Volume 12
Number 2 *Winter 1978*

*pp.*289-326

Winter 1978

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THE EMERGING UNITED STATES OF EARTH: WORLD HABEAS CORPUS AS THE LIGAMENT OF UNILAW AND GLOBAL JUSTICE

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God created Man single in order to teach us that if you destroy one life, Scripture considers you to have destroyed a whole world, and if you sustain one life, Scripture considers you to have sustained a whole world. *Talmud, Sanhedrin* 17a.

INTRODUCTION

Something entitled "Emerging United States of Earth," or even referring to the effective rule of world law, may well be dismissed as dreamy and utopian. However, "[t]he human mind has always accomplished progress by its construction of Utopias."[1] To the utopist, politics, including world politics, involves decision-making which calls for the formulation of ideals used to suggest alternative courses of action and clearly define the ends to be achieved.[2]

Legislation is involved in formulating ideals whether by treaty or international declaration; and the act of legislating entails purely

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+ The research assistance of Ernest Katin, Ph.D., is acknowledged.

1. B. KIDD, THE SCIENCE OF POWER 158 (1918). *See also* G. AND P. MISCHE, TOWARD A HUMAN WORLD ORDER (Paulist Press 1978). According to Dr. Rene Dubos: "In their book the Misches have presented the most wide-ranging analysis of the forces that make obsolete the present structure of national sovereign states, and of the mechanism which could bring about a more viable world order."

2. Sibley, *Apology for Utopia*, 2 JOURN. OF POLITICS (Feb. and May, 1940); The Bobbs Merrill Reprint Series in the Social Sciences, PS 258.

speculative ideals and is the act of defining ends.[3] The only apparent guide is that of bold, imaginative speculation.[4] Such speculation is based on the harsh reality of experience derived from such cataclysmic events as the Holocaust, Nagasaki and Hiroshima, and from man's physical intrusion and migration into the cosmos. It derives from the depletion of energy sources and the world-wide ecological threat to earth.

World law becomes an essential for human survival, which, though recognizing diverse political and legal systems and the perpetuation of multi-cultures, conceives of world or planetary collective responsibility as founded upon the sanctity of the human being. Man is envisioned as having been created in the image of the Divine. The sanctity of human life entails the promulgation and concrete implementation of human rights. Consequently, Mother Earth is regarded as intended for the benefit of all mankind, with world public order endowing everyone with the fundamental duty to respect and protect the fundamental human rights of all human beings.

Ethics plays an important role in the political and social development of society. The exploitation of one or a group of individuals by others—whether in the form of slave labor, racial superiority, arbitrary detention, the denial of national or cultural self-determination or expression, or the imposition of dictatorial authority—negates the sanctity and dignity of man and threatens the world order. The ethical may not be separated from the political since human decision-making and action invariably involves ethics.

These eventuations, are the bases for a *unilaw* that transcends and combines all legal systems and national sovereignties and involves an interrelation of rights and duties for mankind. Mother Earth is regarded as the property of man, subject to his eco-management. The aim is to restrict the greed and avarice of self-interest that unleashed would destructively pollute and exhaust the cosmos common to all humanity. *Unilaw* recognizes the intrinsic freedom of man; to be restricted only to that extent which will facilitate his mutual survival.

Unilaw would be the ligament for an emerging United States of Earth—an instrument for world public order. An emerging univer-

3. E. JORDAN, THEORY OF LEGISLATION: AN ESSAY ON THE DYNAMICS OF THE PUBLIC MIND 366 (1930).

4. Robert Goddard (1882-1945), the pioneer in rocketry cautioned: "It is difficult to say what is impossible, for the dream of yesterday is the hope of today and the reality of tomorrow." G. O'NEILL, THE HIGH FRONTIER 18 (Morrow 1977).

salism which nevertheless respects particularism—the resistence to unite politically—would facilitate the formulation of standardized indicators and machinery for the monitoring of governmental policies and actions to assure compliance with the universal standard of human dignity. Implementation of *unilaw* would be facilitated by an *ombudsman* for mankind buttressed upon world habeas corpus.

The English common law writ of habeas corpus exists to protect man's basic right to freedom from arbitrary detention. One author properly expressed the fundamental importance of the writ of habeas corpus: "The Habeas Corpus Acts declare no principle and define no rights, but they are for practical purposes worth a hundred constitutional articles guaranteeing individual liberty."[5] Upon petition of this writ the court can order an individual to appear so as to examine the legality of his detention. If the court determines the individual has been illegally detained, his release is ordered forthwith.

World habeas corpus proposes to internationalize this basic common law writ through the establishment by treaty of regional tribunals. These tribunals would enable an individual who is arbitrarily detained and has effectively exhausted available municipal remedies, to apply for an order to inquire into his detention and to order his release. The proposal for world habeas corpus envisions conferring standing on the individual to implement human rights formulated by the United Nations and international agencies. As such it is a ligament for *unilaw* and the emerging United States of Earth. Nevertheless, *it does not envision the disintegration of state sovereignty.* Upon implementation, world habeas corpus would be the breakthrough for an effective world order.

This article will examine the historical, philosophical, and institutional development of the world-wide status of human rights. It will be shown that the means to insure international due process of law is now at hand, and that a world community based on the rule of law will emerge if the countries of the world will support and employ world habeas corpus.

THE INTERNATIONAL SYSTEM

The foundation of international relations is power, which is based on persuasive coercion and ultimately, force-coordinated physical coercion. Fundamentally, power entails the imposition of one's will over a group. International society is conceptually a system of open

5. A. DICEY, LAW OF THE CONSTITUTION 199 (10th ed. 1959).

or hidden power.[6] States feel constrained to defend themselves by various means including war, alliances or situations of balance, and neutralization. Law is invoked to justify these policies and, in fact, plays a secondary role. Dean Acheson observed: "law simply does not deal with . . . questions of ultimate power—power that comes close to the sources of sovereignty. . . . No law can destroy the state creating the law. The survival of states is not a matter of law."[7] Accordingly, the survival of the state is beyond the law.

International society since 1815 has become world-wide and more organized. World society has been characterized by the breakup of the European-Christian community, the expansion of the European system to world proportions in the course of colonialism and imperialism since the sixteenth century, and the concentration of power in an increasingly smaller number of powers and super powers. Following World War I, an attempt was made to create an international community based on order through the outlawing of war, disarmament, and collective security. This international community emerged as the League of Nations. Though the ineffectiveness of the League was attributed to its lack of universalism, it later became apparent that the reason was more fundamental. The inadequacies of the United Nations highlights the inefficacy even further.

International order is essentially based on a power balance. Today, this may more properly be regarded as an international quasi order. The present quasi order has, despite a number of localized conflicts, managed to evade a direct armed conflict because of the mutual "over kill" capacities of the super powers. International law serves the function of legitimizing this pure power relationship. The basic principles of international law—sovereignty, recognition,

6. G. SCHWARZENBERGER, CIVITAS MAXIMA (RECHT UND STAAT IN GESCHICHTE UND GEGENWART) No. 413/414 (1973) [hereinafter cited as SCHWARZENBERGER]. *See generally* I CLAUDE, POWER AND INTERNATIONAL RELATIONS (1962); J. FRANKEL, INTERNATIONAL RELATIONS (1964); H. KISSINGER, THE WORLD RESTORED, METTERNICH, CASTEREAGH AND THE PROBLEMS OF PEACE 1812-1822 (1957); E. CARR, THE TWENTY YEARS CRISIS 1919-39; H. LASSWELL, WORLD POLITICS AND PERSONAL INSECURITY (1935); H. MORGENTHAU, POLITICS IN THE TWENTIETH CENTURY (3 vols. 1962); R. ULLMANN AND R. TANTER, THEORY AND POLICY IN INTERNATIONAL RELATIONS (1972).

7. PROCEEDINGS OF THE AM. SOC. OF INTL. LAW 14 (57th Ann. Meetings, 1963). For elaboration of this view see generally F. MEINECKE, MACHIAVELIANISM, THE DOCTRINE OF RAISON D'ETAT AND ITS PLACE IN MODERN HISTORY (1962). However, even municipal legal systems recognize the right to individual self-defense. "If a legal system is to uphold the right to life, there must be a liberty to use force for the purpose of self-defense." Ashworth, *Self Defense and the Right to Life*, 34 CAMBRIDGE L.J. 282, 283 (1975).

agreement integrity, freedom of the seas, and self-defense[8]—do not hinder the essential power relations. Within the context of power politics, legal relationships have developed on the basis of actual or formal equality, for instance, in the areas of diplomatic relationships or cooperation, economics, communications and transportation. In these interrelations, the sanctions of power have been sublimated by the mutuality of the parties to fulfill their legal obligations. This situation prevailed from the post-Napoleonic Wars period until World War I. A tendency developed for a partial international order with the development of international institutions and the International Court of Arbitration at The Hague. International society became more universally organized with the establishment of the League and ultimately the United Nations, which were based upon a fragile agreement between states.

The decolonization and emergence of many nations with equal sovereignty appears to have presaged the emergence of an international community. Actually, this development reflected the weakness of the former colonial powers which have been replaced by the great land powers: the United States, the Soviet Union and the Peoples Republic of China. In international forums, the great powers, being in a minority, are out-voted when declarations and resolutions are adopted proclaiming such moral principles as national self-determination. However, the great powers are merely limited in regard to the internal affairs of these organizations since their resolutions and actions have generally a mere advisory effect. When obligatory decisions are made in the Security Council, the great powers utilize the power to veto.

