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International law as a legal order is distinguished from national or intraorganizational legal orders by the lack of a central enforcement authority. This major deficiency is painfully felt in the field of international protection of human rights. The degree to which human rights norms are implemented remains in marked contrast with the degree to which such norms have been codified and accepted by the international community as binding conventional law. An impressive body of international conventions providing for the protection of human rights in almost all spheres of social and political life has been built up during the past fifty years,[1] but their enforcement is sadly lagging. Sovereignty of states—understood as their supreme authority and independence—is being identified as the major factor responsible for such a lamentable state of affairs with regard to the internationally controlled implementation of human rights.[2] Although other subjects of international law such as international organizations and, to some degree, the individual have emerged as actors in the international system,[3] the sovereign states remain the prime constituent elements of the international system, both politically and legally. Thus, the sovereign states not only are creating the international norms for the protection of human rights, but also are determining the process of their implementation—or nonimplementation—according to their

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[1] *See generally* Human Rights—A Compliation of International Instruments, U.N. Doc. ST/HR/1/Rev. 1 (1978); L. SOHN & T. BURGENTHOL, INTERNATIONAL PROTECTION OF HUMAN RIGHTS (1973).

[2] *See, e.g.*, R. FALK, HUMAN RIGHTS AND STATE SOVEREIGNTY at 3 *passim* (1981) (hereinafter cited as FALK, HUMAN RIGHTS). "Governments do not protect human rights, they violate them." Report of the Conference on Implementing a Human Rights Commitment in United States Foreign Policy (quoting Roger Baldwin), *quoted in* Shephard, *Transnational Development of Human Rights: The Third World Crucible*, in GLOBAL HUMAN RIGHTS: POLICIES, COMPARATIVE RESOURCES, AND NGO STRATEGIES 213 (1981).

[3] *See* Oda, *The Individual in International Law, in* MANUAL OF PUBLIC INTERNATIONAL LAW 469 (M. Sorensen ed. 1968); El Erian, *The Legal Organization of International Society*, in MANUAL OF PUBLIC INTERNATIONAL LAW 55 (M. Sorensen ed. 1968).

sovereign will. Seen from this perspective, state sovereignty and the international protection of human rights appear to be incompatible.

Starting from the assumption of the incompatibility of the principle of state sovereignty and the international protection of human rights, two major schools of thought have developed[4] and have advocated corresponding strategies. One school takes a position of transnationalism or supranationalism aimed at overcoming the sovereign state as the dominant constituent element of the international system. Transnational mechanisms of human rights implementation are supposed to replace international protection of human rights. These mechanisms are conceived of as being either of a grass roots, populist, nongovernmental type or of a supernational, vertical, "hierarchical" nature. In any case, national sovereignty as a supposed barrier to the implementation of human rights is to be bypassed or overcome, thereby transforming the traditional nature of the state, which is characterized by the exercise of exclusive jurisdiction over its people and territory. Richard Falk leans towards this position when he states that without the emergence of a new system of world order, not based on sovereign nation states, international protection of human rights is bound to remain weak or marginal.[5] However, Falk admits that in some instances effective international protection of human rights may be procured even today.[6] Among the questions which remain with regard to this position is how—and more importantly, when—such a new system is going to be brought about,[7] not to speak of the possible deficiencies and dangers of such a system.[8]

The other school includes some writers and especially practitioners in the field of foreign policy who tend to take a rather resigning or forthrightly negative attitude toward the notion of international protection of human rights. They claim that the protection of human rights is essentially an internal matter of states and certainly not a proper or primary object to be pursued by means of foreign policies. The principle of nonintervention into the internal affairs of states takes precedence over human rights concerns.[9] It may be overinterpreting the works of Hedley Bull if one attributes this kind of argument to him,[10] but as a prominent

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[4] These may be termed the "non-internationist" and the "transnational/supranational" schools of thought, *see* notes 5-10 & accompanying text *infra*.

[5] Falk, *Responding to Severe Violations*, in ENHANCING GLOBAL HUMAN RIGHTS 245 (1979) (hereinafter cited as Falk, *Responding to Severe Violations*).

[6] *Id.* at 212.

[7] See the critical appraisal of Falk's approach by S. HOFFMANN, DUTIES BEYOND BORDERS 139 (1981).

