BOOK REVIEWS

Les exceptions préliminaires dans la Convention européenne des droits de l'homme, by D. de Bruyn *et al.*, Bruylant, Brussels, 1997, ISBN 2-8027-1068-0, 184 pp., Bfr. 1650.

Under the old control mechanism established by the European Convention on Human Rights, the determination of the admissibility of applications was a main task of the European Commission of Human Rights. Under the two-tier system set up by the Convention, the Commission served as a filter in rejecting a large number of applications on the basis of admissibility criteria and of the merits. If no friendly settlement was reached, the European Court of Human Rights could seize the case within three months after the transmission of the Commission's report to the Committee of Ministers.

Subsequent to the amendment made by the Protocol No. 11, a new single and permanent European Court of Human Rights has started to function on 1 November 1998. The Commission's filter function is now transferred to a committee of three judges and Chambers of seven judges. Despite various aspects designed to reform the Convention's control mechanism, the admissibility criteria remain unchanged.

The book under review is written by Lambert and five other Belgian lawyers. It consists of nine chapters, each dealing with various issues relating to the preliminary objections, viz. the question of admissibility of complaints.

In the first chapter, Kaiser examines various preliminary questions raised under Articles 24 and 25, including the standing of an applicant and an addressee of a complaint. Among those discussed here, the most interesting question concerns an addressee of a complaint with respect to the attribution of responsibility. Kaiser points out that the Strasbourg organs have extended the scope of a state party's responsibility by reason of its "*manquement indirect*" (p. 20). On this question, he firstly refers, without expressly using the term, *Drittwirkung*, to the possibility that a state party may be held responsible if it fails to protect a right of one private person against another. Secondly, he discusses the effects, outside its own territory, of a contracting state's acts such as extradition or expulsion. Despite his somewhat misleading term, "*manquement indirect*", Kaiser rightly, in the opinion of this reviewer, does not use the term *indirect* obligation. There is no question of adjudicating on the responsibility of private parties or third states, as the liability under the Convention arises only from the *direct* consequence of a contracting state's act or omission.

In the second chapter, Kaiser examines the two procedural periods required by the Convention: the period of six months, within which an application must be brought before the Commission after the final decision of national authorities (Arti-

cle 26) and; the period of three months, within which the Court must seize a case after the transmission of the Commission's report to the Committee of Ministers (Articles 32(1) and 47). A doubt remains why Kaiser puts two distinctive rules in the same chapter. The six-month rule is closely connected to the exhaustion of domestic remedies and firstly examined by the Commission. In contrast, the three-month rule is examined by the Court, and as such it should have been discussed after other admissibility criteria provided in Articles 24-27 are examined.

In the third chapter, de Bruyn examines the requirement of the exhaustion of domestic remedies (Article 26), a well-established rule in public international law. Under the European Convention, this rule indicates that the Convention's supervisory mechanism is subsidiary to a national system. De Bruyn evaluates the question of the burden of proof with reference to a number of recent cases of the Commission. If an applicant proves that he or she has exhausted the local remedies, a respondent state must reverse this proof, referring to the existence of "accessible, effective and sufficient" remedy (p. 64). Moreover, if a respondent state fails to raise a preliminary objection before the Commission, it is estopped from doing so before the Court. It is not often that the Court disagrees with the Commission's decision of admissibility and accepts a preliminary objection on the exhaustion rule. The Court is entitled, but not obliged, to examine, *ex officio*, preliminary objections as regards any procedural requirement, as the burden rests on a respondent state.

De Bruyn discusses various exceptions to the exhaustion rule. An exception can be recognised when there exists an administrative practice which renders any remedy "vain or ineffective" (p. 73). In order for such an exception to be admitted, there must exist a repetition of acts and the official tolerance of them. It is regretted that there is no reference to the *Greek* case, which first recognised this exception.[1]

In the fourth chapter, Lambert closely examines the notion of "victim" within the meaning of Article 25. As to the status of victim, the most interesting question may be whether to permit an application by so-called 'potential' victims. Under Article 25, the Convention excludes an *actio popularis* and the examination of a national law *in abstracto*. Lambert discusses two groups of cases involving potential victims. He firstly refers to those cases in which the Strasbourg organs have accepted the complaints on the basis that the mere existence of a law or practice may directly affect the rights of individual persons. In a series of applications concerning surveillance measures, succession involving discrimination on the ground of illegitimacy, as well as criminalisation of private homosexual conduct, no particular measures were enforced against the applicants. The second group of cases relate to extradition and expulsion. It is regretted that while more recent cases are examined in this chapter, no reference is made to the ground-breaking decision of *Chahal* v. *UK*.

