

INTERNATIONAL PROTECTION OF HUMAN RIGHTS AND FREEDOMS

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"The intercourse, more or less close, which has been steadily increasing between the nations of the earth has now extended so enormously that a violation of the right in one of the parts of the world is felt all over it."

The prophetic words of Kant spoken more than 150 years ago are even more valid today. The impact of the rapid technological development on the methods of organization and production as well as on military and social techniques have created a single, global community with interdependences hitherto unknown.¹ The modern means of transportation and communication have enormously extended the physical environment of the individual. The effects of his activities have led to world wide interactions influencing and determining each other's actions and expectations. The immense technological progress is however unmatched by a similar development of a political and social order. The satisfaction of man's basic demand is prevented by this disparity despite available means to provide an equal opportunity for all to maximize all fundamental human values.

Because of these conditions, the protection of inalienable human rights has become of world wide concern. Today the United Nations Charter is attempting to relate the actions of States with these realities of life. By declaring the promotion and observance of human rights as one of the essential aims of the organization, it introduces a new era in the development of the man's fundamental rights and his relation to the State and the world community. The United Nations Charter, the Universal Declaration of Human Rights,² the proposed draft Covenants on Human Rights,³ and the

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¹ WRIGHT (ed.), *THE WORLD COMMUNITY* (1948); OGBURN (ed.), *TECHNOLOGY AND INTERNATIONAL RELATIONS* (1949); LASSWELL, *The Interrelations of World Organization and Society*, 55 *Yale L.J.* 889 (1946); BOURQUIN, *Pouvoir Scientifique et Droit International*, 70 *HAGUE RECUEIL DES COURS* 334-402 (1947).

² Text of the Universal Declaration of Human Rights (hereafter cited as *DECLARATION*) in *YEARBOOK OF THE UNITED NATIONS* 1948-49, at 535-7 (1950).

³ Text of the draft Covenants (hereafter cited merely as *COVENANT*) in *COMMISSION ON HUMAN RIGHTS, REPORT OF THE NINTH SESSION TO THE ECONOMIC AND SOCIAL COUNCIL, OFF. REC.; SIXTEENTH SESS., SUPPL. No. 8 (E/2447; E/CN.4/689) 39.50 (1953).*

European Convention on Human Rights,⁴ already in effect,⁵ begin to formulate the international human rights of the individual.

TRADITIONAL INTERNATIONAL LAW AND THE INDIVIDUAL

"No legal order, international or other, is true to its essential function if it fails to protect effectively the ultimate unit of all law—the individual human being."⁶ It is a well known fact that traditional international law offers only meagre protection to the individual. While as an alien his international protection is scanty,⁷ as a citizen he has no international protection against his own State, and as a stateless person he is generally without any protection whatsoever.

The International Protection of Aliens: The rules of international law protecting aliens are doubtful and vague in their concept. The so called "equality doctrine," which prevails largely in the Latin American countries, shields the alien only to the extent granted by the receiving State to its own nationals.⁸ Such a protection may be very negligible indeed for it depends on the nature and efficiency of the municipal law of the receiving State.⁹ Even the doctrine of minimum standard grants only a minimum protection to the alien.¹⁰ The lack of precisely formulated standards prevents an effective protection, particularly so if one realizes that the State concerned could determine its already limited scope. Although subject of this international protection, the alien may claim its enforcement only

⁴ COUNCIL OF EUROPE, DIRECTORATE OF INFORMATION, THE EUROPEAN CONVENTION ON HUMAN RIGHTS (Hereafter quoted as EUROPEAN CONVENTION) together with the text of the PROTOCOL, 39-61 (1952); the text may also be found in 45 A.J. INT'L L. Off. Doc. 24-39 (1951) or YEARBOOK ON HUMAN RIGHTS FOR 1950, at 420-6 (1952).

⁵ The Convention has been in effect since Sept. 3, 1953. The following States, members of the Council of Europe, have so far ratified the Convention: United Kingdom, Norway, Sweden, Federal Republic of Germany, Saar, Ireland, Greece, Denmark, Iceland, Luxembourg; Council of Europe, Doc. IP 636—CR/EBS.

⁶ LAUTERPACHT, INTERNATIONAL LAW AND HUMAN RIGHTS 78-9 (1950).

⁷ DUNN, THE PROTECTION OF NATIONALS 47 (1931); ROTH, MINIMUM STANDARD OF INTERNATIONAL LAW APPLIED TO ALIENS 23 (1949).

For an exhaustive treatment see BORCHARD, THE DIPLOMATIC PROTECTION OF CITIZENS ABROAD (1919); Harvard Draft, THE LAW OF RESPONSIBILITY OF STATES FOR DAMAGES DONE IN THEIR TERRITORY TO THE PERSON OR PROPERTY OF FOREIGNERS, 23 A.J. INT'L L. Spec. Suppl. 133-218 (1929).

⁸ DUNN, *cit. supra*, note 7, at 56, 140-1; ROTH, *cit. supra*, note 7, at 62-80.

⁹ DUNN, *cit. supra*, at 140, 142; ROTH, *cit. supra*, 80.

¹⁰ BORCHARD, *cit. supra*, note 7, preface; DUNN, *cit. supra*, note 7, at 62-3; ROTH, *cit. supra*, note 7, at 81-110; BORCHARD, *The Minimum Standard Treatment of Aliens*, 33 PROC. AM. SOC'Y INT'L L. 51-63 (1939).

through the diplomatic channels of his State.¹¹ As this protection depends on the discretion of his State, he may receive no protection at all.

The International Protection of Citizens: As matters of international concern have been steadily increasing, it has become apparent that the treatment of citizens by their own States is as important, if not more, than that of the aliens. Actually, past experience demonstrates that the large scale violations of citizens' fundamental rights are ultimately a much graver threat to the world community than the occasional disregard for the alien's rights. Despite the individual's increased movements and actions across national boundaries, by far the largest part of world population remains almost permanently under the authority of the respective State and thus outside any international protection. A citizen who abroad enjoys some international protection is singularly unprotected against his own State. "The State could treat its nationals unjustly or even barbarously; it could deny them fair trials or execute them without trial; it could permit discrimination, starvation, or massacre, and violate no rule of international law."¹²

Stateless Persons: Stateless persons and persons with double nationality, if both States are involved, are deprived of any international protection.¹³ Such an attitude is derogatory to the individual's human dignity and unmasks the irrationality of international legal doctrine basing the protection of man solely on his nationality.¹⁴

To remedy this deplorable situation, the United Nations Charter, the Universal Declaration of Human Rights, the draft Covenants on Human Rights as well as the European Convention on Human Rights tend to protect *any* individual against *any* State.

The formulation of the individual's human rights has already been preceded by his international duties. The responsibility the individual carries is not to the State but to the world community and his fellow human beings. The development of an international criminal responsibility is evidenced by the London Agreement on the Prosecution and Punishment of the Major War Criminals and the

¹¹ Freeman, *Human Rights and the Rights of Aliens*, 45 PROC. AM. SOC'Y INT'L L. 127 (1951).

¹² Wright, *International Law and Power Politics*, 2 MEASURES 130 (1951).

¹³ Freeman, *Human Rights and the Rights of Aliens*, 45 PROC. AM. SOC'Y INT'L L. 123, 127 (1951).

¹⁴ Similarly LAUTERPACHT, *cit. supra*, note 6, at 55.

Nuremberg Judgment,¹⁵ and the Charter of the International Military Tribunal for the Far East¹⁶ and its Tokyo Judgment.¹⁷ The United Nations General Assembly reaffirmed these principles of international criminal responsibility and proposed to incorporate them in a draft Code of Offenses against the Peace and Security of Mankind.¹⁸

Applying the principles of Nuremberg Trial the Genocide Convention¹⁹ unequivocally sets forth the individual's responsibility declaring in Article IV that "persons committing genocide or any other act enumerated in Article III shall be punished whether they are constitutionally responsible rulers, public officials or private individuals." Similarly, the Committee on International Criminal Jurisdiction in its draft Statute for an International Criminal Court, confers upon the proposed court the competence "to judge natural persons who have acted as the Head of State or agent of government" who are "accused of crime under international law or special agreements."²⁰ The complex problem of an international control of atomic energy prompted the United Nations Atomic Energy Commission to propose an international responsibility of individuals as

¹⁵ OFFICE OF THE UNITED NATIONS CHIEF OF COUNCIL OF PROSECUTION OF AXIS CRIMINALITY, NAZI CONSPIRACY AND AGGRESSION, OPINION AND JUDGMENT (1947).

For further discussion see CALVOCORESSI, NUREMBERG, THE FACTS, THE LAW AND THE CONSEQUENCES (1947); Schwelb, *Crimes Against Humanity*, 23 BRIT. YEARBOOK OF INT'L LAW 178-226 (1946). For a good survey of the development of international criminal jurisdiction consult UNITED NATIONS, HISTORICAL SURVEY OF THE QUESTION OF INTERNATIONAL CRIMINAL JURISDICTION, Memorandum prepared by the Secretary-General, A/CN. 4/7/Rev. 1 (1949).

¹⁶ U.S. TREATY SER. 1589.

¹⁷ Horwitz, *The Tokyo Trial*, INTERNATIONAL CONCILIATION No. 465 (1950).

¹⁸ Resolution 177 (II); GENERAL ASSEMBLY, OFF. REC., SECOND SESS., RESOLUTION 111-2 (1947). For the text of the draft Code, together with the comments of the International Law Commission 45 A.J. INT'L L. Off. Doc., 126-32 (1951). See further Parry, *Draft Code of Offences against the Peace and Security of Mankind*, 3 INTERNATIONAL L. Q. 208-27 (1950).

For an excellent survey of attempts at international criminal jurisdiction see the so-called Pella Memorandum concerning *Draft Code of Offenses against the Peace and Security of Mankind* (A/CN. 4/39—1950).

¹⁹ Text annexed to General Assembly's Resolution 260 (III), GENERAL ASSEMBLY, OFF. REC. THIRD SESS., PART I, RESOLUTIONS 174-7 (1948).

For further discussion, Graven, *Les Crimes Contre l'Humanité*, 76 HAGUE REUELL DES COURS at 490-522 (1950).

