

THE HUMAN RIGHTS PROVISIONS OF THE UNITED NATIONS CHARTER

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Introduction

The United Nations emerged in the midst of World War II, essentially as a military alliance. The primary objectives were the termination of the war through the unconditional surrender of the Axis Powers, and the establishment of an enduring and harmonious peace in the world community. The basic concept of the Organization was conceived with a declaration of principles agreed upon by Franklin Delano Roosevelt and Winston Churchill on August 14, 1941, which was later to become known as the Atlantic Charter. New nations were brought into this alliance, which came to be known as the United Nations. Meetings and conferences were held throughout the course of the war in such locations as Casablanca, Hot Springs, Quebec, Moscow, Cairo, Teheran, Bretton Woods, and Yalta, to plan the foundations of the new peace.

At Yalta, preparations were made for a conference to take place in San Francisco, beginning on April 25, 1945. The purpose of this conference was to draft the Charter of this new Organization of Peace, the United Nations. And, true to its purpose, the San Francisco Conference produced a constitution for a World Organization, a Charter conceived at Yalta, modelled at Dumbarton Oaks, completed on June 26, 1945 in San Francisco, and which came into force on October 24, 1945.

Like the constitution of its predecessor, the League of Nations, this new constitution recognized the maintenance of peace as the primary objective. However, the Charter of the United Nations¹ also recognized that there could be no real and enduring peace among the nations of the world without the acknowledgement of the basic human dignity and worth of the individuals who made up these nations. It was realized that a nation which systematically denies the rights of its own citizens could not be realistically depended on to recognize the rights of other nations and their peoples. As Professor Schwelb notes:

Hitler's and Mussolini's records proved, moreover, how close a relationship exists between outrageous behaviour by a government towards its own subjects and aggression against other nations, between respect for human rights and the maintenance of peace.²

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1. [1945] Can. T.S. No. 7, Charter of the United Nations, San Francisco, 1945 (hereinafter referred to as the Charter).
2. E. Schwelb, *Human Rights and the International Community: The Roots and Growth of the Universal Declaration of Human Rights, 1948-1963* (1964) 24.

Therefore, in asserting the importance that the recognition and preservation of basic human rights plays in the task of maintaining international peace and security, the Charter which emerged from the Conference at San Francisco was, in essence, the first international instrument in which the nations of the world community agreed to promote human rights and fundamental freedoms on an international level. The Charter embodies seven direct references to the concept of human rights. The first reference is to be found in the preamble of the Charter, which contains a reaffirmation of “. . . faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small. . . .” Included in the purposes of the United Nations, in Article 1(3) of the Charter, is the achievement of “. . . international cooperation in solving international problems of an economic, social, cultural, or humanitarian character . . .”, and the promotion and encouragement of “. . . respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion. . . .”

Contained in Article 13(1)(b), in the list of functions and powers of the General Assembly, the Organization's principal organ, is the initiation of studies, and the making of recommendations “. . . for the purpose of . . . promoting international cooperation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”

Under Chapter IX, Article 55(c), of the Charter, dealing with international economic and social cooperation, it is stated that “. . . the United Nations shall promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.” Furthermore, in Article 56, “All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.”

Included in the purposes of the Economic and Social Council, as set out in Article 62(2), is the power to “. . . make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.” In addition to this power, the Economic and Social Council has the obligation under Article 68, to “. . . set up commissions in economic and social fields and for the promotion of human rights. . . .” This express provision for a commission on human rights is demonstrative of the importance this commission, and the entire concept of human rights play in the scheme of the United Nations.

The seventh and final direct reference to human rights contained in the Charter is found in Chapter XII, which deals with the international trusteeship system. It is declared in Article 76(c) that one of the basic objectives of the trusteeship system is “. . . to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world. . . .”

This list, however, by no means comprises a complete enumeration of the relevant provisions, as there are a number of other, implicit references to human rights contained within the text of the Charter. For example, some Articles make reference to the purposes of the United Nations, and any such Article necessarily incorporates a reference to human rights. An example of such a reference is found in Article 14, which deals with the recommendatory power of the General Assembly in certain situations, “. . . including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations.”

Furthermore, implicit reference to human rights is not limited to those Articles referring to the purposes of the Organization. For example, another provision dealing implicitly with human rights can be found in Article 10, which states that “The General Assembly may discuss any questions or any matters within the scope of the present Charter. . . .” It is clear, then, that this Article gives the General Assembly the power, among others, to discuss questions dealing with human rights. A careful perusal of the provisions of the Charter shows that the list of indirect references to human rights given here is by no means complete.

There is indeed an ever present theme of respect for human rights which runs prominently throughout the entire Charter. However, one needs only to look briefly at the world situation today to realize that “. . . universal respect for, and observance of, human rights and fundamental freedoms for all . . .”, as enunciated in Article 55(c), is not a recurring facet of life in the world today. The purpose of this paper, then, is an analysis of the human rights provisions of the Charter, their scope and their effect. In an effort to deal with the subject matter in a relatively systematic fashion, the discussion to follow will be composed of three major sections: 1) the effect of the human rights provisions on the Member States of the United Nations; 2) the effect of the human rights provisions on the citizens of the Member States; and 3) the effect of the human rights provisions on the United Nations as a whole.

Effect of the Provisions on Member States

In appraising the human rights provisions of the Charter, the primary question to be considered is whether or not the Charter imposes a positive obligation on the Member States to observe human rights within their own territory. It has been said that:

. . . the Charter does not impose upon the Members a strict obligation to grant to their subjects the rights and freedoms mentioned in the Preamble or in the text of the Charter. The language used by the Charter in this respect does not allow the interpretation that the Members are under legal obligations regarding the rights and freedoms of their subjects. All the formulas concerned establish purposes or functions of the Organisation, not obligations of the Members. . . .³

This rather somber view has been accepted by a number of other writers as well.⁴

However, such a view cannot stand upon a careful analysis of the Charter. Human rights constitutes a theme which recurs again and again throughout the Charter. In fact, it is a theme which is singular in its predominance. These provisions are obligatory in nature, and not merely broad pronouncements of desirable, yet unattainable goals. The very fact that the human rights provisions play such a major part in the scheme of the Charter, and the fact that the promotion and encouragement of respect for human rights is included as one of the principal objectives of the Organization would, of necessity, entail some type of obligation on the Member States. As Professor Wright suggests, "Treaty provisions which define the purposes, procedures or powers of international bodies may imply obligations by the parties not to obstruct the realization of these purposes, to observe these procedures, and to respect the decisions resulting from the exercise of these powers."⁵

Therefore, even if reference to human rights in the Charter were limited to the purposes and powers of the Organization, there would still be, by implication, an obligation on the part of the Member States to follow the initiative of the United Nations in that field. However, the provisions dealing with human rights are not limited in such a manner, and a direct reference to the Member States can be found in Chapter IX of the Charter. Article 55 states that the United Nations has a duty to promote, *inter alia*, ". . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion." Moreover,

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3. H. Kelsen, *The Law of the United Nations: A Critical Analysis of its Fundamental Problems* (1950) 29.
 4. E.g., E.H. Crowell, "The Declaration of Human Rights, The United Nations Charter and Their Effect on the Domestic Law of Human Rights" (1950), 36 Va. L. Rev. 1059; Frederick M. Miller, "The Charter and the Future" (1946), 32 A.B.A.J. 48.
 5. Q. Wright, "National Courts and Human Rights — The Fujii Case" (1951), 45 Am. J. Int'l. L. 62, at 70.

under Article 56, "All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55."

Legal Interpretation of the Provisions

In determining the legal effect of Article 56 on the Member States, it must be borne in mind that the Charter, as an international agreement, must be interpreted in accordance with basic principles of treaty construction. The most important of these fundamental principles is that "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."⁶

The operative term in Article 56 is the word "pledge." Pledge may be adequately defined as ". . . a promise or agreement by which one binds himself to do or forbear something."⁷ The French version of the Charter states that ". . . les Membres s'engagent . . . à agir." The French version, like the English version, is indicative of the mandatory nature of this provision. In truth, any ordinary construction of this Article inevitably leads to the conclusion that the Member States have undertaken some sort of binding legal obligation, and the issue becomes the extent of the obligations assumed.

It has been suggested that the obligation is limited to merely the promotion of international cooperation in the realization of the purposes described in Article 55.⁸ However, this conclusion is difficult to accept, as the wording of Article 56 indicates that the obligation extends beyond mere cooperation with the United Nations. The Article indicates that the Member States are not only obligated to act jointly and in cooperation with the Organization, but that they have also assumed a duty to take separate action in the promotion of human rights. The legislative history of this provision demonstrates the significance of the inclusion of the pledge to take separate action.

The Article originated as a proposal which read: "All Members pledge themselves to take separate and joint action and to cooperate with the Organization and with each other to achieve these purposes."⁹ Thus, there was, initially, a clearly stated, threefold pledge to take joint action, separate action and to cooperate with the Organization. It is certainly lamentable that Article 56 did not incorporate this original proposal. In any event, the next proposal limited

6. *United Nations Conference on the Law of Treaties, Vienna, 1968-1969. Official Records, U.N. Doc. A/Conf. 39/27, Vienna Convention on the Law of Treaties, Art. 31(1).*
7. *Webster's Third New International Dictionary (1965) 1739.*
8. *But see Summary Records of the 23rd Meeting, [1949] Y.B. Int'l. L. 163-64.*
9. *Supra* n. 5, at 72.

the pledge to that of mere cooperation: "All members undertake to cooperate jointly and severally with the Organization for the achievement of these purposes."¹⁰

However, this proposal was rejected in favour of the final text of the Article, which re-introduced a threefold pledge, extending beyond mere cooperation. Admittedly, this threefold pledge is not as lucid, nor as unequivocal as the original proposal, but nevertheless, there is a definite pledge to take separate action in the promotion of human rights, beyond the limits of mere cooperation.