1. Greek case (Denmark, Norway, Sweden, and The Netherlands *v.* Greece), Report of the Commission of 5 November 1969, 12 Yearbook of the European Convention on Human Rights 126, at 195-196, paras. 28-29 (1969).

The fifth chapter, to which Depré contributes, examines the principle of *non bis in idem* provided in Article 27(1)(b). This principle is based on the *res iudicata* and the *lis pendens*. Firstly, the Commission rejects a complaint if the factual contents are the same as the ones previously raised by the same applicant. Secondly, it rejects a complaint which has already been brought before other international bodies.

In the sixth chapter, Lombaert examines the questions relating to reservations under Article 64. Evidently, under Article 19 of the Vienna Convention on the Law of Treaties, a reservation must be compatible with the object and purpose of the treaty. Lombaert agrees with the view of Velu and Ergec in their *La convention européenne des droit de l'homme* (1990), without substantiating why a reservation can be formed even to non-derogable rights while a reservation to Article 15 must be considered as incompatible with the object and purpose of the Convention (p. 117). In the opinion of this reviewer, derogation is the external limit of restricting the Convention's rights, and it is difficult to justify any reservation to the four non-derogable rights mentioned in Article 15(2). Moreover, the absence of any examination of a controversial reservation made by France to Article 15 can be criticised as a regrettable omission.

The seventh chapter deals with the competence *ratione temporis*. When making the declaration recognising the right of individual petition under Article 25, state parties can limit the Commission's competence to acts occurring subsequent to the declaration. If the declaration is silent on the period, the Commission's competence has a retroactive effect, dating back to the ratification of the Convention. Thus, as Lombaert notes, the Commission earlier considered that when the final domestic decision was taken before the Article 25 declaration, the point at which the six-month rule started to run was "deferred (*reporté*)" to the date of that declaration (p. 132). However, in *X* v. *France*, the Commission, departing from this position, required the six-month rule to run from the final domestic decision even if that decision was taken before the declaration.[2] The Commission's change of jurisprudence was intended to exclude a number of applications concerning events which took place prior to the Article 25 declaration.

In the eighth chapter, Lombaert analyses the competence *ratione loci* with respect to two questions: the question of territorial jurisdiction under Article 1 and; the applicability of the Convention to non-metropolitan territories as envisaged by Article 63. With regard to the first question, he refers to the principle reaffirmed in the *Loizidou* case that even outside its territory, responsibility of a state arises when it exercises an "effective control" over an area, whether by its local administration or by military forces.

As regards Article 63, the most interesting question is the meaning of local requirements in the third paragraph. In the *Tyrer* case, the Court refused to defer to the appreciation of the Manx population, who wished to retain the judicial corporal

2. X. *v.* France, Application No. 9587/81, Decision of 13 December 1982, 29 Decisions and Reports 228.

punishment as an effective means of deterrence to juvenile delinquency. *Local* requirements cannot be invoked to justify an infringement of a non-derogable right provided in Article 3, the protection of which is a *European* requirement.

In the final chapter, Verdussen deals with the objections relating to the merits of applications. This includes the notions of the competence *ratione materiae*, 'manifestly ill-founded', and abuse of the right. As regards the competence *ratione materiae*, the absence of particular rights guaranteed in the Convention's catalogue does not mean that they are excluded from the Convention's protection. Verdussen discusses what Cohen-Jonathan calls the technique of protection "*par ricochet*". The Strasbourg organs have interpreted certain provisions of the Convention in such a way as to encompass 'implicit or derived' rights which are, by themselves, not guaranteed as *rights* in the Convention (p. 156).