²⁰ Art. 25 of the draft Statute for an International Criminal Court; text in 46 A.J. INT'L L. Off. Doc., 1-11 (1952). For further discussion Liang, *The Establishment of an International Criminal Jurisdiction: The First and Second Phase*, 46 A.J. INT'L L. 73-88 (1952) and 47 A.J. INT'L L. 638-657 (1953) respectively; Wright, *Proposal for an International Criminal Court*, 46 A.J. INT'L L. 60-72 (1952).

well as of States for the observance of a convention establishing such a control.²¹

However, the recognition of the individual as subject of international rights and the establishment of effective international enforcement measures could not ensure the observance of fundamental rights unless the untenable acts of State doctrine is abandoned. "The principles of international law, which under certain circumstances, protect the representative of a State, cannot be applied to acts which are condemned as criminal by international law."²² If a violation, however grave, could be excused and justified as an act of sovereign powers of the State, international protection of human rights would be illusive. To preserve the acts of State doctrine would be to exempt the individuals acting on behalf of the State from any responsibility to their fellow men.

As the individual, whether national, alien or stateless, is subject to an elementary international responsibility, it is but just to recognize his rights to a minimum international protection by granting him fundamental human rights to be claimed against anyone.²³ These international rights and duties of the individual mark a turning point in his relation to the world community and his State alike. It is a cautious but significant move to modify his ties with the State and identify them with the welfare of the entire world community.

GROWTH OF HUMAN RIGHTS PROGRAMS

Steadily increasing demands of all peoples for the recognition of fundamental values is well reflected by the changing relations of the individual to the modern State—from the absolutistic, liberal, democratic State onward to the emerging social welfare State.²⁴

²¹ ATOMIC ENERGY COMMISSION, FIRST REPORT (AEC/18) 26-7 (1946).

²² OFFICE OF UNITED STATES CHIEF OF COUNSEL FOR PROSECUTION OF AXIS CRIMINALITY, INTERNATIONAL MILITARY TRIBUNAL—NAZI CONSPIRACY AND AGGRESSION—OPINION AND JUDGMENT, 53 (1947).

²³ Similarly Cassin, *L'homme, sujet de droit international et la protection des droits de l'homme dans la société universelle*, 1 LA TECHNIQUE ET LES PRINCIPES DU DROIT PUBLIC: ETUDES EN L'HONNEUR DE G. SCHELLE 91 (1950).

²⁴ BARKER, PRINCIPLES OF SOCIAL AND POLITICAL THEORY 244-252 (1951); MANNHEIM, MAN AND SOCIETY IN AN AGE OF RECONSTRUCTION 336 (1948); MCIVER, DEMOCRACY AND ECONOMIC CHALLENGE 29-30 (1952).

Cf. also, for instance, Art. 75 of the recently revised Danish Constitution (June 5, 1953) which states:

"(1) In order to advance the public weal efforts should be made to afford work to every able-bodied citizen on terms that will secure his existence.

(2) Any person unable to support himself or his dependents shall, where no other person is responsible for his or their maintenance, be entitled to receive public assistance that shall comply with the obligations imposed by Statute in such respect."

The evolutional stages roughly show the gradual development of civil and political rights, culminating in the recognition of economic, social and cultural rights.

The individual's demand for physical security had led to the limitation of State powers expressed in the guarantee of inviolability of persons, soon followed by freedom from inhuman and cruel punishment, arbitrary arrest and detention. Those fundamental rights, now generally recognized as civil rights, have been gradually extended to freedom of expression and opinion; of conscience and worship; and of assembly and association.²⁵ While the individual's liberation from the shackles of the absolutistic State originally tended to secure free trade within the State, unhampered by governmental interference,²⁶ further development broadened the application of this principle to the individual's protection against any governmental encroachment.

Apart from the beneficial achievements, liberalism created social evils hitherto unknown such as exploitation, unemployment, lack of housing etc. These harmful effects could not be remedied by the enjoyment of mere civil rights. The demand for social and economic rights called for access to political power of broad masses which, becoming politically conscious, attempted to gain participation in the decision making process of the government and thus secure the necessary social and economic reforms.²⁷ In many an instance the gratification of these demands will slowly transform the State's economic structure as well. "You cannot well have, in the same community, and at the same time, two separate worlds" asserts Barker, "one of political democracy and the other of economic autocracy."²⁸

The world wide tendency of this development has not and could not proceed with equal speed and intensity everywhere. The difficulties each State inevitably encounters in attempting to perform necessary social and economic functions gives greater meaning to the need for international cooperation in promoting these rights. On the other hand, political and civil rights, already formally stated in most constitutions,²⁹ are often abused, and require therefore fundamental, world wide guarantees.

The first attempt to further international human rights are closely related to the established need of international organizations.

²⁵ BARKER, *cit. supra*, note 24, at 232-3.

²⁶ LASKI, *THE RISE OF EUROPEAN LIBERALISM* 15, 133 (1936); WHITEHEAD, *ADVENTURES OF IDEAS* 41 (1933).

²⁷ BARKER, *cit. supra*, note 24, at 241.

²⁸ BARKER, *ibid.*, at 246-7.

²⁹ LAUTERPACHT, *AN INTERNATIONAL BILL OF THE RIGHTS OF MAN* 81 (1945).

President Wilson's Fourteen Points,³⁰ the Peace Treaties of 1919 and other minority treaties dealt with the right of nations and national minority groups rather than with the individual.³¹ Only in the unaccepted Japanese proposal for an equal treatment of aliens submitted to the Paris Peace Conference,³² did the individual come into prominence at all. The minority treaties—of which the German-Polish Convention concerning Upper Silesia is particularly noteworthy³³—granted to the individual an elementary international protection.

The horror of brutal extermination and the merciless trampling on man's most fundamental rights, so frightfully displayed by the totalitarian regimes, urgently called for an international protection of the individual himself. Without exception all the statements and declarations made during World War II, such as the Atlantic Charter,³⁴ the United Nations Declaration,³⁵ or President Roosevelt's message to the Congress on Four Freedoms,³⁶ emphasize the individual's rights and recognize the necessity to provide man with an international protection.

The Dumbarton Oaks Proposals contained, at the United States' initiative, a modest provision for "promotion of respect for human rights and fundamental freedom."³⁷ At the San Francisco Conference, suggestions were made to include in the Charter itself a universal declaration of human rights,³⁸ or at least to state explicitly the principles of man's rights and duties. Even though these proposals were rejected for lack of time and adequate studies, they contributed to the final formulation of the Charter's human rights pro-

³⁰ 56 CONG. REC. Part 1., 65th CONG., 2d SESS. 651 (1918).

³¹ AZCARATE, LEAGUE OF NATIONS AND NATIONAL MINORITIES (1945); Jones, *National Minorities: A Case Study in International Protection*, 14 LAW AND CONTEMPORARY PROBLEMS 599-622 (1949).

³² MILLER, 1 DRAFTING THE COVENANT 183, 269, 461 (1928).

³³ Text of the Convention in KAECKENBEECK, THE INTERNATIONAL EXPERIMENT OF UPPER SILESIA 570-822 (1942).

It must be noted that this Convention provided not only for an international protection of minorities (Arts. 64-158) but also for an international protection of rights of the individual (Art. 4) even against his own State, KAECKENBEECK, *ibid.* 52-4; also Kaeckenbeek, *Upper Silesia Under the League of Nations*, 243 THE ANNALS 132-3 (1946).

³⁴ 5 DEP'T STATE BULL. 125-6 (1941).

³⁵ 6 DEP'T STATE BULL. 3 (1942).

³⁶ 87 CONG. REC. Part 1, 77th CONG., 1st SESS. 46-7 (1941).

³⁷ DEP'T STATE, POSTWAR FOREIGN POLICY PREPARATION 1939-1945, at 327 (Pub. 3580—1950). For the Dept. of State preliminary drafting of a 'Bill of Rights' see *ibid.* 84, 98, 115-6; text of the draft *ibid.* Annex No. 14, at 483-5.

³⁸ UNCIO, DOCUMENTS, v. 1, pp. 560, 683; v. 3, p. 73.

visions. "The United Nations Charter asserts certain universal principles concerning the rights not only of States, but of individuals."³⁹ The very beginning of its preamble expresses the solemn determination "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women." Among the principles and purposes of the Organization, the Charter lists again international cooperation "in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion." Chapter IX of the Charter of International Economic and Social Cooperation formulates the United Nations commitment to promote "(a) higher standard of living, full employment, and conditions of social and economic progress . . . (b) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion." These goals are to be attained partly through the activities of the Economic and Social Council in cooperation with the General Assembly, partly through the Member States committed to take, for that purpose, separate or joint actions in cooperation with the Organization. The international nature of human rights is perhaps best illustrated by Article 68 of the Charter creating a special Human Rights Commission for their promotion.

In his closing speech to the San Francisco Conference President Truman stated:

"Under this document (Charter) we have good reason to expect an international bill of rights acceptable to all the nations involved. That Bill of Rights will be as much a part of international life as our own Bill of Rights in the part of our Constitution. The Charter is dedicated to the achievement and observance of fundamental freedoms. Unless we can attain those objectives for all men and women everywhere—without regard to race, language or religion—we cannot have permanent peace and security in the world."⁴⁰

PRESCRIPTIONS OF THE DRAFT COVENANTS ON HUMAN RIGHTS

The first major step towards the implementation of the United Nations human rights program is the Universal Declaration of Human Rights adopted by the General Assembly on December 10, 1948. It is an elaboration of the commitments of Article 55 of the Charter to observe and promote fundamental human rights, which is to serve as

³⁹ Wright, *Law and Politics in the World Community*, in *LAW AND POLITICS IN WORLD COMMUNITY* 6 (Lipsky ed. 1953).

⁴⁰ UNCTO, *DOCUMENTS*, v. 1, p. 717.