The argument that the duty is limited to mere "promotion" of human rights and that there is no duty on a Member State to respect human rights in its relationship with its own citizens is also incapable of support upon closer scrutiny. It is difficult to comprehend how a nation could deny human rights within its own jurisdiction and not be in contravention of an obligation to promote the respect of human rights in the international sphere. Promotion of a principle can certainly never be achieved through hypocrisy. So, the pledge to take separate action in achieving the purposes set forth in Article 55 must, if the pledge is to have any meaning, carry with it a positive duty on the part of a Member State to respect and observe the human rights and fundamental freedoms of the subjects within its own boundaries.

This proposition gains support from a number of various sources, such as the writings of many eminent legal scholars. For example, the late Sir Hersch Lauterpacht, formerly a Judge of the International Court of Justice once stated that:

Any construction of the Charter according to which Members of the United Nations are, in law, entitled to disregard — and to violate — human rights and fundamental freedoms is destructive of both the legal and the moral authority of the Charter as a whole. It runs counter to a cardinal principle of construction according to which treaties must be interpreted in good faith.¹¹

Oscar Schachter, the former Deputy Director of the United Nations Legal Department has written that:

There is therefore no sufficient reason to characterize Article 56 as a mere statement of purpose, devoid of legal effect. To do so . . . would be contrary to both the language and the ascertainable intention of the framers of the Charter. And even if it be granted that there is some obscurity in the text or the intent of the drafters, the choice between alternative interpretations should legitimately be resolved in favour of that construction which best effectuates the major purposes of the provision.¹²

The "major purposes of the provision" of which Mr. Schachter writes, are, in his opinion, the protection and observance of the

10. *Ibid.*

11. H. Lauterpacht, *International Law and Human Rights* (1950) 149.

12. O. Schachter, "The Charter and the Constitution: The Human Rights Provisions in American Law" (1951), 4 *Vand. L. Rev.* 643, at 652.

human rights of the individual citizens of the Member States. There are many other writers who have advanced the position that there is a definite legal obligation on the part of the Member States of the United Nations to refrain from violating human rights and fundamental freedoms within their own boundaries.¹³

The concept of the obligatory nature of the human rights provisions in the Charter has also been discussed in a number of decisions of various municipal courts. The issue has arisen in several United States decisions, because of the American Constitutional framework, in which treaty law is the supreme law of the land.¹⁴ This principle is limited to treaties which are held to be self-executing,¹⁵ however. The issue of whether or not a treaty is self-executing is by no means a simple one to resolve, but it is of no particular importance in the context of the present discussion. Whether or not the human rights provisions of the Charter are held to be self-executing by the Courts of the United States is not directly relevant to the question of whether or not the provisions impose binding obligations on the Member States.

An acknowledgement of the mandatory character of these provisions can, in fact, be found in the United States Supreme Court decision of *Oyama v. California*,¹⁶ which arose in the context of discriminatory alien land laws. In his concurring opinion, Justice Murphy stated:

Moreover, this nation has recently pledged itself, through the United Nations Charter, to promote respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, and religion. The *Alien Land Law* stands as a barrier to the fulfillment of that national pledge.¹⁷

Justice Black was of a similar opinion.¹⁸

A similar type of case came before the Supreme Court of California again in 1952.¹⁹ Although the self-executing nature of the human rights provisions was denied, a question which has no bearing on the present discussion; it was recognized that “. . . the member nations have obligated themselves to cooperate with the international organization in promoting respect for, and observance of human rights. . . .”²⁰

13. E.g. L. B. Sohn, "The Human Rights Law of the Charter" (1977), 12 Tex. Int'l. L.J. 129; B Schlüter, "The Domestic Status of the Human Rights Clauses of the United Nations Charter" (1973), 61 Cal. L. Rev. 110; E. Schwelb, "The International Court of Justice and the Human Rights Clauses of the Charter" (1972), 66 Am.J. Int'l. L. 337.

14. U.S. Const. art. vi, cl.2.

15. *Foster v. Neilson* (1829), 27 U.S. 253, at 314.

16. (1948), 332 U.S. 633.

17. *Id.*, at 673.

18. *Id.*, at 649-50.

19. *Sei Fujii v. California* (1952), 242 P. 2d 617 (Cal. S.C.).

20. *Id.*, at 621 (statement of Gibson, C.J.).

Canadian Courts have also recognized the mandatory effect of the human rights provisions of the Charter. In the case of *Re Drummond Wren*,²¹ the Court declared a racially discriminative covenant to be invalid as violating public policy, citing, *inter alia*, the human rights provisions of the Charter as an indicator of public policy. This would, impliedly, affirm the obligatory effect of the provisions. A similar case was *Re Noble and Wolfe*.²² In that case, Hogg, J. recognized that the Member States were under a duty to respect human rights, but the covenant was not struck down, since “. . . the obligations set out in the United Nations charter do not seem to have been made a part of the law of this country or of this Province by any legislative enactment of either the Dominion Parliament or the Ontario Legislature.”²³ This, of course, relates to the domestic law of Canada, and has no bearing on the status of the provisions at international law.

The international judiciary has also had occasion to consider the Charter's human rights provisions. In the Advisory Opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*,²⁴ the International Court of Justice, the judicial organ of the United Nations, was asked to consider South Africa's racially discriminative policy of apartheid. Paragraphs 130 and 131 of the advisory opinion read as follows:

130. It is undisputed, and is amply supported by documents annexed to South Africa's written statement in these proceedings, that the official governmental policy pursued by South Africa in Namibia is to achieve a complete physical separation of races and ethnic groups in separate areas within the Territory. The application of this policy has required, as has been conceded by South Africa, restrictive measures of control officially adopted and enforced in the Territory by the coercive power of the former Mandatory. These measures establish limitations, exclusions or restrictions for the members of the indigenous population groups in respect of their participation in certain types of activities, fields of study or of training, labour or employment and also submit them to restrictions or exclusions of residence and movement in large parts of the Territory.

131. Under the Charter of the United Nations, the former Mandatory had pledged itself to observe and respect, in a territory having an international status, human rights and fundamental freedoms for all without distinction as to race. To establish instead, and to enforce, distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin which constitute a denial of fundamental human rights is a flagrant violation of the purposes and principles of the Charter.²⁵

It is informative to note that the Court not only speaks of the pledge that South Africa had undertaken under the Charter, but also goes

21. [1945] O.R. 778 (H.C.).

22. [1949] O.R. 503 (C.A.).

23. *Id.*, at 532.

24. [1971] I.C.J. 16.

25. *Id.*, at 57.

on to declare that South Africa's actions and policies constitute a definite violation of the "purposes and principles of the Charter." This would indicate that the obligation assumed by the Member States goes beyond that pledge in Article 56, and that the Charter as a whole imposes positive legal obligations on the Member States to respect and observe human rights.

Practical Application by the United Nations

However, the most concrete support of the proposition that the Member States are under an obligation in the area of human rights is to be found in the practice of the United Nations itself, as there have been many resolutions adopted by the General Assembly which clearly state that the Members are committed to observe human rights. The first human rights case coming before the United Nations was in 1946, in relation to the treatment of Indians in South Africa. India referred the situation to the General Assembly, claiming that South Africa's policies of racial discrimination were a violation of the human rights provisions of the Charter. The great majority of the representatives in the General Assembly were of the view that the Charter did indeed provide for definite obligations on the part of the Member States to respect and observe fundamental human rights and freedoms. As the Chinese delegate stated in reply to South Africa's proposal that the whole question be put before the International Court of Justice:

There can be no doubt that Member States incurred, by signing the Charter and ratifying it, a definite obligation under the Charter, so we need not refer to the court to say whether a Member State has or has not obligations under the Charter.²⁶

The General Assembly, at the end of the debate, adopted Resolution 44(1), which also reflected the mandatory character of the provisions:

THE GENERAL ASSEMBLY, having taken note of the application made by the Government of India regarding the treatment of Indians in the Union of South Africa, and having considered the matter:

1. STATES that, because of that treatment, friendly relations between the two Member States have been impaired, and unless a satisfactory settlement is reached, these relations are likely to be further impaired;

2. IS OF THE OPINION that the treatment of Indians in the Union should be in conformity with the international obligations under the agreements concluded between the two Governments, and the relevant provisions of the Charter;

3. THEREFORE REQUESTS the two Governments to report at the next session of the General Assembly the measures adopted to this effect.²⁷

In 1946, the General Assembly also unanimously adopted Resolution 103(I), dealing with persecution and discrimination. The text of that resolution reads as follows:

26. *Journal of the United Nations* (1946), 54 Suppl. A-A/P.V./50, 363.

27. *Yearbook of the United Nations* 1946-47 148.

THE GENERAL ASSEMBLY DECLARES that it is in the higher interest of humanity to put an immediate end to religious and so-called racial discrimination, and calls on the Governments and responsible authorities to conform both to the letter and to the spirit of the Charter of the United Nations, and to take the most prompt and energetic steps to that end.²⁸

It can be seen, then, that the principal organ of the United Nations, the General Assembly, demonstrated, early in its history, that it accepted and endorsed the view that the human rights provisions do, indeed, impose legal duties on the Member States, and that these provisions are more than mere declarations of vague general principles. An analysis of the provisions of the Charter and the various sources that support that proposition leads to the same inescapable conclusion.