Two points of general criticism of this book may be made. Firstly, the structure of chapters may be somewhat confusing. The six-month rule discussed in the second chapter should have been examined at the end of the third chapter concerning the exhaustion of domestic remedies, as this rule is closely connected, and logically subsequent, to the exhaustion rule. In addition, the notion of 'victim' discussed in the fourth chapter should have been evaluated after the first chapter, as both the question of *locus standi* and the status of victim touch on the competence *ratione personae* provided in Article 25. There should also have been a concluding chapter. Secondly, while the same admissibility criteria apply to the new Court, at least a brief reference to the Eleventh Protocol and to the new control system should have been included.

Nevertheless, this book is, in general, a good collection of chapters, which is based on the thorough examination of the Strasbourg organs' large number of cases. It also synthesises with concision the views of mainly francophone authors. It should serve as a useful reference book for any practitioner and scholar who wish to gain an insight into the procedural requirements of the European Convention on Human Rights.

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Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy, by S.R. Ratner & J.S. Abrams. Clarendon Press, Oxford, 1997, ISBN 0-198265506, xxxv and 368 pp., US$ 89/£55.

All those interested in international criminal law will welcome a new book entitled *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy*, by Steven R. Ratner and Jason S. Abrams. The book has four parts, headed: *Substantive Law*; *Mechanisms for Accountability*; *A Case Study: The Atrocities of the Khmer Rouge*; and *Conclusions*. Part 1 introduces the subject, providing a brief historical overview, before stating that a "study of individual accountability for human rights atrocities must consider four bodies of law" (p. 9), namely international human rights law, international humanitarian law, international criminal law, and domestic law, then describes the nature of responsibility, methodology employed in the book, sources of international law, and principles of legality. Chapters 2, 3, and 4, consider genocide, crime against humanity, and war crimes respectively. Chapter 5 treats slavery and forced labour, torture, racial discrimination and apartheid, and forced disappearances, under the title *Other Abuses Incurring Individual Responsibility under International Law*. Chapter 6 is entitled *Expanding and Contracting Culpability: Related Crimes, Defenses, and Other Barriers to Criminality*. In Part 2 on *Mechanisms*, the authors examine the role of national tribunals, international criminal tribunals since the Nuremberg and Tokyo Tribunals, "non-prosecutorial options" and then comment on a number of issues concerning evidence and judicial assistance. In Part 3, the authors present a case study on the Khmer Rouge, concluding the book with Chapter 15 (Part 4), entitled *Striving for Justice: The Prospects for Individual Accountability*.

Accountability for Human Rights Atrocities in International Law has a number of strong points for which the authors must be commended. Firstly, the book raises interesting issues and arguments in a way that relates norms of international criminal law to concrete situations. For example, in a discussion on genocide, the authors refer to the Iraqi treatment of the Kurds, the US bombing campaigns during the Vietnam War, and mass rape perpetrated in the former Yugoslavia. Although the discussion here is rather cursory, the authors have tried to engage the reader in considering the anomalies that may crop up in the application of the relevant norms, in this particular instance, concerning the crime of genocide, instead of merely providing their own answers.

The authors' extensive use of international and national cases helps highlight how particular norms have been interpreted in practice. In this context, although brief, there is an interesting discussion on national efforts to prosecute human rights violations which touches upon the cases of Argentina, post-Communist Germany, Ethiopia, and Rwanda. All of these examples serve to remind the reader of the variety of environments in which international criminal law enforcement may be expected to operate.

Perhaps the book's strongest asset is the well-presented and detailed case study on the atrocities of the Khmer Rouge. The choice of Cambodia is of interest, particularly in light of what appears to be an increasing willingness currently on the part of the international community to ensure Khmer Rouge leaders and organizers are brought to justice. The study reviews the historical background to the problem, considers applicable norms of international law and Cambodian law, and then explores the range of available procedural mechanisms pertaining to investigation and enforcement.

