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Moskowitz: Human Rights and World Order. The Struggle for Human Rights in the United Nations

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RECENT BOOKS

HUMAN RIGHTS AND WORLD ORDER. The Struggle for Human Rights in the United Nations. By *Moses Moskowitz.* New York: Oceana Publications. 1958. Pp. 239. $3.95.

This is a valuable addition to the vast literature on questions of the international protection of human rights which has appeared since World War II. It is interesting to the student who is familiar with the subject. It is also a very good introduction to what has become a very involved accumulation of law and fact.

In describing the human rights activities of the United Nations the author deals with the Charter and with the ambitious project of the International Bill of Human Rights, of which only the first part, the Universal Declaration of Human Rights, 1948, has so far materialized. However, the United Nations has met considerable difficulties of a political and technical nature in making rapid progress with what was supposed to be the core of the bill, the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. Mr. Moskowitz estimates that the General Assembly will require at least ten more years before the covenants can be opened for signature. The book gives an account of two outstanding examples of United Nations intervention in specific human rights issues, namely, the racial situation in South Africa and the issue of forced labor. It also deals with interim measures for the protection of human rights and supplementary programs, in particular, in the latter category, with the so-called action program proposed by the United States which consists of advisory services in human rights, a system of periodic reports by governments, and studies of specific rights or groups of rights.

The author believes that the basic considerations underlying the human rights program are political, social and moral, and only secondarily legal and constitutional. The fact remains, he adds, that the systematic development of well defined and reliable procedures and practices which are indispensable to orderly international action for the advancement of human rights requires a clear and authoritative answer to the many constitutional problems which arise out of the domestic jurisdiction clause [Article 2 (7) of the Charter]. The failure of the United Nations to provide such an answer is, in the author's view, both cause and effect which account for the fact that so far the world organization has not succeeded in striking a balance between the appropriate spheres of national and international competence in the field of human rights.

Moskowitz makes a strong plea for the right of the individual to petition an international authority and for the creation of the office of a United Nations Attorney-General for human rights. His suggestions contemplate a world-wide network of regional machineries of implementation

(committees and regional attorneys-general) from which an appeal would lie to the Central Human Rights Committee.

A book like *Human Rights and World Order,* the author of which has for many years devoted his scholastic attainments and his great industry to the cause of human rights, deserves not that the review be restricted to a few general laudatory remarks, but that the issues which it presents be squarely faced and subjected to critical analysis. This will now be attempted.

The main conclusion of the book is summarized in one short sentence on page 166, where the author states that "there is no substitute for the Covenants on Human Rights." In this refined and reflective age, he believes, moral indignation is no barrier to mischief; "but a government will reflect twice before risking a breach of international law." Nobody who is interested in the international protection of human rights will seriously contest the view that the coming into force of comprehensive legally binding treaties regulating all fields and all aspects of human rights and endowed with appropriate international supervisory machinery would be a highly desirable state of affairs. This is, indeed, a goal to which the United Nations is solemnly committed. The author underestimates, however, what already exists and declines to accept less complete achievements as desirable assets. His point of departure is an interpretation of the domestic jurisdiction clause of the Charter which is indistinguishable from the interpretation placed on this often quoted clause by the champions of unrestricted State sovereignty. That Moskowitz makes a brilliant plea, *de lege ferenda,* for the need for an "international rule of law in Human Rights" does not alter the fact that it is his proposition that the *lex lata* places no obligations in human rights matters on States and that, apart from cases which involve threats to the peace, breaches of the peace or acts of aggression, it vests no authority in the United Nations. He states that "the Member States are partially liable to the jurisdiction of the United Nations in so far as they are subject to its enforcement authority in situations and disputes which the United Nations considers as requiring its intervention," i.e., by way of enforcement measures under Chapter VII of the Charter. That in his view is the limit of the obligations deriving from acceptance of the Charter. So blunt a statement does not take sufficiently into account the fact that Member States have pledged themselves to take action for the achievement of universal respect for human rights (Article 56) and to fulfill in good faith the obligations assumed by them [Article 2 (2)].

It is a consequence flowing logically from the author's general approach when he says, with regard to the action taken in such matters as the race question in South Africa and the question of forced labor, that these "demonstrate clearly the illusory character of United Nations intervention in specific questions involving human rights and its incapacity for effective and constructive action." While it cannot be claimed that the activities

of the Organization in regard to the racial situation in South Africa have so far been crowned with success, there will be many who dissent from his summary dismissal of the many similar attempts of the Organization. That "the United Nations fell far short of its objectives" is not surprising. Mr. Hammarskjold has said: "The United Nations is only a first approximation to the world order which we need and which one day must be brought about." (Address at the Atoms for Peace Award Ceremony, January 29, 1959)