Though the era of decolonization appears to have led to the establishment of a large number of states with obstensibly equal sovereignty, in reality the spheres of influence of the super powers have replaced colonial rule. International law, which veils the actual power relationships, has been used for ideological purposes. Clear examples are the human rights conventions on Genocide, the Prevention of Racial Discrimination, the Covenants on Political and Civil Rights and on Social and Economic Rights. These conventions are actually pompous statements with no means for effective enforcement. Those adhering to the conventions may assert reservations emptying them of meaning.

Power politics has made the United Nations ineffective as a peace-keeping agency. The rivalry of the super powers and the ensu-

8. SCHWARZENBERGER, *supra* note 6.

ing power blocs thwart collective self-defense in cases of a threat to the peace, as in the Middle East. Moreover, the former colonial nations, now comprising the so-called third world, tend to vote *en bloc* without regard to substantive issues. Voting in the United Nations is based on what may be called "partisanship," or a type of "party politics." Nations vote on issues, for instance, the Middle East, according to bloc considerations. Since the third-world countries comprise the majority of the voting in United Nations agencies, each country is effectively immune from sanction.

A realistic appraisal of the international society includes the consideration of a myriad of factors. A pressing problem is the so-called North-South division between the smaller number of technologically developed nations and the mass of underdeveloped countries suffering from mass poverty, lack of social integration, and inability to make use of natural resources. Overshadowing this division is the surging population growth, though recent reports indicate that the birth rate has tended to decrease somewhat.[9] International society is faced with the problem of managing the world ecology to assure that the planet will remain habitable. The problem of conserving energy resources and developing new sources of energy is becoming more imperative.

Since the end of World War II, mankind has been faced with the ever-present threat of thermo-nuclear annihilation. The ideological and power struggle between the United States and its allies and the Soviet Union and its satellites has made the threat of mutual nuclear annihiliation a sobering possibilty.[10] Despite the vast expenditures on weapons research and production, it has become increasingly apparent that war, as a means for resolving international conflicts, has become outmoded. Moreover, the economic and social burden of armaments expenditures is becoming less tolerable. Ac-

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9. *See* Haaratz, Jan. 23, 1977 (Hebrew). *See also* Hart, *Has the Danger of Formulation Explosion Passed?*, MAARIV, March 3, 1972. An organization calling itself The Environmental Fund has placed announcements in newspapers calling on the United States Congress to place a moratorium on food aid to countries which do not adopt stringent measures to control population growth. *See, e.g.*, Wall Street Journal, Jan. 13, 1977, at 13. AS to how scarce resources may be effectively utilized by effective planning, see, e.g., A. WEINER, THE ROLE OF WATER IN DEVELOPMENT: AN ANALYSIS OF PRINCIPLES OF COMPREHENSIVE PLANNING (1972).

10. *See generally* C. GRAY, THE SOVIET-AMERICAN ARMS RACE (1976); P. HAMMOND, COLD WAR AND DETENTE, THE FOREIGN POLICY PROCESS SINCE 1945 (2nd ed. 1975); F. SHERMAN, THE LOGIC OF WORLD POWER, A INQUIRY INTO THE ORIGIN, CURRENTS AND CONTRADICTIONS OF WORLD POLITICS (1974).

cordingly, the super powers have been seeking accommodations among themselves to decrease the burden.

Communications and the jet have made the world smaller, facilitating more contact among the regions of the globe; but social, cultural and ideological differences still serve to separate mankind, perhaps more than previously. The world is more accurately likened to a global metropolis with differences in wealth and well-being, conceivably greater than in the nineteenth century.[11] Though the big brother society of 1984 envisioned by George Orwell does not appear at hand, the two dozen democracies remaining in the world face continuing challenges.

International society, and its semi-order, is being constantly threatened with anarchy and disintegration. Terrorism has become a growing threat to domestic and international order.[12] Terrorist groups, with the support of some United Nations states seeking to use the terrorists as instruments of policy, have coordinated efforts in a world-wide scheme of assassination, hijacking, and indiscriminate sabotage. The reaction against this terrorism, led by authoritarian states which appear to be more effective in quelling terrorist actions has been to limit civil liberties.[13]

The malaise of international society has evoked renewed impetus for proposals of reform based on the rule of law, world order or world government, and proposed institutions to deal functionally with the problems of the cosmos. The need has arisen for remolding the present international society based on relations of mutual fear and power into an association or community based on human love and understanding.[14]

An embryonic international law of cooperation which is now developing, has become particularly pronounced in the fields of physical communication, economic cooperation, and social welfare.[15]

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11. Rubinstein, *Towards 1984; Big Brother Has Not Come*, Harratz, Jan. 7, 1977 (Hebrew).

12. J. BOWYER BELL, TRANSNATIONAL TERROR (AEI Hoover Policy Studies 1975). B. Jenkins, "International Terrorism: A New Mode of Conflict," California Seminar on Arms Control and Foreign Policy Research (Research Paper No. 48, 1975). H. INBERGER, DIE TERROR MULTIS (Munich, 1976).

13. Lecquor, *Terror Has Powerful International Patrons*, MAARIV, Jan. 21, 1977 (Hebrew).

14. *See* SCHWARZENBERGER, *supra* note 6; K. MANNHEIM, IDEOLOGY AND UTOPIA (1936).

15. W. Friedmann, "Some Fundamental Changes in The Structure of Contemporary International Law," Washington World Peace Through Law Conference, 1965.

The increased number of state participants in international law has led to divergencies based not so much upon cultural differences, as upon economic differences between developed and underdeveloped nations. Another development is the emergence of functional public international organizations which originated first with the establishment of the International Postal Union, and now include the World Bank and the World Health Organization, each of which is endowed with legal personality and must be regarded as subjects of international law. The ambit of international law has greatly expanded to include such matters as health, communications, labor, atomic energy, the ecology and many other matters.

The European community has created new prototypes of international organizations. The outlook for international law may be regarded as that of mingled hope and acute despair. The late Professor Wolfgang Friedmann summarized the dilemma:

> Our contemporary world is in the paradoxical situation that, on the one hand, the complete revolution in the destructiveness of weapons and the speed of communications—which distinguishes the situation of the present generation from that of any previous period in history—has made the national state an anachronistic organization, even less adequate to the needs of our time than the feudal barons and city states were to the conditions of some centuries ago, while on the other hand, the delayed outburst of nationalism in the formerly dominated or exploited continents of Asia, Africa and South America, has created a plethora of nominally "sovereign" national states, many of which are not fit for survival in either military, political or economic terms.[16]

The first and overriding necessity is the organization of mankind for survival.

The principle of national self-determination is a particularly explosive issue tending to obfuscate efforts to attain national order and also disrupts the structure of nation-states. It is a root cause for international terrorism. The concept of self-determination—the right of a group of people who consider themselves separate and distinct

16. *Id. See also* Friedmann, *Half a Century of International Law*, 50 VA. L. REV. 1333 (1964); W. FRIEDMANN, THE CHANGING STRUCTURE OF INTERNATIONAL LAW (1964). For further views on the changing scope and structure in international law, see JENKS, THE COMMON LAW OF MANKIND (1958); G. SCHWARZENBERGER, THE FRONTIERS OF INTERNATIONAL LAW (1962).

from others to determine for themselves the state in which they will live and the form of government they will have[17]—has rallied national forces in the struggle against colonialism and to the establishment of over one hundred and forty-six nation-states.[18] However, all but approximately fourteen of today's states contain at least one significant minority, and half of these exceptions are characterized by the extension of the dominant ethnic group beyond the state's borders.[19] Successor states to colonial domination are challenged by ethnic sub-groups with demands for expression of self-determination. Statesmen, when referring to self-determination, refer to that of states rather than peoples.[20] Nevertheless, the dynamics of self-determination operate independently of the desires of political leaders. National groups seeking self-determination clash among themselves. The dominant national group tends to be intolerant in granting rights to minority groups.

The problem, rather, is one of granting the right to cultural self-determination rather than political determination. Where feasible, a measure of autonomy may be granted. The concept of a world community does not negate cultural particularism or national identity and self-expression. The false universalism, characterized by the excesses of Christianity and Islam, became in fact, a form of imperialism. Such universalism is in effect, the absolutization of one particularism.[21]

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17. J. PLANO & R. OLTON, THE INTERNATIONAL RELATIONS DICTIONARY 121 (1969).

18. Connor, *The Politics of Ethnonationalism*, 27 JOURN. OF INTL. AFFAIRS 1 (1973).

19. *Id.*

20. Emerson, *Self-Determination*, 65 AM. J. INTL. L. 459 (1971). On ethnicity, see ETHNICITY: THEORY AND EXPERIENCE (N. Glazer & D.P. Moynihan eds. 1976).

21. Reuther, "The Future of Christian Theology About Judaism, Christian Attitudes on Jews and Judaism," A Bi-monthly Documentary Survey, No. 49 (Aug. 1976). She writes:

> [i]t is true that particularism can become just ingrown ethnocentricity. What is not so easily recognized by Christians is the way universalism becomes imperialism toward the identities of all other peoples. In effect, Christian universalism declared that Christianity was the only valid identity that was in community with God. All other identities were spurious, demonic and do not mediate relationship with God. Only insofar as people incorporate themselves into this one true identity for "all mankind" do they achieve "salvation"; true humanity and relationship with God. This image of the non-Christian has been central to Christian racism, because it transferred over to the racial and cultural identities of all other peoples this judgment made upon their religions. Convert all nations . . . conquer all nations. Such universalism is false universalism. It is really the absolutization of one particular

TOWARDS WORLD COMMUNITY

Statesmen and opinion makers know well what needs to be done: the transformation of international society based on fear, and the play of power politics to a world community or *Civitus Maximus* based on love and understanding and upon the rule of law. The alternative is continued disintegration and the possibility of thermonuclear destruction. The late President Lyndon Johnson, speaking to the Washington World Conference on World Peace Through Law in 1965, affirmed dedication to the rule of law and acknowledged that "[l]aw is the greatest human invention. All the rest give him mastery over his world. Law gives him mastery over himself."[22] However, his administration, like that in other states, did little to initiate a breakthrough for the effective rule of law.