Objections to Implementation

However, there have been a number of obstacles to the realization of the full potential of this principle. The major impediment in establishing the obligatory nature of the human rights provisions has always been Article 2(7) of the Charter itself — the so-called “domestic jurisdiction” clause. The clause reads as follows:

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

On the basis of this clause, it has been frequently argued that the protection of human rights is a matter which is “essentially within the domestic jurisdiction” of the Member States, and that therefore, any obligation within that context is precluded by the application of Article 2(7).²⁹ It has been said that:

The whole question of human rights . . . is bedeviled by the role of the sovereign state and the idea of domestic jurisdiction, the notion that a government is entrusted with the exclusive competence to maintain order and to establish justice within its national boundaries, and that that is the business only of the national government, that there is no right of interference that arises because other countries are distressed by the human rights situation that exists within foreign societies.³⁰

However, the conclusion that Article 2(7) alters, in any way, the obligations assumed by the Member States with respect to human rights is entirely unwarranted. The clause itself, in no manner, modifies the pledge to respect human rights. It is only relevant in considering the powers of the United Nations in enforcing the obliga-

28. *Id.*, at 178.

29. See *Supra* n. 3, at 29 n. 8.

30. J. Carey, *International Protection of Human Rights: Background Paper and Proceedings of the Twelfth Hammarskjöld Forum* (1968) 47 (statement of Professor Falk, a participant in the Forum).

tions. The only effect it could possibly have is to limit the powers of the Economic and Social Council, and of the General Assembly, together with other subsidiary bodies, in initiating studies, discussing situations, and making recommendations in the field of human rights. But, it is doubtful whether the Article has even this limited effect.

It must be borne in mind that there are two key terms within the domestic jurisdiction clause. The first of these is to be found in the fact that the Article only deals with the powers of the United Nations to "intervene". Secondly, the scope of the prohibition contained within the Article is limited to matters which are "essentially within the domestic jurisdiction of any state". Before any conclusions regarding the ultimate effect of Article 2(7) can be reached, the significance of these two terms must be considered.

In dealing with the significance of the term "intervene", it is most illuminating to refer to the writings of the late Sir Hersch Lauterpacht. As Professor Lauterpacht once wrote:

Paragraph 7 of Article 2 refers only to such action on the part of the United Nations as amounts to intervention; it does not rule out measures falling short of intervention. Intervention is a technical term of, on the whole, unequivocal connotation. It signifies dictatorial interference in the sense of action amounting to a denial of the independence of the State. It implies a peremptory demand for positive conduct or abstention — a demand which, if not complied with, involves a threat of or recourse to compulsion, though not necessarily physical compulsion, in some form. This has been the current interpretation of the term 'Intervention' . . .

Intervention is thus a peremptory demand or an attempt at interference accompanied by enforcement or threat of enforcement in case of non-compliance. Enforcement, in this connexion, may mean either direct measures of compulsion or such indirect pressure as is associated with non-compliance with a legal obligation or with a pronouncement of an international authority having binding legal effect. That interpretation of the term 'intervention' supplies an answer to the question of the limits of the action of the organs of the United Nations undertaken in order to encourage and promote the observance of human rights and freedoms. Thus it would follow that the General Assembly, or the Economic and Social Council, or any other competent organ of the United Nations, are authorised to discuss a situation arising from any alleged non-observance by a State or a number of States of their obligation to respect human rights and freedoms. The object of such discussion may be the initiation of a study of the problem under the aegis of the United Nations; it may be a recommendation of a general nature addressed to the Members at large and covering in broad terms the subject of the complaint; or it may even be a recommendation of a specific nature addressed to the State directly concerned and drawing its attention to the propriety of bringing about a situation in conformity with the obligations of the Charter. None of these steps can be considered as amounting to intervention. None of them constitutes peremptory, dictatorial, interference. None of them subjects to coercive action, or to a threat thereof, the unwilling determination of a State.³¹

31. *Supra* n. 11, at 167-69.

Professor Lauterpacht's interpretation indicates that the principal organs of the United Nations which are given jurisdiction in the field of human rights, the General Assembly and the Economic and Social Council, as well as subsidiary bodies, such as the Commission on Human Rights, are not completely hindered by Article 2(7) in dealing with human rights problems. The powers of the Assembly and the Council, and the subsidiary organs, are limited to study, discussion, and recommendation — none of which constitute intervention in the technical sense.

The power of intervention is limited to the Security Council, and Article 2(7) expressly excludes from within its parameter enforcement measures undertaken by the Security Council under Chapter VII of the Charter. Article 39 of the Charter authorizes the Security Council to determine if a situation constitutes a threat to international peace and security, and to take enforcement action, if necessary, in such a situation to maintain or restore peace. In such a situation, intervention by the Security Council is certainly a possibility. However, the day-to-day situations involving human rights violations are not dealt with by the Security Council, so that the General Assembly, the Economic and Social Council, and the subsidiary bodies are, by far, the more important organs in the field.

Article 2(7) must be read subject to other provisions of the Charter. For example, Article 10 states that "The General Assembly may discuss any questions or any matters within the scope of the present Charter . . . and . . . may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters." Also, under Article 13, the General Assembly has the duty to initiate studies for the purpose of, *inter alia*, ". . . assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." If these, and other provisions, are to have the legal effect which is clearly stated within their text, intervention, in the context of Article 2(7), must be interpreted, as Professor Lauterpacht suggests, so as not to encompass the power of study, discussion, or recommendation.

However, even if the term "intervention" is construed as including study, discussion and, recommendation by various organs of the United Nations, it must still be kept in mind that the prohibition on intervention relates only to matters "essentially within the domestic jurisdiction of any state." Therefore, the issue becomes whether the area of human rights and freedoms is something which is essentially within the domestic jurisdiction of the Member States. The question must be answered in the negative. Although human

rights is an area of the law dealing with the relationship of a State with its citizens, and not the inter-relationship of States, because the Charter makes a number of specific references to human rights, and because human rights is a recurring theme throughout the body of the Charter, it has become elevated to a matter manifestly of international concern. Human rights have become the substance of international obligations assumed by the Member States, so that any question relating to them must be regarded as having been lifted from the sphere of the State's domestic jurisdiction, and from the scope of Article 2(7). It can no longer be regarded as a matter which is "essentially within the domestic jurisdiction of any state." As the Norwegian delegate to the San Francisco Conference stated:

It is, of course, true that under the Charter, some matters such as the treatment of racial elements, have been removed from the sphere of domestic jurisdiction and that, in consequence, the scope of the matters which are essentially within the domestic jurisdiction of the member states has been to some extent diminished.³²

The practice of the United Nations supports these conclusions. In a number of situations coming before the General Assembly concerning the violation of human rights, it was clear that, in the view of the majority of the delegates; investigation, discussion, and recommendation do not amount to intervention within the context of Article 2(7), nor are human rights a question which is essentially within the domestic jurisdiction of the Member States.

For example, in the 1946 session of the General Assembly, when the case involving the treatment of Indians by South Africa was being discussed, South Africa claimed that the matter fell within its domestic jurisdiction, and that, because of Article 2(7) of the United Nations Charter, the General Assembly was not competent to discuss the issue. The reply of the Panamanian delegate was this:

Now, is paragraph 7 a real barrier? Are human rights essentially within the domestic jurisdiction of the state? My answer is no, and a hundred times no. I submit that by the San Francisco Charter, human rights have been taken out of the province of domestic jurisdiction and have been placed within the realm of international law. I submit that the United Nations have undertaken collectively to promote and protect human rights, and by so doing, the members of the community of states have given birth to a new principle of the law of nations.³³

The fact that the General Assembly did, ultimately adopt a resolution affirming that South Africa's policies were in contravention of her international obligations³⁴ is indicative of the fact that the majority of the delegates were in agreement that Article 2(7) presented no serious obstacle.

32. 6 U.N.C.I.O. Docs. 431 (1945), as quoted in J. Huston, "Human Rights Enforcement Issues of the United Nations Conference on International Organization" (1967), 53 *la. L. Rev.* 272, at 279.

33. *Supra* n. 26, at 346.

34. *Supra* n. 27.

Another example of the United Nations dealing with the question of human rights violation and overcoming the problem of Article 2(7) can be found in the discussion of the denial of human rights in Bulgaria and Hungary during the third session of the General Assembly. During the debate, the American Representative said that:

Article 2 paragraph 7, of the Charter, regarding non-intervention in matters of essentially domestic jurisdiction, was not intended to preclude discussion in the Assembly on the defence of human rights and fundamental freedoms, should the need arise. Moreover, there was nothing to prevent the Assembly from expressing an opinion or making a recommendation when a particular country constantly and deliberately refused to recognize these rights.³⁵

So, in summation, an analysis of Article 2(7) shows that while the Article contains a prohibition on intervention by the United Nations, it does not extend to the processes of study, discussion, and recommendation by the competent organs of the United Nations. Moreover, while the scope of the prohibition is limited to matters essentially within the domestic jurisdiction of the Member States, the question of human rights and fundamental freedoms has been elevated to a matter of international concern. The practice of the General Assembly confirms the view that Article 2(7) in no way limits the obligations assumed by the Member States, nor does it limit the procedures which may be taken by the United Nations in an effort to enforce these obligations.