"a common standard for all peoples and all nations to the end that every individual and every organ of the society . . . shall strive by teaching and education to promote the respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance."⁴¹

The Universal Declaration, formulated in a broad vein, pursues general goals and does not provide any enforcement measures. To prepare an enforceable international bill of man's rights, the Human Rights Commission has drafted two Covenants which define the individual's rights and freedoms with a precision required for their enforcement. The existing differences in national social and economic conditions precluded a single Covenant encompassing all man's civil and political as well as economic and social rights but also enforcement measures equally applicable to both categories of those rights. In many an instance the conditions in which economic and social rights may be realized must first be prepared before their enforcement could seriously be considered. It is for these reasons that two separate Covenants have been drafted.⁴² While the political and civil rights are expressed in terms of enforceable rights, the economic, social and cultural rights are merely subject to implementation programs.

To maintain a democratic society a free and full development of the personality and capacities of the individual are necessary. This is the aim of the Human Rights Covenants. To avoid an abstract definition of democracy, unduly stressing either its political or economic aspect, the Covenants prefer to describe in terms of values which sociological observation consider indispensable for the existence of the individual and his peaceful society. The Covenants seek to guarantee every individual equal opportunity and free unimpaird access to pursue by peaceful procedure "wide sharing of power, both formal and effective by which he is governed, including

⁴¹ General Assembly, Resolution 217 (III), OFF. REC. THIRD SESS., Part I. RESOLUTIONS 71.

⁴² General Assembly, Resolution 543 (VI), OFF. REC. SIXTH SESS., RESOLUTIONS 36 (1951/52). See also the statements of delegates of United Kingdom (E/CN. 4/SR. 363 at 4 and A/C.3/SR. 361 at 87); of United States (A/C.3SR. 361 at 78); of France (A/C.3/SR. 363, p. 98); of New Zealand (A/C.3/SR. 367 at 121); of Denmark (A/C.3/SR. 362 at 89); cf. also E/CN.4/529 at 13-6.

The Soviet block consistently pressed for a single Covenant, E/CN.4/SR. 269 at 7. Note that the EUROPEAN CONVENTION deals only with the political and civil rights.

the processes of government, the political parties, pressure groups, and equality before law."⁴³

Power: Despite the complementary nature of political and economic and social rights, the broad sharing of power and its distribution remains preeminent. Its disappearance would herald the beginning of a totalitarian institution. Aristotle's dictum that "If liberty and equality—are chiefly found in democracy, they will be best attained when all persons alike share in the government to the utmost"⁴⁴ is today as valid as McIver's statement that "inequality in power is inequality in all things."⁴⁵ Article 23 of the Covenant on political and civil rights guarantees to the *citizen* the opportunity and right to vote⁴⁶ and be elected.⁴⁷ The universal and equal right to express his will freely in genuine, periodic elections by a *secret* vote virtually prescribes a democratic regime banning the sordid Orwellian voting robots of totalitarian States.⁴⁸ Moreover, by stressing the opportunity to vote, the Covenant assures not only the right but its effective exercise as well. As a necessary corollary of this right, the Covenant ensures the citizen an equal opportunity for direct and indirect participation in the conduct of public affairs as well as access to public service.⁴⁹ By an explicit reference to Article 2 these rights are granted "without distinction of any kind."⁵⁰ Only reasonable restrictions, mostly conditioned by local circum-

⁴³ McDougal, *The Comparative Study of Law for Policy Purposes: Value Clarification as an Instrument of Democratic World Order*, 61 *YALE L.J.* 929-941 (1952).

For a systematic discussion of a framework of reference see LASSWELL-KAPLAN, *POWER AND SOCIETY* (1950) especially at: 55-102.

⁴⁴ ARISTOTLE, *POLITICS*, Book iv.

⁴⁵ McIVER, *DEMOCRACY AND THE ECONOMIC CHALLENGE* 44 (1952).

⁴⁶ Cf. however Art. 3 of the *POTOCOL* to the *EUROPEAN CONVENTION* which does not speak in terms of individual's right but of commitments of the Contracting Parties to "hold free elections".

For further comment and criticism see Robertson, *The European Convention on Human Rights: Recent Developments*, 28 *BRITISH YEARBOOK OF INT'L L.* 1951 at 364-5 (1952); Mosing, *Human Rights and the Council of Europe* 132-7 (unpublished essay, Yale Law School Library, 1952).

An excellent collection of electoral laws may be found in *YEARBOOK ON HUMAN RIGHTS FOR 1948* at 265-408 (1950).

⁴⁷ *EUROPEAN CONVENTION* does not explicitly grant the right to be elected.

⁴⁸ Art. 21(3) of the *DECLARATION* seems to permit even non-secret voting procedure: ". . . genuine elections . . . shall be held by secret vote or by equivalent free voting procedures".

⁴⁹ Again the *EUROPEAN CONVENTION* does not recognize such a right.

⁵⁰ Art. 2(1) of the *COVENANT* on political and civil rights states: "Each State Party hereto undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in this Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

stances, are permissible on those internationally guaranteed political rights.⁵¹

Effective participation in the conduct of public affairs and full enjoyment of political rights presupposes the right to freedom of association. Freedom of association is a vital political right as the shaping of public policy depends on the organization of common interests and opinions, whether expressed in terms of political parties, business organizations or trade unions.⁵² Article 21 of the Covenant on political and civil rights grants *everyone* "the right of freedom of association with others".⁵³

The right to form trade unions explicitly guarantees also the right to join freely local, national or international trade unions.⁵⁴ Although the Covenants are silent on the right to strike, it may be assumed that this right is implied in the right to freedom of association.⁵⁵ The insistence of some delegates to permit at least lawful restrictions on the exercise of the right to association by members of armed forces and police⁵⁶ shows the concern to safeguard the State executive powers against any crippling effect of a strike.⁵⁷ Article 21, paragraph 3 of the Covenant by referring to the ILO Convention on Freedom of Association and the Protection of the Rights to Organize⁵⁸ determines the detailed content of this internationally recognized right. However, this paragraph binds the States Parties to the ILO Convention only.⁵⁹

While the trade union right sets forth clearly the person's right to join freely, the general provision of Article 21 of the Covenant

⁵¹ *Ibid.*, Art. 23, par. 1. See also the comment of the British delegation E/CN.4/SR. 365, at 5.

⁵² BARKER, *op. cit. supra*, note 24 at 208-10.

⁵³ Similarly EUROPEAN CONVENTION Art. 11(1). See, however, Art. 15 of the CONVENTION RELATING TO THE STATUS OF REFUGEES (text in United Nations, Dept. of Public Information, Magna Carta for Refugees 24-54 [1950]), granting only a restricted right to association:

"As regards non-political and non-profit making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favorable treatment accorded to nationals of a foreign country, in the same circumstances."

⁵⁴ Art. 8 of the COVENANT on economic, social and cultural rights.

⁵⁵ E/CN.4/SR. 299, p. 3.

⁵⁶ Cf. for instance, the comment of the British delegate, E/CN.4/SR. 325, p. 5.

⁵⁷ Art. 21(2) of the COVENANT on political and civil rights; similarly Art. 11(2) of the EUROPEAN CONVENTION.

⁵⁸ Text in YEARBOOK ON HUMAN RIGHTS FOR 1948, at 427-30 (1950); also in UNITED NATIONS, DEPT OF PUBLIC INFORMATION, THESE RIGHTS AND FREEDOMS 192-7 (1950).

⁵⁹ For criticism of this provision LAUTERPACHT *cit. supra*, note 6, at 368-9.

on political and civil rights is not so outspoken,⁶⁰ permitting eventually compulsory membership in associations. The exercise of some professions is justifiably dependent on the qualification of the individual and his admission to a professional association. However, alleged protection of the general public and professional interests ought not to be abused for acquiring monopolistic position. While any discriminatory practice by an association is prohibited by virtue of Article 2 mentioned above, unreasonable restrictions on admission which could easily transform such an association in a professional, medieval guild contrary to freedom of association are not impossible.

The right to freedom of association would have little meaning without a right to freedom of assembly. Article 20 of the Covenant on political and civil rights guarantees the right of peaceful assembly. Both the right to freedom of association and of assembly are subject to "national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others."⁶¹

The right of all peoples to self-determination, i.e. "freely to determine their political, economic, social and cultural status"⁶² is the logical, and extreme application of the individual's political rights. Already guaranteed by the Charter,⁶³ the right to self-determination has also been inserted, upon the instruction of the General Assembly, in both Covenants. Compared with the Charter, these Covenants have broadened this right to include also the peoples' "permanent sovereignty over their wealth and resources".⁶⁴ Both Covenants assure its universal application in overseas territories as well as in metropolitan areas. All States, including those administering, under the United Nations supervision, non-selfgoverning and trust territories or those controlling, in whatever manner, dependent territories, are committed to promote in them the realization of self-determination.⁶⁵

⁶⁰ Art. 20(2) of the DECLARATION: "No one may be compelled to belong to an association".

⁶¹ Arts. 20 and 21(2) of the COVENANT.

⁶² Art. 1(1) of the COVENANT on political and civil right.

For criticism of the ambiguity of the term and the problems involved see the comment of the Belgian delegate, E/CN.4/SR.252, at 7-9. Consult also the Secretary-General's Memorandum, *The Principles of Self-Determination in Relation to Chapters XI, XII, and XIII of the Charter*, (E/CN.4/622) and his note, *The Right of Peoples and Nations to Self-Determination* (E/CN.4/516).

⁶³ Arts. 1(2); 55, par. 1.

⁶⁴ Arts. 1(3) of both COVENANTS; for further comment see E/CN.4/SR.256 at 10.

⁶⁵ *Ibid.* Arts. 1(2).