[8] Falk himself admits of these dangers when he observes that "[t]he centralization of power, nonterritoriality, and the decline of the state do not necessarily entail any normative promise. The outcome could well be tyrannical, chaotic, exploitative, technocratic, deeming, and unstable." Falk, *Responding to Severe Violations*, *supra* note 5, at 253.

[9] See, for example, the noninterventionist stance taken by R. VINCENT, NONINTERVENTION AND INTERNATIONAL ORDER (1974).

[10] *See* Bull, *Human Rights and World Politics*, in MORAL CLAIMS IN WORLD AFFAIRS 79

foreign policy designer, Henry Kissinger could properly be mentioned in this context.[11]

Although both schools raise pertinent aspects of the problem of implementing human rights from an international level, for practical purposes and for a number of very basic theoretical reasons, neither is satisfactory. Any return to the classical notion that the protection of human rights is essentially or exclusively an internal matter of states seems to be out of step with present state practice and international political and legal theory.[12] On the other hand, in view of an international system persistently and even increasingly clinging to the notion of sovereignty,[13] strategies for the implementation of human rights based on an essentially new world order appear to be premature, to say the least.

But more important, both the traditional approach and the new world order model are derived from a misconception of the legal and political scope of the principle of sovereignty as it has developed today. The new world order model also suffers from an imbalanced assessment of the role of the state in the law enforcement process. Therefore, both points have to be examined in turn.

ORIGINS AND MODERN DEVELOPMENT OF THE CONCEPT OF SOVEREIGNTY

Origins and Relevance of the Notion of Sovereignty in International Law

The concept of sovereignty is often associated with the notion of absolute power or authority of governments and states. The Bodin formula, which defines sovereignty as the "potestas legibus soluta" or which describes the monarch as being "legibus solutus" (as not bound by law), often is invoked to corroborate the understanding of sovereignty as absolute power.[14] From this understanding, it is inferred that a state which is sovereign in this sense by definition could not be envisaged as subject to any higher (international) norms such as human rights norms, unless it has consented to them and remains in control of their application and nonapplication.[15] This is in itself a consistent argument. It rests, however, on an inaccurate reading of Bodin and his followers. Bodin was not concerned with elaborating a principle of absolute power of governments (or

(Pettman ed. 1979); *see also* Vincent, *Western Conceptions of a Universal Moral Order*, in MORAL CLAIMS IN WORLD AFFAIRS 52 (Pettman ed. 1979).

[11] For an evaluation of Mr. Kissinger's position, see S. HOFFMANN, *supra* note 7, at 138-39.

[12] *See* text accompanying notes 32-36 *infra*.

[13] This is expressly admitted by Richard Falk in FALK, HUMAN RIGHTS, *supra* note 2, at 33 and Falk, *Responding to Severe Violations*, *supra* note 5, at 207.

[14] *See* J. BODIN, *The First Booke of a Commonweale*, in THE SIX BOOKS OF A COMMONWEALE (K.D. McRae ed. 1962).

[15] *Id.* at 84.

of the monarch) in the sense of limitless or even arbitrary power. Having experienced the turmoils of the French religious strife, he was concerned with the centralization of public authority in the monarch and doing away with competing power groups or authorities such as the church and the nobility. Bodin provided the conceptual framework for the process of the nationalization of power[16] that was essential to the emerging modern territorial state. This centralized authority was not conceived of as being unlimited. The sovereign monarch was seen as being bound by the divine law,[17] or by natural law, as it was stated by later political philosophers. Emerique de Vattel, for instance, applying the concept of sovereignty to the external status of the newly established territorial states, naturally found the right to sovereignty to be limited by the same right of other states[18]—a limitation in part based on the natural law principle of "neminem laedere" (not to do damage to someone else).

The basic idea of the recognition of the principle of sovereignty was to provide for a legal concept and a structural element of the international system that gave the actors in the system the necessary competence and power to act as stable partners in international relations, that is, the competence and power to enforce the law internally and externally. Sovereignty was the theoretical instrument for the establishment of a legal and political order constituted by identifiable entities with a capacity to interact with one another.[19] Sovereignty was not a synonym for limitless, absolute power. The recognition of the natural law principle of "pacta sunt servanda" is just another piece of evidence for this limited concept of sovereignty as a legal principle.