In the book's preface, the authors decry in other works "an abstruse elucidation of the law and process, all too common in legal discourse" (p. xxxiii) and, perhaps anxious to avoid dry legal argument, make sure to include references to cases throughout the book. One senses that this concern arises from the common law lawyers' habitual distrust of the methodology employed in civil law countries which places greater emphasis on codified law and doctrine. The field of international criminal law is notoriously complex, even chaotic, owing to its unplanned and unsystematic development in response to disparate needs identified by the international community on an interstitial basis over many centuries. Unfortunately, an overreliance on the case-law approach may come at the considerable expense of methodological, logical, and normative coherence.

It would have been all the more valuable therefore were the authors to have identified clearly the purpose of the enquiry as an *argument* with much greater legal and analytical precision, a shortcoming evident in the way the authors framed the central question of their enquiry: "[c]an international criminal law provide a meaningful sanction for atrocities by governments and others in a position of power against those under their control? This volume seeks to shed light on this compelling issue of contemporary international law" (p. xxxii).

The short answer to the authors' question would obviously be "Yes". In view of the Nuremberg and Tokyo Trials, international criminal law *can* "provide a meaningful sanction for atrocities by governments and others" etc. These post-World War II trials proved that the international community *can* act decisively to punish individuals in high positions of government authority for having committed or having ordered to be committed crimes against peace, war crimes, and crimes against humanity. However, the more interesting questions might be *should* international criminal law be the means to provide an effective sanction, if yes, *does* it do so, and if not, *why* not and *how can* it be improved.

As formulated, the guiding question of the enquiry leads in many wrong directions. Firstly, the word 'atrocities' is almost devoid of legal meaning and is therefore overly vague. Because the word 'atrocities' could include all sorts of acts which do not count as crimes under international law, the authors should have referred to 'grave', 'serious', or 'gross' "violations of international human rights and humanitarian law", to indicate the objective body of international human rights and humanitarian law norms rather than to evoke more subjective considerations.

Secondly, international criminal law does not concern sanctions only for "atrocities by governments and others in a position of power against those under their control" in certain very important cases which are of obvious relevance to the commission of 'human rights atrocities'. For example, a war of aggression entails individual criminal responsibility whether or not the aggressor ultimately wins or gains control. Indeed, it is most frequently during and immediately after war that human rights atrocities are committed – a point recognized in the UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court held in Rome where delegations took great pains to include 'aggression' in the Statute. To take another example, Article 85(3)(b) of Protocol I prohibits, under certain conditions, the launching of "an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects" as a grave breach – which is arguably also a 'human rights atrocity' – while not necessarily implying any relationship of control beyond that of an attack. Perhaps the authors were thinking more of crimes against humanity or particularly serious human rights violations in the classic sense where the government through its agents commits crimes against persons within its jurisdiction. Yet, if this were the case, then either the scope of the enquiry should have been narrowed to exclude war crimes and other crimes not related to the traditional government-citizen relationship in classic human rights law, or the central question should have been framed with greater precision.

Thirdly, the authors refer here to 'international criminal law' which concerns the criminal responsibility of the individual under international law and perhaps certain corporate entities, such as criminal organizations or criminal conspiracies, but which is not designed to hold a government responsible as a collectivity. The responsibility of a government flows from rules of the classic international law of state responsibility, a related but entirely separate regime of legal responsibility under international law. The authors' question as to whether "international criminal law can provide a meaningful sanction for atrocities by governments and others" (p. xxxii) risks confusing these two separate legal regimes.

Fourthly, the word 'meaningful' means little unless we know in which way the authors mean it and 'meaningful' for whom. Are the authors asking whether international criminal law can be effective (e.g., as regards the efforts of courts to acquire custody over the offender or *ad hoc* tribunals securing enforcement of its judgments, etc.), or are they thinking more of subjective and symbolic feelings on the part of individuals who seek vindication or redress or perhaps what they personally consider meaningful? If the last, then what criteria would they employ?

