use by the student, there is little likelihood of this occurring given the price.