The Development of the Notion of Sovereignty and Its Modern Scope

In the eighteenth century the notion that the principle of sovereignty was an inherently limited one tended to be dismissed or forgotten in actual interstate relations. Legal writers, however, did continue to conceive of sovereignty as a legal concept and that as such it was an inherently limited one. They saw sovereignty as a relative rather than an absolute concept. Politically the eighteenth century international system started

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[16] I owe this very illustrative term to the constitutional law course conducted by W. Howard Mann at the Indiana University School of Law at Bloomington which I had the privilege to attend in 1959.

[17] J. BODIN, *supra* note 14, at 104.

[18] E. DEVATTEL, THE LAW OF NATIONS; OR PRINCIPLES OF THE LAW OF NATURE, APPLIED TO THE CONDUCT AND AFFAIRS OF NATIONS AND SOVEREIGNS 12 (1980).

[19] *See* Quaritsch, *Bodins Souveränität und das Völkerrecht*, 17 ARCHIV DES VOLKERRECHTS 257, 272-73 (1978); *see also* Delbrück, *Menschenrechte im Schnittpunkt zwischen universalem Schutzanspruch und staatlicher Souveränität* 22 GERMAN YEARBOOK OF INTERNATIONAL LAW 384, 387-89, 396-97 (1979).

to develop a new structural element, the balance of power concept,[20] which was fully developed in the nineteenth century and which made itself felt as a definite check on the state's sovereignty. Thus, even on the political level the proposition that sovereignty was an absolute concept without external restraints does not hold true.

Under the modern notion of sovereignty, the understanding that sovereignty is a necessary characteristic of the states constituting the international system and the international legal order, and at the same time a relative concept subject to limitations as the international system may necessitate, may be seen even more clearly. The focus here is on the law of the United Nations Charter as an emerging world constitution. It recognizes and emphasizes the sovereign equality of member states,[21] and thus clings to the idea that the international legal and political order depends on the states' stability and their capacity to act effectively. Yet in chapter VII it also provides for the organization's competence to interfere drastically with the sovereign member states' policies if these endanger international peace and security.[22] Sovereignty as a recognized, basic principle of the United Nations Charter is viewed as compatible with the restraints provided by chapter VII and with the unequal power structure as it exists today (for example, nuclear "haves" and "have nots"). Likewise the charter provides for the obligation of the member states to promote respect for human rights without discrimination on the basis of race, sex, or nationality.[23] This obligation, elaborated and improved by the numerous human rights instruments, has been continuously interpreted as not to constitute an illegal and illegitimate inroad on national sovereignty, notwithstanding counterclaims of some member states like South Africa.[24]

A few cases may illustrate the foregoing proposition. As early as 1947 the United Nations General Assembly took issue with the violation of human rights in Bulgaria, Hungary, and Rumania. The Franco regime in

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[20] For a very pertinent discussion of the concert of Europe as a power relationship based on the balance of power concept which was envisaged as a restraint on the sovereign states, see I. CLAUDE, JR., SWORDS INTO PLOWSHARES 21-39 (4th ed. 1971).

[21] U.N. CHARTER art. 2, para. 1.

[22] *See* U.N. CHARTER, ch. VII.

[23] U.N. CHARTER art. 1, para. 3; *id* at art. 13, para. 1; *id.* at art. 55, para. 1.

[24] As to the United Nations practice with regard to U.N. CHARTER art. 2, para. 7 in the context of human rights, see 1 Repertory of United Nations Practice 55-58, U.N. Sales No. 1955. V.2 (1955); 1 Repertory of United Nations Practice, Supplement No. 1 25-28, U.N. Sales No. 1957. V.4 (1958); 1 Repertory of United Nations Practice, Supplement No. 2 121-24, U.N. Sales No. 64. V.5 (1963-64); 1 Repertory of United Nations Supplement No. 3 67-70, U.N. Sales No. E. 72. V.2 (1972); *see also* Ermacora, *Human Rights and Domestic Jurisdiction (Article 2, § 7 Of The Charter)*, 124 Recueil Des Cours II 371 (1968); Henkin, *Human Rights and "Domestic Jurisdiction"*, in HUMAN RIGHTS, INTERNATIONAL LAW AND THE HELSINKI ACCORD 21 (T. Buergenthal ed. 1977); J. DELBRÜCK, DIE RASSENFRANGE ALS PROBLEM DES VOLKERRECHTS UND NATIONALER RECHTSORDNUNGEN 104 (1971).