The concept of the rule of law advanced by the American Bar Association and other groups, has been criticized for its failure to come to grips with actual domestic and international issues, and for its tendency to uphold the status quo.[23] It has been maintained, however, that the idea of a rule of law consists of more than general principles or rules, but is a way of life in which the primacy of the human person is dominant.[24] Thus, this rule of law has been identified with natural law.[25]

Proponents of the rule of law express faith in its attainment. Late United States Supreme Court Chief Justice Earl Warren asserted:

> Achieving and maintaining a rule of law strong enough to regulate actions of nations and individuals in the world community is no more dreamy, impossible or impracticable than was the idea of splitting the atom, or putting a man on the moon, or sending a missile to Mars a few years ago.[26]

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ism. It is a characteristic which Christianity also shares with Islam. Both groups have attributed an inferior identity to Jews, and both have denied the rights of "pagans," including Hindus and Buddhists to exist. Although these attitudes are being modified in Western culture today, they are essential to the understanding of the impact of the combination of Western colonialism and missionism on the rest of the world.

Id. at 2.

22. Washington World Peace Through Law Conference, 1965.

23. J. SHKLAR, LEGALISM 134 (1964).

24. B. BROWN, THE RULE OF LAW REVISITED, WASHINGTON CONFERENCE ON WORLD PEACE THROUGH LAW (1965).

25. *Id.*

26. Address delivered by the Honorable Earl Warren, Chief Justice of the

However, to try to equate technological achievements with the prospects for social breakthroughs is as erroneous as the elements involved; the nature of the problems are fundamentally different.

The rule of law advocates appear to have a naive belief in human nature that somehow the use of reason and accomodation can ultimately resolve all problems if only mankind will see the light. As Reinhold Niebuhr noted, men behave differently in groups than they do as individuals.[27] Though a man acting as an individual may well be motivated by reason and a moral sense, this is not possible for human societies and social groups. This is partly due to the difficulty of establishing a rational social force which is powerful enough to cope with the forces by which society achieves its cohesion, and in part, the collective egoism, compounded by the egoistic impulses of individuals. Certain aspects of man's behavior are not subject to the control of reason, but instead, are guided by the self-interest of the group.

This distinction, as Niebuhr noted, is most apparent with regard to nations. The selfishness of nations as opposed to individuals, is apparent. The nation as a corporate unity is held together more by force and emotion than by reason. Since ethical action requires rational self-criticism and self-transcendence, national attitudes cannot approximate the ethical. Criticism is regarded as disloyal; moreover, national cohesion is maintained by force and the conceived interests of the ruling elite. Through patriotism, individual unselfishness is transmuted into national egosim.[28] Loyalty to the nation is a high form of altruism when compared with lesser loyalties and more parochial interests, thereby becoming the vehicle of all altruistic impulses. It expresses itself on occasion with such fervor that the individual's critical attitude toward the nation is almost completely destroyed. The community of mankind, lying beyond the nation, is too vague to inspire devotion. Lesser communities within the nation—religious, ethnic, cultural—may encounter difficulty in competing with the nation in evoking loyalty. The nation, with its police power and symbolism, impresses its claim upon the consciousness of the individual. Moreover, the love and pious attachment of the individual to his immediate surroundings and familiar experiences reinforces his patriotic sentiment, which the nation may exploit for its own purposes. An element of vicarious

United States Supreme Court at the Inaugural Session of the Washington World Conference on World Peace Through Law, 1965.

27. R. NIEBUHR, MORAL MAN AND IMMORAL SOCIETY (1960).

28. *Id.*

selfishness is involved, since the individual's lust for self-gratification is vicariously satisfied through the goals of the nation. A combination of unselfishness and vicarious selfishness in the individual provides a tremendous force to national egoism. This serves the moral hypocrisy of nations, particularly in wartime.

Donald Keys optimistically writes that it is possible to develop world-mindedness.[29] In both the individual and the nation, disidentification is needed, ultimately leading to the emergence of a true identity capable of accepting and integrating all separate elements. Nations must develop emerging planetary values concerned with caring and sharing. A new consciousness is emerging, Keys contends, with the entity of World Man. Ecology and the planetary society have developed a new sense of relatedness. The United Nations, despite its limitations, has in its Secretariat developed a sense of mankind and "has become a vast drafting board for sketches and plans of a future world order."[30] It is elaborating a series of embryonic departments of planetary management. The elements of humanity physically meet at the United Nations, and in the Secretariat are found the unconscious representatives of the energies of human unification.[31]

Among philosophers, theologians, scientists and writers, a sense of inclusiveness has developed towards the synthesis of cultures.[32] Institutions are being re-examined with reflections upon established beliefs, with attempts being made to encourage dynamic relationships among individuals and groups in all parts of the world striving for integration. The contention is made that "[t]here is indeed a growing legion of enlightened people everywhere who are beginning to build a new social order under our very noses."[33]

The idea of world government has long had an appeal for mankind. The idea has been put forth more forcefully in the post-World War II period. Citizen groups throughout the world have taken the initiative to develop world government and to promote

29. Keys, *The Synthesis of Nations*, 1 SYNTHESIS 8 (No. 2, 1975).

30. *Id.*

31. E. HUBBARD, THE NEED FOR NEW WORLDS, Chap. 4 (1971); G. O'NEILL, THE HIGH FRONTIER (1977).

32. Heussenstamm, *A New Prophetic Trend*, 11 WORLD UNION 9 (No. 4, Oct.-Nov.-Dec., 1971) [hereinafter cited as Heussenstamm]. Another writer contends that "The world must have a world government some time or the other to enable it to live as a world." This he envisions as "a sort of federation of free nations." He calls for the growth of a "world personality" that "thinks, feels, and wills for the world as a whole, with the world as such as the basis." Indra Sen, *The Seeking For World Unity*, 1 WORLD UNION 27 (No. 1, Jan.-Feb.-Mar., 1971).

33. Heussenstamm, *supra* note 32.

the concept of world citizenship. Garry Davis, residing in France, has proclaimed himself a world citizen with a world passport and has established a special court.[34] In San Francisco, a World Citizenship Party was formed[35] with a platform calling for a world constitution and a world government. A tendency towards mundalization has developed with communities proclaiming citizenship beyond the community and the state, to the world. In various communities, the United Nations' flag is flown to proclaim the global relationship. Congresses and conventions have been held for organizing world government.[36]

The current proposals were expressed as early as 1795 by Immanuel Kant in his pamphlet, *Perpetual Peace.* Regarding peace as an edifice at whose foundation lie past wars in which issues decided by force and violence became the material of laws—subsumed under and refined by compacts, constitutions, treaties and alliances—Kant believed that world government, the dynamics of which are found in the mechanism of human passions, could issue through perpetual alliances the condition of lasting peace.[37] Kant rejected the notion that nations had a right to make war and called for the establishment of a League of Peace; he called for world citizenship.

In some areas enlightenment has regressed since Kant's day. For example, the pursuit of science in the eighteenth century enjoyed great freedom from government interference. Benjamin Franklin was able to obtain right of passage and freedom from molestation by American warships for ships of the Royal Navy, under the command of Captain Cook, which were engaged in a scientific expedition organized by the Royal Society. During the Napoleonic Wars, Count Rumford traveled extensively in France, holding discussions with scientific colleagues, while Chevalier de Rossi, a French sailor and scientists, dined at the Royal Society in 1796 while a prisoner of war.[38]

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34. Chief Justice Luis Kutner, Statute of the World Court of Human Rights, By Resolution of World Government of World Citizens, Mulhouse, France (June 1974).

35. World Citizens Party, California, Fifth Organizational Paper (Central Committee, August 1976, 1590 Broadway, San Francisco, California 94109).

36. One suggested breakthrough is the bold step of unilateral disarmament and the replacement of the application of the Gandhian approach of non-violent resistance as a means for self-defense. *See* M. Sibley, "Uniliteral Initiatives and Disarmament," (Beyond Deterrence Series, Peace Literature Service of The American Friends Service Committee, 1961). At the same time, an international police force would be established.

37. I. KANT, PERPETUAL PEACE (1957).

38. Lord Todd, *The Freedom of Enquiry,* 11 PATTERNS OF PREJUDICE 1 (No. 1, Jan., Feb., 1977).

Governments today have impeded the advancement of science, which can only be facilitated through the free interchange of experimental results and ideas, by arbitrarily restricting the travel of scientists.[39] Not only are scientists forbidden to leave countries to attend conferences, but in some instances governments have refused the right of scientists to attend conferences simply because they are citizens of a country whose government pursues a political course unpopular with that of the host country. The United Nations Educational, Scientific and Cultural Organization (UNESCO) has decided to withhold financial support from scientific meetings which allow participation by scientists whose governments are unpopular with a majority of its member-states.[40]

Though some may blame science and technological advance for the world's problems, man's standard of living can only be improved through scientific and technological advancement.

> The real reason for more of our troubles lies not in science but in our social and political ineptitude when it comes to realizing the potential of the advances which science has made and continues to make. And so today we live in a turbulent and unhappy world. The hoped for amity among nations has failed to materialize. Deep divisions exist between them and this has inevitably led to increasing secrecy and mutual suspicion and all too frequently to violence and even open warfare.[41]

In actuality, scientific and technological advancement could help in bringing the nations of the world closer together.

