

Given the extraordinarily varied circumstances internal to states of the world, the variations of size between them, and the disparate distribution of power among competing major states, a meaningful democratic goal would balance representation in formal arenas with the inexorable requirements of minimum order in an unfantasized world. Before the original Charter regime is radically changed, its conception of and grounding in the realities of power politics should be appreciated. It represents an effort, however imperfect, to seek a meaningful and realistic balance between the desire for power sharing in formal arenas and the unyielding practical restraints of effective power.

In terms of effective power, critical decisions continue to be largely influenced by a small number of states. If authoritative arenas are to be as effective as possible, they must accommodate themselves to this aspect of political reality. They may work to change it as best they can, but to ignore it simply dooms an arena to a semantic function and ultimately to the withdrawal of support by large powers persuaded that their vital interests can no longer be served by participation in it.

While there is certainly room for an enhancement and clarification of the prescriptive function of the General Assembly, the core distribution of power between the Security Council and the General Assembly with regard to primary security matters is both a fail-safe device for the United Nations and a constant monitor for realism in decision and congruence between authority and control. The most cogent criticism of the implications of the nonpermanent vacancy case is not the formalistic cavil that an unconstitutional amendment was being effected;²⁶ international lawmaking is rich in informality and innovation. The problem is the substance of the change and the disruptive, if not destructive, consequences it would have held for the Organization and for its still useful role in world politics.

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TO THE EDITORS-IN-CHIEF:

The Iran Hostage Crisis

By way of editorial comment in the April 1980 issue of the *Journal* (74 AJIL 411), Professor Richard Falk, in his usual provocative manner, suggests that, with respect to the Iran hostage crisis, international law and procedures are "arbitrary and one-sided." He suggests further that we should "not sit too quickly in judgment of Ayatollah Khomeini for his evident refusal to shape Iranian policy by reference to the law on the books," citing in support of this proposition alleged violations of international law

²⁶ Opinion of Erik Suy, note 15 *supra*, at 36.

by the United States in Iran, Cuba (the missile crisis), the Dominican Republic, Vietnam, and elsewhere. To combat this one-sidedness of international law and of "international life in general," Falk proposes that "citizens through voluntary organizations should organize to regulate the behavior of the governments."

I would suggest that Falk has been a bit too harsh on existing international law and procedures as they apply to the Iran hostage crisis and a bit too sparing on the behavior of the Ayatollah Khomeini. It is instructive to remember that, in its order of December 15, 1979, the International Court of Justice, while declining to accept Iran's contention, transmitted by letter to the Court, that the seizure of the hostages was merely a "secondary" or "marginal" matter, noted that it was open to Iran to appear before the tribunal and raise, by way of either defense or counterclaim, its charges of alleged United States violations of international law. Iran has declined the Court's invitation to do so.

Iran has also declined to cooperate with the commission of inquiry established by the United Nations, although this commission would have afforded Iran an excellent opportunity to plead its case against alleged U.S. violations of international law. Iran's insistence that the commission interview only those hostages selected by the militants as being implicated in anti-Iranian activities would seem itself a fine example of "one-sidedness."

Falk argues that international law's prohibition on intervention is "fuzzy, vague, and necessarily conditional and contextual." Unfortunately, there is a measure of truth to this contention. Nonetheless, if the facts are as alleged, the case that the United States has violated international law by its activities in Iran is a strong one. Moreover, norms against torture appear sufficiently developed to support a case against the United States under international law, if, as alleged, the CIA supported and even participated in such activities by SAVAK. If Iran's case is a strong one, it is ironic that it has failed to plead it in available forums.

To some extent, citizens have already organized themselves through voluntary associations to regulate the behavior of governments. Amnesty International and other nongovernmental organizations associated with the United Nations come immediately to mind. Amnesty International, in fact, has reported alleged human rights violations under the Shah. One would hope that it will be possible for NGO's to do a report on the Ayatollah Khomeini's regime, which has summarily executed hundreds of persons without a semblance of due process and which shows disturbing signs of a fascist character.¹

To be sure, Falk's observations on the failure of the world community to deal adequately with the heinous crimes of tyrants are well taken. Perhaps they will lead to redoubled efforts to effect reforms in international criminal law and procedures that would ensure "a fair trial under impartial auspices" for such individuals. Were such a millenium to arrive, it is likely that the Shah and the Ayatollah would appear in the same dock.

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¹ See Bordewich, *The Fourth Estate: Fascism Without Swastikas*, HARPER'S, July 1980, at 65.