Spain was next on the agenda and so was the question of the treatment of the colored population of South Africa, which then became the notorious struggle of the United Nations against apartheid. France was also indicted for human rights violations in Algeria.[25] In all these cases the General Assembly would not yield to claims of the member states concerned that the questions raised were those subject to their exclusive national jurisdiction. These states claimed that the international treatment of the problems violated their sovereign rights. It is established United Nations law that the principle of nonintervention does not apply to questions of human rights violations, although the lawful range of measures to be taken against such violations is open to discussion.[26] The most recent and most important case where sovereignty was not accepted as barring the international community from concerning itself with violations of human rights is that of the strong indictment of the Soviet Union within the framework of the Conference on Security and Cooperation in Europe. The Soviet Union gave up claiming exclusive jurisdiction and plunged into a substantive discussion of the problems at issue at the Belgrade follow-up conference.[27]

From the foregoing it may be fairly concluded that the simultaneous recognition of the principles of sovereignty and of the international protection of human rights is not theoretically inconsistent. But it may very well be that *in fact* the existence of the sovereign state is incompatible with international protection of human rights, as the transnationalist stance maintains,[28] and therefore should be disposed of as a constitutive element of human rights implementation strategies. The role of the sovereign state in the process of implementing human rights has to be examined.

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[25] *See* 1 Repertory of United Nations Practice, Supplement No. 2 122-23, U.N. Sales No. 64. V.5 (1963-64).

[26] While an increasing number of U.N. members favor forcible action—even outside the U.N. framework—against denials of basic human rights such as the practice of apartheid policies or other gross violations of human rights like genocide, others are reluctant to accept the idea of using physical force for the implementation of human rights because—if generalized—this use of force could give momentum to the renaissance of the bellum iustum concept, a concept which in view of the heterogenous value orientations of the world could do away completely with the prohibition of the use of force, held to be one of the great achievements of our time; for a discussion of lawful action against human rights violations, see Falk, *Responding to Severe Violations*, *supra* note 5; for a critical appraisal of the revival of bellum iustum notions in the context of human rights, see Delbrück, *Rechtsprobleme der Friedenssicherung durch Sicherheitsrat und Generalversamm lung der Vereinten Nationem*, in VEREINTE NATIONEN IM WANDEL-ENTWICKLUNGSLINIEN DER PRAXIS DER VEREINTEN NATIONEN IN VOLKERRECHT SICHT 131 (W.A. Keweing ed. 1975).

[27] For documentary references, see *Verlauf und Abschluss des Belgrader KSZE—Flogetreffens*, 33 EUROPA-ARCHIV D217 (1978). See also in this context the concluding speech of the chairman of the Soviet delegation. *Id.* at 257. For a rather critical summary survey of the Belgrade meeting see *New Try at Belgrade*, 1977 AM. FOREIGN REL. 43; *Follow-Up at Belgrade*, 1978 AM. FOREIGN REL. 34.

[28] *See* text accompanying notes 5-8 *supra*.

HUMAN RIGHTS IMPLEMENTATION AND THE ROLE OF THE SOVEREIGN STATE

Enforcement of Human Rights and the Role of the State

The traditional approach to human rights, largely influenced by Lockean political philosophy, usually has some strong antigovernment or antistate overtones. This is especially true of the classical liberal concept of the political and civil rights which are designed to check government encroachments on the individual's freedom. Economic and social rights, on the other hand, stemming from the very different philosophical background of socialist philosophy,[29] depend on implementation by government agencies. But it must not be forgotten that the traditional basic rights depend for their enforcement on a duly administered state machinery, namely, the courts of law. No one else than Immanuel Kant has reminded us so clearly that the freedom of the individual can only be safeguarded within a lawful society, which Kant understood to be the "res publica" or the "good state."[30]

While the gross violation of human rights by many states may seriously intrigue observers, and while one may be inclined to feel deep sympathy with those who try to develop strategies for the implementation of human rights which bypass or try to overcome the sovereign state, one nevertheless has to recognize that, at least as of now, no mechanisms for the adequate enforcement of human rights other than governmental ones have been devised. On the other hand, as often as not, the enforcement of human rights by private groups along the lines of the populist model, despite best intentions, has resulted in a biased, sometimes violent attempt to implement human rights, which has brought about the denial of these very rights to many innocent citizens.[31] If it is concluded from

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[29] For a detailed discussion of the different concepts of human rights, see L. HENKIN, THE RIGHTS OF MAN TODAY 31-88 (1978); *see also* S. HOFFMANN, *supra* note 7, at 95-140; FALK, HUMAN RIGHTS, *supra* note 2, at 125-52.