Accordingly, the individuals and groups who struggle for a breakthrough in the establishment of a world community must not deceive themselves. Institutions like the Hague Tribunal for International Arbitration, the International Court of Justice, and institutions for international conciliation are used only sparingly and not applied to resolve the outstanding conflicts between states.[42] The twentieth century has seen the emergence of mass messianic movements for restructuring world order with echoes of medieval chiliasticism, which have had the opposite effect of establishing

39. *Id.*
40. *Id.*
41. *Id.*
42. Sohn, "Report on Recent Developments in International Conciliation," 53rd Conf. International Law Assoc. 34 (1968).

totalitarian societies that threaten world peace and human freedom.[43]

The believer in man's ultimate ability to survive and to order his life in dignity must not despair. The task of building a world order is a slow and painstaking process with many setbacks; but there are indications of progress. The development of several twentieth century multi-national institutions has started the world community on the road towards international due process of law.

THE INSTITUTIONAL BREAKTHROUGHS

The European Economic Community

Perhaps the most dramatic development towards international order can be found in the European Economic Community (EEC). The Rome Treaty envisaged the establishment of a Common Market facilitated by the free movement of goods, with a common custom and tariff policy. Economic policy has been coordinated with interdependent community power directly affecting states.[44] The institutions of the Common Market include a Commission empowered to issue regulations, directives, and decisions. Though a Council of Ministers also functions, the Commission's decisions prevail unless overruled unanimously by the Council. In addition, a European Court of Justice also functions, handing down binding decisions.

Though the European Court of Justice of the European Communities has some of the aspects of an international court, it tends to be "an internal supreme court of justice of a multinational group."[45] Unlike the International Court at The Hague, judges are not selected by nationality; in addition to states, institutions of the Community and individuals both have standing; and municipal courts experiencing difficulty in interpreting the community law, which has become an integral part of their law, may refer the question to the European Court of Justice for interpretation.[46] The court's interpretation is binding on the national court, thereby assuring unitary interpretation among the member-states. The judgments are enforceable in all member-states. The court inter-

43. N. COHEN, THE PURSUIT OF THE MILLENIUM (1961).

44. Bebr, *Law of the European Community and Municipal Law*, 34 MOD. L. REV. 481 (1971).

45. R. Lecourt, Note on Comparison Between The Court of Justice of the European Communities and The International Courts (Working Paper, Washington World Conference on World Peace Through Law, 1965).

46. *Id.*

prets the treaties, applying the principle of giving necessary effect to their purposes.

The application of the European Community law differs from private international law or international law.[47] The Community has its own legal capacity and sovereignty limiting the sovereignty of member-states—a common law for all member-states. It may be regarded as *unilaw*. It is neither national law nor international law. The EEC Treaty permits the invoking of unwritten general principles. Article 215, dealing with non-contractual disability, allows invocation of principles "common to the laws of the member states." Outside the purview of this section, the Court of Justice has also drawn on general principles contained in Community law and expressed in the law of the member-states in upholding "Respect for Basic Rights."

Article 177 of the EEC Treaty confers rights having a direct affect on citizens, and thus constituting part of the law of the State without any positive act of national authorities. Individuals, as well as the organs of the Community and the other member-states, may invoke treaty provisions which impose express obligations upon a member-state to refrain from certain actions. The court's jurisprudence extends to citizens and courts of member-states where national legislation, regardless of the reason, fails to comply with community law. The European Court has asserted the supremacy of Community Law over national law, even with regard to national constitutional law.[48] The municipal courts generally follow the interpretations of the European Court.

The Community law is interwoven with national law, relying on the latter for execution. The national law governs the custom and procedures of the national courts in determining and applying Community law. The directives from the communities to the member-states prescribe for them in a binding fashion a particular object, but leave them free with regard to the manner of achievement. National laws are required to fulfill the obligations imposed on the member-states by the directives.[49]

The Organization of World Ecology

Another significant breakthrough towards world order is the move to manage the world ecology. National statutes regarding air

47. Kutscher, *Community Law and The National Judge*, 89 L.Q.R. 487 (1973).
48. *Id.*
49. *Id.*

and water pollution are copied by other states and form the basis for a customary international law. A great number of treaties between neighboring countries have for some time been enacted for protection against the pollution of commonly shared water bodies and air sheds.[50] Regarding administration and access to courts and compliance, pollution in a neighboring country is considered equal to pollution in one's own country. One environmental law controls the territory with no act causing pollution permitted without approval by an established international agency.[51]

International standards formulated by recognized experts, with regard to such matters as flight control and pollution, are routinely enacted or referred to in municipal law, thereby becoming a uniform and interwoven part of international law. Through this process, a form of *unilaw* is emerging which transcends differing legal and social systems.

An approach has been made towards international legal unification and uniformity with regard to air law. The problem is to assure that similar facts and relations will be treated equally.[52] The first stage is to avoid conflicts by determining the applicable law without any direct ruling on matters of substance. However, substantive uniformity is attained by directly applying international rules to relationships which embody some international element. The third phase is realized when the substance of internationally established rules is autonomously translated into national law without an international element.[53] International legislation will always be a subsystem, a part of a more extensive system in which it should be integrated without inherent contradiction.

The success of international codification requires a need, and the obstacles must not be prohibitive. The basic objective of an in-

50. Hambro, *Some Legal Problems Concerning the Protection of the Human Environment*, 12 Is. L. Rev. 1 (1977) [hereinafter cited as Hambro]. *See generally* W. Gromley, Human Rights and Environment: The Need for International Cooperation (Leyden, 1976). A 1974 treaty between Denmark, Finland, Norway, and Sweden treats the four countries as one area in fighting pollution, with the citizens of the four states granted equal rights to protect their environment in each of the states. *See* List of treaties, Conventions and Agreements concerning Environmental Problems of Large Areas, prepared by Economic Commission for Europe, Env/R 35 of 2 October 1975. An incipient law of physical communities is evolving. Lederer, *Book Review*, 12 Is. L. Rev. 126 (1977).

51. Another world development towards on effective legal order is the series of conventions pertaining to pollution of the seas.

52. Guldiman, *International Air Law in The Making*, 27 Current Legal Problems 233 (1974).

53. An example is the Warsaw Convention of 1929 on air carriers liability.

ternational convention is to reconcile divergencies and to compromise on various matters. An attempt at international unification may create disharmonies within national territories which may be mitigated by permitting states to make reservations concerning specific clauses, or by providing for optional schemes. In formulating a convention, there arises the problem of using general terms, as opposed to providing for the maximum of substance. A convention with a maximum of substance may not be acceptable to many states, while a convention acceptable to all may be of little effect. The formulation of broad principles may be more acceptable to the continental legal systems, whereas detailed regulation would accord more with the English common law tradition. Yet another problem involves establishing institutions for implementation.

INTERNATIONAL PROTECTION OF HUMAN RIGHTS

Early Development

The protection of human rights is a basic and essential element in the development of a world community and legal order. Functional relationships, particularly with regard to commerce, require protection of human rights. The members of the European Community have, for example, a common respect for human rights.[54] The importance of respect for human rights as a basis for peace and resolution of conflicts was also recognized in the Helsinki Declarations pertaining to relations with the Soviet Union.[55]

Prior to World War II, the general protection of human rights in international law was limited to the protection of aliens who, ironically, enjoyed greater protection than citizens residing in their own state; and also limited to application of humanitarian intervention in cases where a state maltreated its subjects in a manner offending the conscience of mankind.[56] Conventions dealing with

54. The members adhere to the European Convention on Human Rights.

55. For text of Helsinki Declarations cf., 73 DEPT. OF STATE BULL. 323 (1975); 14 ILM 1292 (1975). With regard to the Belgrade Conference, the dialogue between East and West on human rights has been characterized as a play on words or semantics with each participant resorting to the same concepts and verbiage but each intending something different. This is apparent from the draft Soviet Constitution which, like the present constitution which was adopted under Stalin, confers such rights as freedom of expression and assembly not as natural rights or because the citizen is entitled to human rights, but to serve the interest of the workers and the Socialist regime. J. Daniel, *Human Rights—The Brezhnev Version*, DAVAR, (June 24, 1977), Friday Supplement 13 (Hebrew). The Helsinki Declaration represents a test for the Soviet Union and a challenge for the United States. Lequor, *Human Rights—Form and Substance*, MAARIV, June 17, 1977 (Hebrew) [hereinafter cited as Lequor].

56. "The International Protection of Human Rights By General International Law," 54th Conf. International Law Association 633 (1970).

human rights were limited to the laws of war protecting the rights of prisoners and civilians in occupied territories, the outlawing of the slave trade, and following World War I, the Minorities Treaties and the Mandates System of the League of Nations. The International Labour Organization conventions also contain provisions protecting the human right of association and prohibit slave labor.

The shocking violations of human rights and the depredations upon human dignity during World War II dramatically made the protection of human rights a matter of world concern. In the pre-World War II period, the protection of human rights was regarded primarily as a matter of domestic jurisdiction with the international community indifferent, despite the Nazi depredations. It was this indifference that had facilitated the Holocaust. In essence, a moral crisis ensued. What had happened was a challenge to the basic principle that man is sacred or created in the Divine image.[57] The belief in the sanctity of the human being became the foundation for human rights.[58]

The United Nations

The United Nations Charter contains specific provisions regarding the protection and promotion of fundamental human rights. The Preamble provides that the task of the United Nations involves 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." Article I, Paragraph 3 includes respect for human rights as one of the objectives of the United Nations. Article 55, Paragraph (c) lists respect for observance of human rights and fundamental freedoms as one of the basic functions of the United Nations. In addition, Article 56 obligates the member-states to take joint and separate action in cooperation with the organization for the achievements set forth in the charter.