A more precisely defined analytical cutting edge might have helped to avoid certain logical inconsistencies and conceptual ambiguities that remain in the work. For example, in Chapter 1, the authors point out the basic distinctions between civil and criminal responsibility, and criminal responsibility of the in-

dividual versus that of other entities, such as the state, groups or corporations. The authors then state that: "this study remains focused upon one core set of targets – individuals, those who actually commit violations of human rights. As for the nature of their liability, it addresses criminal responsibility, although it also considers civil liability under domestic law" (p. 15).

In light of the lengthy explanation of the distinctions to be drawn between these basic concepts, the reader is left to wonder why the book's title refers only to 'accountability' in general rather than to 'individual responsibility' or 'individual criminal responsibility', particularly since the content of the book and headings of Chapters 1 and 5 refer to "individual accountability" and "individual responsibility". Even the final Chapter is titled *Striving for Justice: The Prospects of Individual Accountability*. Without being qualified by the word 'individual', the term 'accountability' in the title of the book gives the impression that the authors intended to sweep in a wide range of entities other than the individual human being, such as the state, insurgent forces, groups of persons, or possibly even international organizations or their agents, such as UN peacekeeping forces to whatever extent these might be involved in human rights violations. The subtitle reference to 'Nuremberg' at least narrows the focus by alluding to *criminal* rather than civil responsibility, but does not exclude the criminal responsibility of organizations. After all, Article 9 of the Nuremberg Charter authorized the Tribunal to declare certain entities criminal organizations.

In Part II on *Mechanisms for Accountability*, the title of Chapter 8, *The Forum of First Resort: National Tribunals*, is followed by a Chapter on International Criminal Tribunals, which seems to imply that international and domestic criminal tribunals form part of the same legal hierarchy, which is not the case. And it is not clear why the authors seem to consider truth commissions and civil suits (in Chapter 10) as examples of mechanisms for accountability. Indeed, one of the more bitterly controversial aspects of the South African Truth Commission has been its authority to trade amnesty for statements purporting to represent the truth, a process that obviously may frustrate the enforcement of criminal responsibility for human rights violations (and incidentally, may even also undermine efforts at national reconciliation as the authors acknowledge at p. 203). Chapter 10 also includes a part on *Immigration Measures: Denying Refuge to Offenders*, which the authors seem to view as a sort of sanction, as these measures may "present an opportunity for bringing some justice to bear on those responsible for human rights abuses" (p. 214). However, such measures involve much larger questions concerning efforts to acquire custody over the alleged offender, and hence, problems relating to extradition between states as well as state cooperation with international criminal tribunals in the arrest and transfer of criminal suspects or fugitives for trial or imprisonment. Accordingly, these kinds of procedural issues should figure not under the rubric of mechanisms for accountability, but more as procedural questions concerning acquisition of custody, perhaps in a separate chapter devoted to this matter.

In a lengthy section entitled *Civil Suits: Alternative Day in Court for Victims*, for no apparent reason, the authors consider the law on denaturalization and deportation only of one country: the United States (pp. 208-215), explaining in a footnote their view that US law "provides a useful example of a developed legal system for pursuing civil redress for human rights abuse abroad" (footnote 38, p. 204). Readers might have benefited from a much broader analysis that included a comparison of the relevant norms in other legal systems.

A brief word must also be said about the methodology used in the book. The authors observe there has been a lack of state prosecutions of crimes under international law in the last half century, and then indicate they prefer to rely on: "statements of governments as evidence of their belief about the meaning of law where more concrete evidence (such as action against specific offenders) is lacking. Although this approach may have analytical shortcomings, it seems consistent with the appraisal method of courts and scholars evaluating human rights norms, even if they differ on the exact methodology" (p. 19).

However, the analytical shortcomings of this approach should not be underestimated. State practice rather than mere statements, i.e. what a state and its officials or agents actually do, not what these actors say they do, is what counts for both perpetrator and victim, particularly if we are talking about violations such as torture, rape, or murder. As a matter of the requirements of international customary law, state practice is by far the more critical element; *opinio iuris* alone is often highly unreliable and even misleading. It would be nothing short of naive to rely on official government statements alone as an indication of what governments believe to be the law in its 'authoritative' aspect, for in the human rights field, many governments, particularly those whose members may be responsible for really serious violations, are famous for saying positive things about human rights while violating them left and right. A realistic appraisal of customary law requires a careful evaluation of actual state compliance. Talk is cheap: governments frequently pay lip service to human rights norms, it seems, because other members of the international community may just take them at their word, in which case real compliance can be safely dispensed with! Better to acknowledge that the law is unclear or that there is insufficient evidence of a customary rule than either to water down the requirements of custom or concoct customary rules from *opinio iuris*, imagining norms where there are none.