[30] I. KANT, *Der Allgemeinen Rechtslehre Zweiter Teil*, in IMMANUEL KANT'S WERKE 122 (E. Cassirer ed. 1916).

[31] A case in point—of modest scope as compared with other cases involving gross violations of human rights—is the privately instigated boycott of the newspapers of the West German Springer Publishing Company in the late 1960's. The company was thought to impair the right of freedom of information by holding a near monopolistic market position with regard to newspapers. Thus, private groups—who disliked the Springer political stance anyway—on several occassions frustrated the distribution of the papers by force. Not only were other citizens harassed in their enjoyment of their right of freedom of information by such action, but private property was destroyed in the course of the on-going violence. While a good case could be made at the time that freedom of information was in fact in jeopardy in the field of newspapers, the privately instigated attempt at remedying the situation was clearly inadequate. More serious questions are raised when the use of force by non-governmental or private groups are involved in cases which, at least at the outset, are founded on human rights issues. Situations here could range from clearly terrorist-type actions to fully fledged resistance movements in the cause of fighting dictorial regimes

the foregoing remarks that the sovereign state, effectively wielding power to enforce the law, is a major or dominant factor in the implementation of human rights, the question arises whether this is also the view taken by the various international instruments for the protection of human rights, such as the United Nations covenants.

The Role of the Sovereign State as Envisioned by the International Human Rights Instruments

As was mentioned in the beginning of this paper, the overwhelming number of international human rights norms are addressed to the states, rather than to individuals or to groups of persons. The language used most in the formulation of the human rights covenants and documents is that "states parties" undertake to respect a certain right, to enforce it, to enact national laws securing it, or to deter any violation of it by adequate repressive mechanisms.[32] Rarely are there provisions for an individual's possession of a specific right that could be enforced in the courts of law directly under the international legal instrument. One of the most notable exceptions to this on the international level seems to be article 5 of the International Convention on the Elimination of all Forms of Racial Discrimination 1966,[33] where the right of everyone, without discrimination of any sort, to have access to any place or service intended for use by the general public is stipulated. This norm is considered to be self-executing within the national jurisdictions of the parties to the convention. On the regional level, the right of the individual under article 25 of the European Convention of Human Rights[34] is another prominent exception to the rule.

And yet a closer look into the process of implementation of these rights of the individual reveals that again it is the state which is to enforce any decision in favor of the individual by an international tribunal or organization. Thus, for instance, it was for the Austrian government to change its criminal procedure code with respect to the maximum length of the pretrial arrest of a person after the European Commission and

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grossly violating human rights. While the use of force by private groups for the redress of possibly violated human rights in democratic countries, offering the full spectrum of political and judicial recourse, cannot be justified for whatever legitimate reason, opinions may differ with regard to situations where the use of force may be held to be justified by invoking the moral right to resistance—a problem which cannot be dealt with adequately in the present context.

[32] *See, e.g.*, International Covenant on Civil and Political Rights, 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966); International Convention on the Elimination of All Forms of Racial Discrimination, 18 U.N. GAOR Supp. (No. 15) at 35, U.N. Doc. A/5515 (1963).

[33] International Convention on the Elimination of All Forms of Racial Discrimination, 18 U.N. GAOR Supp. (No. 15) at 36, U.N. Doc. A/5515 (1963). For a more detailed discussion of the individual's rights under this convention, see Delbrück, *supra* note 24, at 95.