Although an undisputed right, self-determination must, because of its dynamic and political character, be exercised prudently to sustain a reasonably secure balance between the higher aspirations of the world community and those of each group.⁶⁶ The unscrupulous means for attaining it and its no less scrupulous suppression are pregnant with dangers to international peace and security. On this issue, the Covenants take an unsatisfactory, pusillanimous stand. They commit the States to respect the maintenance of self-determination in other States "in conformity with the provisions of the United Nations' Charter"⁶⁷ thus presumably seeking to guarantee State's independence. Yet not only States but individuals as well attempting to exercise this right must be restrained from resorting to open violence and defiance of human rights guaranteed to others. As the French delegates asserted:

"The right of peoples to self-determination should be exercised by democratic means * * * and must not be attained in disregard of human rights * * * The right to self-determination of peoples should be exercised in a manner compatible with international peace and security. The French delegation could not agree to a conception of the right of peoples which admitted the right for them to kill one another."⁶⁸

The Covenants fail to specify illegal activities. Instead a general provision prohibits activities of individuals, groups or States, endangering or destroying the guaranteed rights of others.⁶⁹ This provision also implicitly bars such means aiming at the realization of self-determination. This shortcoming is particularly bluntly revealed when self-determination is used as a cover for subversive activities. "It would be odd if the United Nations were to sanction any kind of action, including subversive activities".⁷⁰

Unless personal liberty is effectively guaranteed, political and other fundamental rights are but an empty gesture. A wanton deprivation of liberty is practically a deprivation of all rights and freedoms.⁷¹ "I would willingly part with all other rights in the draft Covenant on Human Rights" observes Prof. Chafee, "if it could erect a world wide barrier against the knock on the door at 3 A.M."⁷² To safeguard the right to life, liberty and security, guaranteed by the Covenant, anyone detained or arrested is granted the privilege of

⁶⁶ Cassin's comment E/CN.4/SR.253 at 12.

⁶⁷ Preamble to the COVENANT on Political and Civil Rights.

⁶⁸ E/CN.4/SR.263 at 4.

⁶⁹ Art. 5(1) of either COVENANT.

⁷⁰ E/CN.4/SR.261 at 8.

⁷¹ Cf. comment by Ch. Malik of Lebanon, C/CN.4/SR.95 at 13.

⁷² CHAFEE, HOW HUMAN RIGHTS GOT INTO THE CONSTITUTION 52 (1952).

habeas corpus by means of which he may contest, before the court, the illegality of such a deprivation and possibly secure his release.⁷³ He is entitled to be informed about the charges against him at the time of his arrest, and be promptly brought before his judge.⁷⁴ An individual accused of a criminal offense is, furthermore, protected by the due process of law clause granting him all the essential rights necessary for his defense (such as hearing by an independent and impartial tribunal; presumption of innocence; adequate time and facilities for defense preparation; assistance of counsel etc.).⁷⁵

The effectiveness of *habeas corpus* is, however, greatly impaired by the lack of any reference as to the content of law authorizing the deprivation of liberty.⁷⁶ Against a ruthless, Nazi-like "law" sanctioning such deprivation on any conceivable ground, *habeas corpus* must lamentably fail in its protection. Sanctioning deprivation of liberty on "such grounds and in accordance with such procedure as are established by law"⁷⁷ as the Covenant does, practically leaves to States free hand to limit or strangle the right to liberty as they see fit. It is here that the Covenant opens a wide gap through which perilous inroads may be made on the right to liberty.

Respect: To assure respect for man's dignity and the free development for his personality, the Covenants guarantee the right to equality, regardless of "race, sex, color, religion, nationality, political opinion or other ground irrelevant to capacity and provides a recognition of common merit as a human being or special excellence as an individual".⁷⁸

The Covenant on political and civil rights proclaims equality as an essential principle of international and municipal law. Article 2(1) commits the State "to ensure to all individuals within its territories and subject to its jurisdiction the rights *recognized* in the Covenant, without distinction of any kind".⁷⁹ In addition, a general anti-discrimination clause commits the signatory State to guar-

⁷³COVENANT Art. 9(1,4); also EUROPEAN CONVENTION Art. 5(4).

⁷⁴COVENANT Art. 9(2).

⁷⁵*Ibid.* Art. 9(3); similarly EUROPEAN CONVENTION Art. 6.

⁷⁶Cf. the United Kingdom draft proposal (E/CN.4/L.137) attempting to set out limitations to the right of liberty; to some extent the EUROPEAN CONVENTION Art. 5(1) does so.

⁷⁷COVENANT Art. 9(1).

⁷⁸McDougal, *The Comparative Study of Law for Policy Purposes: Value Clarification as an Instrument of Democratic World Order*, 61 YALE L.J. 917 (1952).

⁷⁹Emphasis added. Also EUROPEAN CONVENTION Art. 14.

antee also equality of treatment of all those rights created by its municipal laws.⁸⁰

Article 17 of this same Covenant prohibits "arbitrary or unlawful interference with his privacy, home or correspondence" by private individuals or public officials and protects him against "unlawful attacks on his honor and reputation".⁸¹

Similarly, the Covenant guarantees to everyone the recognition as a person anywhere, granting him equality before the law and his equal standing before the courts and tribunals.⁸² By segregating persons merely accused from those already convicted⁸³ and guaranteeing humanitarian treatment of persons imprisoned,⁸⁴ the Covenant attempts to minimize the impact of community sanctions on the general respect and honor of the person. To reduce the stigma of imprisonment, the reformation and social rehabilitation of convicts are stressed.⁸⁵

A scrupulous observance of equality demands also respect for the claims of ethnic, religious or linguistic minority groups striving for a free development of their common heritage. Their observance is as much a matter of maintaining international peace as it is a fundamental right of the individual belonging to such a minority group. To enable such an individual to practice the culture, religion or language of his minority, Article 25 of the Covenant on political and civil rights assures the exercise of those rights within the community. This right, however, is protected only within the minority group and does not grant, for instance, the use of minority language before public authorities. Neither does the Covenant assure the minority a proportional share of the public funds for the financial support of its particular institutions.⁸⁶

⁸⁰ COVENANT Art. 24:

"All persons are equal before the law. *The law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*".

See also the comments of the delegations of Yugoslavia (E/CN.4/SR327 at 7-8); of India (*Ibid.* at 4).

The EUROPEAN CONVENTION contains no similar general anti-discriminatory clause applicable to all domestic laws.

⁸¹ COVENANT Art. 17; see the comments of the United States and Pakistani delegates E/CN.4/SR375, p. 14 and E/CN.4/SR376, p. 4.

EUROPEAN CONVENTION Art. 8 is somewhat narrower as it does not protect the individual's honour and reputation.

⁸² COVENANT Arts. 14(1); 16; 24.

⁸³ *Ibid.* Art. 10(2).

⁸⁴ *Ibid.* Art. 10(1).

⁸⁵ *Ibid.* Art. 10(3).

⁸⁶ For criticism LAUTERPACHT, *op. cit. supra*, note 6 at 352.

Insidious propaganda of intolerance, racial superiority or hatred may well threaten the peaceful relations among nations and prepare them mentally for violence and war. The abuse of modern means of mass media of communication is gruesomely demonstrated by the effects of racial superiority propaganda of the Nazi regime which resulted in a "spiritual rape of masses". Ultimately man's fundamental rights are seriously imperilled. In consonance with the aims of the United Nations Charter "to practice tolerance and live together in peace with one another as good neighbors",⁸⁷ Article 26 of the Covenant obliges the States to prohibit "any advocacy of national, racial or religious hostility that constitutes an incitement to hatred and violence". The Covenant makes no distinction as to whom this advocacy is directed for the State's vicious propaganda, generating aggressive forces, endanger fundamental rights anywhere, within or without the State. A major difficulty is to separate such forbidden advocacy from free dissemination of unorthodox or even inimical ideas, guaranteed by freedom of speech and expression.⁸⁸ It is to avoid a stifling control over thought that the Covenant prohibits the propagation of ideas detrimental to the society by inciting hatred and violence.

Well-Being and Health: Some of the previously mentioned rights related to power, such as right to life and liberty, are also pertinent to the individual's well-being and health. Article 6 of the Covenant on political and civil rights protects the man's life against the State and private individual alike.⁸⁹ This international protection of life, as set forth by the Covenant is broader than that of the Genocide Convention for it guards the individual against any single act, regardless of its motivation.⁹⁰ This protection does not, however, give an indication as to its proper extent.⁹¹ This is particularly important in determining the individual's permissible self-defense. Neither does the Covenant preclude capital punishment as a penalty for the most serious crimes imposed for violating the national laws consistent in principle with the Universal Declaration of Human Rights or the Genocide Convention.⁹²

⁸⁷ Preamble.

⁸⁸ For discussion of this issue see E/CN.4/SR.377.

⁸⁹ Similarly EUROPEAN CONVENTION Art. 2(1): "No one shall be deprived of his life intentionally * * *."

⁹⁰ Cf. Art. II of the GENOCIDE CONVENTION which relates this crime under international law to "acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group * * *."

⁹¹ EUROPEAN CONVENTION contains an enumeration of exceptions to the individual's right not to be intentionally deprived of his life, Art. 2(2).

⁹² COVENANT Art. 6(2); EUROPEAN CONVENTION provides for no similar modification, cf. Art. 2(1).

Prohibition of torture and cruel, inhuman punishment as set forth by Article 7 of this same Covenant also extends to medical and scientific experimentation to which the individual is subjected against his free consent. Medical experiments are permitted even though undertaken without the consent of the patient if fully justified by his mental or physical state.⁹³ Finally, the Covenant prohibits slavery and slave trade,⁹⁴ imprisonment for inability to fulfil contractual agreements⁹⁵ and retroactivity of criminal laws.⁹⁶

While political and civil rights protect the individual's elementary physical inviolability and personal liberty, the Covenant on economic, social and cultural rights strives to improve man's physical and mental health and well-being.⁹⁷ The actual implementation of those rights is in many instances a controversial issue touching the very foundation and function of the State. The Covenant, therefore, merely recognizes those rights and formulates them in broadest terms. Their nature is best illustrated by Article 12 recognizing everyone's right "to an adequate standard of living and the continuous improvement of living conditions". All the economic and social rights embodied in this Covenant are an elaboration of this generally stated principle which regulate the working conditions and determine wages, social and housing policy etc.⁹⁸ At present some of those rights more closely resemble political declaration than enforceable rights. They may be honored only after the States have created, by national or international actions, conditions which permit their implementation and enforcement.⁹⁹ Thus, for instance, Article 13 recognizing

⁹³ Cf. the comments of the delegations of France and United Kingdom, E/CN.4/SR.311 at 10, and E/CN.4/SR.312 at 3,6. For the observation of the various Governments on this question consult E/CN.4/528, paragraphs 95-100.

The European Convention Art. 3, limits itself only to the prohibition of "torture" "degrading treatment and punishment".