Elsewhere, the authors state that: "[i]nternational criminal law should thus be viewed as but one of the alternatives along a continuum to enforce international human rights or humanitarianism, with criminality a means of enforcement when other methods prove inadequate" (p. 11). But this view is misleading. Aside from the point that 'criminality' – which, according to, for example, the Oxford English Dictionary means "the quality or fact of being criminal" i.e. referring to the criminal act itself not to the process whereby an act may be designated as criminal – cannot be a means of enforcement, it does not follow from the fact that certain violations of human rights and humanitarian law figure

within the rubric of crimes under international law, that international criminal law should be viewed either along the same continuum of one or both of these bodies of norms, or as a species of either. While it is true that international human rights law, humanitarian law, and certain other fields of international law, such as the international law governing navigation on the high seas, encompass norms providing for individual criminal responsibility for particular acts, it does not follow that these other fields are assimilable to international criminal law or the other way round. To the contrary, international criminal law is rapidly emerging as a separate and distinct normative and institutional subsystem of public international law, evidenced most strikingly by the adoption on 17 July 1998 in Rome of a treaty to establish a permanent international criminal court. The eventual establishment of the permanent court with the statute as the cornerstone of a universal international criminal code would certainly provide a major impetus in this direction.

Accountability for Human Rights Atrocities in International Law is thought-provoking for the issues it raises, its wide-ranging scope, its extensive references to cases and the use of a very interesting case study on Cambodia. The book raises many stimulating questions on various aspects of individual criminal responsibility in international law for serious human rights violations and, despite some conceptual imperfections discussed above, remains a valuable addition to the scholarly literature on this topic.

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Key Resolutions of the United Nations General Assembly, 1946-1996, by D. Rauschnig, K.Wiesbrock & M. Lailach. Cambridge University Press, Cambridge, 1997. ISBN 0-521-59287-9, xx and 600 pp., US$ 135/UK £ 90.

This collection of some of the key resolutions of the United Nations General Assembly, from its first session in London in January 1946 up until 1996, was prepared in connection with the celebration of the UN's fiftieth anniversary in 1995. It presents a selection of 419 resolutions out of a total of more than 8000; a short preface explains the format: one accessible volume, handy for desk or office use or during lectures.

Published by Cambridge University Press, the text was prepared by staff members of the Institut für Völkerrecht of the University of Göttingen.The

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authors claim its importance for, on the one hand, politicians and diplomats, and even staff members of international organizations and, on the other hand, scholars and lecturers in the field of international law, political science, or contemporary history. Students, journalists and the interested public also might find it useful. It is maintained that for any research into, or discussion of these areas reference to key General Assembly resolutions is essential. Their significant influence on many international issues, such as friendly relations between states, disarmament and peacekeeping, self-determination and decolonization, human rights, crime prevention, and global protection of the environment, cannot be denied.

The 419 selected resolutions are accordingly classified under 11 systematic headings, in chronological order, without any further introductory comments.

Part 1 is entitled *Principles Governing International Relations* and covers peace and security, peaceful settlement of disputes, sovereignty and intervention, diplomatic and consular missions, and then proceeds to resolutions on particular disputes such as the Suez Canal, Hungary, Congo, Cyprus, Nicaragua which have been the subject of UN concern.

Part 2 deals with the *Maintenance and Restoration of International Peace and Security* and covers disarmament, nuclear and other weapons, peacekeeping operations, regional security arrangements and the strengthening of democracy, including election observing.