[34] For text and discussion of the individual's rights under art. 25 of the European Convention, see Z. NEDJATI, HUMAN RIGHTS UNDER THE EUROPEAN CONVENTION (1978).

the European Court of Human Rights had found the existing law violative of the right to personal freedom and the principle of proportionality. The same would have been true if a similar case in the court had been decided against the Federal Republic of Germany.[35]

It is to be concluded, therefore, that the present international human rights law, in conformity with the views expressed here previously with regard to the role of the state, mainly focuses on the sovereign states as the key law enforcement agencies. To ask for a new transnational system as a basis for the implementation of human rights would mean, undoing the fabric of international human rights norms that have been so tediously and cumbersomely developed over the last thirty-five years, or at least giving little heed to this impressive body of law.

The task international lawyers, as well as politicians, are confronted with is to look for tools and incentives to induce states to come in line with their international obligations to implement human rights. It is not the sovereign state as such that is a barrier to the enforcement of human rights. It is the "bad state" that presents the problem.

INTERNATIONAL IMPLEMENTATION OF HUMAN RIGHTS IN THE WORLD OF SOVEREIGN STATES

The Obstacles

The problem is a formidable one; the obstacles are numerous and complex. First, the international system is pluralistic: it comprises various cultures and heterogeneous philosophical and political value systems. A realistic view of the international human rights instruments must, therefore, result in the disillusioning observation that the international community, in drawing up these instruments, has barely proceeded beyond a minimum consensus with regard to the meaning of the rights stipulated. Second, the implementation of human rights in many instances amounts to nothing less than the renunciation by governments and elites supporting them of their dominant position in a given society and state. The implementation of human rights lacks the advantage other norms of international law possess—that abiding by these norms is a matter of reciprocal benefit, at least if seen from a short-range point of view.[36] Third, even if the binding nature of international human rights norms is accepted, in many instances the infrastructural prerequisites for their implementation are lacking. There are not adequately functioning courts of law, an economic and social achievement that would allow for the implementa-

[35] *See* Eru. Court H.R., "Wemhoff" Case, judgment of 27th June 1968; Eru. Court H.R., "Neumeister" Case, judgment of 27th June 1968.

[36] This has been very pertinently observed by Richard Falk, *see* FALK, HUMAN RIGHTS, *supra* note 2, at 33.

tion of economic and social rights, or sufficient well-trained legal personnel who could respond to the demands of the international human rights norms.

In view of this incomplete list of obstacles to the implementation of human rights in the world of sovereign states, it may be asked whether present-day international enforcement machinery is adequate and acceptable for this formidable task and whether it ever could be—a question that is answered in the negative by the transnational approach. But this may not be the only possible answer to the question when present-day enforcement mechanisms are analyzed.

International Enforcement Machinery for Human Rights

The two existing regional systems for an international enforcement of human rights under the 1950 Convention of Human Rights and the 1969 American Convention of Human Rights certainly do not deserve any drastically negative evaluation. The enforcement mechanisms are highly sophisticated and have reached the quality of an actual system of judicial review. On the other hand, the status of the sovereign states involved in these regional systems is sufficiently recognized by leaving them a realm of discretion and control as to their compliance with the system, which in itself has made them more readily accept the jurisdiction of the relevant international bodies. Yet the regional experience of today is of such a particular nature, made in more or less culturally and politically homogeneous regions, that it hardly could be taken as a model that could be easily transferred elsewhere and that could thereby possibly make a universal approach to the implementation of human rights obsolete.[37] Therefore, leaving aside the regional aspects of the enforcement machinery for human rights, one must assess the adequacy or inadequacy of the existing *international* enforcement mechanisms in order to find out whether there is any reason to believe that international human rights implementation in a world of sovereign states is feasible. Among present-day enforcement instruments two types may be distinguished: political mechanisms and quasi-judicial procedures.[38]

Political mechanisms are to be found in the competence of the United Nations organs such as the Security Council and the General Assembly and the main organs of the United Nations Specialized Agencies to secure observance of the human rights obligations of the members, partly by mobilizing public opinion by thoroughly investigating any human rights

[37] For a rather thorough discussion of the opportunities the regional approach supposedly provides in general (including ample documentary materials), see R. LILLICH & F. NEWMAN, INTERNATIONAL HUMAN RIGHTS—PROBLEMS OF LAW AND POLICY 546 (1979).

