INTERNATIONAL PROTECTION OF HUMAN RIGHTS. By Louis B. Sohn* and Thomas Buergenthal.** Indianapolis, Indiana. Bobbs-Merrill Co. 1973. Pp. xliii, 1,402. $19.50. BASIS DOCUMENTS ON INTERNATIONAL PROTECTION OF HUMAN RIGHTS. Pp. vi, 244. $4.25.

For a number of years, those few law school teachers offering a specialized course dealing with the protection of human rights have been hampered by the lack of a suitable case book and collection of documents.[1] As interest grew in this subject, developing within the context of public international law, the need for a scientific collection of historical and contemporary materials became acute. This gap in legal literature has now been filled by one of the best source books this reviewer has had the privilege to examine.

The protection of human rights is now a matter of international concern.[2] Against this background, this book provides the needed teaching materials for use in law school instruction and human rights courses offered in other departments. Additionally, the authors note that the book ". . . is designed to serve, more so than do traditional case books, as a source book containing primary documentation needed by teachers, scholars, practitioners, officials of national governments and delegates to international institutions."[3]

The first third of the book develops a historical perspective. The decision of the authors to include a selection of historical materials constitutes one of the book's greatest strengths, but this choice must have been most difficult because there must necessarily be some duplication of topics taken up in courses on public international law. However,

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[1] Schwelb, *Teaching the Law Relating to the International Protection of Human Rights: An Experiment*, 17 J. LEGAL ED. 451 (1965). General treatises were used, *e.g.*, A. ROBERTSON, THE LAW OF INTERNATIONAL INSTITUTIONS IN EUROPE (1961), *as explained* in Gormley, *The Changing Content of International Law: The Experiment in European Regional Organization*, 17 J. LEGAL ED. 79 (1964).

[2] As Professors Sohn and Buergenthal show in their Preface, the protection of human rights is now a matter of international concern:

> It has been widely recognized, at least since 1945, that the international community has a vital interest in the promotion and protection of human rights. The gradual acceptance of the proposition that human rights are a matter of international concern has in turn provided the impetus for the development of new rules of international law defining in specific terms various individual rights and freedoms; it has also led to the establishment of special institutions to interpret and apply these rules. The result is a substantial and rapidly evolving body of law, both substantive and procedural . . . .

L. SOHN & T. BUERGENTHAL, INTERNATIONAL PROTECTION OF HUMAN RIGHTS (1973) [hereinafter cited as INTERNATIONAL PROTECTION].

[3] *Id.* at v.

these topics need to be reexamined from the standpoint of the protection of individuals, groups, and non-governmental entities rather than in terms of the traditional rules of diplomatic protection. In this connection, it should be recognized that there is a growing tendency to include some discussion of human rights in case books on public international law. A recent example is the new edition of Professor Bishop's CASES AND MATERIALS ON INTERNATIONAL LAW.[4]

The opening chapter of the book contrasts the basic theories underlying the emerging right of the individual with the norm of absolute state sovereignty.[5] The purpose of this material is to illustrate how the individual's status has transformed from being a mere object of state action into a subject of international law. Yet this reviewer wonders why the intermediate position — the individual as a beneficiary of the law — was not at least mentioned. In numerous instances of human rights protection (including the broader notion of labor, economic, social, and cultural rights) the individual is not a full subject of the law; however, he does benefit from the actions of multinational organizations such as the ICRC, the OECD, and even the U.N. For example, even though individuals (sick and wounded prisoners of war and civilians in occupied areas) do not have the right of direct petition or communication to the ICRC, they do derive direct benefits from actions taken on their behalf.[6]

The increased recognition of the emerging status of private individuals is introduced in the opening pages,[7] and this basic theme (along with the antithesis of state sovereignty, encompassing such precise topics as exhaustion of domestic remedies and the requirements of nationality) is reexamined throughout the text. That is to say, this case book not only demonstrates the evolution of human rights protection at the global level, it also treats the developing status of private persons.[8]

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[4] W. BISHOP, INTERNATIONAL LAW (3d ed. 1971). A good example of the coverage given human rights in courses on international business transactions can be seen in C. FULDA & W. SCHWARTZ, CASES AND MATERIALS ON THE REGULATION OF INTERNATIONAL TRADE AND INVESTMENT (1970).