Development and Strengthening of International Law is the subject of the next part which, surprisingly, gives only a handful of resolutions. The only texts dealing with the International Law Commission are on its establishment and enlargement respectively, and those are to be found in Part 11, under *Functioning of the United Nations*. Given the importance of the development of international law as a criterion for the selection process as professed by the editors, we would have liked to see requests for Advisory Opinions of the International Court of Justice included here, and not only on a selected basis under separate cases. The important Part 4, *Problems of Statehood*, follows the evolution of international thinking on decolonization and self-determination through resolutions of a general declaratory character as well as on particular cases such as the former Portuguese colonies, the case of Namibia, the unification of Togoland, Southern Rhodesia... The question of Palestine is also dealt with in this Part, going from the fundamental Resolution 181 of 1947 on *The Future Government of Palestine* to the latest resolutions on the legality and the economic and social repercussions of Israeli settlements in the Occupied Territories.(The status and UN-representation of the PLO is brought under Part 11). Several more recent problems of unification and dissolution of states, such as Germany, Korea, Yemen, and Yugoslavia also found a place in Part 4.

Two important parts are Part 5, on *Economy and Development*, tracing the history and evolution of the UN's work and thinking on questions of economic and social development co-operation, and Part 6, on *Human Rights*. This last

section includes resolutions on general human rights questions (the full text of the Universal Declaration is included), but also on more specific topics (discrimination) and on vulnerable groups, such as women, children, minorities, and indigenous peoples. Here, as in other parts, we would have liked to see included the enabling resolutions of the great UN- Conferences in the human rights field as well as the adoption of the conclusions of these Conferences by the General Assembly. Now, we find only the Nairobi Foreward-Looking Strategies for the Advancement of Women. On the other hand, important texts such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the resolutions on the protection of all persons under any form of detention or imprisonment and on the treatment of prisoners have been included. The resolutions on human rights situations in specific countries seem to us to be of lesser importance in this context. Their relevancy for the development of Human Rights law in general is debatable, and readers who are studying certain country-specific situations need much more information than is given here. This applies to other parts of this publication as well.

The relatively short Part 7, on *Humanitarian Law*, includes some 16 resolutions on the law of armed conflict, war crimes and genocide, and refugees, displaced persons, and stateless persons. They concentrate on the most important statements of principles in the field; there is no reference to the work of the UN High Commissioner for Refugees.

Part 8 deals with *Questions Concerning Territory, Sea and Space* but gives only some of the basic resolutions on the Law of the Sea, on the Law of Outer Space (both concerning the so-called global commons) and one on the question of Antarctica. The resolutions on the Law of Outer Space include the fundamental Declaration on Guiding Principles of 1963 and later resolutions on various specific subjects, but, inexplicably, the resolution on Principles Relating to Remote Sensing of the Earth from Space, the only source of international legal principles in this field, has been left out.

Social Issues, Part 9, contains a number of important texts on drug abuse and drug trafficking, as well as on international co-operation on crime prevention; the texts of several model treaties in this field are included.

Part 10, on *Environment*, gives the text of only 11 resolutions. We have the impression that the evolution of international law in this domain, and its growing importance, would have justified a more extensive selection. The enabling resolution of the Rio Conference of 1992 could have been included, for example.

The final Part 11 deals with the functioning of the United Nations Organization itself: composition of, and voting in, some of the UN's organs; establishment of certain subsidiary organs; membership and representation; and of course financial and budgetary questions.

A selection as the one under review is understandably difficult, personal, and to a certain extent also arbitrary. We have to respect certain choices and omissions which do not correspond with our own views on the importance of specific resolutions. Nevertheless, some logic in the selection process is to be respected! One more example of an incomprehensible selection is Part 11.60 which deals with "non-members and observers". It includes several important but by no means all decisions of the General Assembly granting modes of access to outsiders. As to regional organizations, the decision on the EEC is included, but nothing on OAS, OAU, Council of Europe, etc.. As an example of the newest developments in the field the resolution on observer status for the International Committee of the Red Cross is included, but not the much more innovative and controversial resolutions on observer status for the International Federation of Red Cross and Red Crescent Societies and for the Sovereign Military Order of Malta respectively.