[38] For a more detailed discussion and description of these mechanisms, see J. DELBRÜCK, *supra* note 24, at 123. Along similar lines of classification, see A. KHOL, ZWISCHEN STAAT UND WELTSTAAT (1969).

violations and exposing these violations to public criticism. The reporting and petitioning systems, on the other hand, are understood here as representing the quasi-judicial mechanisms. Under these procedures regular reports are received by committees set up by the various United Nations conventions and composed of persons of outstanding legal performance and high moral character who scrutinize these reports with regard to the performance of the reporting states in the field of human rights.[39] The states criticized for violating human rights have the opportunity to present their case in either the political or the quasi-judicial system, thus providing for a chance to initiate an international dialog on the meaning or substance of internationally agreed human rights norms in particular situations and in different cultural settings.

Some Proposals for Improvement in Implementing Human Rights

Compared with the large scale of gross violations of human rights occuring all over the world, the achievements of the international mechanisms for the implementation of human rights may appear marginal.[40] On the other hand, there are indications that despite the very slow progress made, the mechanisms reviewed here may not be so inadequate, especially if invigorated by some collateral strategies. It must be observed preliminarily, however, that none of the major new or traditional strategies proposed for the implementation of human rights would yield results overnight. The protection of human rights on an international plane is a very recent phenomenon in international relations. Viewed from a broader time perspective, the international achievements in the field of human rights, especially in building consensus on basic human rights to be protected, appear to be less marginal. Nevertheless, improvement is necessary, and to some degree, possible if a strategy of moderation and persistence is accepted. The following proposals may contribute to this approach.

First, as Stanley Hoffmann has suggested,[41] existing implementation mechanisms could be applied more effectively if they were not focused on all problems at once. Although a consistent policy of human rights implementation, or rather a policy with the right "inconsistencies,"[42] should

[39] See, for example, the system established under Part IV of the International Covenant on Civil and Political Rights, *supra* note 32.

[40] *See generally* Falk, *Responding to Severe Violations, supra* note 5.

[41] *See* S. HOFFMANN, *supra* note 7, at 120-22.

[42] *Id.* at 126. Hoffmann uses the term "inconsistency" for describing a dilemma that Western States often face, *i.e.*, that they are not in a position to pursue a foreign policy which is consistently guided by human rights considerations, because other important factors such as the maintenance of international peace are intervening. Foreign policies thus come to appear as inconsistent which is not the same as being selective for opportunistic reasons—a charge which could be leveled against the one-eyed human rights policies of most of the Western countries at one time or another (and against similar biases of some private human rights advocates, too).

persistently be followed, concentraton on those cases where success is most likely to be achieved is preferable. From success in such particular instances, the movement toward implementing human rights may gather stronger momentum in time.

Second, existing mechanisms for the implementation of human rights could be applied more effectively if the states committed to the cause of human rights as, for instance, the Western democracies are, would take a more vigorous stand on implementing human rights at home and abroad. Sometimes the problem seems to be not so much the reluctance of any given state to fulfill its obligations under international instruments for the protection of human rights, but the lukewarm support of international efforts to implement human rights given by those democratic states which could wield considerable political and economic power to back up such international efforts. Among the new tools to be applied in this context, the effective barring of states which violate human rights from participation in the international community may be used more extensively. As international law develops into a more value-oriented legal order, the right and capacity to participate in this order may be made dependent not only on being a sovereign political entity, as is traditionally done, but also on being one that lives up to basic human rights standards. The exclusion of South Africa from participation in the work of the General Assembly and some specialized agencies, the nonrecongnition of Rhodesia after the Ian Smith declaration of independence, the nonrecognition of the Bantustan-state Transkei as an independent state, and the threat of expulsion of Colonel-controlled Greece from the European institutions are cases indicating the trend of international attitudes suggested here.

Third, the use of international mechanisms for the implementation of human rights may be made more effective if supplemented by nongovernmental group action that recognizes the sovereign rights of the state but at the same time brings to bear pressures on states violating human rights. It is here that the transnational approach is definitely meaningful, as the example of Amnesty International shows. Intensification of human rights education on a wide geographic scale also has to be considered as a clearly helpful means of pursuing a strategy of moderation and persistence in the international implementation of human rights.

Humankind is not left without some promising prospects for the implementation of human rights in a world of sovereign states. Attempts to implement these rights need not wait for the establishment of a new world system, possibly better geared to the protection of human rights, nor would postponing the necessary drive for the protection of human rights until such a system is brought about be in the interest of those who need help now.