[5] *E.g.*, 1 L. OPPENHEIM, INTERNATIONAL LAW 362-69 (2d ed. 1912); *reprinted in* INTERNATIONAL PROTECTION, *supra* note 2, at 1.

[6] W. GORMLEY, THE PROCEDURAL STATUS OF THE INDIVIDUAL BEFORE INTERNATIONAL AND SUPRANATIONAL TRIBUNALS 26-29 (1966).

[7] *Cf.* the changed position of the status of the individual was recognized by Lauterpacht in 1 L. OPPENHEIM, INTERNATIONAL LAW (8th ed. H. Lauterpacht 1955); *reprinted in* INTERNATIONAL PROTECTION, *supra* note 2, at 5-8. An additional example of the emerging status of the individual as a subject of international law is to be found in a new preface written by Judge Jessup in a reprinting of his classic work. *See* P. JESSUP, *Preface*, A MODERN LAW OF NATIONS (1968).

[8] Opposition (the antithesis) to the recognition of the dignity and legal status of human beings is shown in the rejection of Professor Waldock's Draft Article 66 to the Draft for the 1968 Vienna Conference on the Law of Treaties by the International Law Commission. The purpose of the article is to recognize the individual within the orbit of treaty law. Gormley, *The Codification of*

Chapter Two introduces the classical theme of diplomatic protection, when it is shown that the rights of aliens must not be minimized if sovereigns are to guarantee the rights of their own citizens. While fundamental to subsequent human rights conventions, diplomatic protection, as it emerges from traditional international law, is still one of the primary means through which injuries to nationals and companies are redressed.

Much of the material contained in Chapter Two tends to duplicate the content of courses in international business transactions. However, when considered from the standpoint of human rights protection, such legal precedent takes on a new perspective, namely the manner in which the development of distinct procedural remedies is broadened by state action. In particular, the application of the classical norm of reprisals against aliens, groups of people, or minorities has "shocked the conscience" of humanity to a greater degree than mere reprisals between governments.

The theme of diplomatic protection is carried forward in Chapter Three, which contains illustrations of those extreme situations in which states have intervened in order to preserve the continued existence of minority groups. Chapter Three is one of the most useful chapters because humanitarian intervention is the first attempt in modern international law to break the defense of absolute state sovereignty. Traditionally, this defense allowed a sovereign to treat its own nationals, plus those indigenous people with less than full citizenship who were located in the sovereign's territory, in almost any manner desired.

The instances in which major European powers intervened with military force to prevent the extinction of minority groups serve as the forerunner for later institutional efforts by the League of Nations. It is unfortunate that space limitations compelled the authors to limit their discussion to the interventions in Syria, Lebanon, and Armenia.[9] Lest the reader gather the impression that humanitarian intervention is of purely historical interest, the concluding section presents the Stanley-

Pacta Sunt Servanda by the International Law Commission: The Presentation of Classical Norms of Moral Force and Good Faith, 14 ST. LOUIS U.L.J. 367, 396-401 (1970). Indeed, the basic problem is spelled out by the I.C.J. in the Barcelona Traction case, which held that the traditional requirements of diplomatic protection can only be modified by a convention granting rights to individuals or groups of persons. This pronouncement by the International Court of Justice haunts the study of implementing machinery designed to safeguard individual's rights. Barcelona Traction, Light and Power Company Ltd. (Belgium v. Spain) (Second Phase), [1970] I.C.J. 1, 32; *reprinted in* INTERNATIONAL PROTECTION, *supra* note 2, at 18.

[9] *But see* the additional examples given in INTERNATIONAL PROTECTION, *supra* note 2, at 178-81.

ville Rescue Operation,[10] which illustrates that humanitarian intervention (and in a few instances self-help) is still a contemporary remedy available for future use with the added sanction of a regional or international organization.

Chapter Four is concerned with the international protection of minority rights and the experiments of the League of Nations. The chapter, by explaining the structure and procedural techniques of the major tribunals established in Upper Silesia, renders a major contribution to the understanding of contemporary international lawyers. However, it is not brought out clearly enough that the regional regime, with its mixed commissions, was strictly limited to persons belonging to the German minority in Poland and the Polish minority in Germany. The reality of both the regional and international regimes is that not all minorities were included wihin the scope of the "Guarantee Clause," as contained in the 1919 Bilateral Treaty between Germany and Poland or the 1922 Geneva Convention. Nevertheless, the real significance of Chapter Four is that it notes the major instances in which the League succeeded, to some degree, in safeguarding human rights for a fifteen year period.