Similarly the GENEVA CONVENTION FOR THE AMELIORATION OF THE CONDITION OF THE WOUNDED AND SICK IN ARMED FORCES IN THE FIELD OF AUG. 12, 1949, Art. 12, par. 2, states in its pertinent part: ". . . Any attempts upon their lives, (members of the armed forces) or violence to their persons, shall be strictly prohibited; in particular, they shall not be murdered or exterminated, subjected to torture or to biological experiments . . ." (text in Dept. State Pub. 3938).

⁹⁴ COVENANT Art. 8(1,2); similarly EUROPEAN CONVENTION Art. 4(1).

⁹⁵ COVENANT Art. 11.

⁹⁶ *Ibid.* Art. 15(1).

⁹⁷ For a general discussion of these rights Saba, *Les droits économiques, sociaux et culturels dans le futur pacte des droits de l'homme*, 78 JOURNAL DU DROIT INTERNATIONAL 464-81 (1951).

⁹⁸ COVENANT on Economic, Social and Cultural rights Arts. 6, 7, 9, 11, 13.

⁹⁹ Cf. for instance, the comments of the United States and French delegation, A/C.3/SR.360 at 78 and A/C.3/SR.363 at 98 respectively.

"the right of everyone to the enjoyment of the highest attainable standard of health" can merely commit the States to undertake the necessary preliminary steps.

The enjoyment of human rights would be inconceivable without a right to freedom of movement, including the right to choose a residence and leave the country freely.¹⁰⁰ This right, equally applicable to nationals and aliens,¹⁰¹ is limited by the requirements for national security and public health. Presently an unrestricted movement across national boundaries cannot be seriously considered let alone guaranteed. For this reason the Covenant guaranteeing everyone's right to leave the country¹⁰² does not—contrary to the Universal Declaration of Human Rights¹⁰³—assure the right to seek and enjoy political asylum. However, once the alien is lawfully admitted he enjoys at least a minimum international protection of his freedom of movement. If threatened by expulsion, permissible "in pursuance of decisions in accordance with law", the alien has an internationally recognized right to appeal such a decision.¹⁰⁴ Against very strict immigration laws this recourse may, however, be of little avail to the alien.

Wealth—Good—Services: The wisdom of an explicit recognition of a "right to work" is frequently challenged because of the possibly implied converse "duty to work" which might legalize compulsory labor.¹⁰⁵ Article 6 of the Covenant on economic and social rights emphatically stresses the element of free will in accepting work, de-

¹⁰⁰ COVENANT on Political and Civil Rights Art. 12(1).

While the Indian delegate considered the right to freedom of movement as fundamental (E/CN.4/SR.315 at 5), the British and Australian delegates were of the opposite opinion (E/CN.4/SR.315 at 5,6) and the latter proposed even its deletion from the COVENANT.

¹⁰¹ Cf. the comments of Lebanese and Egyptian delegates, E/CN.4/SR. 315 at 12.

Although Art. 26 of the CONVENTION RELATING TO THE STATUS OF REFUGEES grants to the lawfully admitted refugees freedom of movement within the State's territory, yet it discriminates against him, making him "subject to any regulations applicable to *aliens* generally in the same circumstances", emphasis added.

¹⁰² Note, however, Art. 12(2) of the COVENANT explicitly stating that "no one shall be subjected to arbitrary exile".

¹⁰³ DECLARATION Art. 14.

¹⁰⁴ COVENANT Art. 13, Art. 32(2) of the CONVENTION RELATING TO THE STATUS OF REFUGEES contains a similar provision.

¹⁰⁵ COVENANT on Political and Civil Rights Art. 8 (3a): "No one shall be required to perform forced or compulsory labour".

For an instructive survey of existing forced labour practices consult the joint UNITED NATIONS—ILO REPORT OF THE AD HOC COMMITTEE ON FORCED LABOUR, published as SUPPL. No. 13 of the OFF. REC., SIXTEENTH SESS. of the ECONOMIC AND SOCIAL COUNCIL (E/2431) and ILO, STUDIES AND REPORTS No. 36 (1953).

scribing it as a "fundamental right of *everyone* to the opportunity if he desires to gain his living by work which he *freely* accepts."¹⁰⁶ The broad phrasing of this Article and the general anti-discriminatory clause of Article 2 grant to aliens the right to work, and for that matter to all other economic and social rights as well. ". . . Aliens subject to reasonable limitations and classifications, living and working in the country should receive the same treatment as nationals with respect to most rights".¹⁰⁷ As there is no internationally recognized right to immigration, the danger that this liberal provision would prejudice the status of domestic labor is unfounded. This right to work is attempted to be made meaningful by guaranteeing an equal remuneration for work of equal value without any distinction and "decent living for (workers) and their families."¹⁰⁸

Enlightenment and Rectitude: Free, democratic society and respect for human rights depend on widely shared enlightenment and education. Everyone is granted the right to freedom of thought, conscience and religion.¹⁰⁹ The right to freedom to form, hold and express one's opinion freely and without discrimination gives those rights meaningful implementation. Attempting to ensure a world wide exchange of ideas and information, the Covenant emphasizes the broadest possible freedom of communication, regardless of its form and national frontiers.¹¹⁰ The right to enjoy the benefits of scientific progress, assured by the freedom of scientific research and creative activity, concludes this set of rights.¹¹¹

Education is one of the few absolute rights. Because of the widely differing conditions a uniform classification of the various educational systems is impossible except on the lowest level. Thus a compulsory primary education is to be made freely available to everyone.¹¹² In contrast to the other economic and social rights, the provisions dealing with the realization of compulsory education are specific. They require the States to prepare and adopt within two years a detailed plan of action to be implemented within a reasonable time.¹¹³ The progressive development of public educational system does not preclude the existence of private educational institutions which satisfy the minimum standard set by the States. Freedom of

¹⁰⁶ Emphasis added.

¹⁰⁷ Comment of the United States delegate, E/CN.4/SR.272 at 5.

¹⁰⁸ COVENANT on Economic, Social and Cultural rights Art. 7.

¹⁰⁹ COVENANT on Political and Civil Rights Art. 18(1,2); similarly EUROPEAN CONVENTION Art. 9(1,2).

¹¹⁰ COVENANT Art. 19(1,2); EUROPEAN CONVENTION Art. 10(1).

¹¹¹ COVENANT on Economic, Social and Cultural Rights Art. 16.

¹¹² *Ibid.* Art. 14(2a).

¹¹³ *Ibid.* Art. 15.

parents, and possibly of legal guardians, to choose for their children from among the public or private schools is explicitly recognized.¹¹⁴ Finally, the right to participate in cultural life is also assured.¹¹⁵

The Scope of Values Protected: In protecting the fundamental values, the Covenants fall short in particular parts of both the Universal Declaration of Human Rights and the European Convention on Human Rights of the Council of Europe—not to mention the constitutional rights granted by individual States. Contrary to the Declaration¹¹⁶ and the European Human Rights Convention¹¹⁷ and to several proposals,¹¹⁸ the Covenants have so far abstained from recognizing the right to ownership and its protection against arbitrary deprivation. The failure to protect this right within a reasonable limit appears to be a shortcoming. The general provisions of Articles 12 and 13 of the Covenant on economic and social rights, however, do recognize everyone's right to adequate food, clothing, housing and in general to an adequate standard of living.

The State as well as individuals and groups are bound to abstain from any activity or performance of "any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the Covenant."¹¹⁹ Furthermore, the Covenants prohibit any curtailment of rights presently enjoyed beyond the minimum standard of rights and freedoms to be granted under the Covenants.¹²⁰

Emergency situations or local conditions will frequently require limitations of the rights guaranteed. For the duration of a public emergency "which threatens the life of the nation and the existence of which is officially proclaimed" the Covenant on political and civil rights authorizes the State to derogate certain rights "to the extent

¹¹⁴ *Ibid.* Art 14(3). Art. 2 of the PROTOCOL to the EUROPEAN CONVENTION; for further comment on this provision, see Robertson, *The European Convention on Human Rights. Recent Development*, 28 BRITISH YEARBOOK OF INT'L L. 1951, at 362-4 (1952).

¹¹⁵ COVENANT on Economic, Social and Cultural Rights Art. 16(1a).

¹¹⁶ DECLARATION Art. 17.

¹¹⁷ Art. 1 of the PROTOCOL to the EUROPEAN CONVENTION; for further comment see Adam, *Le droit de propriété dans la Convention Européenne des droits de l'homme et des libertés fondamentales*, 69 REVUE DE DROIT PUBLIC ET DE LA SCIENCE POLITIQUE 317-66 (1953); Robertson, *cit. supra*, note 114 at 361-2.

¹¹⁸ Proposals of France (E/CN.4/L.66 and further comment E/CN.4/SR.362); of the United States (E/CN.4/599); and of Uruguay (E/CN.4/603).

In its note of Jan. 6, 1954, the United States has again proposed the inclusion of this right, E/CN.4/694/Add. 3.

¹¹⁹ Arts. 5(1) of both COVENANTS; also EUROPEAN CONVENTION Art. 17.

¹²⁰ COVENANTS Arts. 5(2).

strictly necessary required by the exigencies of the situation.”¹²¹ To prevent an abusive or excessive derogation the State concerned must immediately notify the other signatory States of the measures taken and the reasons therefor.¹²² Moreover certain rights are immune from any derogation. The Covenant insists on full enjoyment of some of the most fundamental rights under any circumstances. A public emergency, however grave, cannot deprive the individual of his full protection against arbitrary deprivation of life; against torture, cruel and inhuman punishment or treatment; against slavery and slave trade or imprisonment for failure to meet contractual obligations. Similarly, his right to be recognized as a person before the law and his freedom of thought, conscience and religion are fully maintained, irrespective of the existing emergency.¹²³

Among the rights open to derogation are freedom of association, right to peaceful assembly and of expression. Also the right to the privilege of habeas corpus and even the right to be presumed innocent until found guilty might possibly be subjected to derogation. The most serious circumstances—such as large scale violence or armed conflict—may warrant such a derogation. However, the flexibility of the concept of a public emergency, whose nature and origin is left undefined by the Covenant as is the method of its declaration, may virtually enable the States to curtail or even deny the enjoyment of such fundamental rights. The permissible derogation of the right to equality is perhaps the gravest threat to the human rights program. The limitation clause prohibiting derogations based *solely* on race, sex, language, religion or social origin is far too weak to counterbalance the dangers implied in this provision.¹²⁴

Even normal conditions may preclude an unlimited exercise of individual's rights and freedoms. The Covenant on political and civil rights restricts the rights in order to (a) secure national security, public safety, order, health, moral; (b) protect the rights of

¹²¹ COVENANT on Political and Civil Rights Art. 4(1). Similarly EUROPEAN CONVENTION Art. 15(1).