Finally, under this sub-heading another resolution, entitled Observer Status of National Liberation Movements Recognized by the Organization of African Unity and/or the League of Arab States is included which in reality does not deal with the granting of observer status at all (these Liberation Movements had been accorded observer status already in 1974) but with certain facilities for observers at international conferences, and in that context encourages member states to ratify the UN Convention on Representation of States in their Relations with International Organizations of a Universal Character of 1975.

The collection under review does not present any insight into the legal, historical or political background of the various subjects and resolutions. As we have seen, apart from the two-page foreword, the resolutions have to speak for themselves. The text is published with only the date of adoption and the voting result. This might give the unsuspecting reader the impression that all resolutions are created equal and have equal value and effect. Of course, nothing could be further from the truth.

An introduction, however brief, on the legal character and political context of the resolutions would have contributed greatly to the value of the collection. It is essential for the reader to know that the General Assembly, according to Article 10 of the Charter, "may discuss any questions or any matters within the scope of the present Charter [...] and [...] may make recommendations to the members of the United Nations [...] on any such matters". General Assembly resolutions are recommendations and in principle have no binding effect on states. A proposal to give the Assembly general regulatory powers was overwhelmingly defeated at the San Francisco Conference where the Charter was negotiated in 1945.

Nevertheless, certain resolutions may have effect going beyond mere recommendations to the member states. In the first place, it is understood that, with regard to the internal affairs, to the functioning, of the Organization, the General Assembly does have regulatory powers: the determination of the budget, the appointment of the Secretary-General, the admission of new members, the creation

of subsidiary organs are decisions of the Assembly, and are of course binding on the members. It follows that for instance the resolutions of Part 11 of the collection under review are fundamentally different in (legal) effect than many others.

Furthermore, the General Assembly, as has been recognized by the International Court of Justice in its Advisory Opinion on the question of Namibia of 1971, in some instances may take 'constitutional' decisions on the legal status of certain territories. This was the case with the former Mandate Territory of South West Africa (*see* p. 125). The wording of this resolution and of others concerning South West Africa/ Namibia: "reaffirms [...], decides [...], establishes" clearly reflects this.

Finally, the question remains whether the other resolutions, as recommendations, then have equal value in international relations?

The answer is, of course: certainly not!

Some resolutions, such as the Universal Declaration on Human Rights of 10 December 1948, and adopted with unanimity or quasi-unanimity, have come to be accepted as significant statements, or re-statements, of customary international law, and are considered as binding on states, while others have remained highly controversial. The debate on whether any binding effect should be accorded to General Assembly resolutions reached a high point in the sixties and early seventies when the composition of the Assembly had resulted in a clear majority of newly independent, mostly Third World, developing countries. Items such as the right to independence and self-determination, to exploit national natural resources, the question of activities of foreign economic and other interests, a 'Charter on Economic Rights and Duties of States', in short the creation of a New International Economic Order, had taken over the agenda. Voting on these issues ended invariably in overwhelming majorities for the group of developing countries. Representatives of industrialized nations soon discovered the danger of voting in favor of this kind of often far-reaching declarations and changed tactics by making reservations, issuing interpretative statements, abstaining, or voting against, trying to block possible effects of a unanimous approval. And in this regard it was maintained that it was not only the number of negative votes which counted. For example, with regard to the Declaration on Economic Rights and Duties of States, the American representative declared that the proposed text was "meaningless without the agreement of countries whose number may be small, but whose significance in international economic relations can hardly be ignored", meaning, of course, the six industrialized countries which had voted against!

Thus, while tracing the progressive development of international relations through successive General Assembly resolutions in a given field, as the publication under review is inviting us to do, we should be forewarned. It is very important to not only take note of the text in itself, but carefully check the subject-matter as well as the voting results in order to determine its value. As we

have pointed out, the majorities acquired may constitute a poignant indication of the significance of the text concerned.

In sum, this collection of resolutions of the United Nations General Assembly is a handy tool for students of the UN's influence on international relations of the past 50 years, and often makes fascinating reading. However, it cannot be useful without the necessary background information on the structures, history and working of the UN.

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