In any event, any problem that Article 2(7) was capable of posing was always more apparent than real. As Professor Wright has written:

The issue is usually treated as political with the result that domestic jurisdiction has proved less important as a limitation of competence. The reason for this is obvious. If in a political organ a sufficient majority wishes, in an immediate situation, to pass a resolution it is not likely to be deterred by theoretical doubts raised concerning its competence when it has the power itself to resolve those doubts in its own favour.³⁶

A further point of controversy regarding the obligatory effect of the human rights provisions of the Charter has repeatedly arisen in the fact that nowhere within the text of the Charter itself are the human rights and fundamental freedoms spoken of ever defined. A number of writers have concluded that because these rights, and consequently the scope of the obligations incumbent upon the Member States are not defined within the body of the Charter, the provisions of the Charter are incapable of imposing positive legal obligations upon the Member States.

35. U.N. Doc. A/AC. 24/SR. (1948) 20.

36. Q. Wright, *International Law and the United Nations* (1960) 55-56.

As Kelsen writes, “. . . the Charter does in no way specify the rights and freedoms to which it refers. Legal obligations of the Members in this respect can be established only by an amendment to the Charter or by a convention negotiated under the auspices of the United Nations and ratified by the Members.”³⁷ However, the position advanced by Kelsen and others constitutes nothing more than a generalization which is incapable of standing in the light of further scrutiny.

A brief survey of the history of the law of nations leads one to the almost inescapable observation that Treaty obligations are, traditionally, expressed in somewhat vague and general terms, as a Treaty need not display the same level of precision and exactness as, for example, a criminal statute. As Professor Lauterpacht responds to Kelsen's argument:

Neither is the legal nature of the obligations of the Charter in the matter of human rights and fundamental freedoms decisively influenced by the fact that the Charter does not define the human rights and freedoms which the Members of the United Nations are bound to observe. Undoubtedly, that circumstance impairs the juridical character of these obligations inasmuch as a certain amount of clarity and precision is an important requisite of the law. . . . There is a difference between urging that the legal character of a rule is destroyed and admitting that its effectiveness is diminished as the result of the absence of a full measure of definition.³⁸

Furthermore, Article 55 itself contains a prohibition against discrimination on the basis of race, sex, language or religion, and this, in itself, lends some measure of meaning to the concept of human rights. But, the argument against Professor Kelsen's contention need not stop at this level. It is true that the rights and freedoms are not defined within the text of the Charter, but a meaning can be attributed to these provisions by looking outside the confines of the Charter itself. The concept of human rights is, by no means, a novel creation, gaining its first impetus through the framing of the Charter in San Francisco in 1945. As one writer states, the concept of human rights “has a special core of meaning which is widely recognized and accepted.”³⁹ Definition for the concept of human rights and fundamental freedoms can be found by looking at the constitutional law and the practice of various Member States of the United Nations, and at the development of international law.

Obligation of Member States

One can also look at the practice of the United Nations itself in clarifying the obligations which the Member States have incurred,

37. *Supra* n. 3, at 29-32.

38. *Supra* n. 11, at 148-49.

39. *Supra* n. 12, at 652.

and particularly by focusing attention on the Universal Declaration of Human Rights. When the Universal Declaration was unanimously adopted, with eight abstentions, by the General Assembly in 1948, it was merely a resolution of the General Assembly, and as such, was intended to have no legally binding consequences on the Member States. As Eleanor Roosevelt, who was instrumental in the drafting of the Declaration while serving in her capacity as the United States representative on the Commission on Human Rights, said with respect to the Declaration:

It is not a treaty; it is not an international agreement. It is not and does not purport to be a statement of law or of legal obligation. It is a declaration of basic principles of human rights and freedoms to serve as a common standard of achievement for all peoples of all nations.⁴⁰

This may have been the situation when the Declaration was initially drafted and adopted. However, as is often the case, what was anticipated by its authors as serving one purpose has evolved beyond its initial limitations. The Declaration can now be regarded as an authoritative interpretation of the human rights provisions of the United Nations Charter by the organ authorized to do so, the General Assembly. It has become, through the practice of the United Nations and its various organs, an elaboration of the rights and freedoms which the Member States have pledged themselves to observe.

Within a year of the adoption of the Universal Declaration, it was invoked, by the General Assembly, as a basis for censuring the actions of a Member State. The Soviet Union had refused permission to Soviet women married to non-Soviet nationals to leave their country and join their husbands. Therefore, the Soviet Union was acting contrary to Article 13 of the Universal Declaration, which states that "Everyone has the right to leave any country, including their own," and Article 16, which declares that "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family." In 1949, the Assembly adopted a resolution which stated that, because the Soviet Union was acting contrary to Articles 13 and 16 of the Universal Declaration of Human Rights, they were in violation of the obligations they had assumed under the United Nations Charter.⁴¹

Another one of many examples in which the United Nations has acknowledged that the Universal Declaration, in defining the rights

40. (1948), 19 Dept. State Bull. 751; as quoted in M.H. Guggenheim, "Key Provisions of the New United Nations Rules Dealing with Human Rights Petitions" (1973), 6 N.Y.U.J. Int'l. L. & Politics 427, at 433.

41. See generally G. Ezejiolor, *Protection of Human Rights under the Law* (1964) 88-90.

mentioned in the Charter, has, together with the Charter, invoked specific obligations on the Member States in regards to human rights, can be found in a Resolution adopted by the General Assembly on November 28, 1961, dealing with the racial conflicts of South Africa. In that Resolution, the General Assembly reaffirms:

that the racial policies being practiced by the Government of South Africa are a flagrant violation of the Charter of the United Nations and the Declaration of Human Rights and are totally inconsistent with South Africa's obligations as a Member State.⁴²

Besides being an authoritative interpretation of the Charter, there is even some indication that the Universal Declaration may have become a binding norm of international law, and has been recognized as such by the international community. For example, the eighty-four States which sent delegations to the International Conference on Human Rights that met in 1968 in Teheran unanimously adopted the Proclamation of Teheran (1968). Article 2 of the Proclamation states that:

The Universal Declaration of Human Rights states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community.⁴³

This may or may not be the case. However, whether the Declaration imposes obligations in its own right as a norm of international law, the practice of the United Nations indicates that it is binding in the sense that it defines the obligations assumed by the Member States under the human rights provisions of the Charter.

Elaboration of the obligations created by the Charter can also be found by looking beyond the Universal Declaration of Human Rights. For example, in the Advisory Opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa), notwithstanding Security Council Resolution 276 (1970)*, the International Court of Justice stated that "To establish instead, and to enforce, distinctions, exclusions, restrictions, and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin which constitutes a denial of fundamental human rights is a flagrant violation of the purposes and principles of the Charter."⁴⁴

Professor Schwelb, in commenting on this passage, says that:

This language is to a large extent identical with and in any event very similar to that used in Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination,⁴⁵ which defines the term 'racial discrimina-

42. G.A. Resolution 1663 (XVI).

43. As quoted in E.B. Haas, *Human Rights and International Action* (1970) 1.

44. *Supra* n. 24, at para. 131.

45. Annex to G.A. Resolution 2106A (XX) (1965).

tion' to mean 'any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. . . . This means that the International Convention on the Elimination of All Forms of Racial Discrimination is, to a large extent, declaratory of the law of the Charter, or, in other words, the basic principles of the convention lay down the law which binds also states which are not parties to the convention, but, as Members of the United Nations, are parties to the Charter.⁴⁶

This notion could also be extended to other conventions duly adopted by the General Assembly, such as the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights.⁴⁷ With respect to these two Covenants, Professor Sohn is of the opinion that:

Though the Covenants resemble traditional international agreements which bind only those who ratify them, it seems clear that they partake of the creative force of the Declaration and constitute in a similar fashion an authoritative interpretation of the basic rules of international law on the subject of human rights which are embodied in the Charter of the United Nations. This conclusion is supported by the fact that the Covenants are even more universal in their origin than the Declaration. While the Declaration was adopted by less than fifty votes, with some important abstentions, 105 states voted for the Covenants and only a few states (such as Portugal and South Africa) absented themselves at the time of the vote, not daring to interfere with the unanimous vote of the General Assembly. Consequently, although the Covenants apply directly to the states that have ratified them, they are of some importance, at the same time, with respect to the interpretation of the Charter obligations of the non-ratifying states.⁴⁸

It can be seen then that the criticism that the human rights and freedoms so often referred to in the Charter are in no way defined can no longer be sustained. Although this may have been a valid criticism in 1945, when the Charter was originally drafted, since then, primarily through the Universal Declaration of Human Rights, but also through a large and expanding body of resolutions and conventions adopted by the General Assembly, human rights and fundamental freedoms, as referred to in the Charter, have been sufficiently clarified, at least to the extent of setting out some of the specific obligations incurred by the Member States.

Enforcement of the Obligations

The last major point of contention regarding the mandatory character of the human rights provisions is to be found in the apparent lack of effective sanctions which may be used against a Member State that violates its obligations under the Charter. This has led some writers to the conclusion that because of the deficiency

46. E. Schwelb, "The International Court of Justice and the Human Rights Clauses of the Charter" (1972), 66 Am. J. Int'l. L. 337, at 350-51.

47. G.A. Resolution 2200A (XXI) (1966).

48. *Supra* n. 13, at 135-36.

in effective sanctions, there are, in effect, no real obligations assumed by the Member States.⁴⁹ This, too, is a generalization which cannot be supported upon closer examination.