In view of the different nature of rights, the COVENANT on Economic and Social Rights states in Art. 4 that “the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society”.

¹²² COVENANT Art. 4(3). EUROPEAN CONVENTION Art. 15(3) commits the State Party to inform only the Secretary-General of the Council of Europe.

¹²³ COVENANT Art. 4(2). EUROPEAN CONVENTION Art. 15(2) grants even narrower immunity against derogation; it permits, for instance, the derogation of right to freedom of thought, conscience and religion.

¹²⁴ COVENANT Art. 4(1).

others.¹²⁵ The general meaning of these restrictions is ambiguous—as well illustrated, for instance, by the different concept of public order according to French or Anglo-Saxon Law. This is even further aggravated by the Covenant's inconsistent enumeration of these restrictions.¹²⁶ The mere provision that such restrictions must be imposed in accordance with law is¹²⁷ of little practical value until the content of this law is, at least, in principle specified.

It is easy to see that by declaring a public emergency, the State may make *some* rights ineffective. Even worse, arbitrary restrictions permissible on the vague, incongruous grounds of national security and public safety and order, could practically extinguish all the guaranteed rights and freedoms. This danger will continue until these restrictions are left to be interpreted by an independent international body. The prospects for deference to human rights become even dimmer if one refers to the still pending question of federal clause and of reservations to the Covenants,¹²⁸ clauses which may constitute a further encroachment on the enjoyment of these rights.

The main deficiency of the Covenants rests, however, with the inadequate guarantee of their effective enforcement. The constitutions of States formulate both the individual's rights and the pattern of governmental structure. An effective protection of constitutional rights is contingent upon the manner governmental authority is structured and distributed. At present, an international prescription for a specific pattern of a governmental structure suitable for their most effective protection is inconceivable. Any international protection of human rights can merely formulate the basic rights. At best it may commit the States to incorporate them in their constitutions and provide effective domestic remedies for their enforcement.

¹²⁵ *Ibid*, Arts. 5(1); 12(1); 18(3); 19(3); 20; 21(2).

¹²⁶. The ambiguous limitations are used *promiscue*; while the right to freedom of assembly and of association can be limited on all the grounds cited in the text (COVENANT Arts. 20 and 21(2) respectively), the right to freedom of movement *cannot* be limited by reason of public order (*ibid.* Art. 12(1)); the right to freedom of thought, by the requirement of national security (*ibid.* Art. 19[3]).

¹²⁷ E.g. COVENANT Arts. 9(1) deprivation of liberty; 12(1) freedom of movement; 18(3) freedom of thought, conscience and religion; 20 freedom of assembly; 21(2) freedom of association.

¹²⁸ COMMISSION ON HUMAN RIGHTS, REPORT OF THE NINTH SESSION TO THE ECONOMIC AND SOCIAL COUNCIL, *cit. supra*, note 3, at 5.

For an exhaustive discussion of the federal clause *cf.*, Srensen,, *Federal States and the International Protection of Human Rights*, 46 A.J. INT'L L. 194-218 (1952).

ENFORCEMENT MEASURES

To safeguard his political and civil rights recognized by the Covenant, the aggrieved individual is, first of all, granted national remedies.¹²⁹ The Covenant on political and civil rights commits the States immediately to ensure to any person an effective redress against a private individual or public official violating his fundamental rights.

Compared with the Human Rights Declaration,¹³⁰ the provision is a retrogression for it does not immediately grant a *judicial* remedy.¹³¹ The judicial remedies are to be introduced only gradually. For this reason the Covenant commits the States "to develop the possibilities of judicial remedy" and to ensure that any person claiming it "shall have his right determined by competent authorities, political, administrative or judicial."¹³² Depending whether these remedies are to be applied against private individuals or public officials, they may consist of sanctions, recovery for damages or of annulment of an official act, restitution or even disciplinary action against the defaulting official. The existing differences and discrepancies in the development of the legal systems of the various States and the desire to grant some redress, even though short of judicial recourse, explain this approach. However, before establishing such judicial remedies, even a mere petition would satisfy the requirement for there is no explicit recognition of a right to a specific redress.

The State's failure to enforce such remedies granted to the aggrieved individual would reduce the internationally recognized human rights to mere dead letters. Therefore special *international* measures are necessary which would ensure effective enforcement of those rights.¹³³

The draft proposal for international enforcement measures of the political and civil rights, as adopted by the Human Rights Commission at its ninth session, resorts merely to traditional diplomatic means of negotiations. Any State Party to the Covenant which con-

¹²⁹ COVENANT Art. 2(3a).

¹³⁰ DECLARATION Art. 8.

¹³¹ Cassin, *La Déclaration Universelle et la mise en oeuvre droits de l'homme* 79 HAGUE RECUEIL DES COURS 328-9 (1951).

¹³² COVENANT Art. 2(3b).

¹³³ As France's Jauvigny pointed out so well: "They (the Covenants) represent the first attempt in history to internationalize relations which had previously been purely domestic and would require for their implementation an authority, the human rights committee, higher than any previously established in international law * * *. The measures of implementation would give the community of States that had satisfied them a right of supervision of the relations between a State and its nationals in respect of almost all human rights." A/C.3/SR.509 at 147.

siders that another State Party violates the human rights of any person or does not live up to its commitments, may by written statement call this matter to the attention of that State.¹³⁴ If after a three month period the issue is not settled, either State, complained of or complaining, may invoke the assistance of a Human Rights Committee.¹³⁵ This Committee is to be established as a conciliatory body. It is composed of nine members, nationals of the States Parties to the Covenant, elected by the International Court of Justice, and serving in their individual capacity.¹³⁶ It merely renders its good offices in settling the matter and prepares a final report on the solution reached which is to be forwarded to the States concerned and the Secretary-General of the United Nations for its publication.¹³⁷ Only a failure to reach a solution empowers the Committee to draw up and publish a report on "the facts and state its opinion as to whether the facts found disclose a breach by the State concerned of its obligation under the Covenant".¹³⁸

To preclude odious implications from the adverse finding of the Committee and to secure a judicial review, Article 46 of the Covenant on political and civil rights provides that the State complained of or complaining may bring the case before the International Court of Justice.¹³⁹ This appeal which is permissible after the Committee has rendered its opinion on the failed settlement, virtually represents a compulsory jurisdiction of the Court. Compared with the Committee's recommendation the judgment of the International Court of Justice is binding on the State concerned.

If the State which is found by the Court to have breached the Covenant fails to comply with the judgment, the other State Party may presumably, in accordance with Article 94 of the United Nations Charter, have recourse to the Security Council "which may, if it deems necessary, make recommendations or decide upon the measures to be taken to give effect to the judgment." Furthermore, to assure a legal expert opinion while the Committee is seized of a matter, the Committee which itself is not authorized to ask the International Court of Justice for an advisory opinion on any legal question related to the matter, may recommend to the Economic and Social Council to make such a request to the Court.¹⁴⁰

¹³⁴ COVENANT Art. 40(1).

¹³⁵ *Ibid.* Art. 40(2).

¹³⁶ *Ibid.* Arts. 27-31.

¹³⁷ *Ibid.* Art. 43.

¹³⁸ *Ibid.* Art. 43(3).

¹³⁹ For further comments see E/CN.4/SR.390.

¹⁴⁰ COVENANT Art. 44.

The Covenant on political and civil rights contains only meagre enforcement measures. The proposed Human Rights Committee has no investigating powers¹⁴¹ and lacks initiative in taking protective measures however grave the human rights violations may be.¹⁴² This is a serious shortcoming, particularly so if one realizes that the Committee can be invoked by State Parties only.

This approach is hardly more than a traditional method of enforcing international law relying exclusively on the initiative of, and procedures between the States. Neither could an international body, deprived of its own initiative, and dependent on the complaint of alleged human rights violations lodged by the State remove this deficiency. The person whose rights are violated would be again dependent in their enforcement on the State's discretion to complain on his behalf to an international body. His protection would be hardly different from the traditional protection limited to "citizens abroad." Moreover the individual could obtain no redress against his own state except by seeking an action of a foreign State taken on his behalf.¹⁴³ In the recent meeting of the General Assembly's Third Committee it was correctly observed that:

"It States alone were given the right of petition, they would certainly not denounce any violations of human rights on their own territory and there would be political difficulties if they denounced such violations on the territory of other States. Their motives would be suspected, and international tension would be created."¹⁴⁴

In its international enforcement measures, the Covenant denies the aggrieved individual, its ultimate beneficiary, as well as private, non-governmental organizations any right to an international appeal against the violations of his rights by individuals or States. He is even denied the right to petition. The Covenant does so in disregard of the General Assembly Resolution 421 (V) which asked the Economic and Social Council and the Human Rights Commission respectively

¹⁴¹ *Ibid.* Art 42 merely states that "In matters referred to it the Committee may call upon the States concerned to supply any relevant information."

Cf. the joint amendment of Egypt-Philippines-Chile (E/CN.4/SR.388), subsequently rejected, which proposed:

"If the Committee considers that the information supplied is not sufficient it may, by vote of two-thirds of all its members, conduct an inquiry within the metropolitan area or Non-Self-Governing Territory of any State complained against. The State concerned shall afford full facilities necessary for the efficient conduct of the investigation."

¹⁴² Cf. the joint amendment of Chile and India (E/CN.4/L.252/Rev. 1) which proposed that " * * * the Committee shall also have the right to take the initiative in cases where it recognizes that non-observance of this Covenant is serious enough."

¹⁴³ See comment of Kaeckenbeek (Belgium) E/CN.4/SR.343 at 8.