Midway through Chapter Four the South West Africa controversy, that has its roots in the Mandate System, is introduced.[11] The 1966 South West Africa case[12] and the enlightened Namibia Advisory Opinion[13] illustrate the interplay between the political organs of the United Nations and the International Court of Justice. As has been true of the earlier chapters, the relationship between the political climate within international institutions and the development of human rights protection is stressed. Thus, the series of South West Africa cases serves as a bridge between the League and the United Nations.

Chapter Five marks a turning point in the book, because the last historical experiment, the Mandate System, is set forth. In fact, even the Mandates can be deemed to constitute a contemporary problem if one considers the South West Africa cases and the refusal of the South African Government to remove its illegal administration from Namibia. The significant contribution rendered by the Mandate System can be seen in the token success of the Permanent Mandates Commission. On

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[10] *Id.* at 195-211.

[11] *Id.* at 373.

[12] South West Africa cases (Ethiopia v. South Africa, Liberia v. South Africa) (Second Phase), [1966] I.C.J. 6.

[13] Advisory Opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276, [1971] I.C.J. 16.

its own motion, the Commission initiated a procedure of communication for the purpose of information to Commission members. Although the investigatory competence of the Permanent Mandates Commission was severely restricted by the Mandatory Powers in 1926, a major advance had taken place in terms of nineteenth century humanitarian intervention. When comparing the Mandate System with those of the post World War Two period, it needs to be emphasized that in the earlier system no tribunal or judicial structure was available to hear the complaints of indigenous populations residing within mandated territories.

The value of Chapters Four and Five is that the mistakes and the limited success of the League are not lost to history. For example, the abuse of the right of unlimited petition to the League Council by the German minority in Poland, still haunts present plans to accord more liberal procedural rights to individuals, in that states are unwilling to subject themselves to abuses by militant groups.

Contemporary attempts to safeguard human rights, discussed in Chapter Six, will be of primary interest to law students. The authors are to be congratulated for reducing the mass of U.N. material into a teachable corpus. Many of the topics introduced in the earlier chapters (*e.g.*, domestic jurisdiction) arise in this chapter to plague United Nations' programs to safeguard human rights.

This reviewer suspects that law students will find Section G, "Communications from Individuals and Organizations Alleging Violations of Human Rights,"[14] to be most interesting for it describes instances in which lawyers can send communications and even petitions to U.N. organs. For example, any person who feels there has been a gross violation of his rights can petition the Economic and Social Council. Of course, the weakness of this procedure is that a state, by not acknowledging petitions nor providing observations, will take the position that it is not legally bound to cooperate with ECOSOC. Despite the fact that ECOSOC is capable of publishing all proceedings so as to bring the force of world public opinion to bear against the offending state, no binding judicial verdict can be issued.

The following section of Chapter Six, "The International Convention on the Elimination of All Forms of Racial Discrimination,"[15] will be equally challenging to students because they will study a convention that, unlike the U.N. Covenants, has received the required number of

[14] INTERNATIONAL PROTECTION, *supra* note 2, at 739-856.
[15] *Id.* at 856-913.

ratifications. Accordingly, the Committee on the Elimination of All Forms of Racial Discrimination is in the process of systematically examining reports received from parties and refining its procedural techniques. Especially relevant reports are those dealing with questions relating to trust territories and non-self-governing territories.

Since its subject matter is of tremendous importance to all lawyers and statesmen, Chapter Seven, *The European Convention on Human Rights*, should be one of the most carefully read chapters in the book. Teachers should devote considerable time to an analysis of the case law of the European Commission of Human Rights and the European Court of Human Rights for an obvious reason: although other systems not yet ratified are superior in terms of the scope of the rights guaranteed and in more liberal procedural criteria,[16] the seventeen member Council of Europe has produced the most sophisticated system of human rights protection that is presently in force. The significance of the structure is that it is functional, and the impact of the body of case law emerging from the court on the protection of human rights in Europe is considerable.