Whether the charter provisions are binding under all circumstances has been debated by legal scholars.[59] The view has been expressed that neither the needs enumerated in the Preamble nor

57. E. FACKENHEIM, QUEST FOR PAST AND FUTURE, ESSAYS IN JEWISH THEOLOGY (1976). *See also* A. and R. Eckardt, "The Theological and Moral Implications of the Holocaust, Christian Attitudes on Jews and Judaism," A Bi-monthly Documentary Survey (No. 52, Feb. 1977).

58. The reaction to human rights deprivations was first expressed in the Nuremberg principles which brought depraved perpetrators to trial.

59. G. Schwarzenberger, *The Purposes of United Nations International Judicial Practice*, 4 IS. YR. BK. ON HUMAN RIGHTS 11 (1974).

the purposes are rules of law, but are legally relevant.[60] The International Court of Justice in the first Southwest Africa cases asserted:

> Humanitarian considerations may constitute the inspirational basis for rules of law, just as, for instance, the preambular parts of the United Nations Charter constitute the moral and political basis for the specific legal provisions thereafter set forth. Such considerations do not, however, in themselves amount to rules of law.[61]

However, in its advisory opinion in the Namibia Case, the court held that

> 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 enforce distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin would constitute a denial of human rights in flagrant violation of the purposes and principles of the Charter.[62]

Thus, on the one hand, the International Court of Justice proclaims that the United Nations charter does not establish rules of law; but, on the other hand, utilizes the charter to substantiate its legal conclusions.

The meaning of fundamental rights and freedoms was clarified by the Universal Declaration of Human Rights, which expresses a common standard for their promotion. The legal status of the Universal Declaration has been the subject of heated controversy overshadowed by the more general question of the authority of General Assembly resolutions. Some writers deny it has any legal effect, while others regard it as an authoritative interpretation of obligations contained in the charter, and still others consider it an element of customary international law.[63] One writer contends that the Declaration of Human Rights has a higher rank than a regular

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60. *Id.*

61. Southwest African Cases (1971) ICJ 57.

62. Southwest African Cases (1966) ICJ 34.

63. For references, see Schreur, *The Impact of International Institutions on The Protection of Human Rights in Domestic Courts*, 4 IS. YR. BK. ON HUMAN RIGHTS 60, 77 nn. 93-6 [hereinafter cited as Schreur].

General Assembly resoluton.[64] A "declaration" has been characterized as a formal and solemn instrument, suitable for rare occasions when principles of great and lasting importance are being enunciated, and resorted to only in rare cases relating to matters of major and lasting importance where maximum compliance is expected.[65] The Universal Declaration has been regarded as partaking of charter authority and constituting an authoritative interpretation of the charter.[66] Though the Universal Declaration does not refer to the duty of states to guarantee these rights, it is the essence of every legal order that it has to be performed in good faith, the State is addressed as both obligator and guarantor.[67]

The International Organizations

Regardless of the legal effect of the declaration, the General Assembly followed the normal practice of paralleling it with treaties and covenants containing the necessary formulas of contractual obligations, procedure and guarantees. In 1966 the General Assembly adopted the International Covenants on Economic, Social and Cultural Rights, and on Civil and Political Rights. The United Nations Declaration on the Elimination of All Forms of Racial Discrimination, adopted in 1963, was followed in 1965 by the International Convention on the Elimination of All Forms of Racial Discrimination. In 1948 the General Assembly adopted the Genocide Convention.

Other organs and agencies of the United Nations have initiated conventions and declarations dealing with the promotion of the fundamental protection of human rights. These include Discrimination (Employment and Occupation) Convention (1958), by the International Labour Organization; Convention Against Discrimination in Education (1960); adopted by UNESCO; the Abolition of Forced Labour Convention (1957), by the International Labour Organization; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949), by the General Assembly; Convention on the Nationality of Married Women (1957), by the General Assembly; Convention on the Reduction of

64. Lador-Lederer, *Legal Aspects of Declarations*, 12 IS. L. REV. 202 (1977) [hereinafter cited as Lador-Lederer].

65. U.N. Doc. E/CN. 4/L. 610 of 2 April 1962.

66. *See* comment of Rene Cassin, U.S. Doc. A/C. 3/SR-92, 12.

67. Lador-Lederer, *supra* note 64. Another view holds that some General Assembly resolutions, particularly those that are to be followed by a convention are expressive of international law. Gross, *The United Nations and The Rule of Law*, 19 INTL. ORG. 537 (1963).

Statelessness (1961), by a Conference of Plenipotentiaries; Convention Relating to the Status of Stateless Persons (1954), by a Conference of Plenipotentiaries convened by the Economic and Social Council; Statute of the Office of the United Nations High Commissioner for Refugees (1950), by the General Assembly; Freedom of Association and Protection of the Right to Organize Convention (1950), by the International Labour Organization; Convention on the Political Rights of Woman (1952), by the General Assembly; and Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962), by the General Assembly.[68]

Of the regional conventions dealing with human rights, the most significant is the European Convention of Human Rights, signed at Rome in 1950, which established the European Commission on Human Rights and a European Court on Human Rights. The Convention provides for petition by both individuals and contracting parties.[69] Only since November, 1974, have all eighteen member-states of the Council of Europe ratified the Convention, though Cyprus, France, Greece, Malta, and Turkey do not accept all the provisions of the Agreement, while Great Britain has indicated that it may not renew its declaration recognizing the right of individuals to petition the European Commission.[70] The European Commission, since inception, has disposed of over 6,000 applicants from individuals and states.[71] Considering its objects and purpose, the presumption that treaty obligations should be interpreted restrictively when they would derogate from the sovereignty of states, is not applicable to the European Convention.[72] However, the Commission has tended to tread warily in order to convince member-states of their good faith, since interpretations too far out of line may provoke the wrath of the members. The European Commission's con-

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68. Human Rights, A Compilation of International Instruments of the United Nations (United Nations, 1968). Commentators differ as to whether economic and social rights as universal moral rights are to be asserted in an international declarations of human rights, *Compare* CRANSTON, WHAT ARE HUMAN RIGHTS?, in POLITICAL THEORY AND THE RIGHTS OF MAN (1967). Lecquor, *supra* note 55, points out that though the French and 19th century declarations referred to political and civil rights rather than social and economic rights, the fact remains that after their adoption the general well being improved.

69. *See generally* A. ROBERTSON, HUMAN RIGHTS IN EUROPE (2d ed. 1977); F. JACOBS, THE EUROPEAN CONVENTION ON HUMAN RIGHTS (1975) [hereinafter cited as JACOBS].

70. Beddard, *Book Review*, 39 MOD. L. REV. 491 (1976).

71. *Id.*

72. JACOBS, *supra* note 69.

tribution to interpreting human rights provides a frame of reference for United Nations machinery.

Generally, however, the international protection of human rights was affected by the Cold War and the third-world colonial revolution. The International Labour Organization conventions dealing with freedom of association, the right of collective bargaining, and forced labor were initially sponsored by Western governments to embarrass the Soviet Union and its satellites. The conventions and declarations dealing with racial discrimination were triggered by the colonial revolution and the third-world opposition to racial policies in South Africa and Rhodesia. The United Nations, which is dominated by third-world states, is little concerned with other human rights issues, or even with violations of conventions relating to racial discrimination and forced labor when these violations occur in other states. Violations of human rights by members of the third-world, no matter how flagrant, tend, in effect, to be virtually immune from United Nations criticism. As one writer observed:

> The experience of the ILO suggests that only reconciliation polities of recent origin and certain modernizing oligarchies tend to be responsive to international criticism, primarily in order to demonstrate their respectability. Because the future international system is likely to be inhabitated by a very large number of authoritarian polities we cannot rely on the continuation of the pattern of responsiveness. Neither an autonomous of the human rights task nor the possibility of trade offs with security concerns can be foreseen.[73]

The proliferation of international conventions and declarations has, in effect, moved the development of the international protection of human rights from the stage of definition to that of implementation.[74] In this stage, effective institutions are sadly lacking. The United Nations organs, for instance, regrettably lack impartiality.

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73. Haas, "Collective Security and The Future International System," in INTERNATIONAL LAW AND ORGANIZATION 340 (R.A. Falk and W.F. Handrieder, eds. 1968). *See also* Miller, *The New States and International Society,* 386 ANN. AM. ACAD. OF POL. & SOC. SCI. 102 (Nov. 1969), who notes that the relationships of the new states with the super powers and between themselves and with regard to international organizations are unstable. The new states tend "toward an uncritical reliance on the group to which the majority of new states belong has been fostered in the United Nations in an era when voting majorities has been regarded as the most effective weapons in the new states' diplomatic arsenal." *Id.* at 108.

74. Humphrey, "Human Rights Report," 53rd Conf. Intl. Law Assoc. 437 (1968).

Individual State Efforts

The reliance for implementation has been primarily upon state compliance. The Universal Declaration, regardless of its status in international law, has exercised an enormous influence on both municipal and international decision-makers; it has become a standard for measuring and upholding human rights. Domestic courts have relied on the declaration and quoted from its text.[75] Some courts have relied on the declaration as an aid in interpreting municipal law to avoid collision between domestic provisions and the declaration. For example, the United States Supreme Court referred to the declaration in a decision that declared the forfeiture of nationality to be unconstitutional.[76] Mr. Justice Frankfurter, in another Supreme Court case, referred to Article 20(2) and stated that "No one may be compelled to belong to an association."[77] Courts in the Netherlands, Italy, Turkey, and India have in a similar manner interpreted their respective constitutions by referring to the declaration, or made sure that they were in line with its requirements. The West German courts, even prior to West Germany's admission to the United Nations, referred to the declaration on numerous occasions.[78]

Israeli courts have referred to the Universal Declaration and the International Covenant on Political and Civil Rights as reflecting "the basic principles of equality, freedom, and justice, which are the heritage of all modern enlightened states."[79] Israel Supreme Court Justice Chaim Cohn has held in a case involving religious freedom:

> It is decided that rules of international law constitute part of the law prevailing in Israel insofar as they have been accepted by the majority of the nations of the world and are not inconsistent with any enactment of the Knesset [parliament]. The principles of freedom of religion are similar to other rights of man as these have been laid down in the Universal Declaration of Human Rights, 1948, and the International Convenant on Political and Civil Rights, 1965. These are now the heritage of all enlighten-

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75. Schreur, *supra* note 63.

