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The Procedural Status of the Individual Before International and Supranational Tribunals. by W. Paul Gormley.

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THE PROCEDURAL STATUS OF THE INDIVIDUAL BEFORE INTERNATIONAL AND SUPRANATIONAL TRIBUNALS. By W. Paul Gormley. The Hague, Netherlands: Martinus Nijhoff, 1966. Pp. viii, 206. 27f.

International law or the law of nations must be defined as law applicable to states in their mutual relations and to individuals in their relations with states.[1]

—Philip Jessup

The major premise of Professor Gormley's book is that in order to guarantee and to protect human rights which, of necessity, must include economic and property interests, individuals must be capable of maintaining a judicial action against any state which inflicts an injury upon them. To be able to maintain any such action, then, one must possess the necessary *locus standi* at the regional and at the international level. The minor premise could well be formulated to state that even though this type of action is not recognized under traditional concepts of international law, with the adoption of the European Convention of Human Rights[2] and the Establishing Treaty of the Common Market, the individual has in fact—albeit in a rather limited fashion—emerged as a proper *subject* of international law. The author's conclusion is simply that it is no longer proper to hold that only sovereign states are procedural subjects of international law, although he does concede that the individual does not presently enjoy the same standing as states.

Because of an ever-present and, indeed, expanding theory of absolute state sovereignty together with the direct attempts by the member governments of the Council of Europe and the European Economic Community to eliminate any interference in their domestic jurisdictions, Professor Gormley holds the opinion that he has selected a somewhat undesirable time for this work.[3] Yet, undaunted by this state of affairs, he feels that an emerging procedural personality belonging to the individual is evident due to the use of supranational institutions.[4] Specifically, pursuant to the authority contained in the European Convention of Human Rights and the treaty establishing the European

1. A Modern Law of Nations 17 (1950) (slightly altered for this publication). Jessup feels that, as an object (rather than a beneficiary or full subject) of international law the individual has no standing to bring suit in his own name for injuries sustained. *Id.* at 16.

Brown, writing as early as 1924, acknowledged that international law applied only between states and, consequently, the individual had no international rights. Editorial Comment, *The Individual and International Law*, 18 Am. J. Int'l L. 532 (1924).

2. The Convention was signed in Rome on November 4, 1950, and subsequently became effective on September 3, 1953. It has been ratified by fifteen countries: Austria, Belgium, Cyprus, Denmark, West Germany, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden, Turkey and the United Kingdom.

For a most illuminating approach to an understanding of the Convention, see Buergenthal, *Comparative Study of Certain Due Process Requirements of the European Human Rights Convention*, 16 Buffalo L. Rev. 18 (1966). See also Jessup, Transnational Law 52-71 (1956) for a general consideration of the power of transnational law to deal effectively with legal problems at the international level.

3. Preface at vi.

4. *Ibid.*

Economic Community, courts of justice, along with administrative and political organs, which are in turn held to be capable of effectively dealing with complaints filed by individuals, have been established.

After reading an enlightening preface, the reader next encounters a list of one hundred six abbreviations running the gamut from COMECON (Council for Mutual Economic Assistance) to IMCO (International Maritime Consultative Organization) to WEL (Western European Union). One immediately questions the need for this list in the first place. Most of the abbreviations are well understood by those who have any level of familiarity in the area, while others force the reader to refer constantly to these opening pages. This is only a mechanical point of a stylistic nature, but the book would nonetheless have been more sophisticated in its approach if, when reference was made in the body of the book to various European organizations, their full names had been written.[5]

Starting, then, with a brief consideration of the natural rights of men as set within the broad context of international law,[6] moving to the development of his procedural remedies,[7] the various claims commissions of the inter-war period,[8] arbitral tribunals and the role of the United Nations,[9] discussion of the Council of Europe and the various European economic organizations concludes the book.[10] Thoughtful observations are evidenced throughout.

There can be no question concerning the book's breadth of research. Indeed, Professor Gormley is to be congratulated on his meticulous research efforts. However, there is a serious weakness: that is, there is a lack of full, in-depth footnote analysis. For the most part, the reader finds a series of direct quotations and little attempt to synthesize various views.[11] Perhaps it was felt that the reader should draw his own conclusions. Whatever the idea or purpose, this failure to achieve careful analysis, as well as synthesis, within the footnotes is a serious weakness of the book.

The reviewer finds himself in general agreement with the astute observations maintained by Professor Gormley, namely:

First. That the United Nation's General Assembly should promulgate more declarations creating limited obligations of member governments in the area of human rights similar to the Declaration on the Granting of Independence to Colonial Countries and Peoples.[12] Although declarations of this nature ad-

5. *E.g.*, P. 61: "Finally, we must not lose sight of the fact that the ILO (and to a lesser degree other agencies such as UNESCO, WHO, FAO, ITU, UPU, etc.) function at the international level instead of a limited region, with the result that universal minimum standards are created."
6. Pp. 1-16.
7. Pp. 17-35.
8. Pp. 36-44.
9. Pp. 45-126.
10. Pp. 127-84.
11. *E.g.*, p. 58 n.53. In emphasizing the magnitude of the workings of the International Labour Organization, instead of carefully examining the cases of importance it is stated that such an examination would be unduly lengthy.
12. P. 15.

mittedly do not possess legal force or have a binding quality, as does a multilateral treaty, when declarations are unanimously passed, they thereby acquire a position that lies between the mere codified declaration of ideals and a binding convention.[13]

Second. The International Labour Organization has made perhaps the greatest inroad into traditional law and not only provided effective protection to individuals but an indirect right of petition which actually amounts to a right of direct petition at the international level. It would do well for other organizations to emulate the Labour Organizations.[14] Indeed, the United Nations, itself, must give the private party access to the highest international tribunal—The International Court of Justice—if the world rule of law is to become a reality.[15]

Third. The Council of Europe has, within a ten-year period of time, taken significant strides in modifying the traditional object theory of international law—and to this extent has exceeded the efforts of the League of Nations and even the United Nations in the protecting human and economic rights,[16] while the European Economic Community seeks to guarantee economic and property interests.[17]

Fourth. The Commission on Human Rights and the International Court of Justice must assume leadership in attempting to bring about a liberalization of the procedural standards for individual petitioners, and at the same time secure wider ratification of all important international documents by the members without reservations.[18]

This entire book reads more like an historical commentary than a hard piece of traditional legal literature. But this is not meant to be necessarily critical; the reviewer believes that the real purpose of the book is to be found from a standpoint of historical overview. And it is for this reason, then, that the reviewer disagrees with the Professor's reservation expressed in his prefatory comments that this was not an auspicious moment for a study of the procedural status of the individual before international and supranational tribunals. While the present book is not an exacting definitive legal study, its value and stature as a contribution to legal scholarship undoubtedly will be

13. *Ibid.*
14. P. 52.
15. P. 192.
16. P. 122.
17. See Buergenthal, *The Private Appeal Against Illegal State Activities in the European Coal and Steel Community*, 11 Am. J. Comp. L. 325, at 346-47 (1962):

> [T]he Treaty establishing the European Economic Community does not contemplate an appeal, whereby a private party may either directly or indirectly contest the legality of acts or omissions of member States in the Community Court. In fact, the E.E.C. Treaty takes great pains to prevent the possibility of the indirect appeal available under the European Coal and Steel Community Treaty. . . . By leaving the power to contest illegal State activities exclusively to the Community institutions and the member States, the E.E.C. Treaty has deprived itself of the most effective guardian of Community legality: the private party.

18. P. 123.

fully recognized once the emerging procedural personality of the individual is, itself, realized and the book then serves as an invaluable legal chronicle.

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