Moskowitz dismisses lightly such developments as the use of the Universal Declaration of Human Rights as a yardstick for human rights standards by the United Nations organs and other inter-governmental organizations; the implementation of a series of provisions of the Declaration in special conventions which have come into force under the auspices of the United Nations, of the International Labour Organisation and of the Council of Europe; the incorporation of the Universal Declaration in a number of international conventions and other instruments; the influence of the Declaration upon national constitutions and legislation. He hardly does justice to such developments as the evolution of international procedures and the growth of customary rules and principles which have emerged from the "allegations procedure" which was established by the International Labour Organisation on behalf of the United Nations and on its own behalf. [See *Jenks, The International Protection of Trade Union Freedom.*] This development took place, not on the basis of international conventions, but by making use of the powers inherent in the United Nations and in the International Labour Organisation under their basic instruments. The "allegations procedure" has, in scope and in weight, by far overtaken the importance of the more formal procedures of representation and complaint which are provided in the Constitution of the ILO.

The author gives little, if any, credit to the impact on national and international developments of the studies and recommendations in the field of the status of women. He prematurely dismisses the importance of the "new directions in the United Nations programme" on human rights [See Humphrey in *New York Law Forum,* October 1958.] which are still in their initial stages. Their potentialities cannot yet be conclusively estimated. Moskowitz does not deny that the advisory services, more particularly in the form of seminars, or regional conferences, devoted to such questions as the protection of human rights in criminal law and procedure, hold out promise. This reviewer cannot agree with the conclusion that the studies (or the one study undertaken by the Commission on Human Rights, on "the right of everyone to be free from arbitrary arrest, detention and exile" which is still in a preparatory stage) "fail to come to grips with the facts of the situation or tend to dilute the concrete and specific in a sea of generalities"; nor with the opinion that the studies of discrimination in various areas such as education or political rights, undertaken by the

Sub-Commission on Prevention of Discrimination and Protection of Minorities, a subsidiary body of the Commission on Human Rights, stand out in sharp contrast to the arbitrary arrest study undertaken by the Commission itself through a committee of four of its members.

In general, Moskowitz perhaps overestimates the difference, in the international community as it exists today, between treaties purporting to be legally enforceable and pronouncements or activities which operate in the moral and political rather than in the legal field. The 1947 Peace Treaties are international instruments which contain not only legally binding provisions to secure the enjoyment of human rights in the States concerned, but also provide for international machinery for the settlement of disputes arising out of their interpretation and execution. Nevertheless, in some cases, the machinery of the Peace Treaties broke down. The Universal Declaration of Human Rights, on the other hand, which is not a treaty, which was not the object of signature and ratification and which does not provide for its international implementation has, in the words of the Secretary-General of the United Nations, "acquired an authority of growing importance."

Side by side with his rather dogmatic approach to Article 2 (7) of the Charter, and perhaps not quite consistently with it, Moskowitz expresses the opinion that whether a matter is or is not essentially within the domestic jurisdiction of a State is not necessarily a legal question. It depends, he believes, upon the state of international *relations* at a particular time. The concept of "international relations" as denoting an academic discipline different from "international law" has come into use only in recent years. The Permanent Court of International Justice did not use the term "international *relations*" as opposed to "international *law*" when in the Advisory Opinion concerning the Tunis and Morocco Nationality Decrees, 1923, Series B, No. 4, page 24, to which Moskowitz refers, it said that the "question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends upon the development of international relations." The Court continued: "Thus, in the present state of international *law* (sic!), questions of nationality are . . . in principle within this reserved domain." It remains a question of law—to which, incidentally, the General Assembly has given an unmistakable negative reply in a long series of decisions adopted, albeit, by differently composed majorities—whether in spite of the Charter provisions on human rights, human rights questions have remained a matter which is essentially within the domestic jurisdiction of States. An "authoritative interpretation" of the terms of Article 2 (7), which the author so keenly desires, could be obtained only through the procedure of an amendment to the Charter. "The right of giving an authoritative interpretation of a legal rule belongs solely to the person or body who has power to modify or suppress it." "*Ejus est interpretare legem cujus condere*" [Question of Jaworzina (Polish-

Czechoslovakian frontier), Advisory Opinion of the Permanent Court of International Justice, 6 December 1923, Series B, No. 8, page 37]. An amendment of the Charter on so delicate a problem as domestic jurisdiction is beyond the realm of practicability. This is shown by the difficulties which arose in 1956, 1957 and 1958 in connection with the far less sensitive proposals to amend the Charter provisions about the number of the non-permanent members of the Security Council and of the members of the Economic and Social Council.

If this reviewer has expressed opinions which differ in some respect from those of Mr. Moskowitz, or if he has placed different emphasis on various developments, this does not mean that he finds himself in disagreement with the main body of the book, and still less that this difference of opinion detracts from the scientific value and scholarly character of Mr. Moskowitz' contribution. The difference is more a difference of temperaments. In the international field in general and in human rights in particular this reviewer accepts Marcus Aurelius' advice: ". . . be content with achieving even slight progress in human affairs and do not consider even slight progress unimportant."

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