Chapter Seven concludes with a very informative exposition of "The Domestic Application of the Convention."[17] Too often there is a tendency to slight the incorporation of rights contained in multinational conventions within domestic law. For example, in several instances German courts have given a broader interpretation to Convention articles than have the Strasbourg tribunals, whereas in The Netherlands no case has yet upheld Convention rights against provisions in domestic law. Conversely, the future application of international human rights by municipal courts could become another means of achieving the desired goal.

The book concludes with a chapter on the *Inter-American System for the Protection of Human Rights*. At this point the book takes a slightly different direction because the system being examined is not yet in force. That is to say, the Inter-American Convention on Human Rights has yet to achieve the required number of ratifications, and there is little prospect of the Convention ever receiving the required ratification.

Aside from briefly analyzing the contents of the eight chapters, this

[16] *See especially* The Inter-American Convention on Human Rights, Pact of San Jose, Costa Rica (*opened for signature* on 22 November 1969) O.A.S. T.S., No. 36, at 1-21 [O.A.S. OFF. REC O.E.A./Ser. A/16, English (not yet in force)]; *reprinted in* BASIC DOCUMENTS ON INTERNATIONAL PROTECTION OF HUMAN RIGHTS 209-34 (1973). The convention is the topic of chapter eight.

[17] INTERNATIONAL PROTECTION, *supra* note 2, at 1238-65.

reviewer has tried to indicate the strengths of this outstanding case book. Yet a few additional observations may prove helpful. First, because of the care with which the historical data has been selected, and the discussion of contemporary problems (both political and legal) that remain unresolved, this book will never become obsolete. Although many additional petitions, cases, and human rights conventions and protocols will appear, one would hope, in the developing world, this book will nonetheless remain the standard text. New judgments, for example, from the European Court of Human Rights will not eliminate the value of early leading cases. In other words, this book will remain the starting point for the serious researcher and scholar. In particular, the bibliographies provided at the end of each section are extremely well done. So complete is the documentation that Professors Sohn and Buergenthal may have pre-empted much of the future study and research in the field of human rights.

Ironically, the book's greatest strength tends to also become a potential weakness. Quite possibly, the authors have not devoted sufficient consideration to the basic question: "Just who is qualified to teach from this volume?" Relatively few human rights experts are to be found among the teachers of International Law, International Business Transactions, Comparative Law, or Jurisprudence. Regrettably, these standard courses in the international legal studies area are "merely handled" on an irregular schedule.

It may seem a bit ridiculous for a reviewer to suggest that any book of one thousand and four-hundred pages, with a supplement of another two hundred and fifty pages, should have included more material. Still, this reviewer wishes that the Trusteeship Council, because of its system of individual and group petitions, oral hearings, and on-the-spot-inspections of local conditions could have been included. Perhaps later editions of the book may include such information, at least in summary form. Similarly, it seems somewhat unfortunate that the difficulties caused by the existence of the German minority schools in Poland, which consumed so much of the time of the League Council and the Permanent Court of International Justice, could not have been included, so as to shed some light on the continuing linguistic dispute and present language reform in Belgium. Regrettably, such topics had to give way for current activities of the U.N. and O.A.S.

The conventions and protocols contained in the book and supplement reflect the era of the League and United Nations, primarily the two post war periods. Additionally, relatively little attention is devoted to the future course of human rights protection or the new rights that may be

codified by multinational institutions in the latter quarter of this century.[18] For example, despite Professor Sohn's special competence in the subject of the Stockholm Declaration on the Environment,[19] no reference is to be found relating to the proposed human right to be guaranteed a pure and clean environment.

Notwithstanding these few suggestions for the inclusion of additional material, the following conclusion is inescapable: Professors Sohn and Buergenthal have produced a remarkable book. Their original purpose, discussed at the beginning of this review, has been more than fulfilled.

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[18] *See, e.g.*, Council of Europe, Parliamentary Conference on Human Rights, Vienna 18-20 October 1971 (1972).

[19] Professor Sohn takes the position that the Stockholm Declaration [Report of the United Nations Conference on the Human Environment], June 5-16, 1972, U.N. DOC. A/CONF. 48/14 at 2-65, and Rev. 1 (1972), 11 INT'L LEGAL MAT'LS 1416-59 (1972) imposes some obligations on States and can be made binding by future action. Sohn, *The Stockholm Declaration on the Human Environment*, 14 HARV. INT'L L.J. 423, 513-15 (1973).

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