76. Kennedy v. Mendoza-Martinez, 372 U.S. 144, 161 n.16 (1963).

77. American Federation of Labor v. American Sash and Door Co., 335 U.S. 538, 549 n.5 (1949) (Frankfurter, J., concurring).

78. Schreur, *supra* note 63.

79. Shetreet, *Some Reflections on Freedom of Conscience and Religion in Israel*, 4 IS. YR. BK. OF HUMAN RIGHTS 194 (1974) [hereinafter cited as Shetreet].

> ed peoples, whether or not they are members of the U.N.O. and whether or not they have ratified them. . . . For they have been drawn up by legal experts from all parts of the world and been proscribed by the [General] Assembly of the United Nations in which the larger part of the nations of the world participate.[80]

The Israeli courts, therefore, fashion their opinions in accordance with the principles established in these international proclamations.

The various human rights treaties impose an obligation on the contracting states either to incorporate their provisions into the municipal legal systems or to provide equally effective guarantees of fundamental freedoms. Australia established the precendent of enacting a Human Rights Bill,[81] which was based on the United Nations Covenant on Political and Civil Rights that Australia had recently signed. Involving issues of federal-state relations, the Commonwealth contended that the Australian Constitution made possible the implementation into domestic law of any international treaty obligation, or at any rate any treaty obligation concerning subject matter international in character.[82]

Treaties, in some countries, acquire the status of domestic law upon ratification, while in other countries, further legislative action is required. In the United States, Mr. Justice Marshall held that self-executing treaties have internal effect on ratification.[83] In Luxembourg and the Netherlands, a duly ratified self-executing treaty takes priority over both earlier and subsequent inconsistent domestic legislation, while in Germany, Italy, and Belgium, a self-executing treaty, which has been ratified, becomes *ipso facto* part of the domestic law attaining the normative status of an ordinary treaty.[84] In the United Kingdom and Ireland, however, no international treaty is effective in municipal law without legislative action.[85]

The European Community

The application of treaty law has developed principally with regard to the European Convention on Human Rights and European

80. American Orpahan Beth-El Mission v. Minister of Social Welfare, H.C. 103/67, 21(2) P.D. 325, translated and quoted in Shetreet, *supra* note 79.

81. Australia enacted its Human Rights Bill in 1973.

82. Evans, *An Australian Bill of Rights?*, 45 THE AUSTRALIAN QUARTERLY 4, 31 (1973).

83. Foster v. Nielson, 22 U.S. (2 Pet.) 253 (1829).

84. Comte, *The Application of The European Convention on Human Rights*, 4 JOURN. OF THE INTL. COMM. OF JURISTS 94 (1962).

85. Att. Gen for Canada v. Att. Gen. for Ontario (1937) A.C. 326.

Community Law. The European Community Law, *per se*, has emerged as a guarantee of human rights.[86] The Common Market Court at Luxembourg, empowered to draw on general principles of law as a source for its decisions, has held that fundamental rights, forming an integral part of the principles of law which it enforces and assuring protection of such rights, is required to substantiate itself by reference to the constitutional tradition common to the member-states. The court, therefore, cannot allow measures which are incompatible with the fundamental rights recognized and guaranteed by such states.[87] Furthermore, the court held that international treaties on the protection of human rights adhered to by the member-states may also supply indications which may be taken into account within the framework of community law.

Concern arose over the ease with which European Community Law, in actuality, may override the entrenched fundamental rights guaranteed in national constitutions. The Constitutional Court of the Federal German Republic held that in the present state of development of the Common Market, when a conflict arises between community legislation and fundamental rights guaranteed in the German Constitution, the latter would prevail, but hinted that this holding would be maintained only so long as the community lacked a directly elected parliament and codified Bill of Rights of its own.[88]

A number of commentators have contended that contracting parties to the European Convention are required to support the Convention by adopting Bills of Rights in municipal law and to provide for effective judicial remedies.[89] The Secretary General is empowered by Article 57 to oversee the implementation of the convention's requirement in the municipal law of member-states and has used this power three times.[90] The normative status of the convention

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86. Pescatore, *Fundamental Rights and Freedoms in The System of The European Communities*, 18 AM. J. OF COMP. L. 343 (1970).

87. Firma J. Nold KG v. E.C. Commission (1974) C.M.L.R. 338.

88. Internationale Handelsgeselschaft v. Einfuhr und Vorrotestelle fur Getreide und Futtermittel (1972) C.M.L.R. 255 (reporting preliminary reference to Luxembourg Court) and (-974) C.M.L.R. 540 (December issue reporting the ruling of the German Federal Constitutional court). For comment, see Scheuner, *Fundamental Rights in European Community Law and In National Constitutional Law*, 12 C.M.L.R. 171 (1975).

89. For references, see J. Jaconelli, *The European Convention on Human Rights—The Text of a British Bill of Rights*, 1976 Public Law 226 [hereinafter cited as Jaconelli].

90. In 1964 the Secretary General used this power to undertake a general survey..

varies among the contracting parties, depending upon the application of treaties in municipal law.[91] In Austria, the convention was given constitutional effect by a federal constitutional law in 1964,[92] and in 1973 the Austrian Constitutional Court invalidated a provision of an Austrian law which was inconsistent with the judgment of the European Court of Human Rights.[93]

Though in Britain the Convention requires legislative incorporation to take effect, British courts have referred to the provisions of the European Convention as persuasive rather than binding sources of law.[94] In this regard, the distinction may be noted between "legal sources"—for instance, statutes and precedents, which are binding on the judge—and "historical sources"—comprising such diverse matters as precedents from foreign legal systems and current rules of morality, which the judge relies on to interpret statutes or fill lacunae in the law.[95] It is through the "historical sources" that international human rights declarations have in many instances found their way into municipal legal systems.

Accordingly, human rights have emerged as the essential elements of *unilaw* and constitute a ligament for the emerging international community. Regardless whether this may also apply to conventions relating to social rights, there is consensus on the assertion of political and civil rights. A basic premise of what may be regarded as the *unilaw* of human rights is the principle of due process of law or natural justice. Though the phrases "due process" and "natural justice" do not appear in any of the declarations or covenants, many of the provisions of the Universal Declaration and the Covenant on Political and Civil Rights connote a due process parentage.[96] Article 8 of the Universal Declaration provides for an effective remedy by the competent national tribunals for acts violating fundamental rights granted by the constitution or by law; Article 9 prohibits arbitrary arrest, detention or exile; Article 10 provides for the right to a fair and public hearing by an independent and impartial tribunal to determine rights and obligations or criminal charges; and Article 11 deals with basic procedural rights in criminal trial proceedings. All of the above provisions clearly in-

91. *Id.*
92. 7 Yr. Bk. 444.
93. 14 Yr. Bk. 838.
94. For case citations, see Jaconelli, *supra* note 89.
95. H. HART, THE CONCEPT OF LAW 246-7 (1961).
96. Newman, *Natural Justice, Due Process and The New International Covenants on Human Rights*, 1967 PUBLIC LAW 274 [hereinafter cited as Newman].

dicate an implicit expression of international due process. Articles 14 and 15 provide for due process procedures in criminal trials, including the right to "a fair and public hearing by a competent independent and impartial tribunal established by law." Principles of due process are clearly expressed in the Covenant on Political and Civil Rights. Article 9 of the Covenant explicitly provides that "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law."

UNILAW AND A UNITED STATES OF EARTH

The development of a world community based on the rule of law requires consensus on its general character and legal principles. The Fundamental Principles of Human Rights is one element of such a consensus. In the past, world order was maintained by the universal empire and *Pax Romana* of the Autonine Caesars, with justice administered by Roman Law. In the Middle Ages, the Church maintained order. In the modern period, a system of sovereign states emerged with power balances. All of these orders were modified and dissolved because of changing conditions of technology and conventional wisdom. The contemporary international system is unstable and in the midst of a succession of revolutionary systems.[97] On the one hand, international society is subject to anarchy, upheaval, and self-destruction and on the other, to the emergence of a new order and a new outlook. Speculations which may seem utopian today may suddenly emerge as feasible. For example, the writings relating to democracy and a unified state, which appeared in the eighteenth century in France, seemed utterly irrelevant and utopian, only to approach reality with the French and American revolutions. Thus, to conceive of the emergence of a United State of Earth is not altogether a visionary dream. The functional utility of the state as a sovereign entity is gradually dissolving because of its limited functionality. Men all over the world are becoming more and more interdependent. The emergence of cosmo man adds impetus for emergence of a new international legal community.

A new image of world order has emerged since World War I. As Quincy Wright observed:

> In the Hague Conventions, the League of Nations Covenant, the Kellogg-Briand Pact, the Nuremberg Charter,

97. S. HOFFMAN, "International Systems and International Law," in THE INTERNATIONAL SYSTEM 237 (Klaus, Knorr and Verba, eds. 1961).