The criticism apparently stems from the assumption that international law must be built upon the same foundations as our common law, which requires some type of effective sanction to be applied against those who break the law, if it is to be considered an effective legal system. This is a relatively simple matter in the context of a domestic legal system, since the sanctions are imposed against individuals by the State, and there is no question that the State holds a far greater reservoir of power than an individual could ever hope to muster. Indeed, if this was not the case, there would be no need for the concept of human rights. However, a similar type of situation could not realistically be expected in the international sphere, since the physical punishment of a State is not possible in the absence of some sort of supra-national State to enforce the sanction. But does this necessarily mean that international law is not law? To accept that proposition would be tantamount to rejecting the long historical tradition of an international legal system, both within and without the United Nations. Admittedly, insofar as the law cannot be enforced by coercive measures stemming from some supra-national authority, it is an imperfect law, but the law of nations presents a valid legal system nonetheless. And, within that legal system, there has been included the concept of human rights. The United Nations Charter has, by its provisions, imposed binding legal obligations with respect to human rights on the Member States, notwithstanding the apparent lack of effectively enforceable legal sanctions.

Throughout the Charter, there are obligations imposed which do not have any effective method of enforcement, but the obligatory effect of these provisions has never been doubted. For example, under Article 49, the Member States are obligated to "join in affording mutual assistance in carrying out the measures decided upon by the Security Council." There are no sanctions beyond any which could conceivably be used to enforce the human rights provisions, but the fact that Article 49 creates a definite obligation is clear. Other examples can be found in Articles 25, 48, 73, 84, and 100. Any apparent lack of sanctions does not detract from the obligations created in those Articles, nor does it reduce the obligations created by the human rights provisions to meaningless statements of principles.

But this, of course, raises the question of whether there truly is a complete lack of effective sanctions within the structure of the

49. E.g., *Supra* n. 3.

United Nations. In considering possible enforcement procedures, some commentators turn to the concept of humanitarian intervention as a possible alternative.⁵⁰ Humanitarian intervention can be defined as "the justifiable use of force for the purpose of protecting the inhabitants of another state from treatment so arbitrary and persistently abusive as to exceed the limits within which the sovereign is presumed to act with reason or justice."⁵¹

It is clear that the Security Council may resort to the use of force if a situation involving the denial of human rights progresses to the point where it could be characterized as a threat to international peace and security under Articles 39 and 42 of the Charter. However, in view of the veto power available and the Major Power disagreement prevalent within the Security Council, it is doubtful whether such action would ever be taken, except in perhaps the most blatant affront to human dignity and conscience conceivable. The need and opportunity to take action arose in the crises in Biafra, Indonesia, and Bangladesh, but no action was forthcoming from the Security Council. It would be difficult to determine the depths to which a situation of internal strife would have to degenerate before the Security Council would resort to armed intervention, if the bloody genocide in Biafra was not enough to prompt the Council into taking action.

The organs of the United Nations which are normally concerned with human rights, the Economic and Social Council, the General Assembly, and a host of subsidiary bodies are endowed, of course, with no physically coercive powers whatsoever. Therefore, the next question to arise is whether individual Member States may intervene to prevent gross violations of human rights by other Member States within their own boundaries. The major obstacle to answering this question in the affirmative is to be found in Article 2(4) of the Charter, under which the Member States undertake to "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations." In supporting the proposition that a right of humanitarian intervention still resides in the Member States, notwithstanding this Article, it could be argued that such intervention is not directed against the territorial integrity or political independence of a State, but rather, that its sole purpose is to safeguard the rights of the citizens of that State. Moreover, such use of force would not be inconsistent

50. E.g., J.-P.L. Fonteyne, "The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity under the U.N. Charter" (1974), 4 Cal. Western Int'l. L.J. 203.

51. E. Stowell, *International Law* (1931) 348.

with the Purposes of the United Nations, since one of the major Purposes of the Organization is clearly declared to be the promotion of respect for human rights.

The major problem in advocating the use of humanitarian intervention as a sanction for human rights violations arises in the inherent possibility, or indeed, probability of abuse. The Governments of the world today would not, in all likelihood, be responsive to the call of humanitarianism when faced with the risk and consequences of incurring responsibility for intervention. Any intervention that would occur is likely to be motivated by selfish ulterior considerations. The possibility of humanitarian intervention must be left solely at the disposal of the Security Council. It would seem that the failure of the Security Council to take action is infinitely preferable to giving the nations of the world a free hand to act as they wish within the territorial boundaries of another nation, and to justify these actions by attaching to them the label of humanitarian intervention. Such a development would almost inevitably result in a vigilante system of international law, and the situation in the international community would degenerate into a situation of anarchy.

Another possible sanction often considered by writers is the expulsion of Member States who continuously breach the obligations they have agreed to under the Charter.⁵² Article 6 of the Charter provides for the expulsion from the Organization of any "Member of the United Nations which has persistently violated the Principles contained in the present Charter." One of the Principles of the United Nations, according to Article 2(1), is that "All Members . . . shall fulfill in good faith the obligations assumed by them in accordance with the present Charter." Therefore, it is definitely conceivable that if a Member State persistently violates its obligations with respect to human rights under the Charter, that Member State may, under the authority of the General Assembly, and upon the recommendation of the Security Council, be expelled from the Organization. However, it is difficult to comprehend how this procedure could be regarded as an effective sanction in situations involving the violation of human rights. The only thing that could be accomplished by the expulsion of a Member State would be the surrender, by the United Nations, of any limited control or influence it may have had over that Member State. Such a result would certainly not be likely to resolve the problems that originally precipitated the conflict.

There is, however, an effective sanction that the United Nations readily has at its disposal when confronted with a situation involving

52. J. Huston, "Human Rights Enforcement Issues of the United Nations Conference on International Organization" (1967), 53 *la. L. Rev.* 272, at 289.

the abuse of human rights by a Member State. While more concrete sanctions are really not at the disposal of the Organization, and perhaps never will be, a sanction can be found in what has been referred to as "procedures to organize shame."⁵³ The sanction of world public opinion has always been available to the United Nations. By bringing the abuses of human rights into the international forum, the condemnation of the people of the world can be brought to bear upon the perpetrators. The effect of this should not be underestimated. As the former United States Secretary of State, John Foster Dulles once stated:

The nations are becoming more and more sensitive to the moral verdicts of this organization. The perception and the moral judgements of the nations meeting here endow this assembly with genuine power. No nation lightly risks the Assembly's moral condemnation with all that the condemnation implies.⁵⁴

Although it is the only sanction readily available to the General Assembly, the Economic and Social Council, and the various subsidiary bodies, the organs of the United Nations that are endowed with compulsory jurisdiction in the field of human rights, it is quite possibly the only practical method of enforcement possible within the context of power politics in the international community today. It is doubtful whether coercive force stemming from the United Nations or the individual Member States, or expulsion from membership in the Organization could ever be effective sanctions for ensuring compliance with the human rights obligations of the Charter. The only manner in which to ensure a continuing state of international protection of human rights in the world today is to be found in altering and modifying the attitudes of the Governments of the Member States responsible for suppressing human rights and fundamental freedoms. That end can only be achieved by the constant and unrelenting pressure of world public opinion, directed and controlled by the United Nations.

So, despite the major arguments advanced against the obligatory character of the human rights clauses of the United Nations Charter: that there is a ban on intervention by the Organization, that there is no definition of human rights contained within the text of the Charter, and that there is an apparent lack of effective sanctions, a closer analysis of the Charter and the actions of the United Nations leads to the inescapable conclusion that these provisions impose a mandatory obligation on the Member States to recognize and observe human rights within their own boundaries. These obligations have

53. J.P. Humphrey, "The Revolution in the International Law of Human Rights" (1974-75), 4 *Human Rights* 205, at 215.

54. (1955), 2 *United Nations Review* 4.

been defined, and they are, at least to some extent, enforceable by the Organization.

Effect of the Provisions on Individuals

Even if the premise that the Member States of the United Nations are under an obligation to protect human rights is accepted, there remains the question of whether or not the Charter creates original rights in the citizens of the Member States. This proposition is hampered by the traditional international law doctrine regarding the subjects of international law. This doctrine is to the effect that:

Since the Law of Nations is based on the common consent of individual States, and not of individual human beings, States solely and exclusively are the subjects of International Law. This means that the Law of Nations is a law for the international conduct of States, and not of their citizens. Subjects of the rights and duties arising from the Law of Nations are States solely and exclusively. An individual human being . . . is never directly a subject of International Law.⁵⁵

If this doctrine were allowed to stand, it would be impossible to advance the argument that individual human beings have acquired any rights under the Charter of the United Nations, an international agreement. However, the development of the law of nations reveals that this doctrine can no longer be regarded as an invariable principle of law. There have been many examples where the individual has acquired rights and duties at international law. When there are too many exceptions to a rule, that rule can no longer be afforded the dignity of being regarded as an established norm of international law.

For many years, it has been clear that international law is capable of imposing duties on individuals. One example is to be found in the law of piracy. Although a pirate is punished within a domestic legal system, it is international law which obliges an individual not to engage in the act of piracy, and delegates the sanction for a breach of this rule to the various domestic legal systems.

Another such example can be found in the Nuremburg trials, which demonstrated that individuals could be held liable for war crimes. The fact that the actions of the war criminals were in accordance with their domestic laws was no defence, which indicates that the obligation to refrain from actions constituting war crimes was grounded in the higher sphere of the law of nations.