¹⁴⁴ A/C.3/SR.523 at 227.

to consider inserting this right either in the Covenant or in a special protocol. Even the United States has subsequently withdrawn its proposal for a separate protocol authorizing the Human Rights Committee to receive petitions from individuals and non-governmental organizations alike.¹⁴⁵ Nevertheless there is a strong pressure in favor of an individual's right to petition. At the recent meeting of the General Assembly's Third Committee a proposal to re-instate this right of individuals and non-governmental organizations in the Covenant itself has been introduced anew.¹⁴⁶

Because of the narrow approach to this question, it is worthwhile to observe some of the advanced but unaccepted proposals for enforcement measures submitted to the United Nations Human Rights Commission. These proposals were, interestingly enough, much more in accord with the nature of the Human Rights Covenants which seek man's right to international protection of his fundamental rights and freedoms. For instance, during the Paris Peace Conference and the formulation of the Human Rights Declaration, originally anticipated to be binding, Australia proposed an International Court on Human Rights.¹⁴⁷ This Court, following a strict judicial procedure, would have had original and appellate jurisdiction over all disputes concerning the application and interpretation of the Declaration of Human Rights and of any international treaty or convention dealing with human rights, especially of the human rights provisions of the Paris Peace Treaties of 1946 signed by the Allied and Associated Powers with Bulgaria, Hungary, Romania and Finland.¹⁴⁸ It proposed to grant access to this Court to the States as well as individuals and private associations. The commitments of the States Parties to the Declaration to enforce the Court's orders and judgments protecting man's rights provide the basis of enforcement measures.

A more modest proposal of the delegation of Uruguay suggested the appointment of a United Nations Attorney-General,¹⁴⁹ authorized to collect and examine informations relevant to the observation and enforcement of international human rights and to conduct *prior*

¹⁴⁵ E/CN.4/SR.342 at 5. For the text of the original proposal see E/CN.4/557.

¹⁴⁶ A/C.3/SR.524 at 239.

¹⁴⁷ E/CN.4/15.

For further discussion of this question see Human Rights Commission, Working Group on Implementation, *Report* (E/CN.4/53) paragraphs 25-33.

¹⁴⁸ This original proposal was further elaborated in Australia's Draft Statute of an International Court of Human Rights (E/CN.4/AC.1/27); see especially Art. 19 *ibid.* Cf. also Secretary-General's Note: *International Court of Human Rights* (E/CN.4/521).

¹⁴⁹ E/CN.4/549.

to any violations, with the consent of the State concerned, studies and inquiries on the spot. In situations in which a breach of the State's commitment was likely, the Attorney-General was empowered to initiate consultation with such a State. Although the settlement of the complaint was primarily to be attained through negotiation, the Attorney-General's power to make inquiries within the State is by far the greatest one conceded in any proposal of this kind. Subsequently, the Uruguayan delegation itself substantially modified this proposal, suggesting the establishment of an Office of the United Nations Attorney-General¹⁵⁰ which would defend before the Committee public interest, whenever affected, and to request in its 'prosecuting function' to summon and hear witnesses.

Those opposing the right of the individual or non-governmental organizations to petition contest such a measure as an unprecedented and revolutionary move. Such views are unfounded. The precedents in which this right was granted to the individual are impressive.¹⁵¹ Briefly stated, this right found recognition in the various minority treaties¹⁵² as well as in the mandate system of the League of Nations.¹⁵³ Moreover, the United Nations Charter itself states in Article 87 that:

"The General Assembly and, under its authority, the Trusteeship Council, in carrying out their functions, may . . . accept petitions and examine them in consultation with the administering authorities."¹⁵⁴

It may also be added that in pursuance of Article 71 of the Charter non-governmental organizations, accorded consultative status with the Economic and Social Council, already have, to large extent, the right to petition this Council. "It is a matter of record that trade union organizations in particular have availed themselves of this privilege and have made allegations before the Economic and Social Council that trade union rights have been violated."¹⁵⁵

The ILO Convention grants similar right to "any industrial association of employers or workers" to make representations to the

¹⁵⁰ E/CN.4/606/Rev. 1; for its criticism see A/C.3/SR.407 at 369; A/AC.3/564. For a comparative table of various proposals on measures of implementation and a protocol on petitions cf. E/CN.4/617 and E/CN.4/617 Add. 1.

¹⁵¹ For a comprehensive survey of the development of right to petition see Secretary-General's Report: *The Right of Petition* (E/CN.4/419).

¹⁵² AZCARATE, LEAGUE OF NATIONS AND NATIONAL MINORITIES 102-136 (1945).

¹⁵³ WRIGHT, MANDATES UNDER THE LEAGUE OF NATIONS 169-178 (1930).

¹⁵⁴ Cf. also Trusteeship Council, *Rules of Procedure*, Rules 76-93.

¹⁵⁵ INTERNATIONAL LABOUR OFFICE, GOVERNING BODY, MINUTES OF THE 110TH SESSION 175 (1950) (Comment by the United Nations Secretary-General on the Note Concerning Freedom of Association by the Director-General of ILO).

International Labour Office as to a Member State's failure to observe any of the labor Conventions to which it is a party.¹⁵⁶ Besides this representation any Member State as well as *any* delegate to the Conference, regardless whether representing a Government, employers or workers, may make complaints regarding the non-observance of a Convention by a State Party.¹⁵⁷ The Governing Body may not only adopt such a delegate's complaint but also refer it to a special Committee of Enquiry for further consideration and recommendation.¹⁵⁸ In its final phase, the Governments concerned may either accept the Committee's recommendation or submit the complaint to the International Court of Justice for final binding decision.¹⁵⁹

The European Convention for the Protection of Human Rights and Fundamental Freedoms provides for a possible right to petition of "any person, non-governmental organization or group of individuals claiming to be victim of a violation by one of the High Contracting Parties of the right set forth" to be presented to the European Commission on Human Rights.¹⁶⁰ The individual's or private association's standing before the Court of Justice of the European Coal and Steel Community is further indication of the direction of this future, possible trend.¹⁶¹

At present, the right to petition of individuals and private associations is the utmost feasible limit of any enforcement scheme by the Human Rights Committee. Even though the right to petition may amount to nothing more than calling attention to human rights violations, this right is denied. Bitter opposition by powerful States

¹⁵⁶ Art. 24 of the Constitution. (Text as amended in YEARBOOK OF THE UNITED NATIONS FOR 1946-47 at 670-9). In case of representation, the Governing Body may merely approach the State in question and publish its statement made in response to such representation. For further discussion see Jenks, *The Significance for International Law of the Tripartite Character of the International Labour Organization*, 22 GROTIIUS SOCIETY, TRANSACTIONS 1936 at 52-3 (1937).

¹⁵⁷ Art. 26(1,2) of the Constitution.

Cf. also Jenks, *cit. supra*, note 156 at 53-6; FISCHER, RAPPORTS ENTRE L'ORGANISATION INTERNATIONALE DU TRAVAIL ET LA COUR PERMANENTE DE JUSTICE INTERNATIONALE 166-72 (1946).

¹⁵⁸ Art. 26(4) of the Constitution.

¹⁵⁹ *Ibid.* Art. 29.

¹⁶⁰ EUROPEAN CONVENTION Art. 25.

This right to petition becomes effective only after six States Parties to the Convention have explicitly recognized such a right. For further details see Robertson, *The European Convention for the Protection of Human Rights*, 27 BRITISH YEARBOOK OF INTERNATIONAL LAW 1950 at 154-5 (1951), Masing, *cit. supra*, note 46 at 154-8.

¹⁶¹ TREATY CONSTITUTING THE EUROPEAN COAL AND STEEL COMMUNITY Arts. 34-6; for further discussion see Bebr, *The European Coal and Steel Community: A Political and Legal Innovation*, 63 YALE L.J. 26-36 (1953).

has already been manifested,¹⁶² particularly by the Soviet Union and her satellites. They vigorously maintain that only States could guarantee the enforcement of the Covenant. Any international enforcement machinery, it is contended, would constitute an interference with domestic affairs, inconsistent with the "sovereignty" of the State.¹⁶³ Not even on a strictly doctrinal level can this argument hold true. All international treaties limit to a certain degree the States' sovereignty and so do also the human rights provisions of the United Nations Charter or the Human Rights Covenants.¹⁶⁴ As well emphasized by the Philippine delegate:

"It was surely recognized that unless the States Parties were willing to accept some restrictions on their sovereignty, there could be no effective international protection of human rights * * *. It had been held by the International Court of Justice that a matter once regulated by an international instrument, thence forward ceased to be 'essentially within the jurisdiction of the State' * * *. Moreover, once a particular right was regulated by the Covenant, from that moment, it ceased to be essentially within the domestic jurisdiction of the States Parties to the Covenant."¹⁶⁵

CONCLUSION AND RECOMMENDATION

The changing structure of the society shows the urgent need for the universal formulation and international enforcement of the man's fundamental human rights. The life of democracy depends on their vigorous promotion at home as well as abroad. It is generally accepted that violations of fundamental human demands breed fear and frustration likely leading to unwillingness to cooperate and even to aggression.¹⁶⁶ A contribution to physical and economic well-being is a contribution to mental health which in turn also promotes the cause of peace. "Satisfied people are less likely to become aggress-

¹⁶² Cf. the United States note of Jan. 20, 1954 indicating that this country "does not intend to sign or ratify the proposed Covenants", E/CN.4/694/Add. 3.

¹⁶³ A/C3/SR.407 at 368, 372-3; A/C3/SR.394 at 280; E/CN.4/SR.344 at 16.

¹⁶⁴ VERDROSS, VOELKERRECHT 492-3 (1950); WRIGHT, PROBLEMS OF STABILITY AND PROCESS IN INTERNATIONAL RELATIONS 33 (1954).

¹⁶⁵ E/CN.4/SR.388 at 11.