> the U.N. Charter, the Universal Declaration of Human Rights, and other General treaties and declarations, a world order—less politically centralized than the Roman Empire, less ideologically unified than medieval Christendom, but more politically centralized and more committed to fundamental human rights than the state system of the nineteenth century—has been formally accepted by most states. This image has not, however, been fully understood or accepted by most people, or even by most governments. They still think in terms of nation states struggling for power, of a world state like the nation state with which they are familiar, or of conversion of all people to a particular religion or ideology that teaches brotherhood and harmony. As a result, this image, although formally accepted by states, has not been adequately implemented or observed.[98]

With the continuing development of the international consciousness of the individual states, a world order has begun to take shape.

A consensus prevails among statesman and scholars that a world order based on the balance of power and mutual deterrence is unstable and that the system of state sovereignty is no longer feasible. They have also perceived that the multiplicity of cultures and ideologies precludes a universal culture or idealogy. Therefore, they subscribe to the type of world order suggested by the great twentieth century treaties and declarations based on internationalism and pluralism.[99]

Roscoe Pound observed that it is possible to have the rule of law prior to the establishment of a universal state.[100] The common law and the civil law in Europe developed without an omnicompetent superstate. A world law may develop in similar manner. For these purposes, "law" is defined as the regime of social control through legal institutions of justice in a civilized society, rather than referring to the body of authoritative legal precepts which obtain for the time being in a particular politically-organized society. Though a connection is assumed between the two, the enduring part of law is in principles—starting points for reasoning—rather than in

98. Q. WRIGHT, "Steps in The Realization of World Habeas Corpus," THE HUMAN RIGHT TO INDIVIDUAL FREEDOM 160-1 (Kutner, ed. 1970). [hereinafter cited as Kutner].

99. *Id.*

100. R. Pound, "A Forward Step Toward a Legal Order," in Kutner, *supra* note 98.

rules or precedents attaching definite detailed consequences to definite statements of fact. While the former is constant, the latter is transitory.

Unilaw conceives of law as the sense of principles developed by experience and formulated by reason. In part, these principles are expressed in international codification, but transcend codification. It is the reconciliation of all legal systems. A legal system may not necessarily be coterminous with a state, which was true of the effect of Roman Law throughout Europe.[101] A legal system has been defined as the internal organization which every society gives itself in order to conduct its affairs, and is coeval with society rather than emanating from the state.[102] The legal system may relate to a homogenous community within a state. A legal system has been further defined as "a human collectivity bound together by a written or customary legislation relating to legal acts and relationships sufficiently numerous to produce among its members a community of law and sanctions possessing its own legislative, judicial, and adminstrative institutions."[103] The territorial relation is merely contingent.

Unilaw accepts the existence of a multiplicity of legal systems. The continuity of states as sovereign states is not rejected, though the notion of doctrinaire sovereignty is no longer tenable. *Unilaw*, however, conceives of the sovereign states uniting into a United States of Earth and evolving into a world community through an emerging and evolving relationship. Relationships evolve on a functional basis involving economic relationships, communication and transportation, the control of the environment, the quest for outer space, the exploitation of the resources of the sea, weather control, medical research and hygiene, food production, and other areas. To assure the continuity of functional relationships, security relationships gradually evolve with the ultimate abolition of municipal military forces and the establishment of a united force. The initiative begins with only a limited number of states, but ends with the encompassing of all the peoples of the earth. The United States and the nations of the Atlantic Community appear to be the nations most capable of taking this initiative. In entering its third century, the United States may well regard this goal as its historical mission.[104]

101. *See* Vitta, *The Conflict of Personal Laws*, 5 IS. L. REV. 188-94 (1970) [hereinafter cited as Vitta].

102. *See* Vitta, *supra* note 101.

103. *Id.* at 189.

104. Schlessinger, *Starting a Third Century*, Wall Street Journal (Dec. 29, 1976).

The Anglo-American cultural tradition is the most adaptable system for a United States of Earth. As Sidney Hook noted, this tradition consists of three facets:

> These are (1) the institutionalization of the principle of freely given consent; (2) the development of the empirical attitude—which, were it not for the inevitable misunderstandings that attend the phrase, I should like to call "the pragmatic temper"; and (3) the recognition of the worth of diversity and the appreciation of many different varieties of "excellence."[105]

These facets may be broadened to become an integral part of a world culture in which diverse national cultures may preserve their differences, but unite to cope with common problems.

The experimental, empirical attitude that assesses the truth of assertions and claims in terms of results and consequences, eschews the fanaticisms of political and social creeds. This attitude has developed a consensus on basic political institutions without an official metaphysics or theology. Individuals and groups with diverse idealogies and religious outlooks share a consensus in the democratic way of life. All groups follow an empirical approach. Principles are to be regarded as guides to action rather than blindly followed to their logical conclusions.

Though the free giving of consent does not guarantee just or wise decision, it provides a greater likelihood that the consequences of decisions will be considered. This principle implies a belief that men are responsible and are sufficiently rational to know when and where the shoe pinches, and when and where it does not. Free consent implies the absence of coercion, assured by freedom guaranteed by a bill of rights. Though individuals do not function autotomically, their individual consent makes them masters, rather than servants, of the state. Democracy involves accomodation of minority concerns.

Differences are to be appreciated and encouraged. It is a safeguard against provincialism and the tyranny of the familiar. Cultural differences do not threaten a common life in society unless accompanied by practices which deny the right of differences to others and fail to recognize a common method for resolving differences. There must be agreement on a basic method for reaching

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105. S. HOOK, POLITICAL POWER AND PERSONAL FREEDOM 25 (1962).

the truth or testing the good rather than any particular truth or good. In political life, this implies that regardless of political beliefs, one is required to adhere to the rules of the game referring to debate. With regard to cultural differences, each group may preserve and develop its own cultural patterns, provided it does not attempt to impose its specific, exclusive pattern on others and allows its individual members freedom to choose among the diversities of tradition which compete with each other.

> What is required to live prosperously and peacefully together is not a fixed common doctrine or a fixed body of truths, but a common method or set of fixed rules under which we can live with our differences—mitigate, integrate, transcend them if we wish, or let them alone if that is our wish. We cannot make absolutes of doctrines, tastes, or principles without inviting the evils of fanaticism.
>
> Nevertheless, there must be one working absolute on which there can be no compromise, about which one must be fanatical: the rules of the game, by which we settle differences. Whoever plays outside the rules, whoever tries to write his own rules, has given a clear declaration in advance that he proposes to interpret differences as *ipso facto* evidence of hostility.[106]

The number of states in the United Nations which may be regarded as democracies is limited to barely two dozen. The so-called new or third-world states have evolved into dictatorial or authoritarian regimes in which individual liberties are trampled upon; military dictatorships dominate most of the Latin American states. Ironically, blacks enjoy more liberties in South Africa than in most of the African Black dictatorships.[107] The nationalism dominating many of the third-world states is intolerant of cultural diversity. This is true, for example, of the Islamic states and the Arab world.[108] Though the Soviet Union and the Communist bloc are no longer characterized by the tyrannical excesses of the Stalinist era, a totalitarian bureaucracy still prevails.[109] On the other hand,

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106. *Id.* at 37-8.

107. Schnitzer, *White Fear Versus Black Hope*, MAARIV, Nov. 19, 1976 (Friday Supp.) (Hebrew).

108. Luca, *Legal Discrimination Among Arabs* 10 PATTERNS OF PREJUDICE 27 (No. 4, July-Aug., 1976).

109. *See* Hoff, *Brezhnev Ill—Shocking Expectations*, MAARIV, April 29, 1977 at 23 (Hebrew).

the military dictatorship in Greece has been replaced by representative government with greater respect for human rights. Portugal and Spain appear to be developing democratic institutions, and India has returned to democratic rule with the emergency restrictions having been lifted by the new regime.

Nevertheless, the percentage of the world's population under democratic rule and the number of democratic states is small. In most of the world, people live under authoritarian or dictatorial regimes characterized by a denial of fundamental human rights. The democratic states of the world are islands of freedom in a sea of repression. In this situation, they are of necessity in a beleaguered and besieged state. The democratic states are also beset by recurring internal problems threatening, in some instances, the very fabric of their continuity. Democracy and institutions protecting individual liberty in Britain, for example, are threatened by chronic unemployment, inflation, and the problems of colored immigration, which has given rise to nationalist, totalitarian and racist movements.[110] The Western European countries are being affected by unemployment and inflation, causing increasing unrest. In West Germany, alienated youth gives rise to such terrorist groups as Bader-Meinhoff. Though the Italian and French Communist parties currently profess adherence to democratic principles and independence from the Kremlin, their growing influence causes apprehension. The increasing incidence of acts of violence and kidnappings in Italy threatens to undermine the democratic institutions of the Italian Republic.[111] Freedom is also threatened by forces for social conformity.[112] Accordingly, the survival of democratic governments, and the continuance of institutions which uphold fundamental human rights, may not be regarded as a certainty. The fall of the democracies, however, would mean the triumph of barbarism and the negation of human dignity.

The democratic states, therefore, have a critical responsibility to join together to protect fundamental human rights and individual liberty both within and without their respective jurisdictions.[113] The

110. Thurlow, *Racial Populism in England*, 10 PATTERNS OF PREJUDICE 27 (No. 4, July-Aug., 1976).

111. Luciano, *The Kidnapping Industry Flourishes in Italy*, MAARIV, Mar. 3, 1977 (Hebrew).

112. Invens, *Pressures for Conformity*, 11 PATTERNS OF PREJUCICE 5 (No. 1, Jan.-Feb., 1977). This writer in assessing prospects of the survival of freedom in Britain writes, "But I am pessimistic, because whereas twenty years ago I would have been sure that our freedom would survive, now I think that they *probably* will." *Id.* at 8.