It is clear, therefore, that the individual can, and often does, become the subject of duties at international law. It would be difficult to justify the validity of this principle, without admitting the validity of the proposition that individuals can also acquire rights

55. L. Oppenheim, *International Law* (2nd ed. 1912) 19.

under international law. Indeed, there are many examples of individuals acquiring such rights.

One such example can be found in the *Case Concerning The Jurisdiction of the Courts of Danzig*,⁵⁶ dealing with the Paris Convention of 1920 between Poland and Danzig. Under this convention, Poland took control of a part of Danzig's railway system, and a further agreement was entered by the parties which dealt with the rights of the railway officials transferred from the Danzig to the Polish railways. Based on this agreement, some of the transferred railway officials brought pecuniary actions against Poland before the Danzig Courts. Poland challenged the jurisdiction of the Danzig Courts, claiming that since the agreement was based on international law, it could only create rights and duties as between Danzig and Poland, and not between Poland and the individual railway officials. The case came before the Permanent Court of International Justice, and in reply to Poland's contention, the Court stated that:

It may be readily admitted that, according to a well established principle of international law, the *Beamteneabkommen* [i.e. the treaty], being an international agreement, cannot, as such create direct rights and obligations for private individuals. But it cannot be disputed that the very object of an international agreement, according to the intention of the contracting Parties, may be the adoption by the Parties of some definite rules creating individual rights and obligations and enforceable by the national courts. That there is such an intention in the present case can be established by reference to the terms of the *Beamteneabkommen*.⁵⁷

The case establishes that individuals can possess rights under international law if States are willing to acknowledge these rights in an international agreement. Such an acknowledgement must be regarded as being inherent within the provisions of the United Nations Charter. The Charter establishes that the States of the world have an obligation to respect the human rights and fundamental freedoms of their citizens. Where there is a legal obligation, there must, of necessity, be a corresponding legal right vested in another party. It is therefore a logical corollary of the notion that States have an obligation to observe basic human rights that the corresponding rights must be vested in the citizens of each State. To conclude otherwise would be to deny the full extent of the potential effectiveness of the Charter's human rights provisions. The recognition of individual rights must be implied in the Charter if the provisions are not to be rendered meaningless. As Lauterpacht writes, "It would therefore appear that to the extent to which the Charter incorporates obligations to respect the fundamental human rights and freedoms it

56. [1925-30] P.C.I.J., ser. B, No. 15.

57. *Id.*, at 17-18.

amounts to recognition of individuals as subjects of international law.”⁵⁸

It is significant to note that the Preamble of the Charter begins with the words “We the Peoples of the United Nations . . .”. There is no mention of High Contracting Parties, which serves as a further indication that the individual’s rights are being recognized in the Charter.

The doctrine that declares that States are solely the subjects of international law can no longer be regarded as being applicable within the context of the Charter of the United Nations. Once again, in the words of Professor Lauterpacht:

As a result of the Charter of the United Nations — as well as of other changes in international law — the individual has acquired a status and a stature which have transformed him from an object of international compassion into a subject of international right.⁵⁹

The fact that these rights are in no way defined within the body of the Charter does not detract from this principle. The great body of United Nations Resolutions, Declarations, and Conventions, in defining the obligations of the Member States, has also defined the rights of their citizens.

The factor which has hampered the full realization of this development has been the traditional doctrine that individuals cannot possess any international procedural capacity to enforce these rights. In the first place, it must be noted that this doctrine, even if valid, does not necessarily negate the proposition that individuals have acquired rights under international law. As the Permanent Court of International Justice once pointed out, “. . . it is scarcely necessary to point out that the capacity to possess civil rights does not necessarily imply the capacity to exercise those rights oneself.”⁶⁰

Our domestic law affords examples of situations where an individual may possess rights, but does not have the capacity to enforce these rights himself. A good case in point is to be found in the case of infants. An infant may possess certain rights, but if he wishes to enforce these rights in a court of law, the case must be brought before the Court, not by the infant himself, but through his next friend.

In any event, the question of procedural capacity does not affect the question of capacity to possess international rights. Furthermore, on examining the doctrine regarding procedural capacity, it can be seen that that doctrine, like the doctrine regarding subjects of international law, has not withstood the test of time and the development

58. *Supra* n. 11, at 35.

59. *Id.*, at 4.

60. [1932] P.C.I.J., ser. A/B, No. 61, at 231.

of international law. In fact, there have been situations where the individual has been afforded varying degrees of procedural capacity before international tribunals. An early example is to be found in the Treaty of Versailles of 1919. Under Articles 297 and 304 of the Treaty, nationals of the Allied and Associated Powers had the right to put forward claims for compensation against Germany and the other enemy States before the mixed arbitral tribunal. Clearly, this was a situation where procedural capacity had been granted to individuals at international law.

Indeed, there is nothing inherent in the status of individuals at international law which makes it illogical for them to acquire international procedural capacity. There are many more examples besides the Treaty of Versailles where individuals have been granted certain procedural rights under international agreements.⁶¹ Moreover, these cases are not limited to individuals acquiring the capacity to enforce their claims against States of which they are not nationals. In fact, in an agreement between Germany and Poland, the Upper Silesian Convention of May, 1922, there were provisions for a tribunal having jurisdiction to hear claims brought by nationals of either country against their own State.⁶²

Developments in this area have, by no means, remained static. The most recent, and perhaps the most important, example is to be found in the Optional Protocol to the International Covenant on Civil and Political Rights.⁶³ Under Article 1 of the Optional Protocol, an individual has the right to complain to the Human Rights Committee, set up under the Covenant, of any violations of his human rights by his State. This, of course, only applies to nationals of States which have ratified the Optional Protocol, so there is definitely a severe limitation on the effectiveness of these provisions in terms of the numbers of people in the world who will ultimately have recourse to this procedure.

But, the Optional Protocol, and the developments in international law leading to the procedure envisioned by the Optional Protocol, do demonstrate that it is definitely possible for an individual, at international law, to acquire the right to bring an action against his own State to enforce rights denied to him by that State. How, then, is an individual to enforce the fundamental human rights and freedoms granted to him by the United Nations Charter, if his State denies him these rights?

61. *Supra* n. 11, at 49.

62. *Id.*, at 50.

63. G.A. Resolution 2200A (XXI) (1966).

The first possibility is by application to national courts for assistance, and there have, indeed, been a number of instances where national courts have, to some extent, based their decisions on the provisions of the Charter. For example, in the United States, where the Constitution establishes that treaty law is the supreme law of the land, there is a possibility of the direct application of the human rights provisions of the Charter. This enabled the Court, in the case of *Oyama v. California*,⁶⁴ to hold that discriminatory alien land laws in California were invalid on the grounds that they offended, *inter alia*, the human rights provisions of the United Nations Charter.

In Canada, although treaty law does not become binding upon municipal courts in the absence of implementing legislation, the Charter can still potentially affect the outcome of the case in a somewhat indirect manner. For example, in the case of *Re Drummond Wren*,⁶⁵ a restrictive covenant forbidding the sale of land to Jews was held to be void as offending public policy. One of the indicators of public policy considered by Mister Justice Mackay as being valid was the United Nations Charter. In this manner, it is possible for the human rights provisions of the Charter to indirectly influence the decision of a Canadian court, despite the fact that these provisions cannot be directly applied.

However, recourse to municipal courts cannot be considered as a viable method of enforcing the rights granted under the Charter. It is doubtful that a State which is in the habit of denying its citizens their fundamental human rights would permit the existence of a municipal court system prepared to enforce these rights. For any type of effective universal enforcement, there must be some method of recourse to a system outside the domain of State control.⁶⁶

Unfortunately, recourse by individuals directly to the International Court of Justice is precluded by the provisions of the Statute of the International Court of Justice. Article 34(1) of the Statute provides that, "Only states may be parties in cases before the court." It should be noted that this does not necessarily reinforce the traditional doctrine that individuals cannot possess procedural capacity at international law. It merely serves as a statement of one of the rules of a particular court.

Therefore, the only international institution remaining to which an individual can bring forth a grievance is the United Nations itself. If the individual is to be able to enforce the rights given to him under

64. *Supra* n. 16.

65. *Supra* n. 21.

66. See generally B. Schlüter "The Domestic Status of the Human Rights Clauses of the United Nations Charter" (1973), 61 Cal. L. Rev. 110.

the Charter, it must be by way of direct petition to the United Nations. However, the sanctions available are, of course, limited. These are the same sanctions discussed earlier in this paper, and, as has already been stated, they are not entirely without effect. In any event, they are the only ones available.

Ideally, there should be an effective right in the individual to petition the Economic and Social Council through its relevant subordinate body, the Commission on Human Rights. If the complaint was justified, the Commission could refer the matter to the Council, who could make a recommendation dealing with the matter, or could refer the matter on to the General Assembly for discussion and possible recommendation. Such a procedure, however, has been slow in developing within the structure of the Organization.

Early in the history of the United Nations, the right of individual petition was denied. In 1947, the Commission on Human Rights adopted a report that laid down, as a general rule, that the Commission had no power to deal with individual complaints dealing with human rights.⁶⁷ The same year, the Economic and Social Council adopted a resolution approving, “. . . the statement that ‘the Commission recognizes that it has no power to take any action in regard to any complaint concerning human rights’ ”,⁶⁸ and for many years afterwards, this situation prevailed.

