The International Commission of Jurists: Global Advocates for Human Rights. By Howard B. Tolley, Jr. Philadelphia: University of Pennsylvania Press, 1994. Pp. xvii, 344. Index. $36.95.

There is little doubt that the emergence of nongovernmental organizations (NGOs) like Amnesty International and the International Commission of Jurists (ICJ) has been of enormous significance to the development of human rights law in the latter part of this century. Professor Howard Tolley's book is a case study of this Commission, one of the most effective and most established of the human rights NGOs.

Tolley traces the ICJ back to its beginnings as a vehicle for clandestine CIA funding, to provide an international propaganda counterweight to what was perceived as a potential Soviet advantage. He takes the reader through those earliest days, when the focus of ICJ activities was the systematic denial of legal rights in the USSR and Eastern Europe, through the development of a significant and powerful worldwide movement for human rights in the First and Third Worlds as well. The volume has a welcome "warts-and-all" style; although obviously written by a believer in the cause of human rights law and admirer of the pioneers of the movement, it does not shy away from describing the inconsistencies that beset the ICJ's early agenda, as well as the influences that may have steered that agenda off the course of objectivity in the direction of political expediency.

Tolley has clearly invested enormous time in painstaking research into the archives of the Commission, contemporaneous accounts of its activities, and recent interviews with persons whose exploits he relates. His role is that of chronicler, not critic, and the book is narrative written from the perspective of a social scientist, not analysis produced by a lawyer (still less a lawyer specializing in human rights). He therefore makes little effort to tie together the many anecdotes recounted, or to relate them to the "bigger picture" of developments in geopolitics, diplomacy or legal scholarship. Nor have the assumptions that Tolley brings to the study been subjected to the scrutiny that would make some of his conclusions seem less arbitrary.

The principal theoretical premise of the work is that there are two ways of thinking about international law, and two types of people who think in those ways. There are the "realists," a.k.a. positivists, a.k.a. skeptics, who believe that states are the irreducible units of international relations. According to these negative, cynical folk, NGOs can never play a real role in the development of international law because they are neither its subject nor its object. They exist by the grace and at the sufferance of states, which originate individual rights, and they can be ignored or obliterated by states at their unreviewable pleasure.

In the other corner are the "idealists," whom Tolley sometimes calls monists, activists or internationalists. These are the people who believe that international human rights law means something, in that it confers (or protects) real rights, and imposes (or recognizes) real obligations upon real human beings. But, according to Tolley, they have an ambitious political and even psychological program. "Idealists regard human rights as new global values that promote world unity" (p. 11). Their aspiration, he says, is nothing less than modifying human consciousness, aiming at the universal acceptance of world citizenship and, presumably, the Marxist utopian "withering away of the state."

This stylized rendition of competing schools of thought is unfair to both. But the point to be stressed here is a smaller one. Tolley's use of terminology itself helps to perpetuate a view that is rarely spoken, but that requires unequivocal rejection: the view that the acceptance of human rights law *as law* is somehow otherworldly, detached from reality, naive or disingenuous. The very story Tolley tells—the history of the ICJ, its successes and its failures—demonstrates conclusively that, to paraphrase Judge Eugene Nickerson,[1] international human rights law is not a mere set of benevolent yearnings, never to be given effect. It is a definable, ascertainable part of U.S. law: of the federal common law, to be precise. It is also part of the law of the United Nations,

[1] In Filartiga v. Pena-Irala, 577 F.Supp. 860, 863 (E.D.N.Y. 1984), after remand from the U.S. Court of Appeals for the Second Circuit, 630 F.2d 876 (2d Cir. 1980).

to which virtually every country belongs, and membership in which commits each nation to the UN Charter principles and their agreed meanings.[2]

There is a patent inconsistency between the principle reflected in Article 2(7) of the UN Charter, to the effect that the United Nations may not intervene in "matters which are essentially within the domestic jurisdiction of any State," and the solemn commitments of UN members to human rights in Articles 55 and 56 of the Charter, the Universal Declaration, the International Bill of Rights and emerging norms of customary law. The only way to resolve that contradiction is to accept the proposition that the manner in which a state treats its own citizens is not of exclusively domestic concern. There is nothing "idealistic" about this reasoning—indeed, it is those who begin from this syllogism who ought accurately to be termed "realists."

Tolley never quite abandons the framework in which the architects and builders of the human rights law structure are seen as somehow unrigorous. While he concedes that they have done much to improve the human condition, he retains in the book the sense that they are indifferent (deliberately or not) to the inescapable reality of the state. What Tolley calls "a new world order" (which appears to mean a legal system—rather than a political one—not based upon, or perhaps not even containing, nation-states as political units) has yet, he says, to arrive, despite the desire of the "idealists" promoting the NGO agenda to bring it into existence.

An even more basic unexamined premise may be at work here. Throughout the volume, Tolley attempts to relate NGOs in general, and the ICJ in particular, to his "new world order." He relies on analogies between international human rights law and systems of domestic law, especially that of the United States. He speaks of law enforcement institutions, procedural due process and separation of powers, and he regularly refers to international *laws* as well as international *law*, occasionally mentioning the emergence of legal norms as a *legislative* process.