¹⁶⁶ For an exhaustive discussion of this question see in particular: LASSWELL, WORLD POLITICS AND PERSONAL INSECURITY (1935); ARENDT, THE ORIGIN OF TOTALITARIANISM (1951); DOLLARD and others, FRUSTRATION AND AGGRESSION (1939); PEAR (ed.), PSYCHOLOGICAL FACTORS OF PEACE AND WAR (1950); KLINEBERG, TENSIONS AFFECTING INTERNATIONAL UNDERSTANDING (1950); CANTRIL (ed.), TENSIONS THAT CAUSE WAR (1950) (statements and individual papers by a group of social scientists brought together by UNESCO); KISKER (ed.), WORLD TENSION—THE PSYCHOPATHOLOGY OF INTERNATIONAL RELATIONS (1951); KARDINER, THE MARK OF OPPRESSION (1951).

sive."¹⁶⁷ Thus the final answer rests with the individual. Protected and guaranteed his fundamental rights, the individual may well become the backbone of a peaceful world order. Misused and debased, however, man may easily in his despair turn to aggression and blind destruction, a destruction likely to mark the end of himself and his fellow beings. Therein lies the meaning of the United Nations human rights program.

It should be remembered that this program is by no means limited to the Universal Declaration or to the Covenants, though admittedly, they are the most comprehensive ones. Other Conventions prepared by the United Nations and its specialized agencies which deal with particular aspects of human rights form an organic part of this United Nations human rights program. The International Labor Office, functioning already in the League of Nations period, has prepared an impressive number of Conventions¹⁶⁸ such as the Convention Limiting the Hours of Work in Industrial Undertakings;¹⁶⁹ Convention concerning Sickness Insurance;¹⁷⁰ Convention concerning Forced and Compulsory Labor;¹⁷¹ Invalidity and Old Age Conventions.¹⁷² Among the recent ILO Conventions the following deserve to be singled out: Convention concerning Freedom of Association and Protection of Right to Organize;¹⁷³ Convention concerning the Application of the Right to Organize and Bargain Collectively;¹⁷⁴ Convention concerning Equal Remuneration for Men and Women Worker of Equal Value¹⁷⁵ and the proposed Convention concerning Minimum Standards of Social Security.¹⁷⁶ Reference may also be made to the United Nations Convention on International

¹⁶⁷ Klineberg, *The United Nations in WORLD TENSION—THE PSYCHOPATHOLOGY OF INTERNATIONAL RELATIONS* 281 (Kisker ed.).

¹⁶⁸ Until Sept. 1949 the International Labour Conference has adopted 98 Conventions out of which 56 have been duly ratified and brought into effect, INTERNATIONAL LABOUR OFFICE, *CONVENTIONS AND RECOMMENDATIONS 1919-1949*, at iii (1949).

¹⁶⁹ Text, *ibid.*, 1-10.

¹⁷⁰ *Ibid.* 124-33.

¹⁷¹ *Ibid.* 168-78.

¹⁷² *Ibid.* 225-59.

¹⁷³ Text in UNITED NATIONS, *YEARBOOK ON HUMAN RIGHTS FOR 1948* at 427-30 (1950), effective since July 4, 1950, *YEARBOOK OF THE UNITED NATIONS 1951* at 871 (1952).

¹⁷⁴ UNITED NATIONS, *YEARBOOK OF HUMAN RIGHTS FOR 1949* at 291-2 (1951) effective since July 18, 1951. For a comprehensive list of ratified International Labour Conventions see *YEARBOOK OF THE UNITED NATIONS 1951* at 871-2.

¹⁷⁵ INTERNATIONAL LABOUR OFFICE, *SIXTH REPORT TO THE UNITED NATIONS 160-3* (1952).

¹⁷⁶ INTERNATIONAL LABOUR CONFERENCE, *35TH SESSION, REPORT V (a) (1)* at 75-96 (1951).

Transmission of News and the Rights to Correction;¹⁷⁷ Convention relating to the Status of Refugees;¹⁷⁸ Convention for the Suppression of the Traffic in Person and of Exploitation of Prostitution of Others¹⁷⁹ and the recent Convention on Political Rights for Women¹⁸⁰ as well as the UNESCO Copyright Convention and the UNESCO¹⁸¹ Agreements for Facilitating the International Circulation of Visual and Auditory Material¹⁸² and on the Importation of Educational, Scientific and Cultural Materials.¹⁸³

Similarly, regional organizations such as the Council of Europe and the Organization of American States, pursuing among other objectives a regional promotion of human rights,¹⁸⁴ have formulated general and specific human rights instruments which also deserve to be mentioned. Thus the Council of Europe has drafted the Convention for the Protection of Human Rights and Fundamental Freedoms¹⁸⁵ and proposed Draft Agreements on the Social Security of Nationals of the Members of the Council of Europe.¹⁸⁶ The Ninth International Conference of American States at Bogota has prepared an American Declaration of the Rights and Duties of Man;¹⁸⁷ an Inter-American Charter of Social Guarantees¹⁸⁸ as well as an Inter-American Conventions on the Granting of Political and Civil Rights to Women.¹⁸⁹

The present, high political tensions of the bipolar world, however, are certainly most unfavorable to a global implementation of human rights. The serious concern of some States for, and vigorous insistence on, the inclusion of both a federal and general reservation clause and the slim prospect for a widely recognized right to petition do not augur well for an effective, universal enforcement of

¹⁷⁷ UNITED NATIONS, Dept. of Public Information, THESE RIGHTS AND FREEDOMS 182-91 (1950).

¹⁷⁸ *Cit. supra*, note 53.

¹⁷⁹ UNITED NATIONS YEARBOOK OF HUMAN RIGHTS FOR 1949 at 388-91 (1951).

¹⁸⁰ UNITED NATIONS YEARBOOK 1952 at 484-5 (1953).

¹⁸¹ 5 UNESCO COPYRIGHT BULLETIN 30-41 (Nos. 3-4, 1951).

¹⁸² UNITED NATIONS YEARBOOK ON HUMAN RIGHTS FOR 1948 at 431-3 (1950).

¹⁸³ UNITED NATIONS YEARBOOK ON HUMAN RIGHTS FOR 1950 at 411-5 (1952).

¹⁸⁴ COUNCIL OF EUROPE, STATUTE Preamble, Arts. 1, 2, 3, 8; text in 43 A.J. INT'L L. Off. Doc. 162-72 (1949).

ORGANIZATION OF AMERICAN STATES, CHARTER OF BOGOTA Arts. 4, 5, 12, 13, 28, 29, 30, 31; pertinent text in UNITED NATIONS YEARBOOK ON HUMAN RIGHTS FOR 1948 at 437-6.

¹⁸⁵ *Cit. supra*, note 4.

¹⁸⁶ Text in INTERNATIONAL LABOUR OFFICE, THE INTERNATIONAL LABOUR CODE 1951 v. 2 at 1051-6 (1952).

¹⁸⁷ UNITED NATIONS YEARBOOK ON HUMAN RIGHTS FOR 1948 at 441-2 (1950).

¹⁸⁸ *Ibid.* 446-50.

¹⁸⁹ *Ibid.* 438-40.

human rights. Under the existing circumstances it seems, therefore, preferable to set forth short as well as long term objectives for realizing the human rights program:

1. As the impact of the Universal Declaration upon the constitution of States as well as upon their legislation and administrative and judicial decisions becomes discernable,¹⁹⁰ no time should be lost and effort spared to implement the Covenants themselves within certain regions. Democracies of the free world cannot afford leniency, indifference or even hostility towards international human rights. A thorough implementation of the Covenants within the North Atlantic Community would promote closer cooperation among the participating States. The merits of a consolidated Atlantic area are too obvious to require further comment.

2. A speedy ratification of the Covenants and the establishment of effective international enforcement measures, global in its application, can hardly be expected. The gradual and slow strife for a universal realization of the rights enunciated in the Covenants and in the various Conventions makes it advisable to establish a United Nations supervisory body—preferably the Human Rights Committee—authorized to observe, prior to any actual human rights violation, the legislative acts and judicial and administrative decisions of the States in order to detect development injurious to human rights and, if need be, to conduct investigation on the spot. The consultation between the States concerned initiated in such a case by this Committee, and assisted in work by regional human rights committees and by prominent non-governmental social and welfare organizations, familiar with the local conditions, might conceivably contribute to the furtherance of human rights and maintain them in the forefront of international attention and concern.

3. Meanwhile, for the near future, the Universal Declaration which lacks enforcement, will very likely be the only comprehensive international shield protecting the individual. The Human Rights Commission ought to be authorized to act upon the communications already being received by the United Nations from individuals alleging violations of their fundamental rights. This certainly would be feasible. Therefore, the unfortunate Resolution 75(V) of the Economic and Social Council which denied the Human Rights Commission the "power to take any action in regard to any complaint con-

¹⁹⁰ UNITED NATIONS, THE IMPACT OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (1953).

cerning human rights" ¹⁹¹ ought to be withdrawn. To abstain from action on more than 25,000 communications received in a year ¹⁹² may well be considered a disrespect for the human being and denial of the purposes for which the Organization stands. A United Nations action on the individual's complaint would demonstrate the usefulness of the Organization and create confidence in it, a chance the world organization cannot afford to disregard in its struggle for popular support. An individual who has experienced the prospective shield of the United Nations in the most personal manner might become its strongest supporter and defender.

4. To prepare a climate favorable to the acceptance and realization of any human rights program and particularly of the Covenants, a vigorous, long range educational policy must be launched first to enlist the peoples' popular support and promote their understanding and general enlightenment.¹⁹³ "How can we call the Human Rights Declaration 'Universal' when we know that not one man in two can so much as read it?"¹⁹⁴

The fission of the atom; the spectacular explosion of the atomic bomb have made the world shiver in fear of utter destruction. The gross violations of inalienable human rights now witnessed throughout the globe, though perhaps less spectacular, nevertheless represent a destructive force which may well prove no less fatal to our civilization.

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¹⁹¹ ECONOMIC AND SOCIAL COUNCIL, RESOLUTIONS, FIFTH SESS. 20 (1947) and amended by RESOLUTION 275 (X).

In case of alleged violations of freedom of association this resolution has already been modified by Resolution 277 (X), RESOLUTIONS, TENTH SESS. 9-10 (1950).

¹⁹² COMMISSION ON HUMAN RIGHTS, REPORT OF THE NINTH SESSION. *Cit. supra*, note 3 at 38.

¹⁹³ WRIGHT, PROBLEMS OF STABILITY AND PROGRESS IN INTERNATIONAL RELATIONS 126 (1954).

¹⁹⁴ Statement by the former Director-General of UNESCO Jaime Torres Bodet, UNESCO, *World Review* No. 199 at 2 (1952).