This trend was finally reversed on May 27, 1970, with the adoption by the Economic and Social Council of Resolution 1503,⁶⁹ which finally conferred authority on the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities to consider individual human rights complaints. The procedure established is still quite limited, however, in that only petitions which, “. . . appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedom,” are to be considered. Moreover, without the consent of the State against whom the complaint is made, the Commission can only study the complaint and make a recommendation to the Economic and Social Council. An investigation into the complaint is only possible with the consent of the State concerned.⁷⁰

Although the adoption of the procedure itself is definitely indicative of a desirable trend, it cannot be considered as establishing a fully effective system whereby an individual can obtain satisfactory redress for his grievances. The limitations imposed are much too nar-

67. *Supra* n. 41, at 80.

68. ECOSOC Res. 75 (V) (1947).

69. ECOSOC Res. 1503 (XLVIII) (1970).

70. M.H. Guggenheim, *Supra* n. 40, at 453-54.

row. It is difficult to determine when a complaint is of sufficient gravity and reliability to actually reveal, “. . . a consistent pattern of gross . . . violations of human rights.” This difficulty is further amplified by the fact that the determination of whether or not a complaint satisfies the necessary criteria is to be made by a politically motivated body.

Within the context of this procedure there can be no guarantee of a fair and objective hearing, and this, of course, leads to the possibility of discriminatory practices in the hearing of individual human rights complaints and the possibility that less politically sensitive issues, like the question of apartheid, would be given priority by the Commission. The procedure is definitely in need of further refinement. In the words of Professor Humphrey:

What is needed is some judicial or quasi-judicial body, composed of independent persons acting in their personal capacity, before which individual complaints could be brought with some hope that they would be examined fairly and objectively.⁷¹

The United Nations Charter has granted to the individual human rights and fundamental freedoms. These rights have been clarified and defined by a large body of Resolutions, Conventions, and Declarations adopted by the United Nations. However, a right without a remedy is meaningless. If the rights in the Charter are to have any meaning, it is up to the Organization to develop and implement some effective procedure to enforce these rights, beyond the one devised in ECOSOC Resolution 1503, so that an individual may have some realistic hope of having his rights protected from abuse by his own State.

Effect of the Provisions on the Organization

The human rights provisions of the United Nations Charter not only impose obligations upon each individual Member State, they also impose obligations on the United Nations as a whole. Much emphasis has been placed on the fact that the provisions authorize various organs of the Organization to take certain steps in encouraging and promoting human rights, but the provisions go much further than the mere granting of power to the United Nations. They impose a positive legal obligation to act in achieving these purposes. Article 55(c) of the Charter clearly states that “The United Nations shall promote universal respect for, and observance of, human rights and fundamental freedoms for all . . .”.

71. J.P. Humphrey, “The International Bill of Rights: Scope and Implementation” (1976), 17 *Wm. & Mary L. Rev.* 527, at 532-33.

Even in the absence of Article 55(c), the obligation upon the Organization in the field of human rights would still exist. To quote Professor Lauterpacht on this point:

Moreover, that duty exists irrespective of any explicit pronouncement of the Charter to that effect. It is an inescapable principle of interpretation that whenever an international instrument defines, in its constitution, the purposes of its being, the right and obligation to give effect to those purposes are inherent in it and nothing short of an express derogation from that implicit authority can legitimately restrict the powers and obligations in question.⁷²

The fact of an obligation on the part of the United Nations as a whole to encourage and promote respect for human rights is beyond doubt. Unfortunately, the same can certainly not be said of the question of the performance of the Organization in fulfilling its obligations. In fact, the only situation in which it is clear that the United Nations is fulfilling its obligations is in relation to the policy of apartheid in South Africa. Although the United Nations has consistently attacked the policy of apartheid with unprecedented and unrestricted zeal, it seems to be doing so to the exclusion of almost all other situations involving the flagrant denial of human rights.

It cannot be denied that this attack on apartheid is justified, as the practice of the policy is unquestionably contrary to the letter and spirit of the Charter. The United Nations is, indeed, to be commended on its performance in the situation. However, apartheid is only a part, and a relatively small part, of the totality of the problems relating to human rights in the world today. The great deal of effort and energy expended by the Organization on the question of South Africa can certainly not compensate for its apparent lack of concern in many other areas.

The explanation for this preoccupation with apartheid does not require a great deal of searching, as it is quite evident. As one author writes:

. . . United Nations preoccupation with apartheid has been exploited as a convenient ploy and as an excuse for forsaking themes of human rights of a more universal character. It has served to mask political opportunism of every kind and as an occasion for staging extravagant propaganda exercises. It has provided Member States with many opportunities of making facile demonstrations in behalf of human rights and pitting their indignation against evil without engaging their responsibilities. Many governments which condemn South Africa's racial policies and seek their eradication as an absolute moral and political imperative are in no danger of establishing a precedent which some day might be turned against [sic] them.⁷³

The reason behind this preoccupation can, in no way, justify the preferential treatment accorded to the situation in South Africa, and

72. *Supra* n. 11, at 159.

73. M. Moskowitz, *International Concern with Human Rights* (1974) 67.

the fact that South Africa is given preferential treatment is quite clear. An example of the application of this double standard is to be found in the Secretary-General's Report on the Review and Appraisal of United Nations Information Policies and Activities. The Report stated that:

... while the Office of Public Information should adhere strictly to the principle of universality and objectivity, it should, in certain priority fields of United Nations activity, such as the elimination of apartheid, consider itself not only free, but obligated to pursue a more active information programme, more directly geared to support these activities and not to restrict itself to merely neutral stances or statements.⁷⁴

This preoccupation with the question of apartheid is not limited to the supply of public information. Another example can be found in the question of individual petitions to the United Nations, alleging the violation of human rights. Prior to the adoption of ECOSOC Resolution 1503 in 1970, there was no general procedure for dealing with individual complaints concerning human rights violations. However, even prior to 1970, a citizen of South Africa who wished to complain of human rights abuses by his own government was in a much better position than a person with a similar desire in another part of the world. The South African complainant would be given a hearing and his testimony would be circulated to the Member States of the United Nations, and to a number of libraries all over the world. However, any other individual petitioner complaining of human rights violations was merely told that there was nothing that could be done for him.⁷⁵

Although it may be questionable whether this procedural advantage was ultimately of any benefit to the South African complainant, the existence of this double standard is, nevertheless, demonstrative of the fact that the United Nations is definitely more prepared to deal with human rights problems arising in South Africa than in any other part of the international community. The United Nations was meant to be an Organization concerned with the denial of human rights, wherever they may occur. However, in many instances, it seems that the United Nations is an Organization wholly concerned with the elimination of apartheid in South Africa as the ultimate solution to the human rights problems existing throughout the world today.

There have been many crises that have called for action on the part of the United Nations, and yet, such action has been lacking. The Organization has demonstrated an inexcusable lack of initiative in such situations as those in Biafra, Indonesia, Sudan, Bangladesh,

74. U.N. Doc. A/C 5/1370/Rev. 1.

75. For a detailed discussion of this situation, see J. Carey, "The United Nations Double Standard on Human Rights Complaints" (1966), 60 *Am. J. Int'l. L.* 792.

and Uganda. The situation in Bangladesh, involving the wholesale massacre of thousands of human beings, was one which cried for intervention by the United Nations, and yet, the United Nations remained idle, choosing instead to preserve the sanctity of the unfortunate and outmoded doctrine of State sovereignty. This passivity prompted one journalist to report, quite justifiably, that:

If Pakistan had seized a bit of Indian territory, killing a hundred people in the process, one could have been confident that international mediating machinery would have been switched on at once. But because President Yahya Khan's Government have killed thousands and thousands of their own subjects in East Pakistan the world stands idly by. . . .⁷⁶

Admittedly, the question of armed intervention by the United Nations is a most delicate one, but the problem of the United Nations' inactivity goes even beyond that, as was demonstrated in the Nigerian Civil War, following the secession of Biafra in 1966. Whether or not the secession was justified, the ensuing situation resulted in the starvation and death of millions of innocent women and children. Wholesale acts of cruelty and barbarism were taking place in an effort to eradicate the Ibo tribe of Biafra. It is difficult to imagine a more critical and fundamental violation of human rights than the denial of the right to life. Nonetheless, in the general debate of the twenty third session of the General Assembly in 1968, the situation was either completely ignored, or given only passing reference in an effort to avoid the possibility of even verbal interference in the domestic affairs of Nigeria.

The United Nations must strive for the promotion of human rights all over the world in the same manner in which it has concentrated its efforts towards the elimination of apartheid in South Africa. Even if these efforts are limited to general and open discussion in the General Assembly, a major step forward would be taken. The effect of bringing a situation into the world forum and exposing it so that the people of the world may see and judge for themselves should not be underestimated. World public opinion is a vital part of the United Nations' arsenal in combatting the denial of human rights. The potential effect that this type of exposure may have was explained by Albert Sachs during his testimony in 1967 before the Ad Hoc Group of Experts concerning prisoners, detainees, and others in South African police custody:

One feels that if there had been more exposures in the thirties about the treatment in concentration camps by the nazis of Jews and political prisoners, the extermination of whole populations in the forties might possibly have been avoided; and that is one of the reasons why one feels strongly that the more publicity

76. From the May 13, 1971 issue of *The Scotsman* of Edinburgh, as quoted in Moskowitz, M., *International Concern with Human Rights* (1974) 34.

given to the illegalities — by any standard of justice — being committed in South Africa today, the more the hand of the Government there and the authorities will be restrained from effecting yet greater crimes against yet larger sections of the South African population.

So even if it is not possible to achieve what one would like to achieve — namely, the liberation of these prisoners and the ending of these practices — nevertheless, the focusing of attention on what is going on and the exposures of what has been happening are likely to exercise something of a brake on the authorities.