Surely the process of negotiating treaties can be analogized to that of creating domestic legislation. But, as Tolley is well aware, only a portion of human rights law can be said to be binding as a direct result of treaties. General principles of law, and international customary law, have vital roles to play. The former require "recognition by civilized nations"; the latter, state practice accompanied by *opinio juris*. How, therefore, can Tolley's question, "How can international laws be made of the people, by the people, and for the people?" (p. 112) be answered? Even if we knew the answer, would it make sense to assign NGOs this task? Is there any reason why there *should* be an answer to Tolley's challenge, "Did [*sic*[3]] the ICJ provide democratic representation for world citizens in the international political system?" (*id.*)?

"No objective standard," Tolley writes, "can determine whether the ICJ has passed the new world order test" (p. 20). That surely is true, and it would be even if we knew what that "test" was, and what constituted "passing" it. What seems to be emerging, then, from Tolley's view, is a system in which NGOs, like the ICJ, demonstrate by their existence that the juridical order has changed, and that they have fostered that change in the direction of some (unspecified) conception of democratic participation.

Would it not be more accurate to reverse the arrow of implication? Is it not simpler and more accurate to explain that the ICJ and Amnesty International, and the International Human Rights Law Group, and all other NGOs dedicated to furtherance of international human rights as a *legal* system, exist and are able to make a difference precisely *because* the international order has already become something very different from what it was before 1945? Foreign election and trial observers are accepted (if not always welcomed); human rights reports are prepared, presented, and responded to; intergovernmental human rights organiza-

[2] That human rights law is regularly disobeyed, even flouted, is no basis for the claim that it has no place except in the fantasies of "idealists." One does not need to deny the existence or the significance of the nation-state to acknowledge this truth.

[3] There is an odd and distracting inconsistency in tenses throughout the book.

tions (whether within the UN system or regional) convene their meetings, adopt their agendas, and express their views—including those of censure and condemnation; and international campaigns for or against economic sanctions for rights abuses are undertaken. All of this happens because it is an incontrovertible reality at the end of the twentieth century that old notions of sovereignty no longer justify a nation's claim to exclusive control over the rights of the human beings living within its borders.

The test that can fairly be put to the ICJ, then, is whether it has helped to disseminate the view that international human rights law is law, and that compliance with it is mandatory as a matter of law. Tolley's book provides ample and persuasive evidence that this test has been passed. The success of the ICJ, through the unparalleled prestige and unquestionable objectivity of its members, is seen in myriad examples. Perhaps the most important of these is the Commission's universality; it is self-consciously multinational, multiracial and multiethnic. Although founded by First World lawyers, it has had an African president and now boasts its first African secretary-general. As Tolley shows, even when it was funded principally (if not openly) by certain governments, it did not hesitate to criticize those governments themselves when they deserved criticism. It is, therefore, together with Amnesty International, unusually resistant to the charge of cultural imperialism or systematic bias.

Professor Tolley's case study, although perhaps not easily accessible to readers unfamiliar with international institutions and their procedures, provides an interesting genealogy of one of the oldest, most venerable members of the human rights family. As narrative, the book achieves its purpose, which is in no way undermined by the criticisms leveled here at its analytical framework. Moreover, it amply supports its conclusion, which is that in any foreseeable future, "the rule of law [will] still require an (Independent) Commission of Jurists to promote and protect human rights" (p. 282), just as the ICJ has so ably been doing for more than forty years.

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The European System for the Protection of Human Rights. Edited by Ronald St. J. Macdonald, Franz Matscher, and Herbert Petzold. Dordrecht, Boston, London: Martinus Nijhoff Publishers, 1993. Pp. xxix, 94. Dfl.325; $185.00; £124.50.

This substantial work, prepared to mark the fortieth anniversary of the coming into force of the European Convention on Human Rights, is intended as a stocktaking of the achievements of the Convention since 1953. It is no matter, and inevitable, that some essays are out of date as far as reform of the Convention control machinery is concerned. On May 11, 1994, Protocol No. 11 to the Convention was signed by all but one of the thirty-two member states of the Council of Europe. When the Protocol is ratified by all members, perhaps as early as 1996, the current two-tier control system of Commission and Court will be replaced by a single European Court of Human Rights. The individual will then have direct access to an international court to complain about violation of a Convention right.

Reform of the Convention system is a major theme of this book. The need for reform arises from new circumstances in Europe. When the Berlin Wall came down, there were twenty-one Western European member states in the Council of Europe pledged to uphold the rule of law, human rights and effective democracy. The number has since grown to thirty-three (with the recent accession of the Principality of Andorra), the increase largely reflecting the addition of the new Eastern European democracies. Without action to streamline its procedures, the Convention machinery was threatened with being overwhelmed by an ever-increasing workload.

There are at present at least eight further candidate states in the queue to join the Strasbourg system, the most significant of these being the Russian Federation. Russia is expected to become a member of the Council of Europe and a contracting state to the European Convention before the end of 1995. Such a development was probably unimaginable even when this book went to print; certainly no essay in the book anticipates it. It is clearly a time of extraordinary challenge for this most successful of the world's regional systems of human rights protection.