113. Eidelberg, *The 'Détente' Leads to the Decline of Freedom*, MAARIV, Dec. 10, 1976 (Hebrew).

protection of fundamental human rights and freedoms is the prerequisite for international cooperation and the evolution of a United States of Earth; the basis for international cooperation is the *unilaw* of human rights.

The task of the democratic states is to form the nucleus for a United States of Earth with the *unilaw* of human rights constituting the essential ligament. These states include the United States and the Atlantic community, Israel, Japan, Australia, New Zealand, India, Sri Lanka, possibly Malaysia and Singapore, Kenya, and a handful of Latin American states. They should reach out to promote the international protection of human rights elsewhere, thereby encouraging the emergence of democratic institutions, and ultimately a universal United States of Earth.

The *unilaw* of human rights, to be effectively implemented by the United States of Earth, requires an international institution which confers status upon the individual as a subject of international law. The institution must be independent and able to function as an ombudsman for the dignity of man. *World Habeas Corpus offers this approach.* It envisions the internationalization of the Common Law Writ of Habeas Corpus. The writ as embodied in the Habeas Corpus Act of 1679 and subsequent legislation confers a right upon any person who is detained to petition to a Court of Chancery for issuance of the writ, which is issued to the jailor. On the return of the writ, the detainee is brought before the court, which inquires into the legality of the detention, including the jurisdiction of the court or authority ordering the detention, the propriety of the detention, and the surrounding facts relating to it.[114] The writ, premised on an impartial judiciary, is a swift remedy. Though procedural, it is a substantive guarantee of individual liberty and the right to physical security because its very existence is a deterrent to the exercise of arbitrary power and illegal practices.[115] The importance of the remedy is illustrated by the fact that one of the first acts of a dictatorial regime, or one asserting emergency powers, is to abolish or limit the Writ of Habeas Corpus. This was the case in the Philippines, Brazil, Chile, the military regime in Greece, and India under Indira Gandhi.

114. R. SHARPE, LAW OF HABEAS CORPUS (London, Clarendon Press, 1976) [hereinafter cited as SHARPE]. For historical development, see Jenks, *The Story of Habeas Corpus*, 18 L.Q.R. 64 (1962).

115. The writ has been adopted in other forms by other legal systems. For example, in Latin American *Aupara* has emerged as an analogous remedy. *See* Zamudio, *Latin American Procedures for the Protection of the Individual*, 9 J. INTL. COMM. JURISTS 60 (1968).

States are obligated by Article 9(4) of the International Covenant on Political and Civil Rights to provide in their municipal law for the remedy of Habeas Corpus or an analogous remedy. "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful." Article 9(5) provides further that anyone who has been the victim of an unlawful arrest or detention shall have an enforceable right to compensation.

The Writ of Habeas Corpus extends to all forms of detention. Conceivably, it might apply to a person under bail seeking to be freed from the obligations of a surety.[116] It applies also to slavery and child custody proceedings.

Implicit in habeas corpus is the notion of due process of law and natural justice. The words of the Magna Carta, "no free man shall be taken or imprisoned . . . or in any way destroyed . . . except by the lawful judgment of his peers or by the law of the land . . . ," came to be identified in the seventeenth century with habeas corpus, as well as with trial by jury and due process of law.[117] The French *Conseil d'Etat* has developed remedies on principles similar to due process in the term *recours excess de pauvoir*, which has been called the "synthesis of the judicial control of administration. . . ." This remedy enables the *Conseil d'Etat* to protect the citizen against arbitrariness.[118] However, French law is defective in failing to provide an effective remedy for illegal detention.[119]

The internationalization of the Writ of Habeas Corpus would provide an effective international legal remedy to individuals who are arbitrarily detained.[120] *It is based on the premise that man is the subject and ultimate beneficiary of domestic and international law and should have the liberty, integrity, and freedom of his person protected by regionally accessible international courts created by a treaty-statute which would not impair the sovereignty of the signatory states.*

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116. SHARPE, *supra* note 114.

117. *See* Horvath, *Rights of Man*, 4 AM. J. OF COMP. L. 539, 547-50 (1955).

118. *Id.*

119. R. ERRERA, LES LIBERTES A L'ABANDON (Paris, 3rd ed. 1975). Klein, *Book Review*, 11 IS. L. REV. 599 (1976), noting an erosion in French liberties and extension of the power of detention.

120. The concept was first enunciated by this writer in 1931 in reaction to the then impending rise of the Nazi dictatorship with its atavistic repudiation of all notions of human rights.

The proposed system of World Habeas Corpus would affect diverse legal systems and cultures by the establishment of regional tribunals delineated to reflect both practical considerations of geographical proximity and legal traditions. The proposal includes an overall supreme court to which appeal may be made. As has been observed:

> The path of a supranational court is a perilous one. On the one hand, as a court free from the municipal day to day political pressures and owing no complete allegiance to any one country it has a free hand to handle politically sensitive legal issues with the detached interest of an impartial arbitrator. On the other hand, as a court regarded by each of the municipal governments as "alien," it must treat [sic] with extreme caution lest it provoke one or the other of the municipal governments into partially or completely barring it from exercising any jurisdiction over that state.[121]

An international supreme court is faced with the onerous burden of deciding cases between competing sovereign groups.

A precedent for the establishment of an international court for habeas corpus is the Court of Appeal for East Africa, which originated from His Britannic Majesty's Court of Appeal for Eastern Africa set up by an Order in Council in 1902.[122] Formed to exercise appellate jurisdiction in protectorates, its jurisdiction was modified and extended by subsequent legislation and the court was reconstituted in 1961. Pursuant to the Treaty for East African Cooperation, 1967, between Tanganyika, Uganda, and Kenya, the court has jurisdiction to hear and determine such appeals from the courts of each particular state which are provided for by any law in force in that particular state.[123] The court, however, has powers to protect individual liberty, including the authority to issue writs of habeas corpus. Considering the Idi Amin situation in Uganda, the Court's effectiveness has been limited.

Upon exhaustion of municipal remedies, or if no effective municipal remedy is available, an individual who is arbitrarily detained could appeal to the appropriate international tribunal to seek

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121. Kanyeihamba and Kutenda, *The Supranational Adjudicatory Bodies and the Municipal Governments, Legislatures and Courts*, 1972 (PUBLIC LAW 107).

122. *Id.*

123. Each state determines the court's jurisdiction.

a writ to inquire into the legality of his detention. The petition could be made on his behalf. The proposal envisions the formation of world attorney generals to initiate proceedings. Provision would be made for the right to counsel and other legal aids. Such tribunals would, of necessity, operate discretely, respecting national sensitivities and state sovereignty.

World Habeas Corpus may function as a ligament for an international legal community and for world law. Mr. Justice William O. Douglas concisely summarized this function.

> All states need not be merged into one great world state . . . in order that the legality of their conduct may be inquired into. . . . What is needed is a treaty or treaties, worked out under the United Nations, in which standards of international due process are defined and machinery made available to enforce it.[124]

Once the principles of due process are established in a proper fashion, and the executive power organized, an international legal community may naturally develop.

Like other courts, both municipal and international, the proposed World Habeas Corpus tribunal would not have the function of enforcement. As an international tribunal, its judgments would be purely declaratory. Enforcement ultimately would involve the coercive pressures of public opinion and possibly appropriate initiatives by national and international political actors. Adherence of the states would be through respect for treaty commitments.

A problem may arise in that the litigation involving detention may be *res judicata*, for final, as far as municipal law might be concerned. Accordingly, municipal legislation would need to be adapted. Where the habeas corpus tribunal has determined that the detainee was indeed wrongfully detained, provision would be made for compensation.

CONCLUSION

World Habeas Corpus has been endorsed by eminent legal scholars and jurists. The Honorable Arthur J. Goldberg has written:

> The idea of worldwide habeas corpus internationally recognized and enforceable in an appropriate international

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124. An International Writ of Habeas Corpus, quoted in Newman, *supra* note 96.

> court can only be applauded by those who are dedicated to the rule of law and the attainment of lasting peace, for the very term "rule of law" or "due process of law" implies a procedure such as habeas corpus, a means whereby official detention can be challenged and if not justified on the basis of valid laws, terminated. Without this simple procedural mechanism, many of the substantive rights that have been recognized as so important to the cause of peace must remain little more than aspirations. With the advent of international habeas corpus, and the universal respect for human rights that it would encourage, a long stride toward a peaceful world would be taken.[125]

Mr. Justice William J. Brennan regards the proposal for World Habeas Corpus as a "concrete program whereby the now only morally binding Universal Declaration of Human Rights would be made, by the voluntary consent of the nations of the world, a legally binding commitment. . . ."[126] Professor Myres S. McDougal observed that "the policies implicit in the writ of habeas corpus are . . . so fundamental to a decent human existence, and so universally demanded in diverse legal systems, that a concerted effort to institutionalize the process on a transnational scale could be regarded more in the nature of consolidation than of innovation."[127]

Declarations on human rights, including the American Declaration of Independence and the French Declaration on the Rights of Man were catalysts for legal development providing for the protection of individual liberty. The Universal Declaration of Human Rights is a similar catalyst for legal protection in both municipal and international law. It has led to a *unilaw* of human rights and constitutes an ultimate for the evolution of a United States of Earth. What is envisioned is not a super state or universal entity, but merely the emergence of a new international system replacing that which is based on dangerous and unstable power relationships. The goal is a world community order focusing on human beings.

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125. Forward in Kutner, *supra* note 98, at 7.

126. Brennan, "International Due Process and the Law," in Kutner, *supra* note 98, at 87.

127. McDougal, "A Practical Measure for Human Rights," in Kutner, *supra* note 98, at 91.

Valparaiso University Law Review

Volume 12 Winter 1978 Number 2