. . . I feel that torture is something which is carried out in private, in the dark. One of the ways of preventing torture is to open the doors, to throw light on it, because nobody in the world today will stand up and publicly claim that they believe in torture and that they think torture is a good thing.⁷⁷

Therefore, the United Nations, if it is to fulfill its obligations, must continue to deal with human rights violations throughout the international community, even if these efforts are restricted to public exposure and condemnation of the practices of a number of the Member States.

Another area in which the Organization has failed to meet its obligations is in the area of individual complaints concerning the abuse of human rights. Any examination of the history of the United Nations reveals that this is one of the weakest points in the entire human rights program of the Organization. The problem, of course, originated in 1947, when the Commission on Human Rights and the Economic and Social Council declared as a general principle that the Commission had no authority to take any action on individual complaints regarding human rights violations, resulting in a denial of the right of petition and an abdication of a crucial function of the Organization's program in the field of human rights.

The United Nations, as an Organization, and in particular, the General Assembly and the Economic and Social Council, along with their subsidiary bodies, such as the Commission on Human Rights, are bound to take all measures possible, short of actual physical intervention, in attempting to safeguard human rights. In 1947, when the Commission, with the approval of the Council, denied itself the right to act on individual petitions, it had unilaterally deprived itself of a large measure of power necessary to reach that end. Therefore, there should be no doubt that this decision resulted in a breach of the duty imposed on the United Nations by its own Charter. Once again, to quote Professor Lauterpacht:

The United Nations will fail in a crucial — perhaps *the* crucial — aspect of its purpose unless it becomes axiomatic that it must take an active interest in any violation of human rights with a view to remedying situations the continuation of which is contrary to the Charter. Admittedly, neither the Commission on Human Rights nor the Economic and Social Council, nor any other organ of the United

77. U.N. Doc. E/CN.4/AC.22/SR.24 (prov.) at 20 (1967) as quoted in J. Carey, "Procedures for International Protection of Human Rights" (1967), 53 *Ia. L. Rev.* 291, at 317.

Nations (subject to the express exceptions laid down in Article 2, paragraph 7), have the right of intervention in its legal technical sense. But the Commission is entitled — and bound — to take any other action short of intervention in its accepted sense, such action including, in successive stages, examination, enquiry, investigation, report (including publication thereof), and recommendation.⁷⁸

The problem goes deeper than merely the denial of a potentially effective method of enforcing human rights in the world today; it amounts to the denial of a fundamental human right in itself, the right to petition. In 1947, the United Nations, an Organization bound to promote “universal respect for, and observance of, human rights and fundamental freedoms for all. . .” by Article 55(c) of the Charter, denied the existence of one of these rights. The Commission apparently took the stance that in the matter of petitions, there existed no clear right, but rather a privilege, a privilege that the Commission was not disposed to grant the people of the world. Yet, it can be said that the right of petition is an essential and fundamental human right, which has merited recognition by various national constitutions around the world.⁷⁹

The fact that petitions are a right in themselves, rather than a mere privilege was, at one point, acknowledged in the initial framing of the Universal Declaration of Human Rights. Article 28 of the first draft laid down as a basic human right that “Everyone has the right, either individually or in association with others, to petition the government of his State or the United Nations for the redress of grievances.”⁸⁰ Unfortunately, this article was not included in the final text of the Declaration in 1948, and the Organization’s approach to dealing with individual petitions, laid down the previous year, was not altered in any manner.

In 1967, Iran’s representative to the United Nations, Mr. Ganji, claimed that two hundred and fifty thousand communications alleging violations of human rights had been received by the United Nations since 1945.⁸¹ By effectively ignoring these petitions, the United Nations, although obligated to promote human rights, had, in the period of twenty-two years, itself denied a fundamental human right to the people of the world on a quarter of a million occasions.

It is true that this black mark on the Organization’s record in the field of human rights was somewhat alleviated in 1970 with the adoption of ECOSOC Resolution 1503, but this is still not enough. Only petitions which fall into the category of revealing a “consistent pat-

78. *Supra* n. 11, at 230.

79. *See generally, Supra* n. 11, at 247-51.

80. J.P. Humphrey, “The Right of Petition in the United Nations” (1971), 4 Human Rights J. 463, at 464.

81. U.N. Doc. E/CN.4/SR. 967.

tern of gross and reliably attested to violations of human rights and fundamental freedoms” can be considered. Moreover, the powers of the Commission on Human Rights in examining and verifying the petitions are limited if the consent of the State concerned is not forthcoming. And, most importantly, the petitions are to be screened by a sub-commission which is politically motivated, as is the Commission itself, which ultimately considers the petitions which filter through the screening process. Failure to divorce human rights petitions from consideration in a political atmosphere can only lead to the application of double standards.

In order that the right of petition may become effective within the structure of the United Nations, the procedure must be developed much further. A procedure must be implemented whereby all sincerely motivated petitions concerning human rights violations will be considered. The powers of the body considering these petitions must not be limited in the question of investigating and verifying the subject matter of the complaints. And, above all, this body must be free of political motivation so that a fair and equitable hearing may be achieved in an atmosphere of judicial impartiality. Only then will the United Nations begin to fulfill all of its obligations in the promotion and encouragement of respect for human rights.

Conclusions

An analysis of the human rights provisions of the United Nations Charter and a study of the work of the Organization leads to a number of conclusions. Initially, it would be safe to say that the provisions definitely do impose upon the Member States a positive legal obligation to observe and respect human rights and fundamental freedoms within the area of their territorial sovereignty. It is true that these rights, and hence the obligations on the Member States, are not defined within the text of the Charter itself, but definition of human rights to be found elsewhere is certainly not lacking. Article 2(7), the domestic jurisdiction clause neither reduces the obligations that the Member States have assumed, nor does it limit the powers that the United Nations has at its disposal in the enforcement of the human rights provisions. The question of sanctions is a more complex one, but a relatively effective sanction does exist in the ability of the United Nations to focus the world's attention and condemnation, when warranted, on situations involving human rights violations throughout the international community.

With respect to individuals, it would seem to be a reasonable conclusion that the Charter has the effect of granting fundamental human rights and freedoms to the individual citizens of the Member States.

What has been hampering the full realization of the potential scope of these developments, however, has been the lack of positive action taken by the United Nations on the question of human rights. The question of the rights of the individual has been dealt with particularly poorly by the United Nations. The Charter speaks of the promotion of respect for human rights by the Organization, and yet, the United Nations itself has effectively denied to the people of the world the fundamental human right of petition. As Alexander Solzhenitsyn once said of the United Nations:

It obsequiously voted against investigating private grievances — the groans, cries and entreaties of simple, humble individuals, insects too tiny for such a large organisation to concern itself with.⁸²

Although a particularly harsh criticism, it is not entirely unjustified. The United Nations must re-examine its approach to this question. ECOSOC Resolution 1503 was not enough. The Organization must still go much further in resolving this problem, as far as is necessary to ensure an effective right of petition for everyone.

The major problem with United Nations activity in the field of human rights has been the inconsistency in its dealings with human rights violation around the world. The United Nations must maintain a constant vigil on the world situation today, and be prepared to publicize and condemn oppressive practices by States wherever they may occur. Focusing all attention on South Africa will not cause all of the other problems to resolve themselves.

Any power that the United Nations does possess in the field of human rights is based solely on the moral integrity of the Organization. Without the loyalty and support of the people of the world, the United Nations is a meaningless entity. This loyalty and support cannot be maintained by the evasion of vital issues and the application of double standards that have characterized United Nations activities in the past. Any reaction that the United Nations may have in a particular situation is no more important than the fact of the reaction. The United Nations must be sensitive to the world situation and be prepared to react whenever necessary. If the United Nations is to have any impact on the world, it must act as a champion of the people, and it must act relentlessly, with impeccable consistency and integrity. Its actions must be beyond reproach.

This is certainly not to say that the United Nations' activity in the area of human rights has been entirely negligible. The Organization has had a tremendous impact. The acceptance of human rights as an international concern and the establishment of guiding prin-

82. A. Solzhenitsyn, "One Word of Truth. . .", *The Nobel Speech on Literature* (1970) 21.

ciples and standards to strive for are in themselves no small achievements. In fact, it is doubtful if human rights would be a major political issue in the world today, were it not for the efforts of the United Nations. The numerous Covenants, Declarations, and Resolutions adopted by the United Nations have had a significant impact on the international community.

But the fact remains that there is a potential for so much more. The United Nations must take a fresh and bold new initiative in dealing with the challenge every time it presents itself. Human rights are a vital part of the reasons for the existence of the United Nations. If the Organization is to justify its existence in the international political sphere, it must constantly strive to achieve one of its principal goals, the full realization of human rights and individual dignity throughout the world. In the words of the late U Thant, former Secretary General of the United Nations:

... the promotion and protection of human rights form the very essence, and provide the deepest meaning and motivation, of the United Nations as an international and inter-governmental Organization. For, in the last analysis, a recognition of the 'dignity and worth of the human person', in the words of the Charter, is a symbol of all the other activities and purposes entrusted to and pursued by the world Organization: peace, the security of future generations from the scourge of war and the promotion of social progress and better standards of life in larger freedom.

The establishment of human rights provides the foundation upon which rests the political structure of human freedom; the achievement of human freedom generates the will as well as the capacity for economic and social progress; the attainment of economic and social progress provides the basis for true peace.⁸³

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